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IRAN

CONTENTS	
1. Introduction	**1.1 – 1.5**
2. Country assessment	**2.1 – 2.12**
3. Main categories of claims	**3.1 – 3.5**
Christian converts	3.6
Christian evangelisers and/or proselytisers	3.7
Adulterers	3.8
Gay men and lesbians	3.9
Women	3.10
Kurds and supporters of KDPI or Komala	3.11
Smugglers	3.12
Prison conditions	3.13
4. Discretionary Leave	**4.1 – 4.2**
Minors claiming in their own right	4.3
Medical treatment	4.4
5. Returns	**5.1 – 5.3**
6. List of source documents	

1. Introduction

1.1 This document summarises the general, political and human rights situation in Iran and provides information on the nature and handling of claims frequently received from nationals/residents of that province. It must be read in conjunction with the RDS - COI Service Iran Country of Origin Information Report of October 2005 and any RDS-COI Service bulletins on Iran at:

http://www.homeoffice.gov.uk/rds/country_reports.html

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

API on Assessing the Claim
API on Humanitarian Protection
API on Discretionary Leave
API on the European Convention on Human Rights

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

Source documents

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

2. Country assessment

2.1 The present Constitution was adopted after the 1979 Revolution. It stipulates that Iran is an Islamic Republic and the teachings of (Shi'a) Islam are to be the basis of all political, social and economic relations.[1]

2.2 Overall authority is vested in the Supreme Leader, currently Ayatollah Ali Khamenei, who is chosen by the Assembly of Experts, an elected body of religious scholars chosen from all over Iran. The Supreme Leader is the Commander-in-Chief of the armed forces. The executive branch is headed by a President, elected by universal adult suffrage for a term of four years and is restricted by the Constitution to no more than two terms in office.[2]

2.3 Legislative powers are held by the Majlis. Its 290 elected members represent regional constituencies or the official recognised religious communities for a four-year term. Iranian Christians, Zoroastrians and Jews have dedicated Majles representatives. All legislation passed by the Majlis is sent to the Council of Guardians for approval. The Majlis also approves the members of the Council of Ministers, the Iranian equivalent of the UK's Cabinet, who are appointed by the President.[3]

2.4 The Council of Guardians reviews legislation passed by the Majlis for constitutionality and adherence to Islamic law. It is composed of six theologians appointed by the Supreme Leader and six jurists nominated by the judiciary and approved by the Majlis. The Council of Guardians also has the power to veto candidates for the Majlis, local councils, the Presidency and the Assembly of Experts.[4]

2.5 The Council for the Discernment of Expediency was created in 1988 to resolve disputes over legislation between the Majlis and the Council of Guardians. In August 1989 it became an advisory body on national policy and constitutional issues for the Supreme Leader.[5]

2.6 Political parties were legalised in 1998 after a 13-year ban and are still at an early stage of development.[6]

2.7 The Majlis elected in 20 February 2004, has a conservative majority. The Guardians Council disqualified several thousand candidates from standing in the elections, including over a quarter of the sitting deputies. Most of those disqualified were reformists. In protest over 600 candidates refused to take part in the elections. The net result was that in around half the seats there was effectively no alternative to conservative candidates. The conservatives succeeded in turning around the reformist majority in the parliament and now occupy well over half of the 290 seats.[7]

2.8 In the Presidential elections in June 2005, Government figures showed more than 17 million votes for Mahmoud Ahmadinejad, 49, the blacksmith's son who has been mayor of Tehran since 2003, compared with around 10 million for Akbar Hashemi Rafsanjani, the former president and favourite throughout the campaign who had gained the reluctant backing of the beleaguered reformist movement. Charges of vote-rigging and other violations surfaced during the election.[8]

2.9 There has been a disappointing lack of progress on Human Rights in 2004 and 2005. One particular and growing concern that has put particular international spotlight on Iran is the punishment of children. There has been a growing number of reports of juvenile

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[1] FCO Country Profile on Iran, 18 October 2005, p2 & USSD, 28 February 2005, p14
[2] FCO Country Profile on Iran, 18 October 2005, p2
[3] FCO Country Profile on Iran, 18 October 2005, p2
[4] FCO Country Profile on Iran, 18 October 2005, p2
[5] FCO Country Profile on Iran, 18 October 2005, p2
[6] FCO Country Profile on Iran, 18 October 2005, p2
[7] FCO Country Profile on Iran, 18 October 2005, p3
[8] The Guardian, 26 June 2005

offenders being sentenced to death or lashing and of sentences being carried out, including public hanging of children. Restrictions on freedom of expression appear to have tightened. The authorities have blocked many websites and weblogs that provide news or comment critical of the regime, and have shut a number of reformist newspapers.[9]

2.10 There were also some positive legislative developments in 2004, eg a new law to give women greater (though still not equal) divorce rights; and one to bring the 'blood money' paid to Christians, Jews and Zoroastrians (though not Bahá'ís) into line with amounts paid to Muslims.[10]

2.11 The widespread practices of arbitrary detention following arrest, of detention in unofficial prisons and of torture while in detention continue as a feature of the Iranian penal system. A number of juveniles have recently received death sentences and a 16 year old girl was executed in August 2004 for "acts incompatible with chastity". However the practice of stoning has been officially suspended and a similar 'moratorium' on amputations was declared in March 2003.[11] At least 159 people were executed in 2004, including at least one minor. Scores of others, including at least 10 people who were under 18 at the time the crime was committed were sentenced to death.[12]

2.12 While three religious minorities are recognised by the constitution – Christian, Jewish and Zoroastrian – they remain vulnerable in a society governed by the laws and values of Islam. The Baha'i religion is not officially recognised, so members of the Baha'i community enjoy no constitutional freedoms. The Baha'is face frequent persecution; two of their sacred sites were demolished in 2004 and they still face considerable problems gaining access to education.[13] In 2005 Baha'is have reported that they have faced arbitrary arrest and had property confiscated.[14]

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

3.2 Each claim should be assessed to determine whether there are reasonable grounds for believing that the claimant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in *Karanakaran* should be followed when deciding how much weight to be given to the material provided in support of the claim (see the API on Assessing the Claim).

3.3 If the claimant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the claimant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies

[9] FCO Country Profile on Iran, 18 October 2005, p5 & FCO Human Rights Report, July 2005, p58
[10] FCO Country Profile on Iran, 18 October 2005, p5
[11] FCO Country Profile on Iran, 18 October 2005, p5 & FCO Human Rights Report, July 2005, p58
[12] AI Country Report 2004, 26 May 2005, p4
[13] FCO Country Profile on Iran, 18 October 2005, p6
[14] FCO letter, 1 December 2005, p1

for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.

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

3.5 Also, this guidance does not generally provide information on whether or not a person should be excluded from the Refugee Convention or from Humanitarian Protection or Discretionary Leave**.** (See API on Humanitarian Protection and API on Exclusion under Article 1F or 33(2) and API on DL)

All APIs can be accessed via the IND website at:

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

3.6 Christian converts

3.6.1 Most claimants will claim asylum based on ill treatment amounting to persecution at the hands of the State due to their conversion to Christianity.

