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PAKISTAN

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1. Introduction

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

Source documents

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

2. Country assessment

- 2.1** Pakistan was created as a Muslim homeland during the partition of British India in 1947. The army has directly or indirectly ruled Pakistan for much of its independent history. In October 1999, in a bloodless coup, Chief of Army Staff General Pervez Musharraf appointed himself 'chief executive,' declared a state of emergency, and suspended parliament, the provincial assemblies, and the constitution. In June 2001, General Musharraf dismissed President Rafiq Tarar and assumed the presidency himself. He also dissolved the suspended National Assembly, the Senate and the provincial assemblies.¹
- 2.2** The 1973 Constitution provides for a Federal Legislature with the President, a lower house, the National Assembly and an upper house, the Senate. On 21 August 2002, President Musharraf promulgated the Legal Framework Order, which introduced 35 amendments to the constitution and gave him sweeping powers including the power to dissolve the National Assembly and to appoint Provincial Governors, Chairman of the Joint Chiefs of Staff and single service chiefs.²
- 2.3** General Musharraf won presidential elections in October 2007; however, opposition members of parliament boycotted the elections, arguing that it was unconstitutional. In addition, the Supreme Court stated that no winner could be declared until it had ruled on the legality of the president being both head of the country and chief of the army.³
- 2.4** On 3 November 2007, President Musharraf declared a state of emergency on the grounds that the country was in crisis as a result of militant activity and an 'unruly judiciary'. Musharraf suspended the constitution, sacked the chief justice of the Supreme Court and removed other judges of that court who declared his act illegal. The declaration of emergency provoked protests throughout Pakistan and reportedly resulted in the arrest of thousands, including lawyers, opposition activists, civil society members and some journalists. In June 2008, however, the Foreign and Commonwealth Office reported that the situation in Pakistan after the announcement of the state of emergency remained mostly calm, with some clashes between the police and protesters in the cities of Lahore, Karachi, Multan and Rawalpindi.⁴
- 2.5** The terms of the National Assembly and General Musharraf's presidency expired on 15 November 2007 and a caretaker government was established thereafter to take Pakistan to the parliamentary elections scheduled for January 2008. On 28 November 2007, General Musharraf stepped down as Chief of the Army and on the following day, as a civilian, he was sworn in as president. The state of emergency was lifted by President Musharraf on 15 December 2007.⁵
- 2.6** All the main parties filed nomination papers for the parliamentary elections including the Pakistan People's Party led by Benazir Bhutto, and the Pakistan Muslim League (N) led by Nawaz Sharif. The early days of the election campaign were marred by violence and on 27 December 2007, Benazir Bhutto was assassinated by a suicide bomber during election campaigning. Bhutto's death sparked a wave of protests in several cities with at least 50 people reportedly killed in the riots that followed. On 2 January 2008, the Chief Election

¹ Home Office COI Service Pakistan Country of Origin Information Report November 2008 (Background Information: History & Annexes: Annex A)

² COIS Pakistan Country Report November 2008 (Background Information: History, Constitution & Political System)

³ COIS Pakistan Country Report November 2008 (Annexes: Annex A) & COIS Pakistan Country Report July 2008 (Background Information: Recent Developments)

⁴ COIS Pakistan Country Report November 2008 (Annexes: Annex A) & COIS Pakistan Country Report July 2008 (Background Information: Recent Developments)

⁵ COIS Pakistan Country Report November 2008 (Annexes: Annex A) & COIS Pakistan Country Report July 2008 (Background Information: Recent Developments)

Commissioner announced that conditions were not 'conducive' to holding elections on 8 January, and that the elections were postponed to 18 February 2008.⁶

- 2.7** Following the parliamentary elections held on 18 February 2008, the Pakistan People's Party (PPP) emerged as the leaders, winning 87 seats in the National Assembly. The Pakistan Muslim League - Nawaz (PML-N) secured 67 National Assembly seats, whilst the former ruling party, the Pakistan Muslim League - Quaid-e-Azam (PML-Q), took only 41 seats. The PPP and the PML-N agreed to form a government and on 9 March 2008 signed a coalition agreement. The Awami National Party (ANP) also formed part of the coalition in the National Assembly and joined with the PPP in the North-West Frontier Province Assembly. The Jamiat Ulema-e-Islam, decided to join the PPP to form part of the coalition government both in the National Assembly and the Balochistan Assembly. On 24 March 2008, the National Assembly elected PPP vice-chairman, Yousaf Raza Gillani, as Pakistan's new prime minister and he was sworn in by President Musharraf the following day.⁷
- 2.8** The PPP and the PML-N agreed to reinstate the judges sacked by President Musharraf, however, divisions soon emerged and on 13 May 2008, nine PML-N Ministers resigned from the federal cabinet because of differences on the issue. On 7 August 2008, the PPP and the PML-N announced they were launching impeachment proceedings against the President. On 18 August 2008, Musharraf resigned as President and was replaced on a temporary basis by Muhammad Sumroo, Speaker of the Senate, whilst the ruling coalition discussed his permanent successor. Nawaz Sharif pulled the PML-N out of the coalition government on 25 August, accusing the PPP of breaking its promise to approve the reinstatement of all judges sacked by Musharraf. Asif Ali Zardari, the widower of Benazir Bhutto, was elected President of Pakistan on 6 September 2008 winning 68 per cent of the votes. He was sworn into office three days later.⁸
- 2.9** 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 2003.⁹
- 2.10** While the Government has reportedly been keen to promote civil liberties and human rights, instances of illegal detention; mistreatment; torture; and disappearances continue to be reported, as do other abuses carried out by members of the security forces. A lack of judicial independence and fair trials also remain problems.¹⁰
- 2.11** Central government control of security is weak and there is a high incidence of lawlessness in rural Sindh and areas close to Pakistan's border with Afghanistan, including Baluchistan,

