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OPERATIONAL GUIDANCE NOTE

GEORGIA

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1. Introduction

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

Source documents

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

2. Country assessment

- 2.1** Since emerging as an independent state in 1991, following the collapse of communism in the USSR, Georgia has become an arena of conflicting interests. Tense relations with Russia have been exacerbated by Moscow's support for the separatist regions of Abkhazia and South Ossetia. Once a relatively affluent part of the USSR, following independence Georgia lost the cheap energy to which it had access in the Soviet period. As relations between Georgia and Russia deteriorated, trading ties were ruptured which seriously affected the Georgian economy. Since independence, the people of Georgia have endured periods of civil war and unrest as well as violence related to the independence aspirations of the breakaway regions of Abkhazia and South Ossetia. Both regions have close ties with Moscow, which, following hostilities in August 2008, announced that it formally recognised their independence (see sections on Abkhazia and South Ossetia below).¹
- 2.2** Georgia is a republic with a Constitution that provides for an executive branch that reports to the President, a unicameral Parliament and an independent judiciary. The president appoints ministers with the consent of Parliament. President Saakashvili was elected president in January 2004. He faced a major challenge towards the end of 2007 when a one-time ally, former defence minister Irakli Okruashvili, accused him of corruption and of plotting a murder. Following a series of protests throughout the country in response to the allegations, President Saakashvili officially resigned on 25 November, calling for presidential elections, which had been due in mid-2008, to be brought forward to 5 January 2008. The elections were deemed to be broadly in line with international standards and Saakashvili was duly re-elected and inaugurated as President for a second 5-year term.²
- 2.3** The USSD 2007 report stated that the government's human rights record improved in some areas during 2007 but worsened in others, especially during late 2007 when 50,000 people participated in the peaceful demonstrations against the Government referred to above. The authorities took measures to clear demonstrators including tear gas, rubber bullets and truncheons. The Government defended these actions, claiming that a coup was imminent. On 7 November, a State of Emergency was declared, some opposition members were arrested and there were accusations about Russian attempts to influence opposition leaders and inspire a coup. The State of Emergency was lifted on 16 November and most of those arrested were released shortly afterwards.³
- 2.4** Particular areas of concern in 2007 included independence of the judiciary, corruption and impunity of police officers, mistreatment of detainees and poor conditions in prisons and pre-trial facilities. De facto authorities in the regions of Abkhazia and South Ossetia remained outside the control of the central government. In both Abkhazia and South Ossetia, deprivation of life, arbitrary arrest and detention continued to be serious problems. The de facto authorities in Abkhazia continued to restrict the rights of citizens to vote and a 2006 property law prevented internally displaced persons living in other parts of the country from reclaiming homes they fled in Abkhazia in 1992/93. The de facto authorities did not permit instruction in the Georgian language in the predominantly ethnic Georgian Gali district schools in Abkhazia.⁴
- 2.5** Whilst the law provides for an independent judiciary, there were concerns about professionalism of judges and transparency in adjudication. Violations of human rights regularly occurred before and during trials. Proceedings were often disrupted in Tbilisi Criminal Court and it was often impossible to know in advance when hearings would be held as court timetables were often not respected. However, the Georgian Parliament has also taken some significant steps to make improvements within the judiciary. These have included the adoption of legislation prohibiting communication between judges and parties

¹ BBC News: Country Profile

² COI Georgia key documents – July 2008

³ COI Georgia key documents – July 2008

⁴ USSD Country Report 2007

about cases outside of the courtroom; the adoption of a code of ethics for judges and the opening of a School of Justice to train judges.⁵

- 2.6** The constitution prevents such practices, but there were continuing reports during 2007 of instances of torture and mistreatment by state officials. Abuses in police stations remained low due to random inspections by human rights monitors. Incidents of abuses during police arrests persisted but these had declined from previous years. Resulting from recent reforms, there was a low incidence of police corruption at the patrol police level due to their relatively high salaries. Following a visit to Georgia in early 2007, the European Committee for the Prevention of Torture (CPT) reported numerous and consistent allegations of prisoners being beaten at the Rustavi Prison 6. However the CPT did not receive allegations of mistreatment at the four other prisons that it visited.⁶
- 2.7** During 2007, the Human Rights Protection Unit of the Prosecutor General's Office took steps to address torture and mistreatment by random monitoring of pre-trial and prison facilities. The office reported 89 instances of detainees entering pre-trial detention with injuries. In response it launched 20 investigations which were ongoing at the end of 2007. In addition, 23 Ministry of Internal Affairs Officers were sentenced in 7 criminal cases of torture and mistreatment, compared to 7 persons convicted on 4 criminal cases in 2006. The ICRC had full access to detention facilities in the country, as well as to those in the regions of Abkhazia and South Ossetia, to monitor conditions of detention and treatment of all detainees.⁷

Ajara

- 2.8** Relations between the Georgian government and semi separatist leader Aslan Abashidze deteriorated rapidly in 2004 with Abashidze rejecting Saakashvili's demands for the Tbilisi government to extend its power in Ajara. Saakashvili's ultimatums eventually forced Abashidze to resign and flee Georgia for Moscow in 2004 and Ajara is now a fully integrated part of Georgia⁸