3.6.2 ***Treatment.*** Although apostasy (the renunciation of a religious belief) is not mentioned as a criminal offence in the Iranian penal code, the Revolutionary Court has previously cited a work of Ayatollah Khomeini's legal exegesis as the basis for the charge.[15] The late Ayatollah Khonemei also wrote the following in a fatwa, “A national apostate will be caused to repent and in case of refusing to repent will be executed. And it is preferable to give a three-day reprieve and to execute him on the fourth day if he refused”.[16]

3.6.3 An Iranian Muslim who converts to another religion is considered guilty of apostasy. Apostasy, or abandonment of Islam, is under Sharia law, depending on the particular circumstances of the case, punishable by death or lifetime imprisonment.[17] However there have been no reports of persons being executed on the grounds of conversion from Islam since 1994.[18] In a 2002 Danish Fact Finding Report the source consulted thought that converts who are known to the Iranian authorities are summoned to an interview at the Ministry of Information in order to be reprimanded. They are then allowed to go after being warned not to talk about what has taken place at the Ministry. If a criminal case is brought against them, they will be accused of something other than conversion.[19] The 2005 Danish Fact Finding Mission to Iran quoted a number of sources who stated that there were very few if any cases of apostasy because an individual would have to confess that he had been converted in front of a judge.[20]

3.6.4 With regard to the punishment, a distinction is made. For those born from Muslim parents (even if only one of them is a Muslim) anyone found converting "shall be executed". Those born from non-Muslim parents who had converted to Islam and then converted again to another religion shall be "invited to repent". In the event they refuse they shall be executed. With regard to women, detention and flogging shall be applied instead of the death sentence.[21]

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[15] Danish Fact Finding Report, April 2005, p13
[16] Danish Fact Finding Report, April 2005, p13
[17] COIS Iran Country Report para 6.69
[18] COIS Iran Country Report para 6.70
[19] COIS Iran Country Report para 6.71
[20] Danish Fact Finding Report, April 2005, p13
[21] UNHCR/ACCORD,11-12 June 2001, p98

3.6.5 In practice, Muslim converts to Christianity may face obstacles (such as not being admitted to university or not being issued a passport). Even Muslim converts, however, in reality appear able to practice their new faith up to a point. This means, for instance, that weekly church attendance is a possibility.[22]

3.6.6 There have been executions, particularly in the early years of the revolution. However it would appear that at present the Government is not pursuing an active and systematic policy of investigation and prosecution of cases of apostasy although, it should be noted that some of the Baha'is sentenced to death have been charged with apostasy.[23]

3.6.7 Religious conversion is a long process in Iran. Interested persons who apply to join a church are first - as far as possible - vetted to make sure they are sincere (to avoid admitting government 'spies'). They are then required to follow a course in Christian doctrine which normally lasts 1 to 3 years. They should also take an active part in the activities of the church. This is to prevent people from applying for religious conversion for no other reason than to be able subsequently to request asylum in another country. The baptism ceremony is then carried out, in most cases with the greatest discretion.[24]

3.6.8 Various churches issue baptism certificates to converts who request asylum abroad. However, the Assyrian 'Assembly of God' Church never issues such documents. Many of the documents, when checked by the churches concerned, are found to be fake.[25]

3.6.9 Iran is a place where people generally face few problems as long as they exercise a degree of discretion and engage in activities behind closed doors and within their own four walls. Many people for example drink alcohol, practise homosexuality and practise their religious faith after conversion without ever facing difficulties from the authorities. However, if a person who converted abroad walked down central Tehran wearing a cross, he or she would certainly experience difficulties. S/he may not be at risk if s/he keeps a low profile.[26]

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

3.6.11 ***Internal relocation.*** As this category of applicants' fear is of ill treatment/persecution by the state authorities, relocation to a different area of the country to escape this threat is not feasible.

3.6.12 ***Caselaw.***

FS & Others CG [2004] UKIAT 000303
The Tribunal made three main findings; an "ordinary" convert will not, without more, face persecution; an active convert, Pastor, church leader or proselytiser might face persecution; an "ordinary" convert with "additional risk factors" might face persecution. In the third category the "additional risk factors" in 2 of the cases were; a single women who faces discrimination, short of persecution, on grounds of gender due to a lack of economic and social protection (paragraph 190); and an individual whose radical theatre activities led to a past adverse political profile (paragraph 191).

J [2003] UKIAT 00158
The Tribunal set down a number of features that should be taken into consideration in assessing the extent of the appellant's conversion (See paragraph 22). They are:
(1) The genuineness of both the appellant's conversion and the church he attends.
(2) The evidence produced by the appellant in relation to his attendance at a church. This evidence should be more than a written letter: ideally it should be oral evidence from the Pastor or Church leader.

[22] COIS Iran Country Report para 6.72
[23] UNHCR/ACCORD,11-12 June 2001, p98
[24] CEDOCA, Report on the Mission to Iran, 16 May to 6 July 2002, p22
[25] CEDOCA, Report on the Mission to Iran, 16 May to 6 July 2002, p22
[26] UNHCR/ACCORD,11-12 June 2001, p99

(3) The extent to which the appellant has adhered to the principles of the Church he attends. This adherence should be evident throughout his stay in the UK.

The Tribunal also said that the test as to the bona fides of the appellant's conversion is more than that of a reasonable likelihood (paragraph 22). The Tribunal did not believe it possible that someone could be a member of a faith and remain a member in total isolation, attending no services and communicating with no other persons of that faith (paragraph 15).

3.6.13 ***Conclusion.*** Whilst conversion from Islam to another religion is forbidden according to Iranian law and is in theory punishable by the death penalty, the authorities are often aware of conversions but do not do anything to oppose them. As long as the religion is practised privately and the person concerned is not too obtrusive or attracting media attention, in practice there is no problem. It is only if the person practises his religion publicly or actively attempts to convert others that he could be in trouble. In practice people who convert can follow their chosen religion, given reasonable discretion, in a similar way to the ethnic Christians within Iran and with minimal interference or penalty from the authorities. Such claimants will not warrant a grant of asylum. There may be some individuals who by virtue of their high profile are able to demonstrate that they face a serious risk of persecution or ill-treatment from the Government. Where individuals are able to demonstrate such a risk a grant of asylum may be appropriate. Moreover there may be some converts who can demonstrate that they have come to the attention of the authorities previously for different reasons and this in combination with their conversion will put them at real risk of persecution. The conversion plus additional risk factors may compel the authorities to show an adverse interest in the individual where knowledge of the conversion in itself would not be of interest. Where claimants are able to demonstrate such a risk, a grant of asylum may be appropriate.

3.7 Christian evangelisers and/or proselytizers

3.7.1 Some claimants will claim asylum based on ill treatment amounting to persecution at the hands of State due to their actively seeking to convert others (proselytizing).