⁶ COIS Pakistan Country Report November 2008 (Background Information: Recent Developments & Annexes: Annex A) & COIS Pakistan Country Report July 2008 (Background Information: Recent Developments)

⁷ COIS Pakistan Country Report November 2008 (Background Information: Recent Developments & Annexes: Annex A)

⁸ COIS Pakistan Country Report November 2008 (Background Information: Recent Developments & Annexes: Annex A), FCO Country Profile 2008: Pakistan, British Broadcasting Corporation (BBC) News 'Zardari takes office in Pakistan' dated 9 September 2008, BBC News 'No deal yet in Musharraf talks' dated 19 August 2008 & BBC News 'Pakistan's Musharraf steps down' dated 18 August 2008, BBC News 'Pakistan's government in turmoil' dated 13 May 2008, BBC News 'Pakistan government set to split' dated 12 May 2008, BBC News 'Pakistan coalition crisis talks' dated 12 May 2008, BBC News 'No agreement on Pakistan judges' dated 12 May 2008 & BBC News 'Meeting on Pakistan judges issue' dated 9 May 2008

⁹ COIS Pakistan Country Report November 2008 (Background Information: Political System) & FCO Country Profile 2008: Pakistan

¹⁰ COIS Pakistan Country Report November 2008 (Human Rights: Introduction) & Human Rights Watch (HRW) World Report 2009: Pakistan

the Federally Administered Tribal Areas (FATA) comprising North and South Waziristan, and the North West Frontier Province. During 2007 and into 2008, there were a number of clashes between the Pakistani security forces and tribal militants in these areas, primarily in the FATA. In 2008, the Government apologised to the people of Baluchistan for abuses under General Musharraf and released high-profile political prisoners in the province. According to Human Rights Watch, these overtures calmed the situation in Baluchistan and attacks by both militants and the Pakistani military reportedly stopped.¹¹

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 Asylum Instructions on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant Asylum Instructions, but how these affect particular categories of claim are set out in the guidance below.
- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the applicant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in *Karanakaran* should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum Instructions on Considering the Asylum Claim).
- 3.3** If the applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the applicant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on the individual circumstances.
- 3.4** This guidance is **not** designed to cover issues of credibility. Case owners will need to consider credibility issues based on all the information available to them. For guidance on credibility see the Asylum Instructions on 'Considering the Asylum Claim' and 'Assessing Credibility in Asylum and Human Rights Claims'.
- 3.5** All Asylum Instructions can be accessed on the Horizon intranet site. The instructions are also published externally on the Home Office internet site at <http://www.ukba.homeoffice.gov.uk/documents/asylumpolicyinstructions/>
- 3.6 Ahmadis fearing the Pakistani authorities**
- 3.6.1** Many applicants will apply for asylum or make a human rights claim based on fear of persecution by the Pakistani authorities due to their Ahmadi religious faith.
- 3.6.2 *Treatment.*** The constitution states that subject to law, public order and morality, every citizen shall have the right to profess, practice, and propagate his religion. According to official figures obtained from the last census conducted in Pakistan in 1998, there were approximately 291,000 Ahmadis in Pakistan. The real figure is not known, however, as Ahmadis do not generally take part in the official census. In 2007, reports estimated that

¹¹ COIS Pakistan Country Report November 2008 (Annexes: Annex A), COIS Pakistan Country Report July 2008 (Background Information: Recent Developments), HRW World Report 2009: Pakistan & FCO letter dated 1 March 2007

there were between 3 and 4 million Ahmadis in Pakistan. Most Ahmadis are from central Punjab but are scattered across towns and cities. There are two separate Ahmadi groups the main Qadiyani community centred on the Ahmadi spiritual town of Rabwah and the smaller Lahore Ahmadi Movement based in Lahore.¹²