Abkhazia

- 2.9** Fighting between Georgian and Abkhazian troops between 1992 and 1993 followed Abkhazia's proposed reinstatement of its 1925 constitution in July 1992. Russia intervened to broker a ceasefire agreement between both parties and in May 1994 the Moscow Agreement formally ended the military conflict. Abkhazia adopted its new constitution in 1994. More than 200,000 ethnic Georgians fled Abkhazia during the 1992-1993 war. Most have remained in temporary accommodation, awaiting a political settlement that would guarantee their safety. An estimated 60,000 have returned to Gali, a historically Georgian-inhabited district adjacent to the ceasefire line.⁹
- 2.10** Abkhazia formally declared independence from Georgia in 1999 but this was never recognised by other countries. An economic embargo remains in force and Abkhazia is isolated except from Russia which maintains a border crossing and has re-opened the railway line to Sukhumi. Russia has made it easy for people in Abkhazia to gain Russian citizenship and most now hold Russian passports. In 2004 the newly elected Georgian president Saakashvili vowed to restore Georgia's territorial integrity and return Abkhazia and South Ossetia to the fold.¹⁰ In 2006, the Georgian government took control of the upper Kodori valley (also known as upper Abkhazia) and installed the local Georgian government which had been exiled during the 1992/93 campaign.¹¹ There was however little progress on agreeing the outline of a comprehensive political settlement based on a

⁵ USSD Country Report 2007

⁶ USSD Country Report 2007

⁷ USSD Country Report 2007

⁸ COI Georgia key documents – July 2008

⁹ COI Georgia key documents – July 2008

¹⁰ BBC: Regions and territories: Abkhazia 30.06.08

¹¹ FCO Country Profile 2007

possible division of constitutional competencies between Georgia and Abkhazia. Progress on returning refugees to the area and on security was also slow.¹²

- 2.11** Sergei Bagapsh won unrecognised presidential elections in Abkhazia in January 2005 amid allegations of widespread irregularities. He pledged to build integration with Russia and ruled out compromise with the Georgian authorities on sovereignty. During 2007, the Georgian government continued to have no effective control over most of Abkhazia but maintained effective control over the upper Kodor valley. Russian peacekeepers remained present in Abkhazia. In March 2007 the de facto authorities agreed to permit a UN human rights officer's presence and the deployment of 3 UN civilian police in the Gali Sector headquarters. There was little information on the human rights situation due to limited access to the region. Conflict-related disappearance and kidnappings were frequent and incidents of violence occurred, particularly in the predominantly ethnic Georgian Gali region. The situation in the Gali region remained tense as a result of kidnapping, arbitrary arrest and deaths in custody. Teenage boys were reportedly forcibly conscripted to the Abkhaz militia. While the number of ethnic Georgians conscripted into the military was small, the threat of conscription remained a political tool used by the de facto authorities to control the ethnic Georgian population and to prevent young Georgian men from returning to or staying in the Gali district.¹³
- 2.12** Systemic problems in the criminal justice system of the de facto authorities, in particular the failure to conduct impartial investigations and to bring alleged perpetrators to trial, sustained a climate of impunity. Abuse by de facto law enforcement authorities included arbitrary arrests and detention as well as routine mistreatment of detainees. De facto law enforcement authorities rarely wore uniforms or carried badges or credentials, allowing them to act with impunity. Prisons were chronically substandard although overcrowding is reportedly not a problem. The ICRC had full access to detention facilities in the area.¹⁴
- 2.13** De facto authorities did not permit instruction in the Georgian language in the Gali district schools. A 2006 Abkhaz law on citizenship, which excludes the possibility of dual Abkhaz-Georgian citizenship but allows dual Abkhaz-Russian citizenship, limited the rights of the ethnic Georgian population in Abkhazia to participate in the electoral process and to have representation in the de facto parliament as well as other de facto bodies. It also resulted in ethnic Georgians having to relinquish their Georgian passports and obtain Russian passports to travel abroad.¹⁵
- 2.14** Freedom of movement was restricted by the de facto authorities. Checkpoints operated by de facto militia often obstructed citizens' internal movement in the region and from the region to areas controlled by the Georgian government. In December 2006, Abkhaz de facto authorities closed the cease-fire line to all civilian vehicular traffic. They also reduced the number of legal official crossing points to 6 by the end of 2007, with only one being open for vehicular traffic although there were some case by case exceptions.¹⁶
- 2.15** The de facto parliament in May 2006 adopted a decree banning de facto courts from considering any property claims filed by ethnic Georgians who left Abkhazia before, during or after the 1992-93 war, thereby effectively depriving internally displaced persons of their property there. During 2006 the Georgian government began a project called "My House" which allowed over 50,000 IDPs to register property owned in Abkhazia before the war. Abkhaz de facto authorities continued to prevent repatriation of those driven from the region despite their 1994 agreement with Georgia, Russia and the UNHCR. During 2007 the Georgian government developed an action plan for its first national strategy on IDPs. IDPs

