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OPERATIONAL GUIDANCE NOTE

PAKISTAN

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1. Introduction

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

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

www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

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

2. Country assessment

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

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

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

<http://fcohrdreport.readandcomment.com/>

2.3 Actors of protection

- 2.3.1** Caseowners must refer to the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Case owners should also take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Effective protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.
- 2.3.2** Pakistan has four provincial police forces which are independent entities that take orders from federal government on issues of national security only. Large conurbations maintain separate forces that fall within the provincial chain of command. There are no police in the Federally Administered Tribal Areas of North West Frontier Province. Each force is headed by an inspector general whose deputies oversee police operations within specific provincial sectors. Inspector generals are directly accountable to the central Ministry of the Interior whereas all levels junior to that report to the provincial civil service. District superintendents are key figures in implementing the edicts of their superiors on a day-to-day basis.¹
- 2.3.3** At present Pakistan has only about 350,000 police personnel for a population of 170 million and the mandated strength is rarely reached, especially in rural areas where most criminal activity occur. It is estimated that Punjab, Pakistan's most populous province, has an 180,000-strong police force of which only 40,000 are permanently stationed in police stations. Lahore, with 10 million inhabitants, has only 25,000 police and the most crime-ridden city of Karachi, with a population of more than 16 million, has around 29,000 police. The number of terrorist attacks against police has dramatically risen in recent years, from 113 in 2005 to around 2,000 in 2009. The Khyber Pakhtunkhwa police lost 353 policemen in 2009 in terrorism-related incidents. In August 2010 the head of the Frontier Constabulary was one of the most senior security officials ever to be killed by militants in the country.²
- 2.3.4** The Police Service of Pakistan [PSP] is the career federal civil service body from which senior police officers are drawn. Junior officers are appointed by provincial governments. PSP cadres are assigned to serve with provincial governments or to central government

¹ COI Service Pakistan Country Report Jan 2011 (para 9.04) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

² Jane's Sentinel Security Assessment, Security and Foreign forces (Pakistan). 21 April 2011: <http://articles.janes.com/articles/Janes-Sentinel-Security-Assessment-South-Asia/Security-and-foreign-forces-Pakistan.html>

bodies. Recruits are selected annually by examination, and the body's decent pay rates and prestige ensure that competition is keen. Successful candidates receive two years of training at the Police Training College in Sihala, near Islamabad, and are then assigned to duty. Postings and promotions are frequently subject to political interference.³

- 2.3.5** In addition to the regular uniformed forces, tribal elders have formed tribal militias or laskhars (literally, 'armies'). The institution of the tribal lashkar, originally a tribal irregular volunteer militia, has undergone a transformation during the past few years; it is not a permanent defence force but is an irregular force with a localised mission and hence not accustomed to being directed by a central authority for a sustained purpose. In many instances, tribes, frustrated at insurgent operations including unlawful killings, harassment, intimidation and displacement, set up lashkars for their protection. The army, relying on the superior local knowledge of tribesmen, has of late encouraged and in some cases armed such militias to fight insurgents, in the Federally Administered Tribal Areas (FATA) as well as in Khyber Pakhtunkhwa (KP) (formerly known as the North West Frontier Province – NWFP). Lashkars have fought militants in several of the FATA's seven agencies; insurgents, in return, have targeted lashkar members and unlawfully killed anti-Taleban tribal elders who have ties to the lashkars as well as relatives of lashkar members.⁴
- 2.3.6** Taleban and allied armed groups have systematically and widely engaged in human rights abuses in FATA and neighbouring areas of northwest Pakistan. But many civilians from these areas told Amnesty International that they had no less fear of military operations, as was demonstrated in Malakand when more than two million people fled their homes at the onset of military operations in April 2009 or again in South Waziristan in October 2009, where 200,000 people fled as the army moved in. Many residents blamed the Taleban for placing military forces within civilian areas, raising the likelihood of harm to civilians during operations. But government forces are also culpable of systematic and widespread human rights violations in FATA and KP, both in the course of military operations and by subjecting suspected insurgents to arbitrary arrest, enforced disappearance and apparent extrajudicial execution.⁵
- 2.3.7** Police effectiveness varies greatly by district, ranging from reasonably good to ineffective. Although the law prohibits torture and other cruel, inhuman, or degrading treatment, there are reports that security forces, including intelligence services, tortured and abused individuals in custody. During 2010, a non governmental organisation - the Society for Human Rights and Prisoners' Aid (SHARP) — reported 4,069 cases of torture by police, of which 2,690 allegedly occurred in Punjab alone. This was almost double the number cases reported in 2009. Human rights organisations reported that methods of torture included beating with batons and whips, burning with cigarettes, whipping soles of the feet, prolonged isolation, electric shock, denial of food or sleep, hanging upside down, and forced spreading of the legs with bar fetters. Torture occasionally resulted in death or serious injury. Observers noted the underreporting of torture throughout the country.⁶
- 2.3.8** Frequent failure to punish abuses creates a climate of impunity. Police and prison officials frequently use the threat of abuse to extort money from prisoners and their families. The inspector general, district police officers, district nazims (a chief elected official of a local government or mayor equivalent), provincial interior or chief ministers, federal interior minister, prime minister, or courts can order internal investigations into abuses and order administrative sanctions. Executive branch and police officials can recommend, and the courts can order, criminal prosecution. There are reports that these mechanisms are used.⁷
- 2.3.9** There have however been reports of improvements in police professionalism during 2010. Punjab provincial government continue to conduct regular training and retraining in technical skills and protection of human rights for police at all levels. In March 2010 the

³ COI Service Pakistan Country Report Jan 2011 (para 9.04) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

⁴ COI Service Pakistan Country Report Jan 2011 (para 9.10) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

⁵ COI Service Pakistan Country Report Jan 2011 (para 9.13) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

⁶ US State Department Human Rights Report 2010: Pakistan www.state.gov/g/drl/rls/hrrpt/2010/sca/154485.htm

⁷ US State Department Human Rights Report 2010: Pakistan www.state.gov/g/drl/rls/hrrpt/2010/sca/154485.htm

Islamabad Capital Police established a human rights cell to encourage persons to report cases of human rights violations either in person, through a telephone hotline, or via e-mail. Islamabad police also decided to appoint human rights officers (HROs) and members of the community at all police stations. HROs could visit police stations at different times and had authority to interview arrested individuals. If a police officer was reported to be involved in torturing or detaining persons at police stations without justification, HROs could recommend disciplinary action against the officer involved. Provincial and federal law enforcement officers also attended a training course that included human rights, victims' rights, and women's rights. Since 2008 the NGO SHARP has provided training to more than 2,000 police officers in human rights.⁸

2.3.10 The law provides for an independent judiciary; in practice the judiciary was often subject to external influences, such as fear of reprisal in terrorism cases. The civil, criminal, and family court systems provide for public trial, presumption of innocence, cross-examination by an attorney, and appeal of sentences. There are no jury trials. Defendants have the right to be present and to consult with an attorney. Defendants bear the cost of legal representation in lower courts, but a lawyer can be provided at public expense in session and appellate courts. Defendants can confront or question witnesses brought by the prosecution and present witnesses and evidence on their behalf. Defendants and attorneys have legal access to government-held evidence relevant to their cases. Due to the limited number of judges, a heavy backlog of cases, lengthy court procedures, frequent adjournment, and political pressure, cases routinely took years, and defendants had to make frequent court appearances. According to the Law and Justice Commission of Pakistan, as of May 2010 more than 1.1 million cases were pending with the country's lower courts, 150,000 cases awaited the four provincial high courts, and 17,500 cases awaited the Supreme Court.⁹

2.4 Internal relocation.

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

2.4.2 Very careful consideration must be given to whether internal relocation would be an effective way to avoid a real risk of ill-treatment/persecution at the hands of, tolerated by, or with the connivance of, state agents. If an applicant who faces a real risk of ill-treatment/persecution in their home area would be able to relocate to a part of the country where they would not be at real risk, whether from state or non-state actors, and it would not be unduly harsh to expect them to do so, then asylum or humanitarian protection should be refused.

