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1. Introduction

1.1 This document summarises the general, political and human rights situation in Pakistan and provides information on the nature and handling of claims frequently received from nationals/residents of that province. It must be read in conjunction with the CIPU Pakistan Country Report April 2005 and any CIPU or COI Service Pakistan bulletins.

1.2 This document is intended to provide clear guidance on whether the main types of claim are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Caseworkers should refer to the following Asylum Policy Instructions for further details of the policy on these areas:

API on Assessing the Claim

API on Humanitarian Protection

API on Discretionary Leave

API on the European Convention on Human Rights

1.3 Claims should be considered on an individual basis, but taking full account of the information set out below, in particular Part 3 on main categories of claims.

Source documents

1.5 Where paragraph numbers have been cited, these refer to the Pakistan CIPU Country Report April 2005. Additional source documents are listed at the end of this note.

2. Country assessment

2.1 Pakistan came into existence with the partition of British India in 1947. Following a nine-month civil war, East Pakistan achieved independence in 1971 as the new state of Bangladesh. The army has directly or indirectly ruled Pakistan for 29 of its 56 years of independence. In October 1999 in a bloodless coup, Army chief General Musharraf appointed himself "chief executive," declared a state of emergency, and issued a Provisional Constitution Order suspending parliament, the provincial assemblies, and the constitution.[4.1] In June 2001, Gen. Musharraf dismissed the President and assumed the presidency himself. He also dissolved the suspended National Assembly, the Senate, and the provincial assemblies.[4.5]

2.2 The 1973 Constitution, which was placed in abeyance following the 1999 coup, provides for a Federal Legislature with a President, a lower house, the National Assembly and an upper house, the Senate. The Constitution was revived on 15 November 2002 but included a Legal Framework Order comprising 29 Amendments to the Constitution through a Legal Framework Order [LFO] which had been unilaterally endorsed by President Musharraf on 21 August 2002. These new powers allowed him to dissolve the elected National Assembly, extend his term in office and appoint Supreme Court judges. The military was given a

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formal role in governing the country.[4.1 /, 5.1, 5.2]

2.3 National and provincial elections held on 10 October 2002 at which no single party won an overall majority, resulted in the selection by the National Assembly in November 2002 of Mir Zafarullah Jamali as prime minister. Under pressure from his party and the press he resigned in June 2004 to be replaced on a temporary basis by Chaudhry Shujaat Hussain. Finance minister Shaukat Aziz was subsequently sworn in as Pakistan's 21st Prime Minister at the end of August 2004, but also retained the finance portfolio. [4.20, 4.21, 4.47, 4.50]

2.4 Pakistan has been in dispute with India over the territory of Kashmir since 1947. The United Nations brought about a cease-fire line, known as the Line of Control (LOC), effectively dividing Kashmir, and still retains a United Nations Military Observer Group in India and Pakistan. However wars over the issue were fought in 1965 and 1971 and the conflict flared up again in 1999 and 2002. In 2003 Prime Minister Vajpayee of India extended a "hand of friendship" to Pakistan and a number of measures were taken by both countries to normalise the situation. Full diplomatic links have been re-established, transport links have been resumed and there has been a ceasefire along the LOC since November 2003.[2]

2.5 The US State Department Report 2004 (USSD), published on 28 February 2005 reports that "The Government's human rights record remained poor; although there were some improvements in several areas, serious problems remained." The report notes that although citizens participated in national government elections in 2002 many observers found serious flaws in their legal framework. USSD continues, "Local police used excessive force and committed or failed to prevent extrajudicial killings. Sectarian killings continued to be a problem. Police abused and raped citizens. Prison conditions remained extremely poor, and police arbitrarily arrested and detained citizens. Some political leaders remained imprisoned or in exile abroad. Case backlogs led to long delays in trials, and lengthy pre-trial detention was common. The judiciary was subject to executive and other outside influence. Corruption and inefficiency remained severe problems. The Government violated due process and infringed on citizens' privacy rights. The press was partly free and in some instances, the Government took retaliatory actions against media outlets and journalists; however, media criticism of security forces and the Government continued to increase during the year." [6.1]

2.6 In its 2005 report Human Rights Watch noted a rise in sectarian violence, legal discrimination against and mistreatment of women and religious minorities, arbitrary detention of political opponents, harassment and intimidation of the media and the lack of due process in the conduct of the "war on terror" in collaboration with the United States.[6.3] Similarly the Freedom House 2005 report noted constitutional and legal restrictions on the freedom of speech, restrictions on religious freedom and unofficial economic and social discrimination and occasional violence and harassment suffered by religious minorities. The report also noted that some disputes continue to be adjudicated by feudal landlords and tribal elders who impose punishment in unsanctioned parallel courts called jirgas.[6.5]