¹² COI Georgia key documents – July 2008

¹³ USSD Georgia 2007

¹⁴ USSD Georgia 2007

¹⁵ USSD Georgia 2007

¹⁶ USSD Georgia 2007

occupied collective centres in hotels, hospitals and other civil buildings throughout the country and others lived in private homes with family or friends.¹⁷

- 2.16** Following the hostilities in South Ossetia in August 2008 (see 2.19 below), Russian troops advancing into Georgia proper passed through Abkhazia but fighting was largely limited to the Kodori Gorge. Abkhaz forces recaptured the Kodori Gorge from Georgian troops (see 2.10 above). Georgia's troops pulled out of the region on 13 August as part of the ceasefire agreement. The ceasefire required both sides to return to positions they held before the conflict started in South Ossetia but specifically excluded Abkhazia and South Ossetia. Russia confirmed its troops would stay in the provinces of Abkhazia and South Ossetia for the foreseeable future but agreed to remove its forces from adjacent and other areas of Georgia. Russia plans to keep 3,800 troops in Abkhazia and the same in South Ossetia, far more than previously.¹⁸ More than 200 EU observers are tasked to oversee Russian troop pullout from the buffer zones near South Ossetia and Abkhazia.¹⁹

South Ossetia

- 2.17** South Ossetia was granted the status of an autonomous region in the Georgian Soviet Socialist Republic in 1923. In 1992, fighting escalated between Georgian and Ossetian forces. A ceasefire agreement was signed in June 1992 and a Joint Peacekeeping Force established made up of a battalion from North Ossetia, Georgia and Russia. Since 2003, the Georgian government has maintained pressure on South Ossetia to restore national integrity.²⁰
- 2.18** South Ossetia is separated from North Ossetia, which is in Russia. It is inhabited mostly by ethnic Ossetians. Georgians account for less than a third of the population. Eduard Kokoity won unrecognised presidential elections in South Ossetia in December 2001 and again in November 2006. His stated aim is the unification of North and South Ossetia. He describes Russia as the main guarantor of stability in the Caucasus and has strong ties with the like-minded Abkhaz leadership. He states that the people of South Ossetia do not regard themselves as part of Georgia. In an unrecognised referendum in November 2006, South Ossetians voted in favour of restating their demand for independence. A simultaneous referendum among the region's ethnic Georgians voted to stay with Georgia. Russia maintains close contacts with the leadership in South Ossetia. Most South Ossetians have Russian passports and the Russian rouble is commonly used as trade.²¹
- 2.19** The USSD 2007 report noted that there was little reliable information on the human rights situation in Abkhazia and South Ossetia due to limited access to both regions. De facto authorities remained outside the control of central government apart from (at the date of the report) several Georgian enclaves in South Ossetia. In both Abkhazia and South Ossetia deprivation of life, arbitrary arrest and detention continued to be serious problems. Conflict related disappearances and kidnappings were frequent. Prison conditions were chronically sub-standard, although overcrowding was not a problem. The ICRC had full access to detention facilities. During 2007 Russian, Ossetian and Georgian forces participated in a joint peacekeeping force in South Ossetia (see 2.20 below). Freedom of movement was restricted by the de facto authorities in South Ossetia. Checkpoints operated by de facto militia often obstructed citizens' internal movement in and from South Ossetia. In South Ossetia, de facto authorities continued to obstruct repatriation of an estimated 13,000 ethnic Georgians to the region.²²

¹⁷ USSD Country Report 2007

¹⁸ BBC News 'Russia in Georgia separatist pact' 17.09.08 and 'Q&A 1.10.08', BBC Country Profiles, Regions and territories: South Ossetia 27.08.08

¹⁹ BBC News EU monitors begin Georgia patrols: 1.10.08

²⁰ COI Key Documents July 2008

²¹ BBC Country Profiles, Regions and territories: South Ossetia 27.08.08

²² USSD Country Report 2007

2.20 In August 2008, tensions between Georgia and Russia escalated into a full-blown military conflict. After nearly a week of clashes between Georgian troops and separatist forces, Georgia launched a full assault on South Ossetia. Russia said that its citizens were under attack and, in what has been described as a disproportionate response, poured thousands of troops into the area. Russia also launched bombing raids on targets in other parts of Georgia and began to advance deeper into Georgian territory. After more than a week of hostilities, the two sides signed a French-brokered peace agreement. Russia withdrew most of its combat troops, but said that it would maintain its forces in a buffer zone around Abkhazia and South Ossetia. Georgia, France, the UK and the US later accused Russia of violating the terms of the ceasefire deal and only days later Russian President Medvedev announced that Moscow was to formally recognise the independence of South Ossetia and Abkhazia. This announcement drew further protests from the West and Georgia.²³ EU monitors entered the buffer zone around South Ossetia in early October to begin monitoring the ceasefire but Russia has refused to guarantee access to the separatist regions. More than 200 civilian observers are tasked to oversee a Russian troop pullout from the buffer zones.²⁴ On 3 October 2008, in the most serious incident since the ceasefire, a car full of explosives blew up near a Russian military base in Tskhinvali, the regional capital of South Ossetia, and 7 Russian soldiers were killed. Both sides blamed each other.²⁵ Russian troops have removed a key checkpoint from Georgian territory near the breakaway province of South Ossetia, European Union observers have confirmed. The checkpoint, near the town of Gori, a gateway to South Ossetia, is the first taken down by the Russians under the withdrawal pledge.²⁶