3.7.2 ***Treatment.*** Those who actively display their new faith in public, in particular by proselytizing, can expect to face severe repression, even if their conversion goes back decades.[27]

3.7.3 Few of the churches in Iran are involved in any proselytizing. The most active are the two 'Assemblies of God' churches and the 'Episcopal Church of Iran (Anglican Church)'. These churches do engage in active proselytizing.[28]

3.7.4 An element of faith for an evangelical Christian would be to declare it. An evangelical person is an evangelist – preacher of the gospel, an active member of an evangelical church, in which case he may be at risk.[29] Some of their members are said to have been convicted of apostasy. The United Nations Special Representative reported in January 2002 that only three small Persian-speaking "evangelical" churches may remain in operation and that they have had to agree not to evangelise Muslims. The printing of Christian literature is prohibited and Christian bookstores are banned.[30]

3.7.5 In general, apart from the above, few of the churches in Iran are involved in any proselytizing. Other churches admit new members only when the person concerned is married to a member. The Armenian Gregorian Church, the Armenian Catholic Church, the Roman Catholic Church and the Assyrian Church ('The Holy Apostolic Catholic Assyrian Church of the East') never admit converts.[31]

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[27] COIS Iran Country Report para 6.72
[28] CEDOCA, Report on the Mission to Iran, 16 May to 6 July 2002, p21
[29] CEDOCA, Report on the Mission to Iran, 16 May to 6 July 2002, p21
[30] UN, 16 January 2002, p18
[31] CEDOCA, Report on the Mission to Iran, 16 May to 6 July 2002, p21-22

3.7.6 If the person practises his religion publicly or actively attempts to convert others then he could be at a real risk of persecution. However, this applies more to small towns, where it appears that members are sometimes questioned.[32] The 2005 Danish Fact Finding Mission to Iran quoted two sources stating that it was easier to convict someone for proselytizing than merely converting, as the burden of proof only required evidence being given by witnesses and not a confession.[33]

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

3.7.8 ***Internal relocation.*** As this category of applicants' fear is of ill treatment/persecution by the state authorities, relocation to a different area of the country to escape this threat is not feasible.

3.7.9 ***Caselaw.***

FS & Others CG [2004] UKIAT 000303

The Tribunal noted that "we would draw a distinction between those converts who would simply attend Church, associate with Christians and study the bible, and those who would become leaders, lay or ordained, or Pastors, or who would actively and openly proselytise or who would wear in public outward manifestations of their faith such as a visible crucifix." (para 175) They added that "leadership and active proselytising have led to greater targeting in the past." (para 173) and concluded that " We would regard the more active convert, Pastor, church leader, proselytiser or evangelist as being at real risk." (para 189)

3.7.10 ***Conclusion.*** Converts who practise their religion cautiously and with reasonable discretion are unlikely to face a real risk of persecution. However converts who can demonstrate that they have and will continue to practise evangelical or proselytizing activities because of their character or their affiliation to evangelical churches, will attract the adverse notice of the authorities on return to Iran and should be considered at risk of persecution. In such cases a grant of asylum will be appropriate.

3.8 Adulterers

3.8.1 Some claimants will claim asylum based on ill treatment amounting to persecution at the hands of State and non-State agents due to their adultery.

3.8.2 ***Treatment.*** Under the Islamic Penal Code adopted by the Majlis in November 1995, those found guilty of adultery (a crime that must be proven by the testimony of four just men or that of three just men and two just women) are subject to execution by stoning. If a husband discovers his wife in an adulterous act he may kill her and her partner without legal consequence; a wife who discovers her husband with another woman does not have the same right.[34]

3.8.3 One Canadian Immigration and Refugee Board report on the law regarding adultery, states that the standard of proof and punishment concerning adultery reflects the contradictory practices and decisions of the Iranian Islamic courts. In essence, rural small town courts are more likely to inflict harsher sentences and perverse judgements than courts in Tehran. Stoning for adultery is held not to be a widespread phenomenon. However, in July 2001, Amnesty International received a reported case of a stoning to death of a woman for adultery, the sentence being undertaken in Evin prison, Tehran.[35] It was announced that

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[32] CEDOCA, Report on the Mission to Iran, 16 May to 6 July 2002, p22
[33] Danish Fact Finding Report, April 2005, p13-14
[34] COIS Iran Country Report para 6.235
[35] COIS Iran Country Report para 6.236

there would be a moratorium on stoning as a punishment for adultery, however, according to the USSD 2004, the law has not been rescinded.[36]

3.8.4 According to a DIRB Report of 30 March 1999 the punishment for unmarried adulterers is not death, but flogging.[37] According to a DIRB Report of 8 May 1998 the penalties for attempting to entice a married person into committing adultery could range from lashing to death depending on the judge's discretion. The married person who is the unwilling object of such attention is not immune from legal consequences (normally lashing) and from social ostracism.[38]

3.8.5 During the consideration of an asylum claim based on adultery it is worth bearing in mind that Iran is a place where people generally face few problems as long as they exercise a degree of discretion and engage in activities behind closed doors.[39]

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

3.8.7 ***Internal relocation.*** Relocation to a different area of the country to escape either State agents or non-State agents is not feasible.

3.8.8 ***Caselaw.***

A [2003] UKIAT 00095
The IAT allowed this appeal by the Secretary of State against this Iranian Appellant who was sentenced to 100 lashes and then death by stoning after four witnesses gave evidence against him for adultery as is the normal procedure in Iran. The appellant successfully appealed and was released on bail. The Adjudicator found the appellant to be credible and that he has a well-founded fear of persecution due to his political and religious opinions. He then went on to find that there would be a breach of Articles 2 and 3 of ECHR. The S of S only appealed against the asylum decision.
The IAT found: Following Januzi [2003] EWCA Civ 1187 and AE and FE* [2003] EWCA Civ 1032, the interpretation that 'because Iran is a theocratic state, anyone who violates its laws, and faces punishment as a result, can be said to be at risk of persecution by reason of religion,' substantially distorts the purpose of the Refugee Convention (para 34). The fact that a law has its ultimate origin in a religious code does not make it fall within one of the Refugee Convention heads (para 34). Applying Gomez, "All laws necessarily have to some extent a 'political dimension' but that does not mean that a person who transgresses a law is on that account being persecuted for a political reason." (Para 35) Disparity in treatment between different countries cannot in itself cause one of the "Convention grounds" (race, religion etc.) to come into play, if it would not otherwise do so (para 43).

ME [2003] UKIAT 00166
The adjudicator found that the appellant on return to Iran would face persecution on account of his membership of a particular social group, "the group being men in Iran who have committed adultery which has been witnessed by at least three others". She also allowed the appeal on human rights grounds.
The IAT allowed the appeal, by the SSHD, against the adjudicator's decision to allow the asylum appeal, however, human rights went unchallenged and thus still stand. The IAT found: The Tribunal distinguished the facts of the present case with those in Ameen; the reason that the appellant had been attacked and the authorities had subsequently prosecuted him for adultery was simply because he had contravened Iranian law (para 9).
In applying the principles in Montoya [2002] INLR 399 (paragraph 10) to the facts of the case the Tribunal found that neither the appellant's 'nationality nor his sex was a basis for any discriminatory treatment that he received. Thus, the principal factors relied upon to identify him as a particular social group amounted to no more that those which defined his persecution. He was persecuted because he was an adulterer who had transgressed Iranian law.' (Para 11)

FT [2002] UKIAT07576

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[36] COIS Iran Country Report para 6.235
[37] COIS Iran Country Report para 6.240
[38] COIS Iran Country Report para 6.241
[39] UNHCR/ACCORD,11-12 June 2001, p99