- 3.6.3** However, Ahmadis are prevented by law from engaging in the full practice of their faith. A 1974 constitutional amendment declared Ahmadis to be non-Muslims because they do not accept Muhammad as the last prophet of Islam. In 1984, the Government added to the Penal Code Section 298(c), commonly referred to as the 'anti-Ahmadi law.' Used by the Government and anti-Ahmadi religious groups to target and harass Ahmadis, the section prohibits Ahmadis from calling themselves Muslims or posing as Muslims; from referring to their faith as Islam; from preaching or propagating their faith; from inviting others to accept the Ahmadi faith; and from insulting the religious feelings of Muslims. The punishment for violation of the section is imprisonment for up to 3 years and a fine.¹³
- 3.6.4** Specific government policies that discriminate against religious minorities include the use of the 'Hudood' Ordinances and the blasphemy laws. The Hudood Ordinances impose elements of Qur'anic law on both Muslims and non-Muslims. The blasphemy laws provide the death penalty for defiling Islam or its prophets; life imprisonment for defiling, damaging, or desecrating the Qur'an; and ten years' imprisonment for insulting the religious feelings of any citizen. Both the Hudood Ordinances and the blasphemy laws have been abused, in that they are often used against persons to settle personal scores.¹⁴
- 3.6.5** Ahmadis have been banned from holding public conferences, preaching or travelling to Saudi Arabia for the Hajj and/or other religious pilgrimages. Additionally, Ahmadi publications have been banned from public sale, though they have published religious literature in large quantities for a limited circulation. Ahmadis have also faced restrictions on establishing places of worship and the authorities reportedly continue to conduct surveillance on Ahmadis and their institutions. Between July 2007 and June 2008, several Ahmadi mosques reportedly were closed; others reportedly were desecrated or had their construction stopped.¹⁵
- 3.6.6** The Ahmadi community claimed that between July 2007 and June 2008, 45 Ahmadis faced criminal charges under religious laws or because of their faith: 7 under the blasphemy laws, 23 under Ahmadi-specific laws, and 15 under other laws but motivated by their Ahmadi faith. Although no one has yet been executed by the Government under the blasphemy laws, some persons have been sentenced to death. Several of those accused under the blasphemy laws have reportedly been attacked, even killed, by vigilantes, including while in police custody.¹⁶
- 3.6.7** There have reportedly been instances in recent years of low-ranking police officials being bribed to file false blasphemy charges against Ahmadis. Appeals courts have overturned these blasphemy convictions, but suspects are generally forced to spend lengthy periods in prison, where they are reportedly subject to ill-treatment, and they continue to be targeted by religious extremists after they are released. In an attempt to limit abuse of these laws, an amendment was enacted in 2005 requiring that a senior police officer investigate such charges. This has reportedly led to a reduction in new blasphemy cases registered in recent years though non-governmental organisations (NGOs) have reported that this law is not uniformly enforced.¹⁷

¹² COIS Pakistan Country Report November 2008 (Human Rights: Freedom of Religion)

¹³ COIS Pakistan Country Report November 2008 (Human Rights: Freedom of Religion)

¹⁴ COIS Pakistan Country Report November 2008 (Human Rights: Freedom of Religion)

¹⁵ COIS Pakistan Country Report November 2008 (Human Rights: Freedom of Religion)

¹⁶ COIS Pakistan Country Report November 2008 (Human Rights: Freedom of Religion)

¹⁷ COIS Pakistan Country Report November 2008 (Human Rights: Freedom of Religion) & U.S. Department of State International Religious Freedom Report (USIRFR) 2008: Pakistan (Section II)

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

3.6.9 Internal relocation. Where this category of applicants' fear is of ill-treatment/persecution by the state authorities, this does not mean that case owners should automatically presume that internal relocation is not an option. As Lord Bingham observed in Januzi ([2006] UKHL 5):

"The more closely the persecution in question is linked to the state, and the greater the control of the state over those acting or purporting to act on its behalf, the more likely (other things being equal) that a victim of persecution in one place will be similarly vulnerable in another place within the state. The converse may also be true. All must depend on a fair assessment of the relevant facts."

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 Pakistan where they would not be at real risk, whether from state or non-state actors, and it would not be unduly harsh to expect them to do so, then asylum or humanitarian protection should be refused.

3.6.10 Caselaw.

[2005] UKIAT 00033 KK. The IAT 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:

- 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).

3.6.11 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 or Humanitarian Protection will not be appropriate.

3.7 Ahmadis who fear extremist militant groups and/or individuals

3.7.1 Ahmadis may apply for asylum or make a human rights claim based on fear of persecution from extremist militant groups and/or from individuals due to their Ahmadi religious faith. They claim that the authorities are not able or willing to offer sufficiency of protection.