2.21 Approximately 240,000 ethnic Georgians, 227,000 from Abkhazia and 13,000 from South Ossetia, remain displaced as a result of earlier conflicts in these areas. However, during 2007, the government, in conjunction with international organizations and NGOs, developed an action plan for its first national strategy on IDPs.²⁷ In the aftermath of the 2008 war, the Georgian population has again fled South Ossetia. UNHCR state that a total of 163,000 people were forced to flee their homes, including 127,000 displaced in Georgia proper and another 36,000 to North Ossetia in the Russian Federation. Most of those who fled to North Ossetia have already returned. It is unknown how many people were displaced in South Ossetia during the conflict. Of the 127,000 internally displaced people in Georgia, 68,000 have since returned home. UNHCR and the Georgian government estimate that another 5,000 will go home before the onset of winter, which would bring the number of returnees to 73,000.²⁸

3. Main categories of claims

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

²³ BBC Time Line Georgia

²⁴ BBC News 'EU monitors begin Georgia patrols' 1.10.08

²⁵ BBC News 'Russians killed in Georgia blast' 3.10.08

²⁶ BBC News: 'Russian removes Georgia checkpoint 5.10.08

²⁷ USSD Country Report 2007

²⁸ <http://www.unhcr.org/cgi-bin/texis/vtx/home?id=search>

- 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 Asylum Instruction on Considering the Asylum 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 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. Case owners will need to consider credibility issues based on all the information available to them. (For guidance on credibility see the Asylum Instructions on 'Considering the Asylum' and 'Assessing Credibility in Asylum and Human Rights Claims'.
- 3.5** All Asylum Instructions can be accessed on the Horizon intranet site. The instructions are also published externally on the Home Office internet site at:

<http://www.bia.homeoffice.gov.uk/>
- 3.6 Minority ethnic groups: Abkhazians, South Ossetians, Azeri, Armenian**
- 3.6.1** Many claimants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the Georgian authorities or ordinary Georgian citizens due to their Abkhaz, South Ossetian, Azeri or Armenian ethnicity. Some Abkhaz and South Ossetian claimants will claim that they fear persecution because they are accused of being spies and/or supporters of the respective separatist governments.
- 3.6.2 *Treatment.*** The Georgian Constitution provides for citizens of Georgia to be equal in social, economic, cultural and political life irrespective of their national, ethnic, religious or linguistic belonging.²⁹ The government generally respected the rights of ethnic minorities in non conflict areas during 2007.³⁰
- 3.6.3** In December 2005, the Public Defenders Office launched the establishment of a Council of National Minorities which aims at functioning as a forum for dialogue between the authorities and members of the minority communities as well as coordinating the activities of organisations working in the field of national minorities.³¹
- 3.6.4** The government has taken steps to better integrate ethnic minority communities through Georgian language instruction, education, involving minorities in political dialogue, and increasing their overall access to information. It has increased efforts to provide Georgian language instruction to members of ethnic minorities serving in the armed forces and law enforcement. It has also funded over 200 primary and secondary Russian, Azeri, and Armenian language schools throughout the country for persons whose first language is not Georgian.³²
- 3.6.5** During 2007, approximately 240,000 ethnic Georgians, 227,000 from Abkhazia and 13,000 from South Ossetia, remained displaced as a result of the earlier conflicts in Abkhazia and South Ossetia. However, the government, in conjunction with international organizations

²⁹ Silk Road Paper – Minorities and the State in the South Caucasus

³⁰ USSD Country Report 2007

³¹ Silk Road Paper – Minorities and the State in the South Caucasus

³² USSD Country Report 2007

and NGOs, developed an action plan for its first national strategy on IDPs (also see 2.20).³³ Although some 50,000 IDPs have returned to the Gali district (an area of Abkhazia), the Abkhaz separatist regime and de facto South Ossetian authorities continued to prevent repatriation of IDPs to their respective regions.³⁴ In Abkhazia, a 2006 property law prevented internally displaced persons living in other parts of Georgia from reclaiming homes they fled in Abkhazia in 1992/1993. In South Ossetia, de facto authorities continued to obstruct repatriation of an estimated 13,000 ethnic Georgians to the region.³⁵