2.4.3 The law provides for freedom of movement within the country, and for uninhibited foreign travel, emigration, and repatriation; the government has however limited these rights in practice. The law prohibits travel to Israel, and the country's passports include a statement that they are "valid for all countries except Israel." Government employees and students

⁸ US State Department Human Rights Report 2010: Pakistan www.state.gov/g/drl/rls/hrrpt/2010/sca/154485.htm

⁹ US State Department Human Rights Report 2010: Pakistan www.state.gov/g/drl/rls/hrrpt/2010/sca/154485.htm

must obtain "no objection certificates" from the government before travelling abroad. This requirement is rarely enforced for students.

- 2.4.4** The Pakistan government cooperates with the UNHCR and other humanitarian organisations in providing protection and assistance to IDPs, refugees, returning refugees, asylum seekers, and other persons of concern. However, the government's restrictions on access to certain areas of FATA, KP, and Balochistan, often due to security concerns, hinder the ability of humanitarian assistance providers to deliver aid to vulnerable populations.¹⁰
- 2.4.5** Persons on the Exit Control List (ECL) are prohibited from foreign travel. Although the ECL is intended to prevent those with pending criminal cases from travelling abroad, no judicial action is required for the Ministry of Interior to add a name to the ECL. The ECL is sometimes used to harass human rights activists or leaders of nationalist parties. Those on the list have the right to appeal to the courts for removal of their names.¹¹
- 2.4.6** Under Pakistani family law, which is based on Islamic law, the father controls virtually all aspects of his family's life. He decides where his wife and children will live, how the children are to be educated and whether or where they may travel. Courts rarely, if ever, give custody of children to a woman who is not a Muslim, who will not raise the children as Muslims, does not plan to raise them in Pakistan, or has remarried. In all probability, even if the mother wins custody, the children would still need the father's permission, to leave the country.¹²

2.5 Country guidance caselaw

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

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

IA and Others (Ahmadis: Rabwah) Pakistan CG [2007] UKAIT 00088. In this country guidance case the Tribunal concluded that Rabwah does not constitute a safe haven for any Ahmadi at risk of persecution elsewhere in Pakistan and should not, without more, be treated as an appropriate place of internal relocation. However on appeal - **IA (Pakistan) [2008] EWCA Civ 580** - the Court of Appeal agreed that the headnote in that case should be read that '*Rabwah does not necessarily constitute a safe haven for every Ahmadi*' rather than the phrase used which read as '*a safe haven for any Ahmadi*'. The Court of Appeal set out the following steps to consider;

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

¹⁰ US State Department Human Rights Report 2010: Pakistan www.state.gov/g/drl/rls/hrrpt/2010/sca/154485.htm

¹¹ US State Department Human Rights Report 2010: Pakistan www.state.gov/g/drl/rls/hrrpt/2010/sca/154485.htm

¹² COI Service Pakistan Country Report Jan 2011 (para 23.39) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

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

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

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

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

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

SN & HM (Divorced women– risk on return) Pakistan CG [2004] UKIAT00092 In this country guidance case the Tribunal held that the question of internal flight will require careful consideration in each case. The general questions which Adjudicators should ask themselves in these cases of this kind are:

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

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

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

- (i) In general persons who on return face prosecution in the Pakistan courts will not be at real risk of a flagrant denial of their right to a fair trial, although it will always be necessary to consider the particular circumstances of the individual case.

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

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

SA (political activist – internal relocation) Pakistan [2011] UKUT 30 (IAC). The Tribunal held that requiring a political activist to live away from his home area in order to avoid persecution at the hands of his political opponents has never been considered a proper application of the internal relocation principle: see e.g. Nolan J in R v Immigration Appeal Tribunal, ex p. Jonah [1985] Imm AR 7. And (since October 2006) such a requirement cannot be considered to be consistent with para 3390 of the Immigration Rules (Article 8 of the Qualification Directive). Indeed, the pitfalls of requiring a person to act contrary to his normal behaviour in order to avoid persecution have been further emphasised by the Supreme Court in HJ (Iran) [2010] UKSC 31.

HJ (Iran) v Secretary of State for the Home Department (Rev 1) [2010] UKSC 31

In this case, the Supreme Court established the test which should be applied when assessing a claim based on fear of persecution because of an applicant's sexual orientation which is as follows:

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

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

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 instructions below.
- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the applicant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in *Karanakaran* should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum 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 their individual circumstances.
- 3.4** All Asylum Instructions can be accessed via the on the Horizon intranet site. The instructions are also published externally on the Home Office internet site at:

<http://www.ind.homeoffice.gov.uk/documents/asylumpolicyinstructions/>

3.5 Credibility

- 3.5.1** This guidance is **not** designed to cover issues of credibility. Case owners will need to consider credibility issues based on all the information available to them. For guidance on credibility see para 11 of the Asylum Instructions on ‘Considering the Asylum Claim’ and ‘Assessing Credibility in Asylum and Human Rights claims’. Case owners must also ensure that each asylum application has been checked against previous UK visa applications. Where an asylum application has been biometrically matched to a previous visa application, details should already be in the Home Office file. In all other cases, the case owner should satisfy themselves through CRS database checks that there is no match to a non-biometric visa. Asylum applications matched to visas should be investigated prior to the asylum interview, including obtaining the Visa Application Form (VAF) from the visa post that processed the application.

3.6 Fear of the Taliban and other militant groups

- 3.6.1** Some applicants will apply for asylum or make a human rights claim based on the grounds that they fear the Taliban and other militant groups in Pakistan and are unable to seek protection from the authorities.
- 3.6.2** Pakistan's western border areas are racked by violence as separatists and pro-Taliban militants fight government forces to try to extend their control. Hundreds of thousands of people have been displaced by the fighting, many of them out of reach of aid agencies. The main areas affected are Khyber-Pakhtunkhwa (formerly known as North West Frontier Province) and the semi-autonomous Federally Administered Tribal Areas (FATA) which

have a strong Taliban presence, and Baluchistan where separatists are seeking greater political autonomy and control over local mineral resources.¹³

- 3.6.3** The Tehrik-e-Taliban Pakistan (TTP) was formed in 2007 as an umbrella group that would enable the numerous pro-Taliban groups operating in the Federally Administered Tribal Areas (FATA) and northwestern Pakistan to co-ordinate their activities and consolidate their growing influence in the region. However, the individual groups that constitute the TTP - most notably the Tehrik-e-Nefaz-e-Shariat-Mohammadi (TNSM) in Swat - had existed for varying amounts of time prior to the creation of the TTP. The TTP was founded by Baitullah Mehsud, who served as the overall emir of the TTP, and the commander of TTP forces in South Waziristan, until his death on 23 August 2009 from injuries sustained in a United States drone missile strike. Hakimullah Mehsud was subsequently selected as Baitullah's replacement.¹⁴
- 3.6.4** It is however difficult to delineate exactly how the Pakistani Taliban and their allied insurgent groups are organized, who commands them, and where they get their support: the groups' allegiances have shifted several times in recent years, and groups or parts of groups have moved from place to place, both within tribal agencies and across the border into Afghanistan. While most share an extreme religiously inspired militant ideology and a Pashtun identity, they vary widely in objectives and focus. However, many of the groups now share an operational plan, and have demonstrated that they possess effective chains of command and the ability to impose discipline on their ranks when they so desire.¹⁵
- 3.6.5** The Pakistan army pushed Taliban forces out of the Swat Valley and South Waziristan in 2009 and out of the Bajaur and Orakzai agencies in 2010. Militants inflicted cruel and inhuman punishments, attacked civilians and destroyed civilian structures, including schools.¹⁶ Since the military regained control of Swat in September 2009, Taliban-perpetrated abuses such as public floggings and hangings have mostly ended.¹⁷ Militant groups have also carried out suicide bombings and targeted killings across the country. The Taliban and affiliated groups increasingly target civilians and public spaces, including marketplaces, hospitals, and religious processions. In the tribal areas and the Swat valley, suicide bombings against and targeted killings of police and civilians deemed to be army informants or peace activists have been commonplace.¹⁸
- 3.6.6** As well as terrorist-related atrocities there have been serious allegations of disappearances, abductions and extra-judicial killings made against state security forces and the police by international and national human rights organisations. Security forces have also reportedly killed suspected members of the militant groups mostly with impunity. The Human Rights Commission of Pakistan (HRCP) recorded 282 bodies of suspected insurgents found between the end of military operations in Swat Valley in July 2009 and May 2010. Local people attributed these killings to the security forces. Several activists campaigning against enforced disappearance in Balochistan disappeared themselves and were killed.¹⁹
- 3.6.7** The government and the military have encouraged the creation of lashkars (village militias) to help to counter the threat posed by TTP and TTP-linked groups. The government and the military provide intelligence and 'logistical support' (which may or may not include arms) to the militias; villagers provide arms of their own, ranging from guns to axes to sticks.²⁰ The government claims that these militias are hindering TTP operations. Although the militias might be seen as more attuned to local issues and sensibilities than the national army, their effectiveness is far from clear. The government has been criticised by some who feel that, having persuaded local groups to rise up against militants, it has failed to