The Tribunal found that, "Most important, the Appellant has never committed adultery and there would therefore be no genuine evidence against her…the Appellant should have remained in Teheran (sic) to defend the proceedings against her and could now be returned and do so, without any real risk of a perverse decision being reached by the court." (para 12 and 14)

3.8.9 ***Conclusion.*** Adultery, given traditional and societal attitudes, can attract treatment amounting to torture, degrading treatment, and/or the death penalty. UNHCR in a paper of January 2005 noted that, "The critical questions for determining whether the claimant has protection needs are whether he did indeed commit adulterous acts under the Iranian Penal Code; whether this was known or likely to be made known to the public and the Iranian authorities; and whether persecution and serious harm would be among the likely consequences of this public knowledge."[40]

3.8.10 However, the standard of proof required for a charge of adultery is stringent (a crime that must be proven by the testimony of four just men or that of three just men and two just women) and whilst the penalties set out in the law are specific, it is the case that application of these penalties can vary, particularly the further away one gets from major urban areas. If a claimant has been unjustly accused of adultery it is unlikely, given the strict standard of proof required that s/he will be convicted wrongly of adultery. Few claimants will be able to demonstrate a well founded fear of persecution from the authorities as a direct result of adultery, and those that can will not be able to engage the UK's obligations under the 1951 Convention as they will not qualify as a particular social group. If there is credible evidence that the individual is an adulterer and is likely to be prosecuted a grant of HP will be appropriate.

3.9 Gay men and lesbians

3.9.1 Some claimants will claim asylum based on ill treatment amounting to persecution at the hands of State due to their sexuality.

3.9.2 ***Treatment.*** Technically, gay male behaviour is sharply condemned by Islam, and the Islamic code of law (Sharia law) adopted by Iran. Sodomy is punishable by death if both parties are considered to be adults of sound mind and free will. It must be proven by either four confessions from the accused, the testimony of four righteous men who witnessed the act or through the knowledge of a Sharia judge "derived through customary methods". Articles 125 -126 outline the circumstances under which an individual, by repenting, may have the prescribed punishment quashed or have clemency recommended by the judge.[41]

3.9.3 From a legal point of view it is important to take a look at Iranian law (the Islamic Punishment Act), which carries the following provisions for homosexual acts:

Art. 110: The prescribed punishment for homosexual relations in case of intercourse is execution and the mode of the execution is at the discretion of the religious judge.
Art. 111: Homosexual intercourse leads to execution provided that both the active and the passive party are of age, sane and consenting.
Art. 112: Where a person of age commits homosexual intercourse with an adolescent, the active party shall be executed and the passive party, if he has not been reluctant, shall receive a flogging of up to 74 lashes.
Art. 113: Where an adolescent commits homosexual intercourse with another adolescent, they shall receive a flogging of up to 74 strokes of the whip unless one of them has been reluctant.
Art. 114 to 126 establish how to prove homosexual intercourse.
Art. 127 to 134 relate to lesbian sexual relations. Punishment for sexual intercourse among lesbians is 100 lashes and in case of recidivity (3 times) execution.[42]

[40] UNHCR, Adultery in Iran/Particular Social Group, 1 January 2005, p3
[41] COIS Iran Country Report para 6.200
[42] COIS Iran Country Report para 6.201

For reference in Iranian law a child is attributed to a person who has not reached puberty age. Note 1 of Article 1210 of the Iranian Civil Code, ratified by the Islamic Consultative Assembly in 1991, says a girl achieves puberty after 9 lunar years and a boy after completing 15 lunar years and at these age groups these persons are considered adults and mature and are permitted to execute all legal transactions. Moreover the penal law is applicable to those who have achieved puberty age.[43]

3.9.4 However strict though the legal position is, expert opinion consulted by the Canadian Immigration and Refugee Board states "… in practice (homosexuality) is present, and has been in the past, for the most part tolerantly treated and frequently occurring in countries where Islam predominates… In practice it is only public transgression of Islamic morals that is condemned, and therefore Islamic law stresses the role of eye-witnesses to an offence."[44] So far, no cases of execution only on the grounds of homosexual relations have been identified. In fact, the burden of proof is quite high and it would be difficult to prove homosexual liaisons or intercourse. According to some reports in local papers there have been instances of execution of homosexuals. It is not confirmed whether the homosexual act led to execution or whether the person was accused on other charges too.[45] In April 2005 an Iranian convicted of blackmailing his gay partners with videotapes of their sex acts, had been hanged. In this case, the death sentence appears to have been handed down for rape, as the blackmail was deemed to have removed any element of consent.[46] In July 2005 two young men were executed. The case was complicated because there were conflicting views on the reasons for their execution. The Times reported that the individuals were executed for raping a 13 year old boy based on reports from Iran. Human Rights Watch and Amnesty International reported this reason for execution also however Outrage in the first place argued that the rape aspect was an add on by the regime to avert criticism at that particularly difficult time for them in international relations, and that the crime was simply homosexuality. The question of the age of the executed has also attracted comment.[47]

3.9.5 Jurisprudence, burden of proof notwithstanding, shows that accusations of homosexuality are sometimes used to further a case against an individual. For instance, accusations of homosexuality have been used in unfair trials, such as the case of a Sunni leader in Shiraz in 1996/97, who was clearly prosecuted for political reasons.[48]

3.9.6 Repressing homosexual activities is rare for the security forces because of the difficulty in identifying who is gay and who is not since Iranian men have very close physical contact (holding hands and kissing) which is a socially accepted behaviour in Iran.[49] In November 2001, the Swedish Aliens' Appeals Board stated that "a homosexual person (in Iran) does not risk persecution only because he is homosexual ... but he or she risks hard punishment, even the death penalty, if he or she conducts homosexual acts".[50] It follows then that gay right activists that come to the attention of the authorities are also in danger of persecution.[51]

3.9.7 In practice it is only public transgression of Islamic morals that is condemned, and therefore Islamic law stresses the role of eye-witnesses to an offence. The police are not allowed to go in search of possible sinners, who can only be caught red-handed, and not behind the "veil of decency" of their closed doors. The generally tolerant attitude toward homosexual

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[43] NETIRAN, 15 November 1999, p1
[44] COIS Iran Country Report para 6.206
[45] COIS Iran Country Report para 6.202
[46] News24.com, 30 April 2005
[47] Outrage, 27 July 2005 & Outrage, 21 July 2005 & The Times, 22 July 2005 & AI, 22 July 2005 & HRW, 27 July 2005
[48] COIS Iran Country Report para 6.204
[49] Canadian IRB, 11 February 1998
[50] Canadian IRB, 20 January 2003
[51] FCO letter dated 1 December 2005, p2

behaviour in practice can partly be explained by the fact that it will usually take place discreetly.[52]

3.9.8 Lesbian sex continues to be illegal and is punishable by 100 lashes, with the death penalty on the fourth offence. As in the case of gay males, reports of persons being penalised for lesbian sex could not be found.[53] Lesbian cases rarely come before the courts, as the case usually fails the test of proof (four righteous witnesses). Sources hold that lesbian behaviour in public is impossible to distinguish from accepted social contact between women in Iran.[54]

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

3.9.10 ***Internal relocation.*** As this category of applicants' fear is of ill treatment/persecution by the state authorities, relocation to a different area of the country to escape this threat is not feasible.