- 3.6.6** There was limited information on the human rights situation in Abkhazia and South Ossetia due to limited access to these regions. In both Abkhazia and South Ossetia deprivation of life, arbitrary arrest and detention continued to be serious problems (see respective sections above).³⁶
- 3.6.7 *Sufficiency of protection.*** The constitution prevents such practices but there were continuing reports during 2007 of reported instances of torture and mistreatment by state officials. Abuses in police stations remained low due to random inspections by human rights monitors. Incidents of abuses during police arrests persisted but these had declined from previous years. Following a visit to Georgia in 2007, the European Committee for the Prevention of Torture (CPT) reported numerous and consistent allegations of prisoners being beaten at the Rustavi Prison 6 however the CPT did not receive allegations of mistreatment at the four other prisons that it visited.
- 3.6.8** The Public Defender of Georgia is mandated to monitor human rights violations in Georgia in general and to handle claims of human rights violations. In the field of minority protection, a sub division of the office was set up in 2005 for Human Equality.³⁷
- 3.6.9** During 2007, the Human Rights Protection Unit of the Prosecutor General's Office took steps to address torture and mistreatment by random monitoring of pre-trial and prison facilities. The office reported 89 instances of detainees entering pre-trial detention with injuries. In response it launched 20 investigations which were ongoing at the end of 2007. In addition, 23 Ministry of Internal Affairs Officers were sentenced in 7 criminal cases of torture and mistreatment, compared to 7 persons convicted on 4 criminal cases in 2006.³⁸
- 3.6.10** Whilst some problems remain, the Georgian Parliament has taken some significant steps to make improvements within the judiciary. These have included the adoption of legislation prohibiting communication between judges and parties about cases outside of the courtroom; the adoption of a code of ethics for judges and the opening of a School of Justice to train judges.³⁹
- 3.6.11 *Internal relocation.*** If this category of claimants' fear is of the state authorities, relocation to a different area of the country is not feasible. The law provides for freedom of movement, and the government generally respected this in practice in areas under its control. However, freedom of movement was restricted by the de facto authorities in the separatist regions of Abkhazia and South Ossetia, and police checkpoints often obstructed citizens' internal movement in these regions.
- 3.6.12 *Conclusion.*** Due to the ongoing tense relationship between the Georgian government and the separatist regions there may be some antipathy directed towards Abkhazians and South Ossetians within Georgia.⁴⁰ However, the Georgian government generally respects the rights of ethnic minority groups and there is no evidence that either state or non-state

³³ USSD Country Report 2007

³⁴ USSD Country Report 2007

³⁵ USSD Country Report 2007

³⁶ USSD Country Report 2007

³⁷ Silk Road Paper – Minorities and the State in the South Caucasus

³⁸ USSD Country Report 2007

³⁹ USSD Country Report 2007

⁴⁰ International Federation of Human Rights (IDFH): 2005 report on ethnic minorities

agents persecute individuals on account of their ethnic minority status. Whilst there are continuing reports of police abuses and claims of police impunity within Georgia, there is a declining trend in the number of human rights violations by the police and legal remedies are in place to prosecute abuses in the event that they do occur in respect of national minorities. It is therefore unlikely that claimants from this category of claim will qualify for a grant of asylum or Humanitarian Protection.

- 3.6.13** Case owners should note that members of separatist organisations have been responsible for serious human rights abuses. If it is accepted that a claimant was an active operational member or combatant in either the South Ossetian or Abkhaz separatist forces, then case owners should consider whether one of the Exclusion clauses is applicable. Case owners should refer such cases to a Senior Caseworker in the first instance.

3.7 Members of minority religious groups

- 3.7.1** Some claimants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the authorities or ordinary Georgians due to their affiliation to minority religious groups.
- 3.7.2 *Treatment.*** The constitution provides for freedom of religion, and the Government generally respected this right in practice. During 2006, the status of religious freedom continued to improve and the number of attacks on religious minorities including violence, verbal harassment and disruption of services and meetings continued to decrease.⁴¹
- 3.7.3** Most ethnic Georgians (more than 80 percent of the population, according to the 2002 census) nominally associate themselves with the Georgian Orthodox Church (GOC). Several religions, including the Armenian Apostolic Church, Roman Catholicism, Judaism, and Islam, traditionally have coexisted with Georgian Orthodoxy. Approximately 10 percent of the population is nominally Muslim and approximately 6 percent of the population belongs to the Armenian Apostolic Church which forms the third largest religious group in Georgia. All other religious groups constitute less than one percent of the population each. Jews, (approximately 10,000) and a small number of Kurdish Yezidis (approximately 18,000) have lived in the country for centuries.⁴²
- 3.7.4** Religious groups may register as either unions or foundations with the Ministry of Justice (MOJ). A union is based on a membership (a minimum of five members is required), while a foundation involves one or more founders establishing a fund for furtherance of a certain cause for the benefit of the particular group or the general public. There were no reports in 2007 that the MOJ refused to approve applications for registration.
- 3.7.5** Restitution of property confiscated under the communist era remained a problem during 2007. The government did not return any churches to the GOC or to other denominations nor did it return any mosques, synagogues or meeting halls to other religious groups. However, the government provided subsidies for the restoration of GOC churches and mosques.
- 3.7.6** While members of Jehovah's Witnesses no longer felt the need to hold their services in private homes for security reasons, delays in obtaining permits to build and occupy Kingdom Halls required congregations to continue meeting in private homes. In 2007, they used 25 buildings for small scale assemblies but remained without access to a large scale venue. Roman Catholics, members of the Armenian Church and Protestants continued to have difficulty obtaining permission to construct new churches in the face of powerful conservative GOC supporters, however, the GOC did not oppose church construction by other religious groups.⁴³