¹³ COI Service Pakistan Country Report Jan 2011 (para 8.12) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

¹⁴ COI Service Pakistan Country Report Jan 2011 (para 8.42) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

¹⁵ COI Service Pakistan Country Report Jan 2011 (para 8.45) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

¹⁶ Amnesty International Annual Report 2011 <http://www.amnesty.org/en/region/pakistan/report-2011>

¹⁷ Human Rights Watch: World Report 2011, (available at ecoi.net) www.ecoi.net/local_link/153286/254886_en.html

¹⁸ Human Rights Watch: World Report 2011, (available at ecoi.net) www.ecoi.net/local_link/153286/254886_en.html

¹⁹ Amnesty International Annual Report 2011 <http://www.amnesty.org/en/region/pakistan/report-2011>

²⁰ COI Service Pakistan Country Report Jan 2011 (para 8.18) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

offer them adequate protection. It has also raised fears that the government is merely abdicating its responsibility to ensure law and order.²¹

See also: [Actors of protection \(section 2.3 above\)](#)

[Internal relocation \(section 2.4 above\)](#)

[Caselaw \(section 2.5 above\)](#)

3.6.8 Conclusion. The risk from the Pakistani Taliban or other militant groups will be highest in areas where those armed anti-government groups are operating or have control. It is important that caseowners refer to the most up to date country information and take into consideration the nature of the threat and how far it would extend. Whilst there may be a sufficiency of protection generally in Pakistan, in each case the caseowner must consider whether there are specific circumstances that give rise to a particular need for protection which would not be provided and, if such protection is not available, whether the claimant could relocate internally to a place where they would not face a real risk of serious harm and where they can reasonably be expected to stay. This assessment will need to be based on the facts of the individual case. For claimants who can demonstrate a well-founded fear of persecution for reason of on account of their imputed political opinion and who are unable to acquire protection or relocate internally, a grant of asylum will be appropriate.

3.7 Ahmadis fearing the Pakistani authorities

3.7.1 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.

3.7.2 The Pakistan constitution establishes Islam as the state religion and it requires that laws be consistent with Islam. The constitution states that "subject to law, public order, and morality, every citizen shall have the right to profess, practice, and propagate his religion;" in practice however, the government limits freedom of religion. Freedom of speech is also constitutionally "subject to any reasonable restrictions imposed by law in the interest of the glory of Islam".²²

3.7.3 The Ahmadi community, founded in 1889, is the only Islamic organisation to believe that the long-awaited Messiah has come in the person of Mirza Ghulam Ahmad (1835-1908) who claimed to be the metaphorical second coming of Jesus of Nazareth and the divine guide, whose advent was foretold by the Prophet of Islam, Muhammad. Ahmadis believe that God sent Ahmad, like Jesus, to end religious wars, condemn bloodshed and reinstitute morality, justice and peace. His teachings unsettled conventional Muslim thinking. The Ahmadi community continues to spread Ahmad's teachings of moderation and restraint in the face of bitter opposition from parts of the Muslim world.²³

3.7.4 The Ahmadi community has put the number of Ahmadis living in Pakistan at nearly 600,000, although it is difficult to establish an accurate estimate because Ahmadis, who are legally prohibited from identifying themselves as Muslims, generally choose to not identify themselves as non-Muslims. The US Commission on International Religious Freedom report 2010 estimated that there are 3-4 million Ahmadis in Pakistan. The Ahmadi population is centred in and around Rabwah.²⁴

3.7.5 Ahmadis are prevented by law from engaging in the full practice of their faith. A 1974 constitutional amendment declares that Ahmadis are non-Muslims. Section 298(c), commonly referred to as the 'anti-Ahmadi laws,' prohibits from 'posing' as Muslims, Ahmadis may not call their places of worship 'mosques', worship in non-Ahmadi mosques or public prayer rooms which are otherwise open to all Muslims, perform the Muslim call to

²¹ COI Service Pakistan Country Report Jan 2011 (para 8.19) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

²² US State Department International Religious Freedom Report 2010. www.state.gov/g/drl/rls/irf/2010/148800.htm

²³ COI Service Pakistan Country Report Jan 2011 (para 19.57) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

²⁴ COI Service Pakistan Country Report Jan 2011 (para 19.59-60) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

prayer, use the traditional Islamic greeting in public, publicly quote from the Koran, or display the basic affirmation of the Muslim faith. It is also illegal for Ahmadis to preach in public; to seek converts; or to produce, publish, or disseminate their religious materials. Ahmadis also are restricted in building new houses of worship, holding public conferences or other gatherings, and travelling to Saudi Arabia for religious purposes, including the hajj (the pilgrimage to Mecca required of all able-bodied Muslims). The punishment for violation of the law is imprisonment for up to three years and a fine.²⁵ The authorities are also reported to conduct surveillance on Ahmadis, and several Ahmadi mosques have been closed or confiscated; and others reportedly desecrated or their construction stopped.²⁶

3.7.6 Ahmadi leaders claim the government use sections of the penal code against their members for religious reasons. The government use anti-Ahmadi laws to target and harass Ahmadis and often accuse converts to the Ahmadi community of blasphemy, violations of anti-Ahmadi laws, or other crimes. The vague wording of the provision forbidding Ahmadis from directly or indirectly identifying themselves as Muslims enables officials to bring charges against Ahmadis for using the standard Muslim greeting and for naming their children Muhammad. It was reported that as of June 2010, 42 Ahmadis faced criminal charges under Ahmadi-specific laws or blasphemy laws, and 25 Ahmadis faced false charges under other sections of the penal code.²⁷

3.7.7 The authorities routinely used blasphemy laws to harass religious minorities and vulnerable Muslims and to settle personal scores or business rivalries. Authorities detained and convicted individuals on spurious charges. Judges and magistrates, seeking to avoid confrontation with or violence from extremists, often continued trials indefinitely.²⁸ In several instances, the police have been complicit in harassment and the framing of false charges against Ahmadis, or stood by in the face of anti-Ahmadi violence.²⁹

See also: [Actors of protection \(section 2.3 above\)](#)

[Internal relocation \(section 2.4 above\)](#)

[Caselaw \(section 2.5 above\)](#)

3.7.8 Conclusion. As established in caselaw (*MJ and ZM* – see above), the general risk 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. There may however 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. In cases where it is found that an Ahmadi will be “discreet” on return the reasons for such discretion will need to be considered in the light of HJ (Iran). Where individuals are able to demonstrate such a risk a grant of asylum may be appropriate.

3.8 Ahmadis fearing non state actors

3.8.1 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 sufficient protection.

3.8.2 Ahmadis continue to suffer from societal discrimination. Promotions for all minority groups appeared limited within the civil service. These problems were particularly acute for Ahmadis, who contended that a “glass ceiling” prevented their promotion to senior positions and that certain government departments refused to hire or retain qualified Ahmadis³⁰. It has been reported that the vernacular press has become virulently anti-Ahmadi and state

²⁵ COI Service Pakistan Country Report Jan 2011 (para 19.61-64) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

²⁶ US State Department. International Religious Freedom Report 2010. www.state.gov/g/drl/rls/irf/2010/148800.htm

²⁷ COI Service Pakistan Country Report Jan 2011 (para 19.66) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

²⁸ US State Department International Religious Freedom Report 2010. www.state.gov/g/drl/rls/irf/2010/148800.htm

²⁹ Human Rights Watch, Massacre of minority Ahmadis, 1 June 2010 www.hrw.org/en/news/2010/05/31/pakistan-massacre-minority-ahmadis

³⁰ COI Service Pakistan Country Report Jan 2011 (para 19.86) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

television has contained broadcasts of anti-Ahmadi rhetoric, including phrases such as 'Ahmadis deserve to die.' The traditionally liberal English language press, religious freedom was becoming harder to defend as journalists' increasingly feared attack if they defended Ahmadis.³¹