2.7 Pakistan is an Islamic republic and Islam is the state religion. 1998 census figures indicated that 96% of the population were Muslim, the majority being Sunni Muslim and 10% Shi'a. Census figures indicate that 1.69% are Christian, 2.02% Hindu with 0.35% recorded as "other" (including Ahmadis).[6.24] Doubts have been raised about the accuracy of these figures with the religious minorities claiming they represent 10% of the population. [6.25] Discriminatory legislation including the Hudud (also known as Haddud) Ordinances and the anti-Ahmadi laws have fostered an

...factors, circumstances and the anti-Ahmadi laws have fostered an atmosphere of religious intolerance and eroded the social and legal status of religious minorities.[5 page 217] There are reports that the police use excessive force against individuals because of their religious beliefs and practices and also that the police fail to act against persons who use force against religious minorities. Christian and Ahmadi communities have documented both the use of force by the police and police inaction to prevent violent and lethal attacks.[6.28] It has also been noted that relations between different religious groups are frequently tense with acts of sectarian and religious violence. [6.28] Human Rights Watch particularly noted that the Ahmadi community was the target of religious extremists and faced charges under various provisions of the Blasphemy Law.[6.30]

2.8 The Government of Pakistan ratified the United Nations' Convention on Elimination of All Forms of Discrimination Against Women in March 1996. However in practice this has had little effect on the welfare of Pakistani women. [1]

Discrimination against women is reported to be widespread, and traditional social and legal constraints generally kept women in a subordinate position in society. [6.106] Violence against women and girls including domestic violence, rape, honour killings acid attacks and trafficking are reported to be rampant, with existing legal codes discriminating against women and creating major obstacles to seeking redress in cases of violence.[6.105]

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3. Main categories of claims

3.1 This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in Pakistan. It also contains any common claims that may raise issues covered by the API on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal flight are set out in the relevant API's, but how these affect particular categories of claim are set out in the instructions below.

3.2 Each claim should be assessed to determine whether there are reasonable grounds for believing that the 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 API on Assessing the Claim).

3.3 If the applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the applicant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.

3.4 This guidance is not designed to cover issues of credibility. Caseworkers will need to consider credibility issues based on all the information available to them. (For guidance on credibility see para 11 of the API on Assessing the Claim)

3.5 Also, this guidance does not generally provide information on

whether or not a person should be excluded from the Refugee Convention or from Humanitarian Protection or Discretionary Leave. (See API on Humanitarian Protection and API on Exclusion under Article 1F or 33(2) and API on DL)

All APIs can be accessed via the IND website at:

http://www.ind.homeoffice.gov.uk/ind/en/home/laws___policy/policy_instructions/apis.html

3.6 Ahmadis fearing non-State agents

3.6.1 Ahmadis may claim to fear persecution on religious grounds, either from extremist militant groups or from individuals who may use discriminatory legislation in the course of other disputes. They claim that the authorities do not offer them any protection.

3.6.2 Treatment. The most recent census for Pakistan (1998) indicates the number of Ahmadis as 286,000 however this figure is reported to be inherently inaccurate as Ahmadis have been boycotting census and registration for electoral rolls since 1974 when they were declared non-Muslims.[6.46] Estimates indicate that there are approximately 4 million Ahmadis in Pakistan.[3] The movement was founded in 1899 by Mirza Ghulam Ahmad who announced he had received a divine revelation authorising him to accept the allegiance of the faithful. He later declared himself the Mahdi and the promised Messiah of Islam.[6.47] In 1914 the community split in two with the majority in Qadiyan recognising Ghulam Ahmad as a prophet while the minority Lahore Ammadiyya Movement was less willing to distinguish itself from mainstream Islam and recognised Ghulam Ahmad as a reformer. [6.48] Orthodox Islam has never accepted Ghulam Ahmad's visions, and Ahmadis in Pakistan have faced religious and political attacks to the extent that they have been declared apostate and non-Muslim by the country's religious and political elite.[6.49]