3.9.11 ***Caselaw.***

RM and BB CG [2005] UKIAT 00117
The IAT found that "it is most unlikely, given the statistics and the problems of proof, that the death penalty for sodomy is anything other than an extremely rare occurrence." (para123) They also noted that those guilty of immoral acts under Article 147/115 and Tafkhiz under Article 121 face harsh punishments which can include long prison sentences up to six years and up to one hundred lashes. They further stated that "We also consider, bearing in mind the consequences for persons prosecuted successfully for such actions, that Adjudicators should view with healthy scepticism claims that family members or friends or neighbours reported such actions to the authorities." (para 124) Finally they found that it is the case that homosexual acts carried on in private between consenting adults are most unlikely to come to the attention of the authorities.

HS [2005] UKAIT 00120
This is not a country guidance case, and so is case specific. The appellant claimed to have a well-founded fear of persecution, and feared experiencing other serious harm, by virtue of his membership of a particular social group (homosexuals in Iran) and the fact that he has a criminal record resulting from homosexual activity.

- The appellant is credible (paras 120; 123; 127; 135).
- "We find that there is a reasonable degree of likelihood that there was an informer who brought the situation to the attention of the authorities. It is clear from the findings of the IAT in RM and BB, that where allegations are brought to the attention of the authorities, then they will act. See, for example paragraph 123 (of RM)" (paras 129 and 130).
- The ill treatment that he was subjected to was "serious harm inflicted *by reason of* his being a homosexual and that it amounted to his being persecuted and to breach of his right to freedom from torture, inhuman and degrading treatment or punishment under Article 3 ECHR" (emphasis added) (para 134).
- After outlining the principles to be assessed in looking at a particular social group (para 144), "(W)e find that his homosexuality is either an innate and unchangeable characteristic, or it is a characteristic that is so fundamental that he should not be required to change it" (para 146).
- As for the causal nexus, "(T)he state does not protect the Appellant, we find, because he is a homosexual…the Appellant would be at risk of detention upon return, by reason of his membership of a particular social group, namely homosexuals in Iran" (paras 150-151).

3.9.12 ***Conclusion.*** Various recent convictions have highlighted the issue of homosexuality in the Iranian penal system however it is difficult to know for what "crime" the authorities were punishing those concerned. Whilst it is accepted that there is discrimination against gay men and lesbians in Iran it is not accepted that there is systematic repression of gay men and lesbians, although there are individual examples of severe punishments which are a feature of Iranian law being carried out. Each case will need to be considered on its merits

[52] Canadian IRB, 11 February 1998
[53] Canadian IRB, 20 January 2003
[54] COIS Iran Country Report para 6.209

and in light of the country information. Where an individual claimant demonstrates that their homosexual acts have brought them to the attention of the authorities to the extent that on return to Iran they will face a real risk of punishment which will be so harsh as to amount to persecution s/he should be granted refugee status as a member of a particular social group. In addition gay right activists that have come to the attention of the authorities face a real risk of persecution and should be granted asylum as a result of their political opinion.

3.10 Women

3.10.1 Some claimants will claim asylum based on ill treatment amounting to persecution at the hands of the State or non-State agents due to their gender.

3.10.2 ***Treatment.*** Women in Iran have certain rights and freedoms that they lack elsewhere in the region: they have the right to vote and work and they make up over half of the university intake. But discrimination is pervasive. A woman's testimony in court is worth half that of a man. Married women need their husband's permission to get a passport and travel overseas. Domestic violence is a serious problem. Women's participation in the labour market is low. During 2005, the authorities enforced the dress code more strictly: more women were stopped for ''bad hejab" (inappropriate clothing) and for wearing too much make-up.[55] In May 2004 Iran's parliament had twelve female legislators, however women will not be included in the cabinet of Iran's new hard-line President Mahmoud Ahmadinejad.[56]

3.10.3 The State enforces gender segregation in most public spaces, and prohibits women mixing openly with unmarried men or men not related to them. Women must ride in a reserved section on public buses and enter airports and some public buildings and universities through separate entrances.[57]

3.10.4 Women suffer discrimination in the legal code, particularly in family and property matters. It is difficult for many women, particularly those living outside large cities, to obtain legal redress**.** Under the legal system, women are denied equal rights of testimony and inheritance. According to a BBC News Report of 29 May 2002 however, a bill was passed by the Majlis on 22 May 2002 which gave divorced mothers the same custody rights over boys as girls. Payvand News reported that on 8 February 2003 the Expediency Council sided with the Parliament after the bill was twice quashed by the supervisory Guardians Council on the ground that it went against the Islamic Sharia law and agreed to grant divorced Iranian mothers the right to the custody of their children up to the age of seven. The law was finally amended by the Government in November 2003.[58]

3.10.5 Abuse in the family was considered a private matter and was seldom discussed publicly although surveys (eg Tehran University surveys) indicate levels of domestic violence are very high, women have almost no legal redress, and there is a fair amount of social tolerance of domestic violence. Violence against women in the family is recognised, with "blood money" (Deyah). Although the award to a woman will be only half of that made to a man. In addition, families of female victims of violent crimes are reported to have to pay for an assailant's court costs.[59] Researchers from Tehran University reported that five thousand women are victims of honour killings every year and separate research for the National Welfare Organisation has reported that two thirds of Iranian women have suffered domestic violence. [60]

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[55] COIS Iran Country Report para 6.174
[56] COIS Iran Country Report para 6.161
[57] COIS Iran Country Report para 6.158 & FCO letter dated 1 December 2005, p2
[58] COIS Iran Country Report para 6.164
[59] COIS Iran Country Report para 6.165
[60] FCO letter dated 1 December 2005, p2

3.10.6 With regard to passports, the requirements are usually checked when a person wanting to leave applies for a passport. If the criteria, one of them being the husband's permission, are not fulfilled the passport will not be issued.[61] Mothers cannot travel outside of Iran without the permission of the father of the child even if the child is in custody of the mother.[62]

3.10.7 "The Hijab", modest dress code, became mandatory in 1980 and is required to be adhered to in all public places regardless of a woman's religion or citizenship. Women's hair must be fully covered and their faces free of make-up. Contravention of the dress code is punishable by either a verbal reprimand, a fine, 74 strokes of the lash or a prison term of up to three months.[63] In February 2004, hardliners warned they would not tolerate what they described as social corruption and in July 2004 Iran's morality police made several raids in Tehran, in an apparent crackdown on women who flout the strict Islamic dress code.[64]

3.10.8 Although the law permits it, marriage at the minimum age of 9 was rare. In mid-2002, authorities approved a law that requires court approval for the marriage of girls below the age of 13 and boys younger than 15.[65] Current law in Iran sanctions two types of marriage: permanent marriage and temporary marriage called sigheh or mut'a. Temporary marriage is limited by a period of time, normally specified in the marriage contract, which may vary from 1 hour to 99 years. The husband may terminate the marriage at any time. Men are allowed up to four permanent wives and an unlimited number of concubines or temporary wives**.** Muslim men are free to marry non-Muslim women, but marriage between Muslim women and non-Muslim men is not recognised.[66]