- 3.8.3** The public school curriculum included derogatory remarks in textbooks against minority religious groups, particularly Ahmadis, Hindus, and Jews, and the teaching of religious intolerance was widespread. The Government continued to revise the curriculum to eliminate such teachings and remove Islamic overtones from secular subjects. Officials used bureaucratic demands and bribes to delay religious groups trying to build houses of worship or obtain land. Although Ahmadis were prevented from building houses of worship, Sunni Muslim groups built mosques and shrines without government permission, at times in violation of zoning ordinances and on government-owned lands.³²
- 3.8.4** Amnesty International also report that the state has failed to prevent and prosecute discrimination, harassment and violence against religious minorities and, increasingly, moderate Sunni Muslims. Ahmadis, Shi'as and Christians have been attacked and killed in apparent sectarian violence. Sectarian groups reportedly linked to the Taleban attacked Shi'as, Ahmadis and Sufis with impunity. Blasphemy laws continued to be misused against Ahmadis and Christians, as well as Shi'a muslims and Sunnis. According to the National Commission for Justice and Peace, at least 67 Ahmadis, 17 Christians, 8 Muslims and 6 Hindus were charged with blasphemy during 2010 and several cases were dismissed following dubious accusations or improper investigations by the authorities.³³
- 3.8.5** On 28 May 2010 extremist Islamist militants attacked two Ahmadi mosques in the central Pakistani city of Lahore with guns, grenades, and suicide bombs, killing 94 people and injuring well over a hundred. On 31 May, unidentified gunmen attacked the hospital, where victims were under treatment, sparking a shootout in which at least a further 12 people, mostly police officers and hospital staff, were killed. The assailants succeeded in escaping.³⁴
- 3.8.6** The anti-Ahmadi campaign has intensified in the past year, exemplified by the government allowing groups to place banners seeking the death of "Qadianis" (a derogatory term for Ahmadis) on the main thoroughfares of Lahore. The government seldom brings charges against perpetrators of anti-Ahmadi violence and discrimination. Research by Human Rights Watch indicates that the police have failed to apprehend anyone implicated in such activity in the last several years.³⁵
- 3.8.7** The September 2010 report of a Parliamentary Human Rights Group (PHRG) fact finding mission to Pakistan to examine the human rights situation of the Ahmadi community stated that "The Mission were told about several cases of the murder of Ahmadis, reportedly for their religious beliefs. In many of these cases it appears that the police are slow to carry out a proper investigation and that even following a religiously motivated murder, the family of the deceased is not being given any protection."³⁶ Representatives of the Ahmadi community told the Mission that the situation of discrimination and violence that currently exists cannot be attributed solely to extremist Mullahs who openly incite hatred and murder. It is also the state and political parties in power who are contributing to the discrimination against and persecution of Ahmadis.³⁷
- 3.8.8** The PHRG Mission met several state representatives, who without exception stated that state bodies were pressurised by religious extremists and that their own ability to reign in

³¹ COI Service Pakistan Country Report Jan 2011 (para 19.93) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

³² US State Department International Religious Freedom Report 2010. www.state.gov/g/drl/rls/irf/2010/148800.htm

³³ Amnesty International Annual Report 2011. www.amnesty.org/en/region/pakistan/report-2011

³⁴ Human Rights Watch, Massacre of minority Ahmadis June 2010 www.hrw.org/en/news/2010/05/31/pakistan-massacre-minority-ahmadis

³⁵ Human Rights Watch, Massacre of minority Ahmadis June 2010 www.hrw.org/en/news/2010/05/31/pakistan-massacre-minority-ahmadis

³⁶ COI Service Pakistan Country Report Jan 2011 (para 19.73) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

³⁷ COI Service Pakistan Country Report Jan 2011 (para 19.75) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

these parties was very limited. Representatives of the Islamabad Ahmadiyya community told the Mission that the reason for the failure of the government to take active steps against religious extremists was the fact that even the government was reliant on their support. The Mission was told by the Human Rights Commission of Pakistan that extremist Mullahs have developed a power base and now wield much influence because they are being encouraged by the government's failure to act against them. While there is impunity there is no reason for these groups to stop. According to the Commission the government must make examples of extremist Mullahs. At the local level, the police are often reluctant to touch the Mullahs – again this reflects the failure of the government to deal with the situation at any level.³⁸

See also: [Actors of protection \(section 2.3 above\)](#)

[Internal relocation \(section 2.4 above\)](#)

[Caselaw \(section 2.5 above\)](#)

3.8.9 Conclusion. 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. However as established in caselaw (*MJ and ZM* – see above), the general risk 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. In cases where it is found that an Ahmadi will be “discreet” on return the reasons for such discretion will need to be considered in the light of HJ (Iran). Where in individual cases the claimant does face a serious risk of persecution, torture or inhuman or degrading treatment, case owners will need to consider whether there is effective protection for the particular individual and whether they could relocate internally to a place where they would not face a real risk of serious harm and where they can reasonably be expected to stay.

3.8.10 On the question of state protection, it is clear that despite constitutional guarantees, sufficient 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.

3.8.11 With regard the scope for internal relocation, caseowners should note that the Ahmadi community is centred in Rabwah where more than 95% of its population is Ahmadi. However as established in caselaw, Rabwah does not necessarily constitute a safe haven for every Ahmadi. Internal relocation may be viable in some circumstances particularly for low-level members of the community however relocation may only be a temporary solution given the ease with which Ahmadi affiliation can be detected. This is because Ahmadis are prevented by law from engaging in the full practice of their faith. They are barred by law from ‘posing’ as Muslims, may not call their places of worship ‘mosques’, worship in non-Ahmadi mosques or public prayer rooms which are otherwise open to all Muslims, perform the Muslim call to prayer, use the traditional Islamic greeting in public, publicly quote from the Koran, or display the basic affirmation of the Muslim faith. Ahmadis therefore remain somewhat visible within Muslim communities, especially within small communities.

3.9 Christians

3.9.1 Some Christians may apply for asylum or make a human rights claim based on fear of persecution from extremist militant groups and/or from individuals on account of their faith. They claim that the authorities are not able or willing to offer sufficient protection.

3.9.2 The number of Christians in Pakistan has officially been put at 2.09 million, but Christian organisations have claimed to have 4 million members, 90 percent of whom lived in Punjab. The largest Christian denomination was the umbrella Protestant Church of Pakistan, a

³⁸ COI Service Pakistan Country Report Jan 2011 (para 19.75) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

member of the Anglican Communion. Roman Catholics were the second-largest group, and the remainder belonged to various evangelical denominations. The Catholic diocese of Karachi has estimated that 120,000 Catholics live in Karachi, 40,000 in the rest of Sindh, and 5,000 in Quetta, Balochistan.³⁹

- 3.9.3** Christians and Muslims generally live in harmony, but many say they are treated as second-class citizens and feel insecure for several reasons, including the blasphemy law and sporadic militant attacks on churches. While Muslims are charged with blasphemy in more than 50% of cases, human rights activists say the legislation is often used to persecute minorities, or settle personal scores.⁴⁰
- 3.9.4** The Pakistan government's Ministry of Minorities, along with the president and the prime minister, have made public their commitment to protect minorities and their freedom to worship. Some positive measures have been taken such as reserving quotas in the public sector and parliament for minorities and setting up complaints procedures for those encountering discrimination or abuse. However, this is countered by a growing culture of intolerance led by religious groups who have stepped into the gap left by the government's inability to deliver justice or basic services.⁴¹
- 3.9.5** Despite the government's steps to protect religious minorities, relations between religious communities are tense; societal discrimination remains widespread and violence against religious minorities on the increase. There are also instances in which law enforcement personnel abused religious minorities in custody. Security forces and other government agencies do not adequately prevent or address societal abuse against minorities. Discriminatory legislation and the government's failure or delay in addressing religious hostility by societal actors foster religious intolerance, acts of violence, and intimidation against religious minorities.⁴²
- 3.9.6** Pakistan's religious minorities continue to face a series of human rights violations and targeted attacks. The country's Christian population face increasing threats to their lives from the Pakistani Taliban, as well as other Muslim extremists, who demand that they convert to Islam. At village level, Christians are also vulnerable to arbitrary arrest and detention, as they have limited access to justice.⁴³
- 3.9.7** On 2 March 2011, Minister for Minorities, Shahbaz Bhatti was shot dead after gunmen ambushed his car in Islamabad. The cabinet's only Christian minister had received death threats after he pushed for reforms to the blasphemy laws. The Tehrik-i-Taliban claimed responsibility for the attack, stating "This man was a known blasphemer of the Prophet [Muhammad] ... We will continue to target all those who speak against the law which punishes those who insult the prophet. Their fate will be the same."⁴⁴
- 3.9.8** The situation is far more difficult for people in Pakistan who are known to have converted to Christianity, than it is for people who were born Christian. It would be rare for someone to convert to Christianity. It is therefore something of note for the community, with potential repercussions. It would be difficult for Christian converts to live freely and openly in Pakistan, as converts over and above being Christian. People who are known to have converted to Christianity suffer serious discrimination, for example in the workplace or by the authorities.⁴⁵