3.6.3 Ahmadis consider themselves Muslims but have been declared a non-Muslim minority under section 298c of the Penal Code.[5 page 217] Sections within the Penal Code, which have been described as an "anti-Ahmadi law" forbid Ahmadis from "directly or indirectly" posing as Muslims, have enabled mainstream Muslim religious leaders to bring charges against Ahmadis for using the standard Muslim greeting form and for naming their children Mohammed. The constitutionality of this section of the Penal Code was upheld in a split-decision Supreme Court case in 1996; the punishment for violation of this section is imprisonment for up to 3 years and a fine. This provision has been used by the government and anti-Ahmadi religious groups to target and harass Ahmadis.[6.53] The "Hudood" Ordinances apply different standards of evidence to Muslims and non-Muslims as well as to men and women, they list specifically legal prohibitions against Ahmadis practising their religion and incorporate blasphemy laws which have been used to target Ahmadis and others. The Hudood Ordinances and the blasphemy laws have been abused in that they are often used to settle personal scores.[6.54] Certain groups are increasingly using the blasphemy laws to target "deviant" Muslims but the government has not made any serious attempt to reform or repeal these laws. [5 page 217] Although the blasphemy laws provide for sentences up to and including the death penalty no person has been executed by the Government under any of these provisions, however some people have been sentenced to death or have died while in official custody.[6.56]

3.6.4 Ahmadis are reported to suffer from societal harassment and discrimination and even the rumour that someone may be an Ahmadi or have Ahmadi relatives might stifle opportunities for

Ahmadi or have Ahmadi relatives might still opportunities for employment or promotion.[6.61] One report indicates that Ahmadis are the single most targeted group in Pakistan suffering the near complete denial of freedom of expression, of religion and of association.[6.52] The same report notes that the political and religious context in Pakistan also means that the police and judiciary side with accusers in blasphemy cases rather than with Ahmadi defendants.[6.63]

3.6.5 One organisation feared by Ahmadis is the Khatme Nabuwat which is reported to have gone as far as calling for the banning of the Ahmadi movement and the death of Ahmadis. [6.65] Discriminatory religious legislation has fostered an atmosphere of religious intolerance which contributes to acts of violence directed against non-Muslims and members of minority Muslim groups.[6.32] The UNHCR has noted that "Due to the reluctance of local law enforcement officials to stand between Ahmadis and more dominant religious or social groups, discrimination, or physical harassment against Ahmadis may rise to the level of persecution." [3] (p3)

3.6.6 Sufficiency of protection. The Constitution guarantees the rights of religious minorities and promotes religious tolerance. [6.31-2] The Government admits that police brutality against all citizens is a problem. However, both the Christian and Ahmadi communities have documented instances of the use of excessive force by the police and police inaction to prevent violent and often lethal attacks on members of their communities.[6.28]

3.6.7 UNHCR notes that "While police protection is not always unavailable to Ahmadis, law enforcement's lack of power against dominant political groups or collusion between the police and anti-Ahmadi mullahs is common enough that Ahmadis may be reluctant to call upon the police for assistance." In the same paper UNHCR also note the reluctance of local enforcement officials to stand between Ahmadis and more dominant religious or social groups.[3] (p2) The USSD report on International Religious Freedom 2004 also noted police inaction to prevent violent and often lethal attacks on members of the Ahmadi and Christian communities. [6.27]

3.6.8 It is clear that despite constitutional guarantees a sufficiency of protection may not always be available to individual Ahmadis facing treatment amount to persecution. Some Ahmadis may be reluctant to call upon the services of the police as a result of perceptions of their lack of power in the face of dominant political groups and collusion between them and those who are anti-Ahmadi. Some individuals who do approach the police for assistance may face police inaction to prevent attacks against them or the police may use excessive force against members of the Ahmadi community.

3.6.9 Internal relocation. The Pakistani law provides for freedom of movement, foreign travel, emigration and repatriation however, it is reported that the Government limited this in practice. At times certain political party leaders and religious leaders have been prevented from travelling to certain parts of the country, and special permission was required to enter certain restricted areas. [6.97] Ahmadis are concentrated in Punjab and Sindh. The spiritual center of the Ahmadi community is in Punjab in the large, predominantly Ahmadi town of Rabwah also known as Chenab Nagar, [6.48] where 95% of the population is Ahmadi.[3] UNHCR note in a letter dated 13 April 2005 that "While an internal relocation alternative may be viable in some circumstances particularly for low-level members of the community, relocation may only be a temporary solution given the ease with which Ahmadi affiliation can be detected. This is because Ahmadis cannot, for example, attend the same mosques as majority

Muslims and cannot register as Muslims for political/official purposes. Ahmadis therefore remain somewhat visible within Muslim communities, especially within small communities." [3]

3.6.10 Taking into account these issues internal relocation will not generally be unduly harsh for ordinary members of the Ahmadi community. However prominent Ahmadis involved in preaching/proselytising may draw attention to themselves and for them internal relocation to escape the threat may not be appropriate. Caseworkers will need to consider whether the individual concerned has lived away from the area where they face a threat, whether the threat that they face is likely to follow them, and whether they would be easily identifiable in their new location. Whilst Ahmadis may not be visibly different from other Muslims their attendance at Ahmadi Mosques and the fact that they cannot register as Muslims make them identifiable to those seeking to do so, and consequently caseworkers will need to consider whether Ahmadis would be more vulnerable outside of their Ahmadi community. Such considerations may make the option of relocation unduly harsh in some cases.