3.10.9 Divorce applies to permanent marriage only. A husband wishing to divorce is required to obtain court permission to register the divorce if his wife does not agree to the divorce, but registration can only be delayed by the court, not prevented. A husband is not required to cite a reason for divorcing his wife. The conditions under which a woman may divorce depend on the year that she married, and the legislation that was in effect at the time of her marriage.[67] In the event of divorce, the father traditionally has legal custody of his children, unless a woman can show her spouse to be an unfit father and applies under legislation passed in November 1998 to obtain custody. On 8 February 2003 the arbitrative Expediency Council agreed to grant divorced Iranian mothers the right to the custody of their children up to the age of seven. Divorced mothers have already the custody right to their daughters up to the age of seven and the new law incorporates the same right to their sons.[68]

3.10.10 ***Sufficiency of protection.*** There are constitutional and legal safeguards aimed at protecting women's rights but Iran is a conservative traditional society and those provisions may not always be enforced. Particularly in the major cities such as Tehran, Mashad or Esfahan, Iran is a highly developed country which can be compared, favourably, to cities in the West. However, in some rural areas, sufficiency of protection may not be available. Rural areas reflect to a large extent a more tribal and traditional view of life and as a result any centralist views on the law may not be fully actioned. Caseworkers should take into account inconsistency in application of the legal system that is part of the every day life in Iran. In light of this caseworkers will need to decide whether the authorities are willing and able to provide protection on the facts of each individual claim.

3.10.11 ***Internal relocation.*** Internal relocation may be a viable option for women who fear domestic violence. Iranian society in general does not encompass freedom of movement for females but it is not impossible. Factors such as the social and professional background

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[61] COIS Iran Country Report para 6.171
[62] COIS Iran Country Report para 6.186
[63] COIS Iran Country Report para 6.175
[64] COIS Iran Country Report para 6.176
[65] COIS Iran Country Report para 6.179
[66] COIS Iran Country Report para 6.178
[67] COIS Iran Country Report para 6.182
[68] COIS Iran Country Report para 6.185

of an individual claimant and family support will be a major consideration when determining relocation as an option.

3.10.12 ***Caselaw.***

ZH CG [2003] UKIAT 00207

The IAT found that women *per se* do not form a social group. (See Paragraph 74). The facts of ZH were that she suffered domestic violence from a husband who was a drug addict. (See paragraph 7). In ZH there was no evidence that the Claimant faced a real risk of adultery charges from her husband or anyone else. Her concern was that her husband wanted her back with their child, and that his threat to kill her might then be realised. (See paragraph 83). The Tribunal concluded that:

> *"91. We accept that the police are reluctant and unlikely generally to intervene in domestic violence cases against a husband but the evidence does not show such a reluctance in respect of drug or alcohol abuse, nor that the reluctance is marked where there is other supporting evidence, e.g. from parents. In this country, the attitude of the police towards domestic violence has been one of reluctant involvement, though we accept not to the same degree as in Iran, but it would still have been regarded as part of a system of protection.*
>
> *92. The inability of the state to provide protection cannot always be tested solely by reference to the police, if as here, relief can be obtained through divorce. Lord Hoffmann looked at both criminal and civil or family court protection in the United Kingdom in Shah and Islam. In domestic violence, the availability and consequences of divorce constitute a relevant part of the system of state protection. It may be difficult to obtain, but the legislative provision exist, they are not simply ignored by the courts or made impractical for all to use, as the background material on custody and alimony shows. Relevant grounds apply to this Claimant and she is not dependant wholly on her own evidence. The Iranian state, whatever its other discriminatory acts, is not unable or unwilling to provide protection in this instance. The evidence also does not support the conclusion that this couple cannot live apart, before divorce; they have at times done so. It does not support the conclusion that after divorce there would be persecution."*

TB [2005] UKIAT 00065

This case is not a country guidance case but received a determination specific to the facts of the case. The Tribunal found the Appellant would be persecuted on return because she belonged to a particular social group *viz.,* "Young Iranian Women who refuse to enter into arranged marriages". The Tribunal reasoned at paragraph 69 iv) that:

> *"the real risk of this appellant suffering serious harm on return to Iran is primarily for non-Convention reasons (the vindictiveness and retribution of the appellant's father and the Mullah). However, as we consider there would also be a failure of state protection against that serious harm, we find that there is a causal nexus between the persecution (accepting that: Persecution = failure of state protection + serious harm) and her membership of a particular social group."*

Whilst the Tribunal consider that women in Iran may constitute a particular social group, they do not come to a finding on it and there is no conclusive statement on this point.

3.10.13 Conclusion. Iran remains an extremely patriarchal society and despite some advances in the general position of women they remain discriminated against both in terms of the law and tradition. Given the almost universal country attitudes, which can be more firmly rooted outside major towns and cities, the question of internal relocation will require consideration in light of the facts pertaining to each individual case. Sufficiency of protection will be dependent on the nature of fear, and where the persecution emanates from. Women who fear persecution as a result of their gender should be treated as being members of a particular social group as they are discriminated against in matters of fundamental human rights and may not be protected by the State. Women claimants who can demonstrate that they have a well founded fear of persecution as a result of their gender and that have no recourse to State protection or internal relocation should be granted asylum.

3.11 Kurds and supporters of the KDPI and Komala

3.11.1 Many claimants will claim asylum based on ill treatment amounting to persecution at the hands of the state due to their ethnic or political affiliation.

3.11.2 ***Treatment.*** Ethnic Kurds can be found in all walks of life in Iran both in the private and public economic sectors as well as in Iran's military and civilian establishments.[69] The USSD published in February 2005 noted that in recent years, greater Kurdish cultural expression has been allowed and Kurdish publications and broadcasting have expanded.[70] However Human Rights Watch reported that on 2 August 2005, the government shut down *Ashti* newspaper and the weekly *Asu* in Kurdistan.[71] Kurds make up some 7 percent of Iran's population of 68 million, and have campaigned for greater attention from the central government, citing provincial underdevelopment, inadequate political representation, and inattention to their cultural needs.[72]

3.11.3 From mid-June 2005 there have been a series of incidents focused on local Kurds' ethnic identity.[73] According to the USSD 2005, "Suspicions of Kurdish separatist or foreign sympathies have led to sporadic outbreaks of fighting between government forces and Kurdish groups."[74] In July 2005, civil unrest broke out in the province of Kordestan.[75] It was also reported by the Kurdish press in March 2004 that larger demonstrations were triggered by events within the Kurdish area of Iraq when as a result of the signing of the Iraqi constitution it transpired that Iraqi Kurdistan had gained considerable status within the Iraqi federal plan. The demonstrations followed as a result of Iranian Kurds showing solidarity and support with the Iraqi Kurds. The security forces reacted vigorously to the demonstrators.[76] Iranian troops are permanently stationed in Kurdish areas.[77]