³⁹ COI Service Pakistan Country Report Jan 2011 (para 19.102) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

⁴⁰ Reuters. Governor's murder deepens fears of Pakistani Christians, 10 Jan 2011

www.reuters.com/article/idUSTRE70921I20110110

⁴¹ FCO Human Rights Report 2010 www.scribd.com/doc/51588772/SECTION-VII-Human-Rights-in-Countries-of-Concern

⁴² US State Department International Religious Freedom Report 2010. www.state.gov/g/drl/rls/irf/2010/148800.htm

⁴³ Minority Rights Group International. State of the World's Minorities and Indigenous Peoples 2010 – Pakistan, 1 July 2010 <http://www.minorityrights.org/10068/state-of-the-worlds-minorities/state-of-the-worlds-minorities-and-indigenous-peoples-2010.html>

⁴⁴ BBC News. Pakistan Minorities Minister Shahbaz Bhatti shot dead, 2 March 2011 <http://www.bbc.co.uk/news/world-south-asia-12617562>

⁴⁵ FCO letter dated 2 March 2011 (copy available from COI Service)

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

3.9.9 Conclusion. Societal attitudes towards Christians may result in ill-treatment of individuals which in individual cases may reach the level of persecution, torture or inhuman and degrading treatment. However although there are incidents of some Christians being harmed in Pakistan, the sheer number of Christians as a whole in the country does not indicate that those concerned are generally subject to treatment which would be persecutory or otherwise inhuman or degrading treatment. Where in individual cases the claimant does face a serious risk of persecution, torture or inhuman or degrading treatment, case owners will need to consider whether there is effective protection for the particular individual and whether they could relocate internally to a place where they would not face a real risk of serious harm and where they can reasonably be expected to stay. In cases where it is found that a Christian will be “discreet” on return the reasons for such discretion will need to be considered in the light of HJ (Iran).

3.10 Gay men, lesbians, bisexual and transgender persons

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

3.10.2 Homosexual acts are illegal in Pakistan. The Penal Code does not explicitly refer to homosexuality but ‘carnal intercourse against the order of nature’ is punishable by a fine and/or imprisonment for a period of two years to life. In addition, under Pakistan’s Sharia law, homosexual acts are punishable by corporal punishment (whipping), imprisonment, or death.⁴⁶ It is reported however that in practice the authorities rarely prosecute cases⁴⁷ and gay men, lesbians, bisexual and transgender persons live relatively undisturbed by the police.⁴⁸ They would however receive little protection from the authorities⁴⁹ and there are no laws to protect against discrimination on the basis of sexual orientation.⁵⁰ The general population and the family does not see homosexuality in a positive light, but is generally tolerant enough to accept the situation as long as they are not affected.⁵¹ Assaults on gay men and lesbians are said to be ‘rare’.⁵²

3.10.3 There is no known grassroots activism among gay men, lesbians, bisexual or transgender communities in Pakistan.⁵³ Some sources have stated that if an individual openly campaigned for gay rights in the country, he or she could end up being killed by religious followers.⁵⁴ This lack of activism, the silences around sexual orientation, and deeply closeted status of most gay men and lesbians in Pakistan (many of whom live double lives to avoid revealing their sexual orientation) makes it difficult to accurately assess their living conditions and human rights situation. Anecdotal information from Pakistani gay people who have left the country describes fear, secrecy, isolation, suicides, forced marriage, family and community pressure to conform to heterosexual norms.⁵⁵

3.10.4 While the atmosphere in larger cities such as Islamabad, Karachi and Lahore is slightly more tolerant, in rural areas, conservatism is ‘extreme’ and gay men and lesbians remain ‘closeted’. Cultural practices in Pakistan, which permit public displays of affection between

⁴⁶ COI Service Pakistan Country Report Jan 2011 (para 21.03) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

⁴⁷ US State Department Human Rights Report 2010: Pakistan www.state.gov/g/drl/rls/hrrpt/2010/sca/154485.htm

⁴⁸ COI Service Pakistan Country Report Jan 2011 (para 21.12) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

⁴⁹ COI Service Pakistan Country Report Jan 2011 (para 21.12) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

⁵⁰ US State Department Human Rights Report 2010: Pakistan www.state.gov/g/drl/rls/hrrpt/2010/sca/154485.htm

⁵¹ COI Service Pakistan Country Report Jan 2011 (para 21.10) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

⁵² COI Service Pakistan Country Report Jan 2011 (para 21.12) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

⁵³ COI Service Pakistan Country Report Jan 2011 (para 21.11) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

⁵⁴ COI Service Pakistan Country Report Jan 2011 (para 21.12) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

⁵⁵ COI Service Pakistan Country Report Jan 2011 (para 21.11) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

members of the same gender, make it possible for gay men to socialise without attracting attention.⁵⁶

See also: [Actors of protection \(section 2.3 above\)](#)

[Internal relocation \(section 2.4 above\)](#)

[Caselaw \(section 2.5 above\)](#)

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

3.10.6 In general the Pakistan authorities do not provide gay men, lesbians and bisexuals or those perceived as such with effective protection. There are also likely to be difficulties in finding safety through internal relocation. The law provides for freedom of movement within the country and Government generally respects this right in practice. However, in the Supreme Court case of *HJ (Iran)* made the point that internal relocation is not the answer if it depends on the person concealing their sexual orientation in the proposed new location for fear of persecution.

3.10.7 Gay rights activists and other individuals who openly campaign for gay rights in Pakistan would be at real risk from religious extremists and in the absence of adequate protection from the authorities this would amount to persecution. As gay men, lesbians and bisexuals in Pakistan may be considered to be members of a particular social group, they should be granted asylum.

3.10.8 Societal hostility and discrimination against LGBT persons exists in Pakistan, there is no evidence that there is, in general, persecution on these grounds or ill-treatment reaching Article 3 standards on the basis of their sexual orientation alone. Each case must however be examined on its own merits. Where caseowners conclude that a claimant is at real risk of persecution in Pakistan on account of their sexual orientation then they should be granted asylum because gay men, lesbians and bisexuals in Pakistan may be considered to be members of a particular social group.

3.10.9 However, if an individual chooses to live discreetly because he/she wants to avoid embarrassment or distress to her or his family and friends he/she will not be deemed to have a well founded fear of persecution and will not qualify for asylum. This is because he/she has adopted a lifestyle to cope with social pressures and not because he/she fears persecution due to her or his sexual orientation.

3.10.10 If an individual chooses to live discreetly because he/she fears persecution if he/she were to live as openly gay, lesbian or bisexual then he/she will have a well founded fear and should be granted asylum. It is important that gay, lesbian and bisexual people enjoy the right to live openly without fear of persecution. They should not be asked or be expected to live discreetly because of their well founded fear of persecution due to their sexual orientation.

3.11 Women victims of domestic violence

3.11.1 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.