3.7.2 Treatment. Ahmadis continue to suffer from societal discrimination. Ahmadis contend that a 'glass ceiling' prevents them from being promoted to senior positions and that certain government departments refuse to hire or retain qualified Ahmadis. In 2007, the Human Rights Commission of Pakistan (HRCP) also reported the vernacular press as having become virulently anti-Ahmadi. The HRCP noted that state television contained broadcasts of anti-Ahmadi rhetoric, including phrases such as 'Ahmadis deserve to die.' The HRCP further noted that even in the traditionally liberal English language press, religious freedom was becoming harder to defend as journalists increasingly feared attack if they defended

Ahmadis. During the year, the Ahmadi community also reported significant discrimination in access to education.¹⁸

- 3.7.3** In recent years, Ahmadi leaders have reported cases of serious harassment and charged that militant Sunni mullahs and their followers sometimes staged violent anti-Ahmadi marches through the streets of Rabwah. Backed by crowds of between 100 and 200 persons, the mullahs reportedly denounced Ahmadis and their founder, creating a situation that sometimes led to violence. The Ahmadis claimed that the police generally were present during these marches but did not intervene to prevent violence.¹⁹
- 3.7.4** Rabwah is the headquarters of the Ahmadi movement in Pakistan and is made up of 95 per cent Ahmadis. Although Rabwah does provide a degree of community support to individual Ahmadis, there are reports suggesting that Rabwah is targeted by fundamentalist Islamic groups for anti-Ahmadi protests and other actions. Enquiries through the British High Commission in Islamabad show that very few Ahmadis are represented in public and semi public organisations in Rabwah. Approximately 54 per cent of the voting population of Rabwah are Ahmadi, but it appears that Ahmadis do not normally vote in or contest elections.²⁰
- 3.7.5** **Sufficiency of protection.** The constitution guarantees the rights of religious minorities and promotes religious tolerance. Attempts to limit the abuse of the blasphemy laws by the police enacted in 2005 has also led to a reduction in new blasphemy cases registered in recent years, though NGOs have reported that this law is not uniformly enforced. The police reportedly still provide little protection to Ahmadis and in some cases are intimidated against investigating violence or other action against them. Ahmadi community representatives have also reportedly stated that they cannot look to the police or the Courts for protection in Rabwah and that the police are seen by the community as actively protecting the Mullahs and their followers. The perpetrators of anti-Ahmadi violence have very seldom been prosecuted, leading to an atmosphere of impunity.²¹
- 3.7.6** It is clear that despite constitutional guarantees, sufficiency of protection may not always be available to individual Ahmadis. 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 and some Ahmadis have reportedly been attacked while in police custody.²²
- 3.7.7** **Internal relocation.** The law provides for freedom of movement within Pakistan, however, in 2007 the Government limited this right in practice. Most Ahmadis are from central Punjab but are scattered across towns and cities. The spiritual centre of the Ahmadi community is in Punjab in the large, predominantly Ahmadi town of Rabwah (also known as Chenab Nagar), where 95 per cent of the population is Ahmadi. In April 2005, the United Nations High Commissioner for Refugees (UNHCR) noted 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.²³

¹⁸ COIS Pakistan Country Report November 2008 (Human Rights: Freedom of Religion)

¹⁹ COIS Pakistan Country Report November 2008 (Human Rights: Freedom of Religion)

²⁰ COIS Pakistan Country Report November 2008 (Human Rights: Freedom of Religion)

²¹ COIS Pakistan Country Report November 2008 (Human Rights: Freedom of Religion)

²² COIS Pakistan Country Report November 2008 (Human Rights: Freedom of Religion)

²³ COIS Pakistan Country Report November 2008 (Human Rights: Freedom of Religion & Freedom of Movement)

3.7.8 Case owners should assess on an individual case by case basis whether internal relocation is a reasonable option for applicants in this category. In particular, case owners will need to consider whether the individual concerned has lived away from the area where they face a threat, whether the individual has extended family/friends in other parts of Pakistan, 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. Consequently, case owners will also need to consider whether applicants in this category would be easier to track down were they to relocate outside of their Ahmadi community. Such considerations may rule out the option of internal relocation in some cases.

3.7.9 Caselaw.

MJ and ZM (Ahmadis – risk) Pakistan CG [2008] UKAIT 00033. The AIT concluded that:

1. 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.
2. 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.
3. 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.
4. 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 (determination head note amended by the Court of Appeal as outlined below). While noting that there may be some safety in numbers as a result of the large Ahmadi population in Rabwah and that there is the possibility of informal community spirit among Ahmadis, the Tribunal found that there is no higher chance of official protection for Ahmadis in Rabwah than elsewhere. Furthermore, the Tribunal found that it will only be in exceptional circumstances (for example: where an individual has friends or relatives there) that it will be practicable to live there and, even then, it may be no safer than elsewhere. Still, the Tribunal also found that not every Ahmadi is at risk of persecution and each case will be dependent on its particular facts.

Court of Appeal (Case Number: C5/2007/2868) Between the Secretary of State for the Home Department and IA (Pakistan). The Court of Appeal clarified the AIT's reasoning in **IA and Others** and dismissed the Home Secretary's appeal. The Court of Appeal also cleared up an error in the AIT's determination head note. The Court of Appeal agreed the head note should state that Rabwah does not necessarily constitute a safe haven for every Ahmadi rather than retain the AIT's phrase that it was not 'a safe haven for any Ahmadi'.