⁴¹ USIRF 2007 (Section I)

⁴² USIRF 2007 (Section I)

⁴³ USIRF 2007

- 3.7.7** There were reports of societal abuses or discrimination based on religious belief or practice; however, the non-GOC religious minorities reported substantial reductions in incidents of harassment, violence, or other direct pressures. None alleged continuing organised campaigns of physical abuse. There were no reports of forced religious conversion or reports of religious detainees or prisoners. All minority religious groups reported continuing media hostility, although most attributed it to the attitudes of individual media reporters rather than a systematic, organised media campaign.⁴⁴
- 3.7.8 *Sufficiency of protection.*** The criminal code specifically prohibits interference with worship services, persecution of person based on religious faith or belief and interference with the establishment of a religious organisation. Violations of these prohibitions are punishable by fine and/or imprisonment; violations by a public officer are considered abuse of power and punishable by higher fines and/ or longer terms of imprisonment.⁴⁵
- 3.7.9** During 2007, attacks on religious minorities continued to decrease, declining to nearly half that of the previous year. Police were quick to respond to incidents of abuse but were slower in their follow up to crimes viewed as minor “hooliganism.”⁴⁶
- 3.7.10** The PGO's Human Rights Protection Unit monitors the progress of investigations and prosecution of cases involving violations of religious freedom. The Ombudsman's Office also monitors such cases and refers them to the PGO. Statistics of complaints received by the Ombudsman showed that violations declined to nearly half the level of previous years.
- 3.7.11** Although there have been reports of human rights violations by the police, there is no evidence to suggest that there have been any abuses against religious minorities. There is also no evidence that human rights violations in general are sanctioned by the authorities and as such it can be considered that the authorities are willing to provide a sufficiency of protection.
- 3.7.12 *Internal relocation.*** If this category of claimants' fear is of the state authorities, relocation to a different area of the country is not feasible. The law provides for freedom of movement, and the government generally respected this in practice in areas under its control. However, freedom of movement was restricted by the de facto authorities in the separatist regions of Abkhazia and South Ossetia, and police checkpoints often obstructed citizens' internal movement in these regions.
- 3.7.13 *Conclusion.*** There is some general societal discrimination against religious minority groups in Georgia. However, the situation has improved with attacks on religious minorities decreasing significantly. Minority groups are able to freely practise their religions and register with the authorities. There is no evidence to suggest that state authorities persecute members of minority religious groups and they are willing and able to protect religious minorities from attacks. Whilst there are continuing reports of police abuses and claims of police impunity within Georgia, there is a declining trend in the number of human rights violations by the police and legal remedies are in place to prosecute abuses in the event that they did occur in respect of religious minorities. Therefore claimants from this category of claim are unlikely to qualify for a grant of asylum or Humanitarian Protection.

3.8 Corruption

- 3.8.1** Some claimants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of corrupt public sector officials and organised criminal gangs.

⁴⁴ USIRF 2007

⁴⁵ USIRF 2007

⁴⁶ USSD 2007

- 3.8.2 *Treatment.*** In 2006, the government adopted an anti-corruption strategy aimed at the formation of an effective state management system and activation of legal and public feedback mechanisms in order to prevent corruption.⁴⁷ The government has since completely reorganised the notorious traffic police, dismissed corrupt judges and introduced a fair examination system for entering the universities. It has also implemented improvements in the fight against corruption in the areas of state licensing and permissions, state revenue collection, and accuracy of the public registry.⁴⁸
- 3.8.3** In a 2008 report, Freedom House advised that despite progress in combating lower- and mid-level corruption, corruption in Georgia at elite levels apparently continued. Problems remained with the lack of transparency in the government's policy making process, lack of research-based fight against bribery and corruption, lack of a stable and effective mechanism for interaction between government and civil society, inconsistency related to protection of legal requirements during arrests, and difficulties in accessing public information, especially in the regions.⁴⁹
- 3.8.4** A number of politically active defendants in corruption cases, including former Defense Minister Okruashvili and his associates, alleged that they were victims of selective prosecution. There were also reports that politically active persons who were not members of the ruling party experienced selective prosecution for corruption.⁵⁰

Organised criminal gangs

- 3.8.5** To address a serious crime problem dating back to the immediate post-independence period when organised crime and armed gangs operated openly, the government announced a 'zero tolerance' of crime policy during 2006. NGOs criticised the policy which they claimed violated the presumption of innocence and resulted in a reported 12 deaths in Tbilisi in 2006 from the excessive use of force by police.⁵¹
- 3.8.6** During 2006, prison authorities ended the influence of the Thieves-in-Law organised crime gangs network, which since the Soviet era had exercised de facto control of prisons through bribes, extortion, and violence. The gangs also co-ordinated criminal activity outside prisons by using contraband mobile telephones. Gang members were isolated from the general prison population and subject to 24-hour surveillance. During 2006, lawyers and family members were denied access to these prisoners. According to Human Rights Watch, in some cases the treatment of detainees in Tbilisi Prison No. 7, where authorities detained those it considered to be members of the gangs, rose to the level of torture.⁵²
- 3.8.7** Salaries for prison guards were increased and paid regularly. Although corruption among guards diminished following the isolation of the Thieves-in-Law, which used a system of *obshiak* to extort money from fellow prisoners in order to bribe prison officials, some guards reportedly demanded money from inmates' family members. Nevertheless, according to prison officials, the surge in turnover in prison guards was due in part to the loss of income from bribes and also to prison authorities' intolerance of this behaviour.⁵³
- 3.8.8** There was a low incidence of police corruption at the patrol police level. As a result of reforms during 2007, the relatively high salaries for police officers provided an incentive for them to refrain from using their positions to extort money from citizens and from mistreatment or abuse of detainees. In addition during 2007, the salaries of judges at all levels were raised \$60 (100 lari) a month to reduce the incentive for corruption amongst their ranks.