3.6.11 Caselaw.

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

- i) has no record of active preaching and is not a person in respect of whom any finding has been made that there is a real risk that he will preach on return;
 - ii) has no particular profile in the Ahmadi faith;
 - iii) has no history of persecution or other ill-treatment in Pakistan related to his Ahmadi faith; and
 - iv) has no other particular feature to give any potential added to the risk to him (e.g. by being a convert to the Ahmadi faith).
- KM [2004] UKIAT 00302

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

MC [2004] UKIAT 00139

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

Razzaq [2002] UKIAT 01457

The Tribunal decided that Rabwah was not a safe city for the appellant. Razzaq's father was a leading elder in the Ahmadi community, and Razzaq had attempted to relocate on many occasions without success.

Tariq Ahmad Shah [2002] UKIAT 03653

This was the case of an ordinary member of the Ahmadi sect and the Tribunal upheld the conclusion of the Adjudicator that there was a sufficiency of state protection against non state agents. The Tribunal further held that there was no breach of Article 9 given that 4 million Ahmadis living in Pakistan practice their religion quite openly.

Iftikhar Ahmed [1999] CA IATRF1999-0490-C.

The Court of Appeal considered that the nature of the religion is to proselytise, although many Ahmadis do not, this appellant would, and in light of this the appellant would have no internal relocation alternative.

3.6.12 Conclusion. Official and societal attitudes towards Ahmadis may result in the harassment or ill-treatment of individuals. The harassment and ill-treatment may rise to the level of persecution, torture or inhuman and degrading treatment in individual cases. However it is not inevitable that just because someone is an Ahmadi they will face treatment amounting to persecution. Each case should be considered individually on its own merits. Where individuals face a serious risk of persecution, torture or inhuman or degrading treatment caseworkers will need to consider whether there is a sufficiency of protection for that individual and whether they could relocate internally. As noted above sufficient protection may not be available and for some individuals particularly single females internal relocation may be unduly harsh, where this is the case a grant of asylum will be appropriate

3.7 Ahmadis fearing State agents

3.7.1 Many applicants will claim asylum based on fear of persecution by the State on account of their Ahmadi religion.

3.7.2 Treatment. Further general information on Ahmadis in Pakistan is also detailed in 3.6.2 and 3.6.3 above. The Government does not ban formally the public practice of the Ahmadi faith, but the practice is restricted severely by law. A 1974 constitutional amendment declared Ahmadis to be non-Muslims because they do not accept Mohammed as the last prophet of Islam. However, Ahmadis consider themselves to be Muslims and observe Islamic practices.[6.53] In 1984 the Government issued Ordinance XX covering Sections 298(b) and 298(c) of the Penal Code, which effectively criminalised activities of Ahmadis practising their religions or identifying themselves as Muslim. Under these sections Ahmadis cannot refer to themselves as Muslim, their religion as Islam, or their founder as a prophet, refer to their places of worship as mosques for masjids, use the traditional Arabic form of greeting or common Islamic blessings, recite the Muslim call to prayer, preach or otherwise propagate their faith, or participate in any activity that might "outrage religious feelings of Muslims".[3]

3.7.3 Ahmadis also are prohibited from holding any public conferences or gatherings, and since 1983 they have been denied permission to hold their annual Ahmadi conference. Ahmadis are banned from preaching or adopting social practices that make them appear to be Muslims. Their publications are also banned from public sale; however, they publish religious literature in large quantities for a limited circulation.[6.53]

3.7.4 A column on the voter registration form for the October 2002 elections required Muslims to take on oath the acceptance of the finality of the Prophethood of Mohammed. In June 2002 the Election Commission announced that it would accept objections from members of the public to Ahmadis who registered to vote as Muslims who would then be required to sign and oath swearing to the finality of the Prophethood of Mohammed or be registered as

the finality of the Prophethood of Mohammed or be registered as non-Muslims. In protest the Ahmadi community notified the President in September 2002, that it would boycott the October 2002 elections. No Ahmadis are known to have voted, but Government policy remains unchanged.[6.45] A further consequence of the declaration of Ahmadis as non-Muslim is the passport declaration. Religion is designated on passports and to obtain one citizens must declare if they are Muslim or non-Muslim and must affirm that they accept the finality of the Prophethood of Mohammed, declare that Ahmadis are non-Muslims, and specifically denounce the founder of the Ahmadi movement.[6.57]