[2005] UKIAT 00033 KK. The IAT 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:

- v) 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;
- vi) has no particular profile in the Ahmadi faith;
- vii) has no history of persecution or other ill-treatment in Pakistan related to his Ahmadi faith; and

- viii) 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).

[2004] UKIAT 00302 KM. 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 Pakistan 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. In addition, there is no evidence that the appellant placed himself in the forefront of attention by preaching or attending any particularly overt meeting.

[2004] UKIAT 00139 MC. 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.'

[2003] UKIAT 00198 A (Pakistan) The Tribunal reject the notion that simply because an Ahmadi preaches or proselytises he is at real risk of serious harm.

[2002] UKIAT 02642 AZ (Pakistan) CG. The appellant grew up as a Muslim and had converted to the Ahmadi faith at the age of nearly 40. He had claimed asylum on the grounds that, as an Ahmadi, he would face ill-treatment from his brothers and fellow villagers. The Tribunal concluded that there is no sustainable evidence that Ahmadis whether it be as a social group or for their religion are discriminated against by the state so as to be excluded from protection which the law affords all citizens of Pakistan. Being an Ahmadi is not in itself a basis to entitle a person to be treated as a refugee. Simply being an apostate to his faith does not inexorably mean he faces death nor that it is reasonably likely nor a real risk.

[2002] UKIAT 05714 MM (PAKISTAN) (Ahmadi – Internal Relocation) CG. The Appellant is an Ahmadi who feared the Khatme Nabuwat in his home area of Lahore. The IAT agreed with the adjudicator that there was no sufficiency of protection from the authorities in Lahore, however internal relocation to Rabwah was viable where the appellant would be relatively free to manifest his religion openly and in safety.

3.7.10 Conclusion. Official and societal attitudes towards Ahmadis may result in the harassment or ill-treatment of individuals which in individual cases may reach the level of persecution, torture or inhuman and degrading treatment. Where individuals face a serious risk of persecution, torture or inhuman or degrading treatment, case owners will need to consider whether there is sufficiency of protection for that individual and whether they could relocate internally. Sufficient protection may not be available and for some individuals internal relocation may be unduly harsh. The majority of Ahmadi applicants will not be at real risk of ill-treatment but for those who are, and who cannot access sufficient protection or relocate internally, a grant of asylum will be appropriate.

3.8 Women victims of domestic violence

3.8.1 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.

3.8.2 Treatment. Domestic violence is reportedly a widespread and serious problem in Pakistan. The U.S. Department of State reported that in 2007 husbands beat, and occasionally killed, their wives, and married women were at times abused and harassed by their in-laws. In some instances during the year, dowry and family related disputes resulted in death or disfigurement through burning or acid. According to a report by the Human Rights Commission of Pakistan (HRCP) in August 2007, 82 per cent of wives in rural Punjab feared violence from their husbands over minor matters and 52 per cent of wives in most developed urban areas admitted to being beaten by their husbands. By November 2007, there were 34 reported cases of 'stove deaths' – incidents in which women are doused in kerosene and lit on fire. Many of the cases related to disputes with in-laws. According to the

Progressive Women's Association, it became increasingly difficult to compile statistics on acid burn victims in 2007, as many hospitals no longer accepted them.²⁴

- 3.8.3** The National Commission on the Status of Women continues to advocate on behalf of specific domestic violence legislation. In the absence of a specific domestic violence law, abusers may be charged with assault, but in 2007 cases rarely were filed. During 2007, police and judges were reportedly reluctant to take action in domestic violence cases, viewing it as a family problem. Abused women usually were returned to their abusive family members. During the year, women were reportedly 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.²⁵
- 3.8.4** In 2007, the Government operated Crisis Centers for Women in Distress, which referred abused women to NGOs for assistance. There were 276 district-run emergency centres for women in distress providing shelter, access to medical treatment, limited legal representation, social counselling, and some vocational training. However, there were reports during the year that some centres lacked the resources to provide basic services and that in some cases women were abused in the shelters. It was also reported that few women attend the centres.²⁶
- 3.8.5** **Sufficiency of protection.** There is no specific domestic violence law in Pakistan, but abusers may be charged with assault. The Government, along with local NGOs, also runs crisis centres and shelters across the country for women in distress. 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.
- 3.8.6** **Internal relocation.** The law provides for freedom of movement within Pakistan, however, in 2007 the Government limited this right in practice.²⁷ 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.
- 3.8.7** **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.

[2006] UKAIT 00023 FS (domestic violence –SN and HM – OGN) Pakistan CG Heard on 30 November 2005 Promulgated on 13 March 2006 The IAT concluded the background evidence on the position of women at risk of domestic violence in Pakistan and the availability to them of State protection remains as set out in **SN & HM (Divorced women– risk on return) Pakistan CG [2004] UKIAT 00283**. (See below) 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

²⁴ COIS Pakistan Country Report November 2008 (Human Rights: Women) & HRW World Report 2009: Pakistan

²⁵ COIS Pakistan Country Report November 2008 (Human Rights: Women)

²⁶ COIS Pakistan Country Report November 2008 (Human Rights: Women)

²⁷ COIS Pakistan Country Report November 2008 (Human Rights: Freedom of Movement)

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.