3.11.2 Domestic violence is reportedly a widespread and serious problem. Husbands reportedly beat, and occasionally killed their wives. Other forms of domestic violence included torture and shaving the eyebrows and hair off women's heads. In-laws abused and harassed married women. Dowry and family-related disputes often resulted in death or disfigurement by burning or acid. According to the Aurat Foundation, the cases of reported violence against women increased 12.5% in 2010. The foundation reported that during the year 1,436 women were killed, 2,236 were abducted, 486 were victims of domestic violence, 74

⁵⁶ COI Service Pakistan Country Report Jan 2011 (para 21.13) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

were sexually assaulted, 32 were victims of acid attacks, and 633 women committed suicide. The HRCP reported that there were 371 incidents of domestic violence against women, including 82 attempted killings, 62 being set on fire, 12 burned by kerosene stoves, and 30 acid attacks. In addition, 655 women committed suicide, and another 382 women attempted suicide.⁵⁷

- 3.11.3** The Human Rights Commission of Pakistan has reported that 80% of wives in rural Punjab feared violence from their husbands, and nearly 50% of wives in developed urban areas admitted that their husbands beat them.⁵⁸
- 3.11.4** Women who try to report abuse face serious challenges. Police and judges are sometimes reluctant to take action in domestic violence cases, viewing them as family problems. Instead of filing charges, police typically respond by encouraging the parties to reconcile. Abused women usually return to their abusive family members. Women are reluctant to pursue charges because of the stigma attached to divorce and their economic and psychological dependence on relatives. Relatives are hesitant to report abuse due to fear of dishonouring the family.⁵⁹
- 3.11.5** The government operates the Crisis Centre for Women in Distress, which refers abused women to NGOs for assistance. A total of 26 government-funded Shaheed Benazir Bhutto centres for women across the country provide women with temporary shelter, legal aid, medical treatment, and psychosocial counselling. These centres serve women who are victims of exploitation and violence. Victims are later referred to "darul aman" (approximately 200 centres for women and child victims established under the Provincial Women Development Department funds). These centres provide shelter, access to medical treatment, limited legal representation, and some vocational training. Many government centres are full beyond capacity and lack sufficient staff and resources. In some cases women are abused at the government-run shelters.⁶⁰
- 3.11.6** There is no specific law against domestic violence.⁶¹ In August 2009 the Pakistan National Assembly unanimously passed the Domestic Violence (Prevention and Protection) Bill, but the bill lapsed after the Senate failed to pass it within the three months required under the country's constitution and it remains outstanding.⁶²

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

- 3.11.7 Conclusion.** In the country guidance case of *KA and Others (domestic violence – risk on return) Pakistan CG [2010] UKUT 216 IAC* (see above), the Tribunal found that the Protection of Women (Criminal Laws Amendment) Act 2006, one of a number of legislative measures undertaken to improve the situation of women in Pakistan in the past decade, has had a significant effect on the operation of the Pakistan criminal law as it affects women accused of adultery. It led to the release of 2,500 imprisoned women. Most sexual offences now have to be dealt with under the Pakistan Penal Code rather than under the more punitive Offence of Zina (Enforcement of Hudood) Ordinance 1979. Husbands no longer have power to register a First Information Report (FIR) with the police alleging adultery; since 1 December 2006 any such complaint must be presented to a court which will require sufficient grounds to be shown for any charges to proceed. A senior police officer has to conduct the investigation. Offences of adultery (both zina liable to hadd and zina liable to tazir) have been made bailable. However, Pakistan remains a heavily patriarchal society and levels of domestic violence continue to be high.

⁵⁷ US State Department Human Rights Report 2010: Pakistan www.state.gov/g/drl/rls/hrrpt/2010/sca/154485.htm

⁵⁸ US State Department Human Rights Report 2010: Pakistan www.state.gov/g/drl/rls/hrrpt/2010/sca/154485.htm

⁵⁹ US State Department Human Rights Report 2010: Pakistan www.state.gov/g/drl/rls/hrrpt/2010/sca/154485.htm

⁶⁰ US State Department Human Rights Report 2010: Pakistan www.state.gov/g/drl/rls/hrrpt/2010/sca/154485.htm

⁶¹ US State Department Human Rights Report 2010: Pakistan www.state.gov/g/drl/rls/hrrpt/2010/sca/154485.htm

⁶² Human Rights Watch, Pakistan: Expedite domestic violence legislation, Jan 2010 www.hrw.org/en/news/2010/01/11/pakistan-expedite-domestic-violence-legislation

3.11.8 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.

3.11.9 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

3.11.10 Claimants who have demonstrated:

- (i) a real risk or reasonable likelihood of continuing hostility from her husband (or former husband) or his family members, such as to raise a real risk of serious harm in her former home;
- (ii) that they would have no effective in her home area against such a risk, including protection available from the Pakistani state, from her own family members, or from a current partner or his family; and
- (iii) having regard to the available state support, shelters, crisis centres, and family members or friends in other parts of the country is unable to relocate elsewhere in Pakistan, will qualify for asylum as Pakistani women are to be regarded as members of a particular social group within the terms of 1951 Refugee Convention

3.12 Women who have reported being raped

3.12.1 Some female applicants will claim asylum based on fear of ill-treatment by the state authorities or societal discrimination as a result of having reported or attempted to report having been raped.

3.12.2 Rape, other than by one's spouse, is a criminal offence, with punishment that ranges from a minimum of 10 to 25 years in prison and a fine to the death penalty. The penalty for gang rape is either death or life imprisonment, but sentences are often less severe. Although rape is frequent, prosecutions are rare. There were no reliable national statistics on rape due to the underreporting and the lack of a central law enforcement data collection system. However, based on media reports, the NGO Aurat Foundation reported that 928 women were raped during 2010.⁶³

3.12.3 The Protection of Women (Criminal Laws Amendment) Act 2006 brought the crime of rape under the jurisdiction of criminal rather than Islamic courts. Previously, under the rape provision of the Hudood Ordinance, a woman was compelled to produce four male witnesses to corroborate her charge. Under the 2006 Act police are not allowed to arrest or hold a woman overnight at a police station without a civil court judge's consent. A provision in the 2006 Act also modified the complaint procedure in rape cases. Instead of a First Information Report (FIR), it requires a complaint to be made directly to a sessions court. After recording the victim's statement, the sessions court judge officially lodges a complaint, after which police can then make any arrests. While this procedure was meant to eliminate problems relating to social norms that make it difficult for women to go to the police, NGOs report that this created other barriers for rape victims who did not have money or access to the courts. A February 2009 ruling by the Federal Shariat Court invalidated a 25-year-old legal provision allowing a man accused of rape to question the credibility of the victim by offering evidence that she was "of generally immoral character."⁶⁴

⁶³ US State Department Human Rights Report 2010: Pakistan www.state.gov/g/drl/rls/hrrpt/2010/sca/154485.htm

⁶⁴ US State Department Human Rights Report 2010: Pakistan www.state.gov/g/drl/rls/hrrpt/2010/sca/154485.htm

3.12.4 Police were at times implicated in rape cases. Police often abused or threatened victims and demanded they drop charges, especially when the accused had bribed police. Police demanded bribes from some victims prior to registering rape charges, and investigations were often superficial. NGOs reported that some police stations stopped recording rape complaints. Medical personnel did not have sufficient forensics training, which further complicated prosecutions.⁶⁵

See also: [Actors of protection \(section 2.3 above\)](#)

[Internal relocation \(section 2.4 above\)](#)

[Caselaw \(section 2.5 above\)](#)

3.12.5 Conclusion. The Protection of Women (Criminal Laws Amendment) Act 2006 has introduced significant changes to the consideration of rape cases in the courts and demonstrates the will of the authorities to address the problem. The police have however reportedly been implicated in rape cases in some instances, especially with regard to the treatment of the victim.

3.12.6 Sufficiency of protection must be considered on the facts of each individual case, but there are likely to be women who are not able to access assistance and protection. In each case, case owners should identify whether attempts were made to seek protection and what the response of the authorities was. If the applicant did not seek the protection of the authorities, case owners should assess why it was not sought.

3.12.7 Taking into account the general position of women in Pakistani society where they are subordinate to men, may not be educated or even literate and may have to depend on relatives for economic support, internal relocation may be unduly harsh for some women. Factors such as the social and professional background of the individual applicant should be considered when determining relocation as an option. Educated and professional women may however find it possible to support themselves in alternative locations

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

3.13 Women who fear becoming the victim of an honour crime

3.13.1 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.