3.7.5 UNHCR noted in April 2005 that, "In 2004 12 cases (affecting 51 people) were filed against Ahmadis on religious grounds, five of which were lodged specifically under sections 298 (c) and 295 (c) of Pakistan's Penal Code. The charges related to each claim include: preaching, allegedly setting fire to the Qu'ran and writing Islamic terms on a wedding invitation. However, given that the population of Ahmadis is approximately 4 million the number of prosecutions is relatively low. More commonly an Ahmadi may face social discrimination, damage to personal or religious property and/or acts of violence." [1] (p2) Ahmadis continued to be arrested and faced charges under various provisions of the Blasphemy Law for allegedly contravening the principles of Islam. Charges against Ahmadis included, "preaching", distributing "objectionable literature", and preparing to build a "place of worship".[6.30] The resolution of blasphemy cases tends to be very slow, with long periods between filing the case and the first court appearance, with lower courts frequently being intimidated and delaying decisions and refusing bail for fear of reprisal from extremist elements. Whilst the number of new blasphemy cases was reported to be relatively few, 14 within a 12 month period, several high profile cases remained unresolved. However during 2003-2004 the Lahore High Court overturned a few lower court convictions and acquitted several blasphemy defendants.[6.39]. UNHCR further noted in April 2005 that the majority of blasphemy cases are acquitted in court for lack of sufficient evidence. [3]

3.7.6 Police brutality against all citizens is a problem and this sometimes makes it difficult to determine whether religious affiliation was a factor in police brutality. However, both the Christian and Ahmadi communities have documented instances of the use of excessive force by the police. [6.27]

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

3.7.8 Internal relocation. As this category of claimants' fear is of ill treatment/persecution by the state authorities and not just fear of local state agents, relocation to a different area of the country to escape this threat is unlikely to be feasible.

3.7.9 Conclusion. There may be some individual prominent Ahmadis who are able to demonstrate that the effect of discriminatory religious legislation and the penalties imposed on them as a result of this would amount to persecution. Where individuals are able to demonstrate such a risk a grant of asylum may be appropriate. However for ordinary members of the Ahmadi community the effect of discriminatory legislation is unlikely to amount to persecution or torture or inhuman or degrading treatment and a grant of asylum will not be appropriate.

3.8 Victims of domestic violence

3.8.1 Some female claimants seek asylum on the grounds that they are the victims of domestic violence and are unable to seek

protection from the authorities

3.8.2 Treatment. Reports indicate that domestic violence is a widespread and serious problem. Husbands frequently beat, and occasionally killed, their wives, and often newly married women were abused and harassed by their in-laws. Dowry and family-related disputes often resulted in death or disfigurement through burning or acid. Reports suggest that during 2004, there were 193 cases of stove deaths, many of these related to disputes with in-laws. [6.127]

3.8.3 According to the Human Rights Commission of Pakistan (HRCP), one out of every two women was the victim of mental or physical violence. The National Commission on the Status of Women has called for specific domestic violence legislation. In its absence, abusers may be charged with assault, but cases rarely were filed. Police and judges were reluctant to take action in domestic violence cases, viewing it as a family problem. Battered women were usually 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 reluctant to report abuse for fear of dishonouring the family reputation. [6.127]

3.8.4 The US State Department Report covering 2004 notes that the Government has criticised violence against women. Its Crisis Center for Women in Distress refers abused women to NGOs for assistance. During 2004 one NGO, Struggle for Change, operated a shelter for abused women providing rehabilitation assistance to some 67 women. Although provincial governments operated shelters for women in distress at the district level in some cases managers of such shelters have abused women in their care.[6.139] Commenting on state-run women's refuge centres the director of Struggle for Change likened these to dumping places and sub-prisons where once a women enters she cannot leave without obtaining a court order. She also criticised the lack of live in counsellors and said the Government should arrange proper medical and psychiatric services for physically injured and emotionally disturbed women. [6.128]

3.8.5 The National Commission on the Status of Women, set up in July 2002 to examine the policy, programmes and other measures taken by the Government for women development and gender equality, assessing implementation and making recommendations, has called for specific domestic violence legislation.[6.119, 6.127] In its absence abusers may be charged with assault, but cases are rarely filed. The Human Rights Commission of Pakistan reports that one out of every two women was the victim of mental or physical violence, but reports that police and judges are reluctant to take action in domestic violence cases viewing these as family problems. Women themselves are reluctant to pursue charges because of the stigma attached to divorce and their dependence on relatives for economic and psychological matters. Relatives too are reluctant to report abuse for fear of dishonouring family reputations.[6.127]