⁴⁷ USSD Country Report 2007

⁴⁸ USSD Country Report 2007

⁴⁹ USSD Country Report 2007

⁵⁰ USSD Country Report 2007

⁵¹ USSD Country Report 2007

⁵² USSD Country Report 2007

⁵³ USSD Country Report 2007

- 3.8.9** Prosecutions of officials accused of corruption were also enforced. For example, in 2007, the Deputy Mayor of Kutaisi, Omar Kikvidze was found guilty of neglect of official duty and the Acting Head of the Service of Territorial Administration of the Mayor's Office, Mukhran Kokhredize was found guilty of exceeding official authority. Both were sentenced to three years probation, fined \$3,125 (5,000 lari), and deprivation of the right to hold a position in the public sector for three years. In addition, Zviad Mandaria, a member of the Kutaisi Municipality and Iralki Goglichidze, the Deputy Head of the City Service of Economic Development at the Mayor's office were found guilty of exceeding their authority and sentenced to two years probation, fined \$6,250 (10,000 lari), and deprived of the right to hold a position in the public sector for three years.
- 3.8.10 *Sufficiency of protection.*** The implementation of legislation to counter corruption and organised crime, the adoption of an anti-corruption strategy, improvements in public officials' salaries and training, and the active investigation of corruption has considerably enhanced the authorities' capacity to counteract organised crime and corruption. There is therefore no evidence that such claimants are not able to seek and receive adequate protection from the state authorities.
- 3.8.11 *Internal relocation.*** If this category of claimants' fear is of the state authorities, relocation to a different area of the country is not feasible. The law provides for freedom of movement, and the government generally respected this in practice in areas under its control. However, freedom of movement was restricted by the de facto authorities in the separatist regions of Abkhazia and South Ossetia, and police checkpoints often obstructed citizens' internal movement in these regions.
- 3.8.12 *Conclusion.*** Although corruption persists, tackling it is a key priority for the government and corruption among the police and law enforcement officials in general has fallen. Whilst there are continuing reports of police abuses, including claims of police impunity within Georgia, there is a declining trend in the number of human rights violations by the police and legal remedies are in place to prosecute abuses in the event that they may occur. Therefore, the availability of adequate protection from the state authorities and a viable internal relocation option means that claimants in this category of claim are unlikely to engage the UK's obligations under the terms of the 1951 Convention and are unlikely to qualify for a grant of asylum or Humanitarian Protection.
- 3.9 Prison conditions**
- 3.9.1** Claimants may claim that they cannot return to Georgia due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in Georgia are so poor as to amount to torture or inhuman treatment or punishment.
- 3.9.2** The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of ECHR and warrant a grant of Humanitarian Protection. If imprisonment would be for a Refugee Convention reason, or in cases where for a Convention reason a prison sentence is extended above the norm, the claim should be considered as a whole but it is not necessary for prison conditions to breach Article 3 in order to justify a grant of asylum.
- 3.9.3 *Treatment.*** During 2007, the number of deaths in the penitentiary system increased. According to the Ministry of Justice, 100 prisoners died in 2007, compared with 92 in 2006. Most deaths were related to poor medical care and health issues. However, although the total overall number of prisoner deaths increased over the last six years as the overall number of prisoners rose, the mortality rate decreased. Of the 100 deaths in 2007, at least five were reported as suicides on the Justice Ministry's Web site.⁵⁴