3.13.2 Honour killings are described as a custom in which mostly women and some men are murdered after accusations of sexual infidelity. The killers seek to avenge the shame that victims are accused of bringing to their families. However, even girls and, on a smaller scale, boys are victims of the practice. Honour killings are known by different names depending on the area in Pakistan in which they are practised. In Sindh province they are referred to as karo kari, where karo refers to the 'blackened' or dishonoured man and kali [kari] to the 'blackened' woman; they are called tor tora in the North-West Frontier Province (NWFP), where tor refers to the accused man and tora to the accused woman; kala kali in Punjab province, where kala refers to the accused man and kali refers to the accused woman; and sinyahkari in Balochistan.⁶⁶ Honour killings are reportedly most prevalent in rural areas of Pakistan.⁶⁷

⁶⁵ COI Service Pakistan Country Report Jan 2011 (para 23.79) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

⁶⁶ COI Service Pakistan Country Report Jan 2011 (para 26.64) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

⁶⁷ COI Service Pakistan Country Report Jan 2011 (para 26.67) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

3.13.3 Every year hundreds of women are reportedly killed in the name of honour. Many cases go unreported and unpunished. The Human Rights Commission of Pakistan (HRCP) has reported that during 2010 there were 790 honour killings in the country.⁶⁸

3.13.4 The Criminal Law (Amendment) Act of 2005 increased penalties for honour killing. However, human rights groups criticised the act because it allows the victim or the victim's heirs to negotiate physical or monetary restitution with the perpetrator in exchange for dropping charges, known as "qisas" and "diyat."⁶⁹

3.13.5 Activists have also questioned the authorities' willingness to aggressively enforce it. Commenting on its revised laws for honour killings, the Government of Pakistan acknowledged in a 2008 report to the UN Committee on the Rights of the Child that the low level implementation of laws was a problem, which was "Mostly... due to lack of adequate training to appropriately deal with the situation and apply the relevant provisions of the law".⁷⁰

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

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

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

3.13.8 Taking into account the general position of women in Pakistani society where they are subordinate to men, may not be educated or even literate and may have to depend on relatives for economic support, internal relocation may be unduly harsh for some women. Factors such as the social and professional background of the individual applicant should be considered when determining relocation as an option. Educated and professional women may however find it possible to support themselves in alternative locations

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

3.14 Women accused of committing adultery

3.14.1 Some women will apply for asylum or make a human rights claim based on ill-treatment by the authorities because they have committed or are accused of committing adultery and fear a disproportionately harsh sentence under the Hudood Ordinance. Some applicants accused of adultery may fear punishment by family members rather than the authorities. If this is the case, case owners should refer to section 3.10 above.

3.14.2 Under the Offence of Zina (Enforcement Of Hudood) Ordinance 1979, a man and a woman are said to commit 'Zina' if they wilfully have sexual intercourse without being married to each other. Zina is liable to 'hadd' - meaning punishment ordained by the Koran – if one of the parties is married at the time intercourse occurs. The Protection of Women (Criminal

⁶⁸ US State Department Human Rights Report 2010: Pakistan www.state.gov/g/drl/rls/hrrpt/2010/sca/154485.htm

⁶⁹ US State Department Human Rights Report 2010: Pakistan www.state.gov/g/drl/rls/hrrpt/2010/sca/154485.htm

⁷⁰ COI Service Pakistan Country Report Jan 2011 (para 23.71) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

Laws Amendment) Act 2006 took all offences out of the Zina Hudood Ordinance except Zina liable to hadd punishment.⁷¹

- 3.14.3** Although the Hudood Ordinance provides for Koranic punishments, including death by stoning for adultery, as well as jail terms and fines, it is reported that the authorities have never carried out these punishments due mainly to the strict evidentiary standards required.⁷²
- 3.14.4** The Protection of Women (Criminal Law Amendment) 2006 Act also introduced a new offence of fornication into the penal code. Fornication is described as consensual sexual intercourse between a man and a woman where neither are married. The offence is punishable by imprisonment for up to five years and a fine not exceeding 10,000 Rupees (approx £70). The new offence is, however, safeguarded from abuse by the creation of a new offence of false accusation of fornication. The new provision provides that anyone who brings or gives false evidence of fornication shall be punished with imprisonment up to five years and a fine of up to 10,000 Rupees (approx £70). Very importantly, once a prosecution for fornication results in an acquittal, the trial judge can, in the same proceedings, try and sentence the person bringing the charge.⁷³
- 3.14.5** The 2006 Act also amended the procedure governing sexual offences under both the penal code and the Zina Ordinance. Any complaint of adultery must be lodged directly in court, not made to the police. The judge hearing the case must examine on oath the complainant and at least four adult male eye-witnesses, who the court has established to be truthful. The witnesses must testify on oath to the committing of the act of penetration, i.e. the strict evidence required by the Sharia. The procedure regarding allegations of fornication follows that of allegations of adultery, but only two actual eye-witnesses are required. The complainant and the eye-witnesses must be examined in court before the judge can issue a summons for the accused to attend the court.⁷⁴

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

- 3.14.6 Conclusion.** The Protection of Women (Criminal Laws Amendment) Act 2006 has introduced significant changes to the consideration of most cases involving sexual offences. However cases of adultery (Zina liable to hadd) continue to be dealt with under the relevant Hudood Ordinance and can attract severe punishment including death by stoning. It is however reliably reported that such sentences have never been carried out due mainly to the strict evidentiary standards required. Husbands no longer have power to register a First Information Report (FIR) with the police alleging adultery and any such complaint must be presented to a court which will require sufficient grounds to be shown for any charges to proceed. A senior police officer has to conduct the investigation.
- 3.14.7** As noted in the country guidance case of *KA & others* (see above), in general persons who on return face prosecution in the Pakistan courts will not be at real risk of a flagrant denial of their right to a fair trial, although it will always be necessary to consider the particular circumstances of the individual case.

3.15 Land disputes

- 3.15.1** Some applicants may claim asylum on the grounds that they fear persecution after having become involved in a dispute over land typically with a family member.
- 3.15.2** Freehold land in Pakistan tends to be retained by families and passed from one generation to another by inheritance. Ownership is rarely registered. Despite formal laws mandating

⁷¹ COI Service. COI Request. Pakistan: Penalties for extra-marital sex. 19 May 2011

⁷² COI Service. COI Request. Pakistan: Penalties for extra-marital sex. 19 May 2011

⁷³ COI Service. COI Request. Pakistan: Penalties for extra-marital sex. 19 May 2011

⁷⁴ COI Service. COI Request. Pakistan: Penalties for extra-marital sex. 19 May 2011

registration, incentives for registering land are weak or nonexistent, procedures complicated, and loopholes numerous. Land is typically titled in the name of the head of household or eldest male family member of an extended family. While community property rights are recognized in formal law, joint titling of land is uncommon. Islamic law is often inconsistent with statutory law; Islamic law permits oral, unrecorded declarations of gifts of land, while statutory law requires a writ, with the Benami Act legalising documented but unrecorded transactions. Land in FATA is not recorded. The amount of land actually registered countrywide is unreported.⁷⁵

- 3.15.3** Pakistan has poorly functioning, inadequate, and duplicative systems of land administration, and an overburdened and ineffective formal court system. Parallel customary systems of transferring land and resolving land disputes prove more accessible and efficient, creating a pluralistic legal environment.⁷⁶
- 3.15.4** The Provincial Land Registrar and Provincial Board of Revenue have responsibility to maintain registries of landholdings and revenue payments, but the records are not comprehensive. Junior revenue officers known as patwaris survey land, perform boundary demarcation, resolve conflicts, and in many jurisdictions register land ownership, land transactions and mutations of records, and manage land distribution. The patwari has custody of the original land records (17 separate registers) for rural and urban land in a given area.⁷⁷
- 3.15.5** Registering a land transaction in Pakistan involves six procedures, requires an average of 50 days, and costs 5.3% of the total property value. The formal land-registration process begins with engagement of a lawyer or deed writer to draft the transaction document on required stamp paper. The parties to the transaction present the document to the Land Registrar who verifies the identity of the parties and their authority to enter into the transaction, and enters certain endorsements. The owner must take the document to the Board of Revenue, or to the patwari, to enter a record of the mutation in the Record of Rights. The patwari issues a fard, which is an extract of the Record of Rights and evidences ownership of the land.⁷⁸
- 3.15.6** Landholders report that the land administration system is complicated, the procedures are not published for the public, and the processes are not transparent, leaving opportunities for corruption and insecure land tenure.⁷⁹
- 3.15.7** Land disputes are prevalent in rural and urban areas throughout Pakistan. A revenue court system has jurisdiction over disputes regarding land documents, tenancy, land revenue, and land transactions. Disputes are heard at the tehsil level (a level of local government similar to a county) by the tehsildar, the officer responsible for the collection of land revenue and land administration. A Chief Settlement Officer and the provincial-level Board of Revenue are the appellate authorities within the revenue court system. The revenue court system, which is designed to provide a specialized, local, rapid resolution of disputes, has been criticized by landholders as time-consuming, complex, and subject to corruption. Land administration offices do not publish procedures for bringing a claim, documentation of land rights is often missing, land records maintained by the local authorities are often incomplete or of questionable validity, and land administration officials such as the patwari often do not appear to provide evidence. Cases may take years to resolve.⁸⁰
- 3.15.8** Pakistan's formal court system also has jurisdiction to hear land cases, creating a parallel structure of courts. Land disputes are the most common form of dispute filed with the formal court system, perhaps in part because filing a case may stay a pending revenue court proceeding. Pakistan's judiciary is hampered by low pay, poor training, and a large volume of cases. Between 50% and 75% of cases brought before lower-level civil courts and the