3.8.6 Sufficiency of protection. Human Rights Watch in its 2005 report on Pakistan stated that "The existing legal code discriminates against women and girls and creates major obstacles to seeking redress in cases of violence." The same report noted that survivors of violence encounter unresponsiveness and hostility at each level of the criminal justice system, from police who fail to register or investigate cases of gender-based violence to judges with little training or commitment to women's equal rights. [6.105]

3.8.7 Despite the Government's attempts to protect women's rights, significant barriers to the advancement of women remain in

place and in general from birth women are in a subordinate position in society. [6.106, 6.108-110] The Hudood Ordinances create judicial discrimination against women. Women's testimony in cases involving proposed Koranic punishment is considered invalid or discounted significantly. In other cases involving property matters or questions of future obligations, a woman's testimony is equal to half that of a man. [6.110] Husbands and male family members often brought spurious adultery and fornication charges against women under the Hudood Ordinances. Even when courts ultimately dismissed charges, the accused spent months, sometimes years, in jail. On October 26 2004, the National Assembly adopted legislation that requires senior police officials to evaluate the merits of adultery and fornication allegations and requires a court order before a woman can be arrested on such charges. [6.138]

3.8.8 The Pakistani authorities have not demonstrated a willingness or ability to punish or deter those who abuse their wives, and therefore cannot be considered to provide sufficient protection to wives in fear of domestic violence.

3.8.9 Internal relocation. The Pakistani law provides for freedom of movement, foreign travel, emigration and repatriation however, the Government limited this in practice. [6.97] 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 serious risk of serious domestic violence. Factors such as the social and professional background of the individual claimant should be considered when determining relocation as an option. Educated and professional women may however find it possible to support themselves in alternative locations.

3.8.10 Caselaw.

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.

Neelofur Liaquat [2002]UKIAT04408
Refused both asylum and the human rights (Articles 3 & 8) claims. Found the female appellant credible but that her fear of domestic violence at the hands of her husband did not amount to persecution within the terms of the 1951 Convention. Insufficient evidence of her mental illness or the available medical care in Pakistan, therefore return to Pakistan would not amount to breach of Article 3 of ECHR. Internal relocation to Islamabad, where she could care for herself and her children, was a viable option.

SN &HM [2004] Pakistan CG UKIAT 00283
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 for 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] FWCA Civ 2089 AF and FF [2002] UKIAT

to go (Johnson [107], ECHR on 2004 and 12 [2002] SRN 036361), having regard to the available state support, shelters, crisis centres, and family members or friends in other parts of Pakistan?

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

3.8.11 Conclusion. As noted above caselaw has confirmed that Pakistani women are members of a social group within the terms of 1951 Refugee Convention. Asylum claims from Pakistani women who have demonstrated that they face a serious risk of domestic violence which will amount to persecution or torture or inhuman or degrading treatment must be considered in the context of individual circumstances of each claim. In individual cases a sufficiency of protection by the state authorities may not be available, and although internal relocation may be possible in some circumstances where it is not a grant of asylum will be appropriate.

3.9 Women who have reported being raped

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

3.9.2 Treatment. According to the Human Rights Commission of Pakistan, every two hours a woman is raped in Pakistan and every eight hours a woman is subjected to gang rape. The frequency of rape is thought to be much higher but many rapes remain unreported due to a combination of social taboos, discriminatory laws and victimization by the police. [6.134]

3.9.3 In Pakistan rape is not a criminal offence when the perpetrator is the spouse. The USSD 2004 stated that "One cannot be prosecuted for marital rape or for rape in cases where a marriage between the perpetrator and victim has been contracted but not solemnized." [6.135]

3.9.4 Sufficiency of protection. It is reported that many rape victims are pressured to drop charges. Police and prosecutors often threaten to charge a victim with adultery or fornication if she cannot prove the absence of consent, and there were cases in which rape victims were jailed on such charges.[6.136] Additionally police frequently discourage women from bringing rape charges and often abuse or threatened victims, telling them to drop the case, especially when bribed by the accused. Police request bribes from some victims prior to lodging rape charges, and investigations are often superficial. Medical personnel are generally untrained in collection of rape evidence and at times physically or verbally abusive to victims, accusing them of adultery or fornication. [6.137]

3.9.5 Laws (the Hudood Ordinances) place a heavy burden of proof on women and girls who are raped. If they report a rape to the police they are often charged with Zina crimes [unlawful sexual intercourse] because they have in effect admitted to sexual intercourse outside of marriage and been unable to prove absence of consent. In such cases the victims are more likely to be convicted than the perpetrators.[6.134]