⁵⁴ USSD 2007

- 3.9.4** Attempted suicides and self-mutilation occurred in prisons as protests against declining prison conditions and human rights violations. There were also sporadic hunger strikes by prisoners to protest poor conditions, visitor limitations, and the perceived arbitrary parole policy of the government.⁵⁵
- 3.9.5** Five prisons out of 17 institutions and pre-trial detention facilities were overcrowded severely, sometimes at double their capacity, due to the increase in the prison population following the government crack down on crime. According to government statistics, at the beginning of the year, an estimated 21.7 percent of inmates were detainees awaiting trial. While this was an improvement over previous years, the high figure continued to indicate a backlog of court cases.⁵⁶
- 3.9.6** With the exception of the new prisons in Kutaisi, Rustavi, and Gldani, prisons severely lacked medical facilities, including equipment and medicines. However in 2007, the Department of Prisons announced an open tender for purchasing medical insurance service for prisoners for three years. The tender was won by the insurance company Aldagi-BCI and after contracting with Department of Prisons, they became responsible for medical treatment of prisoners.⁵⁷
- 3.9.7** The Ministry of Justice continued its comprehensive effort to reform all aspects of the penitentiary system. During 2007, the total budget for the penitentiary system increased approximately 132 percent in comparison to the budget in 2006, which was itself 63.5 percent higher than in 2005 and the justice ministry continued its multiyear program to build and renovate prisons in order to meet international physical standards.⁵⁸
- 3.9.8** In January 2007, a justice ministry decree created a new juvenile department in two prisons for women, which meant that juvenile female inmates would be confined separately from adults, as was the case for males. The renovated Khoni Prison No. 9 was reopened in February, and in May an additional wing was opened at Rustavi Prison No. 2. In December 2007 Gldani prison was opened officially, and 2,478 prisoners were transferred from Tbilisi Prison No. 5, easing the overcrowding. A psycho-rehabilitation center, Atlantis, was also opened in December 2007 in Rustavi No. 6 prison to treat inmates on a voluntary basis with drug or alcohol dependencies.⁵⁹
- 3.9.9** The ICRC had full access to detention facilities, including those in Abkhazia and South Ossetia. Prison conditions in the two regions were chronically substandard, although overcrowding was reportedly not a problem.⁶⁰
- 3.9.10** The investigative service of the Department of Prisons conducted investigations into alleged misconduct by prison officials. During the year the service opened investigations into allegations that prison officials brought prohibited items such as illegal narcotics onto prison grounds. For example, in October 2006 Ramaz Gabisonia, an official in the women's prison, was detained on charges of bribery and possession of prohibited items on prison grounds. On March 12, Gabisonia was convicted for commission of bribery and passing prohibited objects to a prisoner and was sentenced to two years of imprisonment.⁶¹
- 3.9.11** In cooperation with NGOs, the Justice Ministry adopted a code of ethics for prison system employees on December 13 that set standards for employee conduct and the use of force, modelled after European practices. In August the Working Control Unit of the Headquarters of Department of Prisons was created. According to this unit, during the year there were 36 cases of disciplinary violations by penitentiary officers in various penitentiary establishments. Out of the 36, six were dismissed from their posts, 11 received strict

⁵⁵ USSD 2007

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⁶¹ USSD 2007

rebukes, 18 received a rebuke, and one was reprimanded. Salaries for prison guards were increased and paid regularly; the average salary of a prison employee was 79 percent higher than in 2006.⁶²

3.9.12 Conclusion. While prison conditions in Georgia are generally poor, with overcrowding, medical facilities and unsanitary conditions being particular problems, these are unlikely to reach the Article 3 threshold. The government has also made significant efforts in recent years to work to improve conditions in line with international standards. Therefore, even where claimants can demonstrate a real risk of imprisonment on return to Georgia a grant of Humanitarian Protection will not generally be appropriate. However, the individual factors of each case should be considered to determine whether detention will cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3, relevant factors being the likely length of detention, the likely type of detention facility and the individual's age and state of health. Where in an individual case treatment does reach the Article 3 threshold a grant of Humanitarian Protection may be appropriate.

4. Discretionary Leave

4.1 Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See Asylum Instruction on Discretionary Leave) Where the claim includes dependent family members consideration must also be given to the particular situation of those dependants in accordance with the Asylum Instruction on Article 8 ECHR.

4.2 With particular reference to Georgia the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the Asylum Instruction on Discretionary Leave and the Asylum Instruction on Article 8 ECHR.

4.3 Minors claiming in their own right

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

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

4.4 Medical treatment

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

4.4.2 In 2000 the Georgian government adopted a State programme for a national health policy. The same year saw the adoption of a Strategic plan for health care development in Georgia. According to the latest World Health Organisation (WHO) health indicators for Georgia of May 2005, 100% of the population have access to primary healthcare. Between 90 and 100% of children have received all major inoculations. Per 10,000 people in 2003

⁶² USSD 2007

there were a total of 48.4 doctors and 41.9 hospital beds. Measles and tuberculosis are the main causes of death by disease.⁶³

HIV/AIDS

4.4.3 The law expressly prohibits discrimination on the basis of HIV/AIDS status; however, there is no penalty for violating this prohibition. NGOs reported that societal stigma resulted in individuals avoiding testing or obtaining treatment for fear of discrimination. Some health care providers, particularly dentists, often refused to provide services to HIV-positive persons. Individuals often concealed their HIV-positive status from employers for fear of losing their jobs. The Ministry of Internal Affairs conducted mandatory HIV testing on all job applicants in 2006.⁶⁴

4.4.4 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 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. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.

5.2 Georgian nationals may return voluntarily to any region of Georgia at any time by way of the Voluntary Assisted Return and Reintegration Programme (VARRP) implemented on behalf of the UK Border Agency by the International Organization for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining any travel documents and booking flights, as well as organising reintegration assistance. The programme was established in 1999, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Those wishing to avail themselves of this opportunity for assisted return should be put in contact with the IOM offices in London on 0800 783 2332 or www.iomlondon.org

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