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

3.8.8 Conclusion. As noted above, caselaw has confirmed that Pakistani women are members of a particular 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, 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 may be appropriate.

3.9 Women who have reported being raped

3.9.1 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 a rape in Pakistan.

3.9.2 Treatment. Rape, other than by one's spouse, is a criminal offence in Pakistan. 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. There were no reliable statistics on rape in 2007, but the Asian Human Rights Commission (AHRC) believed that 3,000 rapes occurred during the year. Although rape was reportedly widespread in 2007, prosecutions were rare and it was estimated that rape victims reported less than one-third of rape cases to the police. It was also reported that in 2007 families and tribes at times killed rape victims or encouraged them to commit suicide.²⁸

3.9.3 On 1 December 2006, President Musharraf signed into law the Women's Protection Act (WPA) which essentially moved cases of rape and adultery (falling under the Hudood Ordinances) to the secular rather than Shari'a courts. The WPA also prohibits charging women with fornication offences in the cases where women allege they were victims of rape but cannot prove their 'absence of consent'. According to local sources, no woman was charged with adultery or fornication in 2007 if she appeared before a court under these charges after the passage of the WPA.²⁹

3.9.4 In December 2007, however, the AHRC reported that law enforcement authorities and the courts still applied some old methods regarding cases of sexual abuse and rape. During 2007, some women's rights NGOs complained that the provision in the WPA calling for all rape complaints to be heard by a sessions judge introduced barriers to rape victims who did not have the money or access to courts. Women's rights NGOs also reported that some police stations no longer would record rape complaints because of the new law.³⁰

²⁸ COIS Pakistan Country Report November 2008 (Human Rights: Women)

²⁹ COIS Pakistan Country Report November 2008 (Human Rights: Women)

³⁰ COIS Pakistan Country Report November 2008 (Human Rights: Women)

- 3.9.5** According to the U.S. Department of State, the police were at times implicated in rape cases during 2007. Police reportedly abused or threatened the victim, telling her to drop the case, especially when bribed by the accused. During the year, the police reportedly also requested bribes from some victims prior to lodging rape charges, and investigations were often superficial. In 2007, medical personnel were generally untrained in collection of rape evidence and women accused of adultery or fornication were forced to submit to medical exams against their will, although the law requires their consent.³¹
- 3.9.6 *Sufficiency of protection.*** As stated above, the WPA has introduced significant changes to the consideration of rape cases in the courts. Still, the police have reportedly been implicated in rape cases in some instances, especially with regard to the treatment of the victim. 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 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.
- 3.9.7 *Internal relocation.*** The law provides for freedom of movement within Pakistan, although the Government limits this right in practice.³² Taking into account the general position of women in Pakistani society, where they are subordinate to men, may not be educated or literate, and may have to depend on relatives for economic support, internal relocation may be unduly harsh. 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 will find it easier to support themselves in alternative locations.
- 3.9.8 *Caselaw.***
- See paragraph 3.8.7 for caselaw on women.
- 3.9.9 *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 have been raped and who are able to demonstrate that the treatment they will face on return amounts to persecution or torture or inhuman or degrading treatment must be considered in the context of the individual circumstances of each claim. In individual cases, 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 may be appropriate.
- 3.10 Women who fear becoming the victim of an honour crime**
- 3.10.1** 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.
- 3.10.2 *Treatment.*** Honour killings continue to be a problem, with women as the principal victims. No accurate statistics existed on the number of honour crimes committed during 2007, but local human rights organisations reported between 1,200 and 1,500 cases. Most reported cases took place in Sindh and Punjab, though many more likely went unreported. Usually committed by a male relative of the victim, honour killings punish women who supposedly bring dishonour to the family. The NGO Aurat Foundation has since reported that during the

³¹ COIS Pakistan Country Report November 2008 (Human Rights: Women)

³² COIS Pakistan Country Report November 2008 (Human Rights: Freedom of Movement)

first six months of 2008, 225 women were killed in so-called honour killings and there were 3,026 reported cases of violence against women.³³

- 3.10.3** In 2005, President Musharraf signed a bill into law that provides for additional penalties for all crimes involving honour and criminalises the practice of giving women in marriage as restitution for crimes. However, given the prevailing environment in which the authorities generally do not aggressively prosecute or convict the perpetrators of violence against women, activists have questioned the effectiveness of the bill. In particular, human rights groups have reportedly criticised the legislation because it allows for the victim or the victim's heirs to negotiate physical or monetary restitution with the perpetrator of the crime in exchange for dropping charges. Since honour crimes generally occur within families, perpetrators have reportedly been able to negotiate nominal payments and avoid more serious punishment.³⁴
- 3.10.4 Sufficiency of protection.** There continue to be reports of honour related deaths in Pakistan, but in strengthening the law to deal with honour related crimes there is evidence to show that the Government has taken steps against this practice. Sufficiency of protection must, therefore, be considered on the facts of each individual case. For example, 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 may be applicants who are able to establish a well-founded fear of seeking protection from the authorities.
- 3.10.5 Internal relocation.** The law provides for freedom of movement within Pakistan, however, in 2007 the Government limited this right in practice.³⁵ 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 applicant should be considered when determining relocation as an option. Educated and professional women may find it easier to support themselves in alternative locations.