3.9.6 The standard of proof for rape set out in the Hudood Ordinances is based on whether the accused is to be subjected to Koranic or secular punishment. In cases of Koranic punishment, which can result in public flogging or stoning, the victim must produce four adult male Muslim witnesses to the rape or a confession from the accused. However no Koranic punishment has ever been applied for rape. The standards of proof are lower

for secular punishment, which can include up to 25 years in prison and 30 lashes. Such punishments have been applied. Courts, police and prosecutors have on occasions refused to bring rape cases when Koranic standards of evidence could not be met. [6.137]

3.9.7 Taking into account the laws in place, and the treatment by those in the legal process of women who have been raped, the Pakistani authorities have not demonstrated a willingness or ability to punish or deter those who rape. The state authorities therefore cannot be considered to provide a sufficiency of protection against rape.

3.9.8 Internal relocation. The Pakistani law provides for freedom of movement, foreign travel, emigration and repatriation however, the Government limited this in practice. [6.97] 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 the risk of detention, prosecution or societal discrimination if they report a rape. Factors such as the social and professional background of the individual claimant should be considered when determining relocation as an option. Educated and professional women may however find it possible to support themselves in alternative locations.

3.9.9 Caselaw-see section 3.8.10

3.9.10 Conclusion. As noted above caselaw has confirmed that Pakistani women are members of a social group within the terms of 1951 Refugee Convention. Asylum claims from Pakistani women based on their having been raped and how they will be treated on account of this must be considered in the context of individual circumstances of each claim. Where individuals are able to demonstrate that the treatment they will face on return amounts to persecution or torture on inhuman or degrading treatment it will be necessary to consider whether for that particular individual there is a sufficiency of protection or internal relocation is possible. In certain cases claimants may be able to establish a valid claim for asylum.

3.10 Women who fear becoming the victim of an honour crime

3.10.1 Some applicants will claim asylum 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. Claimants in this category may be in fear of their husbands, their husband's family and in some cases their own family.

3.10.2 Treatment. The perpetrators of honour crimes invoke custom, tradition or religion to justify the punishment and to prevent the authorities from bringing them to justice.[5 page 237] In a 2002 report Amnesty International noted that 'Honour' killings are carried out by men who assume that their wives, daughters or sisters have in some way contravened norms relating to the behaviour of women thereby damaging a man's 'honour'. Often the grounds for such assumptions can be very flimsy and amount to nothing more than a suspicion about a woman's fidelity; but men are also known to have felt shamed if 'their' women seek divorce or become the victims of rape. Men in Pakistani society have virtually no other means of undoing a perceived infringement of 'honour' than to kill the women assumed to be guilty of it. Social pressures to eliminate the 'offending' woman are great and men who would rather ignore rumours of infringement of 'honour' are themselves considered

infringement of honour are themselves considered dishonourable. Women, too, have to some extent internalized norms of 'honour' and are known to have approved of or assisted in killings of other women in the context of 'honour.'[4]

3.10.3 According to the HRCP at least 450 women were killed by family members in so-called honour killings in 2003. [6.130] In 2004 local human rights organisations documented 1,458 cases. Sindh province had over half of reported cases. The practice is also thought to be common in Punjab, NWFP, Baluchistan, and FATA (Federally Administered Tribal Areas. [6.131, 6.132, 6.133]

3.10.4 It is reported that women do not have direct access to jirgas (councils of tribal elders) if they fear becoming the victims of honour crimes. They cannot defend themselves or clear their reputation of slurs and slander. Women are not consulted when important decisions affecting their lives are made; even when they are handed over as part of a compensation agreement to settle a revenge killing or an honour crime. [6.116]

3.10.5 President Musharraf has called for a law banning honour killings which he said was needed to strengthen efforts to do away with this "intolerable practice". Following this call the law against honour crimes has been strengthened. On October 26 [2004], the National Assembly adopted legislation that provides the enhancement of punishment of honour-related crimes committed in the name of customary practices and that restricts the right of victims or heirs to pardon perpetrators in exchange for restitution.[6.132] President Musharraf gave assent to this bill in January 2005. However human rights groups remain concerned that perpetrators of these crimes could in a limited number of cases still be pardoned by the victim or their heirs.[6.131. 6.132, 6.118.]

3.10.6 Sufficiency of protection. In strengthening the law to deal with honour related crimes there is evidence to show that the government has taken steps against this practice. However reports of the continuation of honour related deaths and injuries make it clear that the Pakistani authorities have not demonstrated they are able to provide a sufficiency of protection against all honour crimes. Whether there is sufficiency of protection needs to be considered in light of the particular facts of each case i.e. whether attempts were made to seek protection and if not why not and, if protection was sought, what the police response was. Each case needs to be considered on its individual merits.