⁷⁵ COI Service. COI Request. Pakistan: Ownership of land. 1 February 2011

⁷⁶ COI Service. COI Request. Pakistan: Ownership of land. 1 February 2011

⁷⁷ COI Service. COI Request. Pakistan: Ownership of land. 1 February 2011

⁷⁸ COI Service. COI Request. Pakistan: Ownership of land. 1 February 2011

⁷⁹ COI Service. COI Request. Pakistan: Ownership of land. 1 February 2011

⁸⁰ COI Service. COI Request. Pakistan: Ownership of land. 1 February 2011

high courts are land-related disputes. By one estimate, over a million land cases are pending countrywide. Major causes of land disputes are inaccurate or fraudulent land records, erroneous boundary descriptions that create overlapping claims, and multiple registrations to the same land by different parties. Credible evidence of land rights is often nearly impossible to obtain. Land cases can take between 4 and 10 years to resolve, with the party in possession of the land delaying adjudication in order to prolong the period of beneficial use.⁸¹

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

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

3.16 Prison conditions

3.16.1 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 the Pakistan are so poor as to amount to torture or inhuman treatment or punishment.

3.16.2 The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of ECHR and warrant a grant of Humanitarian Protection. If imprisonment would be for a Refugee Convention reason or in cases where for a Convention reason a prison sentence is extended above the norm, the asylum claim should be considered first before going on to consider whether prison conditions breach Article 3 if the asylum claim is refused.

3.16.3 Consideration. Prison conditions are often extremely poor and fail to meet international standards. Overcrowding is common, except for the cells of wealthy or influential prisoners. According to the Society for Human Rights and Prisoners' Aid (SHARP), in 2010 more than 100,000 prisoners occupied 73 jails originally built to hold approximately 36,000 persons. According to an estimate, the prisoner per capita ratio is 50 per 100,000.⁸²

3.16.4 Inadequate food and medical care in prisons has also led to chronic health problems and malnutrition for those unable to supplement their diet with help from family or friends. In many facilities provisions for sanitation, ventilation, temperature, lighting, and access to potable water are also inadequate.⁸³

3.16.5 Most prison facilities are of antiquated construction, without the capacity to control indoor temperatures. A system exists for basic and emergency medical care; however, in practice it does not always function effectively. Prisoners sometimes also have to pay bribes, and bureaucratic procedures slowed access to medical care. There were various reports of prison riots during 2010 which were provoked by overcrowding, deprivation of legal rights, slow disposition of cases, behaviour of the jail administration, and lack of facilities.⁸⁴

3.16.6 Christian and Ahmadi communities claim that their members are more likely to be abused in prison facilities. Minority prisoners are generally afforded poorer facilities than Muslim inmates and often suffer violence at the hands of fellow inmates. Police reportedly

⁸¹ COI Service. COI Request. Pakistan: Ownership of land. 1 February 2011

⁸² US State Department Human Rights Report 2010: Pakistan www.state.gov/g/drl/rls/hrrpt/2010/sca/154485.htm

⁸³ US State Department Human Rights Report 2010: Pakistan www.state.gov/g/drl/rls/hrrpt/2010/sca/154485.htm

⁸⁴ US State Department Human Rights Report 2010: Pakistan www.state.gov/g/drl/rls/hrrpt/2010/sca/154485.htm

sometimes torture and mistreat those in custody and at times engage in extrajudicial killings.⁸⁵

3.16.7 Conclusion. Although conditions in prisons in Pakistan remain extremely poor, in the country guidance case of *KA and Others* (see above) the courts found that the evidence does not demonstrate that in general such conditions are persecutory or amount to serious harm or ill-treatment contrary to Article 3 ECHR. However, the individual factors of each case should be considered to determine whether detention will cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3, relevant factors being the likely length of detention the likely type of detention facility and the individual's age and state of health. Where in an individual case treatment does reach the Article 3 threshold a grant of Humanitarian Protection will be appropriate.

4. Discretionary Leave

4.1 Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See Asylum 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 (a) they have family to return to; or (b) there are adequate reception and care arrangements. Those who cannot be returned should, if they do not qualify for leave on any more favourable grounds, be granted Discretionary Leave for a period as set out in the relevant Asylum Instructions.

4.4 Medical treatment

4.4.1 Applicants may claim they cannot return to 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 basic non-emergency medical care is available in major Pakistani cities, but is limited in rural areas.⁸⁶ Facilities in the cities vary in level and range of services, resources, and cleanliness. A visible increase has been witnessed in the establishment of health care services across the country. Basic Health Units (BHU), Rural Health Centres (RHC), and civil dispensaries exist in the remote rural areas to meet the health needs of the local communities. In the cities there exist both government and private hospitals with modern technologies available to meet a variety of health challenges.⁸⁷

4.4.3 Free services are available to residents of Pakistan who either possess the Zakat form attested from the area counsellor or to government employees. Vaccination and family planning measures are available to all free of cost. Basic Health units and central health units provide free of cost treatment for minor ailment[s], and free obstetric care is provided to Pakistan nationals and to Afghan nationals in North West Frontier Province of Pakistan.⁸⁸

⁸⁵ US State Department Human Rights Report 2010: Pakistan www.state.gov/g/drl/rls/hrrpt/2010/sca/154485.htm

⁸⁶ COI Service Pakistan Country Report Jan 2011 (para 26.03) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

⁸⁷ COI Service Pakistan Country Report Jan 2011 (para 26.06) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

⁸⁸ COI Service Pakistan Country Report Jan 2011 (para 26.12) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

- 4.4.4** The Human Rights Commission of Pakistan (HRCP) recorded one doctor was available for every 1,225 persons, one dentist for every 19,121 persons, one nurse for every 2,501 persons and one lady health visitor (LHV) for every 16,845 persons in Pakistan. There are a total of 945 hospitals, 4,755 dispensaries, 5,349 BHUs, 903 Maternity & Child Health Centres and 290 TB Centres in Pakistan. There are reports that facilities at state-owned hospitals are poor. Service at private hospitals is preferred because of the higher monetary incentives available there. There were also many reports of the non-availability of basic medicines, such as anti-rabies medication at public hospitals.⁸⁹
- 4.4.5** The International Organization for Migration (IOM) recorded there are various professional bodies established in Pakistan to look after medical resources and needs namely; Pakistan Medical and Dental Council (PMDC), Pakistan Dental Association (PDA), College of Physicians & Surgeons (CPSP). In addition, the National Institute of Cardiovascular Diseases (NICVD) was established to meet the national need to cope with the increasing demand for the diagnosis, management and prevention of cardiovascular diseases and also to keep pace with the rapid technological advances in the practice of cardiology through research and development.⁹⁰
- 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** There is no policy which precludes the enforced return to Pakistan of failed asylum seekers who have no legal basis of stay in the United Kingdom.
- 5.2** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.
- 5.3** Pakistan nationals may return voluntarily to any region of Pakistan at any time in one of three ways: (a) leaving the UK by themselves, where the applicant makes their own arrangements to leave the UK, (b) leaving the UK through the voluntary departure procedure, arranged through the UK Immigration service, or (c) leaving the UK under one of the Assisted Voluntary Return (AVR) schemes.
- 5.4** The AVR programme is implemented on behalf of the UK Border Agency by Refugee Action which will provide advice and help with obtaining any travel documents and booking flights, as well as organising reintegration assistance in Pakistan. The programme was established in 1999, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Pakistani nationals wishing to avail themselves of this opportunity for assisted return to Pakistan should be put in contact with Refugee Action Details can be found on Refugee Action's web site at:

www.refugee-action.org/ourwork/assistedvoluntaryreturn.aspx

⁸⁹ COI Service Pakistan Country Report Jan 2011 (para 26.07) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

⁹⁰ COI Service Pakistan Country Report Jan 2011 (para 26.06) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/