3.10.6 Caselaw.

See paragraph 3.8.7 for caselaw on women.

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

3.11 Women accused of committing adultery or having an illegitimate child

- 3.11.1** Some women will apply for asylum or make a human rights claim based on ill-treatment amounting to persecution from the authorities because they have or are accused of committing adultery and/or having an illegitimate child and fear imprisonment under the Hudood Ordinance.

³³ COIS Pakistan Country Report November 2008 (Human Rights: Women) & HRW World Report 2009: Pakistan

³⁴ COIS Pakistan Country Report November 2008 (Human Rights: Women)

³⁵ COIS Pakistan Country Report November 2008 (Human Rights: Freedom of Movement)

- 3.11.2** Some applicants accused of adultery or having an illegitimate child may fear punishment by family members rather than imprisonment. If this is the case, case owners should refer to section 3.10 on honour killings.
- 3.11.3 *Treatment.*** On 1 December 2006, President Musharraf signed into law the Women's Protection Act (WPA) which essentially moved cases of adultery (falling under the Hudood Ordinances) to the secular rather than Shari'a courts. Before the passage of the WPA, the Hudood Ordinances provided Koranic punishments for violations of Shari'a, including amputation and death by stoning, although the authorities generally did not use such punishments in recent years. According to the U.S. Department of State, the Hudood Ordinances were generally used by family members to control their children's marriage choices, by abusive husbands to control their wives, or by neighbours to settle personal scores.³⁶
- 3.11.4** The WPA prohibits charging women with fornication offences in the cases where women allege they were victims of rape but cannot prove their 'absence of consent'. While sex outside a marriage remains a crime, police have lost the authority to investigate such claims under the new law, implementation of which was a problem in 2007 because of the lack of training of police and lack of awareness of the WPA's technicalities. According to local sources, no woman was charged with adultery or fornication in 2007 if she appeared before a court under these charges after the passage of the WPA.³⁷
- 3.11.5** According to the U.S. Department of State, approximately 2,500 women imprisoned under the Hudood Ordinances were released following the passage of the WPA. A few women remained in custody, but they were now housed in various state operated women's shelters. Despite the introduction of the new laws, the AHRC reported in December 2007 that some women continue to be booked for adultery.³⁸
- 3.11.6 *Sufficiency of protection.*** As this category of applicants' fear is of ill-treatment/persecution by the state authorities they cannot apply to these authorities for protection.
- 3.11.7 *Internal relocation.*** Where this category of applicants' fear is of ill-treatment/persecution by the state authorities, this does not mean that case owners should automatically presume that internal relocation is not an option. As Lord Bingham observed in Januzi ([2006] UKHL 5):
- "The more closely the persecution in question is linked to the state, and the greater the control of the state over those acting or purporting to act on its behalf, the more likely (other things being equal) that a victim of persecution in one place will be similarly vulnerable in another place within the state. The converse may also be true. All must depend on a fair assessment of the relevant facts."*
- 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 Pakistan where they would not be at real risk, whether from state or non-state actors, and it would not be unduly harsh to expect them to do so, then asylum or humanitarian protection should be refused.
- 3.11.8 *Caselaw.***

See paragraph 3.8.7 for caselaw on women.

³⁶ COIS Pakistan Country Report November 2008 (Human Rights: Judiciary & Women)

³⁷ COIS Pakistan Country Report November 2008 (Human Rights: Judiciary & Women)

³⁸ COIS Pakistan Country Report November 2008 (Human Rights: Judiciary & Women)

3.11.9 Conclusion. While sex outside a marriage remains a crime, in 2007 no woman was charged with adultery or fornication if she appeared before a court after the passage of the WPA. In addition, nearly all women previously charged under the Hudood Ordinances have been released since the introduction of the Act. As noted above, caselaw has confirmed that Pakistani women are members of a social group within the terms of 1951 Refugee Convention. Therefore, asylum claims from Pakistani women who demonstrate that they face a serious risk of facing inhuman or degrading treatment due to a spurious accusation of adultery which will amount to persecution must still be considered in the context of individual circumstances of each claim and may qualify for asylum. In the majority of cases, however, a grant of asylum or Humanitarian Protection will not be appropriate.

3.12 Prison conditions

3.12.1 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.