3.10.7 Internal relocation. The Pakistani law provides for freedom of movement, foreign travel, emigration and repatriation however, the Government limited this in practice. [6.97] Taking into account the general position of women in Pakistani society where they are subordinate to men, may not be educated or even literate and may have to depend on relatives for economic support, internal relocation may be unduly harsh for women who are genuinely fleeing ill treatment due a breach or perceived breach of family honour. Factors such as the social and professional background of the individual claimant should be considered when determining relocation as an option. Educated and professional women may however find it possible to support themselves in alternative locations.

3.10.8 Caselaw see section 3.8.10

3.10.9 Conclusion. As noted above caselaw has confirmed that Pakistani women are members of a social group within the terms of 1951 Refugee Convention. Asylum claims from Pakistani women who demonstrate that they face a serious risk of becoming subject to an honour crime which will amount to persecution or torture or inhuman or degrading treatment must

be considered in the context of individual circumstances of each claim. Each case should be considered individually on its own merits to assess whether the claimant sought and was provided with protection and/or whether internal relocation is an option for that particular individual. In certain cases claimants may be able to establish a valid claim for asylum.

3.11 Prison conditions

3.11.1 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.

3.11.2 Consideration. Prison conditions in Pakistan have been described as extremely poor except for those who are wealthy or influential. Overcrowding is widespread with 85,000 prisoners occupying 87 jails originally intended to hold a maximum of 36,075 prisoners. Nine prisoners are reported to have died in Faisalabad Jail due to lack of medical assistance. According to a 2002 report there are three classes of prison facilities. Class "C" cells which generally hold common criminals and those in pretrial detention often have dirt floors and no furnishings. The 2002 report notes that prisoners in these cells are reported to have suffered the most abuse including beatings and forced kneeling for long periods of time, unsanitary conditions were also reported in small poorly ventilated and decrepit colonial-era prisons which were mainly "C" class. Access to medical care was also a problem with mentally ill prisoners lacking adequate care and not being segregated. The 2002 report notes that "B" cells were used for prisoners with a university education or who benefit from political connections. Conditions in "A" and "B" cells were reported to be markedly better with prisoners permitted to have servants, special food, and satellite television. "A" cells were reserved for prominent persons, including political leaders. Child offenders are generally kept in the same prisons as adults and face the same harsh conditions, judicial delay and mistreatment as adult prisoners.[5.56-5.58]

3.11.3 Caselaw

Jamal Din UKIAT [2002]UKIA06585 held that the fact that the appellant was not mistreated during custody and granted bail, is not indicative of likely future treatment. While prison conditions are far from ideal they do not amount to a breach of Article 2 or 3 and no breach of Article 6.

3.11.4 Conclusion. Whilst prison conditions in Pakistan are poor with overcrowding and unsanitary conditions being particular problems conditions are unlikely to reach the Article 3 threshold. Therefore even where claimants can demonstrate a real risk of imprisonment on return to Pakistan a grant of Humanitarian Protection will not generally be appropriate. However, the individual factors of each case should be considered to determine whether detention will cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3, relevant factors being the likely length of detention, the likely type of detention facility and the individual's age and state of health.

4. Discretionary Leave

4.1 Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See API on Discretionary Leave)

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 not covered by the categories below which warrant a grant of DL - see the API on Discretionary Leave.

4.3 Unaccompanied minors

4.3.1 The policy on unaccompanied minors is set out in the API on Children. Unaccompanied minors who have not been granted asylum or HP can only be returned where they have family to return to or there are adequate reception arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception arrangements in place.

4.3.2 Unaccompanied minors without a family to return to, or where there are no adequate reception arrangements, should if they do not qualify for leave on any more favourable grounds be granted Discretionary Leave for the 3 years or until their 18th birthday, whichever is the shorter period.

4.4 Medical treatment

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

4.4.2 Adequate medical care is reported to be generally available in major cities in Pakistan but is limited in rural areas. However child health care services remain seriously inadequate with more than 70% of deaths between birth and five years being caused by easily preventable ailments. [5.62-5.63]

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

5. Returns

5.1 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.

5.3 Pakistani nationals may return voluntarily to any region of Pakistan at any time by way of the Voluntary Assisted Return and Reintegration Programme run by the International Organisation for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining travel documents and booking flights, as well as organising reintegration assistance in Pakistan. The programme was established in 2001, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Pakistan nationals wishing to avail themselves of this opportunity for assisted return to Pakistan should be put in contact with the IOM offices in London on 020 7233 0001 or www.iomlondon.org.

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