3.11.4 According to the Minorities at Risk Project 2001, there are two major Kurdish parties in Iran as well as many smaller ones, including Kurdish branches of other Iranian political parties. The Kurdistan Democratic Party of Iran (KDPI) was originally formed as an illegal organisation during the Shah's reign, to seek cultural and local autonomy. It has maintained a constant policy of demanding democracy for Iran and autonomy for the Kurds. Most of its support comes from the urban middle class, intellectuals, merchants and government employees.[78] The KDPI Congress in July 2004 changed the parties' demands and replaced their previous aim of 'democracy for Iran and autonomy for Kurdistan' with the aim of 'federalism for Iran and national rights for Kurds.' At present, the party is led by its Secretary-General, Moustapha Hedjri.[79] The KDPI ended its "armed struggle" against Iranian forces seven years ago.[80] The Iranian regime deals harshly with its leaders and their aligned militant supporters. There are reports of extra-judicial killings and questionable detentions of Kurdish militant activists.[81]

3.11.5 According to the Minorities at Risk Project 2001, the Revolutionary Organisation of the Toilers of Kurdistan Komala is the other major Kurdish party. While it has often violently disagreed with the KDPI, the Komala has supported the KDPI's stance for democracy and autonomy. It was reported by Amnesty International in 2003 that it appeared that there had

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[69] COIS Iran Country Report para 6.130
[70] USSD 2004, p20
[71] COIS Iran Country Report para 6.136
[72] Radio Free Europe 2005, Iran Faces Agitated Kurdish Population, p2
[73] Radio Free Europe 2005, Iran Faces Agitated Kurdish Population, p2
[74] USSD 2004, p20
[75] COIS Iran Country Report para 6.135
[76] COIS Iran Country Report para 6.133
[77] COIS Iran Country Report para 6.130
[78] COIS Iran Country Report para 6.228
[79] COIS Iran Country Report Annex B
[80] The Financial Times, 2 May 2003
[81] COIS Iran Country Report para 6.229

been a noticeable use of death sentences and executions by the authorities against Komala, an apparent attempt to intimidate the inhabitants of Khordestan.[82]

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

3.11.7 ***Internal relocation.*** As this category of applicants' fear is of ill treatment/persecution by the state authorities, relocation to a different area of the country to escape this threat is not feasible.

3.11.8 ***Conclusion.*** Unless the individual has come to the direct attention of the Iranian authorities, it is unlikely that the authorities will demonstrate an interest in an individual of Kurdish ethnicity or a low level supporter of the KDPI or Komala. However there is objective evidence which indicates that leaders and militant supporters of the KDPI and Komala would be at a real risk of persecution because of their activities. For claimants that are able to demonstrate that they fall within this category, a grant of asylum would be appropriate.

3.12 Smugglers

3.12.1 Some claimants will claim asylum based on ill treatment amounting to persecution at the hands of the state due to their criminal activities.

3.12.2 ***Treatment.*** The problem of smuggling in Iran is increasing according to the Chief of Iran's National Police Force. It is alleged that the total value of smuggled goods is $5.5 billion-$6 billion annually and that up to 80% of these goods enter the country through unregistered ports and jetties in the Persian Gulf.[83] Moreover the extent of smuggling has reportedly made soft drugs as accessible as cigarettes, especially in border cities. The efforts of the Iranian authorities to stop this traffic have been internationally recognised, but Iran is paying a high price in terms of human life and budgetary resources in this struggle.[84]

3.12.3 By law the death penalty can be carried out for drug smuggling however the execution of drug offenders is usually limited to drug lords, organised drug criminals and armed drug traffickers.[85] According to Amnesty International reports of March and June 2002, in January 2002 five Arab activists were hanged in Ahvaz for arms smuggling.[86] The possession and smuggling of opium and cannabis of up to 50 grams can result in a fine of 4 million rials and up to 50 lashes. The penalties become harsher according to the amount that is found on the person. The death penalty may be commuted to life imprisonment and 74 lashes if the quantity does not exceed 20 kg and the perpetrator did not succeed in smuggling/distributing/selling. Anyone who deals in, puts on sale or carries heroin or morphine is sentenced to various punishments.[87]

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

3.12.5 ***Internal relocation.*** As this category of applicants' fear is of ill treatment/persecution by the state authorities, relocation to a different area of the country to escape this threat is not feasible.

3.12.6 ***Conclusion.*** Persons fleeing from prosecution or punishment for an offence are not normally refugees. Prosecution, however, can be considered persecution if it involves victimisation in its application by the authorities. Punishment which is cruel, inhuman or

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[82] COIS Iran Country Report para 6.233
[83] Radio Free Europe 2005, Analysis: Goods Smuggling Highlights Economic Problems in Iran, p1
[84] COIS Iran Country Report para 6.248
[85] COIS Iran Country Report para 6.244
[86] COIS Iran Country Report para 6.143
[87] COIS Iran Country Report para 6.244

degrading (including punishment which is out of all proportion to the offence committed) may also constitute persecution. Few claimants will be able to demonstrate that they would be subject to a disproportionate punishment as a result of their criminal activities. However for individuals who are able to demonstrate that they face the death penalty or a real risk of suffering severe punishment which is meted out to some smugglers in Iran a grant of Humanitarian Protection may be appropriate. It should be noted that a person's criminal activities may mean that they fall to be excluded from the 1951 Refugee Convention under Article 1F and that a grant of HP or DL would not be appropriate. Such cases should be referred to a Senior Caseworker.

3.13 Prison conditions

3.13.1 Claimants may claim that they cannot return to Iran due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in Iran are so poor as to amount to torture or inhuman treatment or punishment.

3.13.2 ***Consideration.*** Prison conditions in the country are poor. Many prisoners are held in solitary confinement or denied adequate food or medical care in order to force confessions. After its February 2003 visit, the U.N. Working Group on Arbitrary Detentions reported that "for the first time since its establishment, [the Working Group] has been confronted with a strategy of widespread use of solitary confinement for its own sake and not for traditional disciplinary purposes." The Working Group described Sector 209 of Evin Prison as a "prison within a prison," designed for the "systematic, large-scale use of absolute solitary confinement, frequently for long periods."[88]

3.13.3 The dominant feature of Iranian prisons is their overcrowding and this seems to have had the inevitable results of prison disturbances on the one hand and breakouts on the other. HIV/AIDS and other diseases have spread rapidly throughout the prison population.[89]

3.13.4 The first UN human rights monitors to visit the country for seven years said on 26 February 2003 that Iranians suffer large-scale arbitrary detentions and some prisons operate outside the control of the judicial system. Although the head of the five-member team examining arbitrary detentions said the authorities had co-operated fully with its requests, he raised concerns about unaccountable prisons, detainees being held without access to legal defence, violations of freedom of expression and other abuses.[90] The number of illegal detention centres not under the direct control of the National Prisons Office is unknown. They are not officially registered as prisons, do not record the names of their prisoners, and information about their budgets, administration, and management is not known even by relevant government authorities. There are reportedly many in and around Tehran, and they appear to be growing in number.[91]