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

3.12.3 Consideration. According to the U.S. Department of State, prison conditions did not meet international standards and were extremely poor in 2007 (except those for wealthy or influential prisoners). Overcrowding was widespread in 2007 with approximately 90,000 prisoners occupying jails originally built to hold a maximum of 36,075 persons.³⁹

3.12.4 In 2007, inadequate food in prisons reportedly led to chronic malnutrition for those unable to supplement their diet with help from family or friends. Access to medical care was also a problem. During the year, the Government permitted visits to prisoners and detainees by human rights monitors, family members, and lawyers with some restrictions. Visits by local human rights monitors occurred, however, the Government denied the International Committee of the Red Cross access to alleged terrorist detainees.⁴⁰

3.12.5 The police often did not segregate detainees from convicted criminals in 2007. Mentally ill prisoners reportedly lacked adequate care and were not segregated from the general prison population. There were also reports of prison riots during year, largely due to the poor living conditions inside prisons. In October 2008, at least four inmates were killed during a riot at the Malir district prison in Karachi.⁴¹

3.12.6 In 2007, the authorities reportedly subjected children in prison to the same harsh conditions, judicial delay, and mistreatment as the adult population. Local NGOs estimated that approximately 1,900 to 2,000 children were in prison at the end of the year. Child offenders could alternatively be sent to one of two residential reform schools in Karachi and Bahawalpur until they reached the age of 18. Abuse and torture reportedly also occurred at these facilities. Nutrition and education were inadequate. Family members were forced to pay bribes to visit children or bring them food.⁴²

3.12.7 The police reportedly tortured and mistreated those in custody in 2007 and at times engaged in extrajudicial killings. Christian and Ahmadi communities claimed their members

³⁹ COIS Pakistan Country Report November 2008 (Human Rights: Prison Conditions)

⁴⁰ COIS Pakistan Country Report November 2008 (Human Rights: Prison Conditions)

⁴¹ COIS Pakistan Country Report November 2008 (Human Rights: Prison Conditions) & BBC News 'Four killed in Pakistan jail riot' dated 16 October 2008

⁴² COIS Pakistan Country Report November 2008 (Human Rights: Children)

were more likely to be abused and non-Muslim prisoners generally were accorded poorer facilities than Muslim inmates.⁴³

3.12.8 Conclusion. Whilst prison conditions in Pakistan are poor with overcrowding and inadequate food being a particular problem, conditions are unlikely to reach the Article 3 threshold. Therefore, even where applicants 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. 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 Instructions on Discretionary Leave) Where the claim includes dependent family members consideration must also be given to the particular situation of those dependants in accordance with the Asylum Instructions on Article 8 ECHR.

4.2 With particular reference to 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 Instructions on Discretionary Leave and on Article 8 ECHR.

4.3 Minors claiming in their own right

4.3.1 Minors claiming in their own right who have not been granted asylum or HP can only be returned where they have family to return to or there are adequate reception, care and support arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, care and support arrangements in place for minors with no family in Pakistan.

4.3.2 Minors claiming in their own right without a family to return to, or where there are no adequate reception, care and support arrangements, should if they do not qualify for leave on any more favourable grounds be granted Discretionary Leave for a period as set out in the relevant Asylum Instructions.

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 In September 2007, the U.S. Department of State reported that adequate medical care was generally available in major cities in Pakistan but was limited in rural areas. According to the World Health Organisation, for every 10,000 people, there are 8 physicians, 1 dentist, 3 nursing and midwifery personnel and 7 hospital beds.⁴⁴

4.4.3 Mental health is a part of primary health care system and actual treatment of severe mental disorders is available at the primary level. The programme initially started in Punjab in 1985

⁴³ COIS Pakistan Country Report November 2008 (Human Rights: Security Forces)

⁴⁴ COIS Pakistan Country Report November 2008 (Human Rights: Medical Issues)

and has been extended to others over the years. There are many residential and day-care facilities, especially for people with learning disabilities providing social, vocational and educational activities.⁴⁵

- 4.4.4** Global Dialysis' website lists 115 Dialysis Centres in Pakistan. Facilities for the treatment of cancer patients are available in larger cities, in both public and private hospitals.⁴⁶
- 4.4.5** In cooperation with donors and the United Nations, the Government established the National AIDS Control Program (NACP) in 2007, which managed an aggressive campaign to educate its citizens regarding AIDS. The NACP held rallies, public campaigns and spoke about birth control and AIDS awareness in mosques. There are a number of treatment centres around Pakistan, but there is reportedly an under-reporting of cases because of the stigma associated with HIV/AIDS.⁴⁷
- 4.4.6** The Article 3 threshold will not be reached in the majority of medical cases and a grant of Discretionary Leave will not usually be appropriate. Where a case owner considers that the circumstances of the individual applicant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

5. Returns

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

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⁴⁵ COIS Pakistan Country Report November 2008 (Human Rights: Medical Issues)

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