3.13.5 The head of the Judiciary, Ayatollah Shahroudi, said on 28 April 2004: "Any torture to extract a confession is banned and the confessions extracted through torture are not legitimate and legal". However the widespread practices of arbitrary detention following arrest, of detention in unofficial prisons and of torture while in detention continue as a feature of the Iranian penal system.[92] On 24 July 2005 the BBC reported that in a report drafted over several months the Iranian judiciary had said that human rights abuses have been taking place in the country's jails such as prison guards who had ignored a legal order banning the use of torture by blindfolding and beating detainees. It also criticised police for arresting people without sufficient evidence.[93]

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[88] COIS Iran Country Report para 5.61
[89] COIS Iran Country Report para 5.63
[90] COIS Iran Country Report para 5.65
[91] COIS Iran Country Report para 5.66
[92] FCO Country Profile on Iran, 18 October 2005, p5
[93] COIS Iran Country Report para 5.68

3.13.6 The first UN human rights monitors to visit the country for seven years said on 26 February 2003 that Iranians suffer large-scale arbitrary detentions and some prisons operate outside the control of the judicial system. Although the head of the five-member team examining arbitrary detentions said the authorities had cooperated fully with its requests, he raised concerns about unaccountable prisons, detainees being held without access to legal defence, violations of freedom of expression and other abuses.[94]

3.13.7 ***Caselaw.***

HD [2004] UKIAT 00209
The IAT noted in paragraph 23 that,
"In reality the background material shows that there is a clear distinction between political and non-political offences in the way in which the offenders are treated and ordinary offender conditions do not involve a real risk of torture or breach of Article 3."
In the second part of paragraph 19 the Tribunal conclude that,
"It is to be noted that there is nothing about the UN finding evidence of torture, let alone torture in ordinary prisons or treatment which breaches Article 3 ECHR."

BE Iran [2004] UKIAT00183
The IAT stated that,
"Whilst prison conditions in Iran are poor, the Tribunal has not considered that they cross the threshold of serious harm: see Fazilat [2002] UKIAT 00973." (Paragraph 12).

"... Certainly Evin prison has a record where torture and ill-treatment of inmates happens to a significant extent; but as the appellant's experiences demonstrate, such treatment is not necessarily routine in respect of all prisoners, and his offence was one of desertion, not of being active in political organisations bent on supervision." (Paragraph 13).

Fazilat [2002] UKIAT 00973
The IAT held that the following conditions in Iran did not breach Article 3:

- some prison facilities are notorious for the cruel and prolonged acts of torture inflicted upon political opponents of the government – there was no real risk that the claimant in this case would be treated as if he were a political opponent
- prison conditions are harsh. Some prisoners are held in solitary confinement or denied adequate food or medical care in order to force confessions – the claimant in this case was not at all likely to face ill treatment in order to force a confession

The Tribunal did “not doubt that prison conditions in Iran are far from ideal … [and] may not measure up to what is expected in this country … Recognition has to be had to the situation in individual countries and to the standards that are accepted, and expected, in those countries. Of course in relation to Article 3, there is a line below which the treatment cannot sink … [but] the threshold has to be a high one because, otherwise, it would be, as one recognises, quite impossible for any country to return to a non-signatory an individual who faces prosecution, rather than any sort of persecution.”

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

3.13.9 However prison conditions for political prisoners are more severe and taking into account that political prisoners may be held in unofficial detention centres or prisons outside judicial control without access to legal defence and suffer violations of freedom of expression and other abuses conditions for political prisoners are likely to reach the Article 3 threshold. Therefore a grant of asylum will be appropriate where individual claimants are able to demonstrate a real risk of imprisonment as a political prisoner on return to Iran. It should be noted that a person’s criminal activities or membership of a proscribed terrorist group such as Mujaheddin e

[94] COIS Iran Country Report para 5.65

Khalq (MEK) may mean that they fall to be excluded from the refugee convention under Article 1F therefore such cases should be referred to a senior caseworker.

4. Discretionary Leave

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

4.2 With particular reference to Iran the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances not covered by the categories below which warrant a grant of DL - see the API on Discretionary Leave.

4.3 Minors claiming in their own right

4.3.1 Minors claiming in their own right who have not been granted asylum or HP can only be returned where they have family to return to or there are adequate reception, care or support arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception arrangements in place.

4.3.2 There have been an increasing number of reports of juvenile offenders being sentenced to death or lashing. In several instances, these punishments have apparently been carried out. A 16-year-old girl, Atefeh Rajabi, was reportedly hanged in public in August 2004 for ‘‘acts incompatible with chastity”. These punishments violate Iran’s obligations under the International Covenant on Civil and Political Rights and the UN Convention on the Rights of the Child.[95] The Foreign and Commonwealth Office stated in December in 2005 that Iran had previously informed the EU that a moratorium is in place on juvenile executions. However Iranian officials at the Ministry of Foreign Affairs recently advised that the moratorium could not be upheld in all cases. FCO have received press reports that suggest that at least five, and possibly as many as eight, juveniles have been executed in Iran this year.[96]

4.3.3 Minors claiming in their own right without a family to return to, or where there are no adequate reception, care or support arrangements, should if they do not qualify for leave on any more favourable grounds be granted DL for a period of three years or until their 18th birthday, whichever is the shorter period.

4.4 Medical treatment

4.4.1 Claimants may claim they cannot return to Iran 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 There are two types of hospitals in Iran, private and governmental. To receive treatment in the governmental hospitals, one must belong to the Social Security Scheme whereby the employer pays the subscriptions for the employee, which would then entitle them to subsidised medical treatment and medication.[97]

4.4.3 In Tehran and other larger cities such as Shiraz and Isfahan there are many well-reputed hospitals. These are staffed by physicians and specialists, most of whom are very

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[95] FCO Human Rights Report, July 2005, p58
[96] FCO letter dated 1 December 2005, p2
[97] COIS Iran Country Report para 5.72

experienced and internationally trained. There is an extensive range of specialist care found in Tehran, both in the private and governmental sector.[98]

4.4.4 For complex medical conditions where treatment is not available locally, the patients can apply to the Supreme Medical Council for financial assistance towards payment of medical expenses overseas. The Supreme Medical Council consists of a group of specialist doctors who assess and examine each case to determine whether such assistance in funding should be allocated.[99]

4.4.5 According to the most recent epidemiologic survey (2004), 21% of the population (25.9% of the women and 14.9% of the men) were detected as likely to be suffering from mental illness. A mandate by the Minister of Health has been issued in 1997 to allocate 10% of all general hospitals to psychiatry beds. Mental health services at the primary care level are available to more than one-fifth of urban and more than four-fifths of the rural population.[100]

4.4.6 As noted above the Iranian healthcare system is relatively well-developed with treatment being available for a range of medical conditions. Therefore the Article 3 threshold will not be reached in the great majority of medical cases and a grant of Discretionary Leave will usually not be appropriate. However where a caseworker considers that the circumstances of the individual claimant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

5. Returns

5.1 Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim.

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

5.3 ***Caselaw.***

D CG [2003] UKIAT 00107

The Tribunal considered the position of returnees to Iran. An individual may be questioned on return, but there is no real or serious risk of prosecution for leaving illegally (paragraph 13). Any sentence that the appellant may be required to serve would not be a breach of article 3 (paragraph 13).

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Asylum and Appeals Policy Directorate
13 December 2005