

COUNTRY GUIDANCE NOTE

IRAN

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**Country Guidance Unit
Onshore Protection Branch
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1. HOW TO USE THIS COUNTRY GUIDANCE NOTE

Purpose

The purpose of this Country Guidance Note is to assist case officers¹ by synthesising relevant country information; identifying critical issues; and providing guidance relating to the caseload. This Country Guidance Note does not replace case by case assessment² and is not to be used as the sole basis for consideration of claims. It is intended to provide context only and does not purport to be comprehensive. It is not intended to dictate the results in individual cases, nor does it address every claim presented in the caseload. The wide range of country of origin information must be considered in assessing individual claims.

This Country Guidance Note draws on a range of sources including organisations, media outlets, and individual journalists and academics based on relevance, credibility and currency of the information. No descriptions for organisations or individuals have been provided in the text. Case officers must consult the original source documents to form their own opinions in relation to an individual case and, where considered necessary, other available evidence should also be taken into account. This Country Guidance Note is not provided for direct quotation.

The issues for consideration and related questions included at the end of each section derive from the country information. Case officers should consider these issues (and others they identify) in their assessments, including where necessary an explanation of their assessment of conflicting information as it may relate to the individual claim.

Policy and legal context

The sections of this Country Guidance Note have been prepared to respond to specific issues relevant to the Australian caseload. It is essential that this Country Guidance Note is used in conjunction with the Refugee Law Guidelines, and where appropriate the Protection Visa Procedures manual, the Protection Obligation Evaluation manual, and any other relevant information. Those provisions of the *Migration Act 1958* (the Migration Act) that relate to refugee status determination and the case law bearing upon those provisions must be applied.

Updates and input

This Country Guidance Note is based on current information at date of publication, and will be updated regularly to reflect significant changes in country situation, relevant case law, or policy. Feedback and input in relation to this Country Guidance Note can be provided by email to: CGNfeedback@immi.gov.au.

¹ Note “case officers” refers to Protection visa decision makers and Protection Obligation Evaluation officers.

² Note the term “assessment” has been used in this document in a generic sense, and does not refer to the Independent Assessment Process.

2. ACRONYMS AND ABBREVIATIONS

| | |
|--------|---|
| BAFIA | Bureau of Aliens and Foreign Immigrants Affairs |
| DFAT | Department of Foreign Affairs and Trade |
| FIDH | International Federation for Human Rights |
| IHRDC | Iran Human Rights Documentation Center |
| IRGC | Islamic Revolutionary Guards Corps |
| JAM | Joint Assessment Mission |
| KDPI | Kurdistan Democratic Party of Iran |
| OCHA | Office for Coordination of Humanitarian Affairs |
| PJAK | Kurdistan Independent Life Party |
| PSG | Particular Social Group |
| UN | United Nations |
| UNHCR | United Nations High Commissioner for Refugees |
| UNICEF | United Nations Children's Fund |
| USCRI | United States Committee for Refugees and Immigrants |
| WFP | World Food Programme |

3. OVERVIEW

The current Australian caseload of asylum seekers from Iran is predominantly made up of Iranian nationals who claim persecution on the grounds of their political opinion, race or religion, and Faili Kurd refugees of Iraqi origin. This Country Guidance Note considers issues which are relevant to claims based on such grounds, including fear of harm from the Iranian government, the availability of state protection and the possibility of internal relocation. It also addresses the issue of statelessness.

The Islamic Republic of Iran is a multiethnic constitutional theocratic republic in which Shi'a Muslim clergy and political leaders vetted by the clergy dominate the key power structures.³ Iran's legal system adopted after the 1979 Revolution is based on Islamic laws (Sharia).⁴

Iran's Constitution provides for an elected president and parliament, however, an unelected Council of Guardians led by the Supreme Leader has the power to review legislation approved by the parliament. The Supreme Leader is also the head of the army and appoints officials to key positions, including in the judiciary and the Council of Guardians.⁵

In June 2009, Mahmoud Ahmadinejad was re-elected president amid a heavily contested poll result, which led to mass protests by opposition supporters. According to many sources, the Iranian authorities responded to anti-government protests with a wide-ranging campaign to suppress dissent, targeting participants of demonstrations as well as individuals from different segments of society, including members of political organisations, prominent reformist politicians, lawyers, students, academics and journalists.⁶

Amnesty International's Deputy Director Hassiba Hadj Sahraoui noted that since the 2009 post-election protests, "the government's growing bunker mentality has led to mounting waves of repression aimed at suppressing any criticism of the authorities or independent reporting on the human rights situation in the country."⁷ In March 2011, UN officials stated that UN human rights experts had not been allowed into Iran since 2005, when Mahmoud Ahmadinejad was elected president.⁸

The treatment of ethnic and religious minorities in Iran, including Arabs, Azeris, Baluchis, Kurds, Christians and Baha'is, continues to attract negative comment from human rights observers.⁹ Amnesty International stated in May 2011 that members of Iran's ethnic

³ Country Report on Human Rights Practices 2010 – Iran, US Department of State, 8 April 2011 (on CISNET under Other Government Resources).

⁴ CX241752: CIA - The World Factbook, Central Intelligence Agency, 23 March 2010.

⁵ CX264609: Freedom in the World Country Report Iran 2011, Freedom House, 12 May 2011; CX254130: Background Note: Iran, United States of America (US) Department of State, 23 July 2010.

⁶ See for example CIS18830: From protest to prison: Iran one year after the election, Amnesty International, 9 June 2010, p. 9; CIS17657: Crackdown in Iran, Iran Human Rights Documentation Center, July 2009; CIS18245: The Islamic Republic at 31: Post-election Abuses Show Serious Human Rights Crisis, Human Rights Watch, 11 February 2010.

⁷ CX261689: Journalists under siege, Amnesty International, 30 April 2010

⁸ CX261690: U.N. human rights body approves investigator on Iran, Reuters, 24 March 2011.

⁹ See for example CX245994: State of the World's Minorities and Indigenous Peoples 2010 - Iran, Minority Rights Group International, 1 July 2010; CX238868: Human Rights Watch World Report Iran 2010, Human Rights Watch, 20 January 2010; CX264809: Amnesty International Annual Report Iran 2011, Amnesty International, 13 May 2011.

minorities suffered “ongoing systematic discrimination in law and practice”, and those who campaigned for recognition of minority rights faced threats, arrest and imprisonment.¹⁰ According to the US Commission on International Religious Freedom, since the June 2009 election, Iran’s religious freedom record has deteriorated, with religious minorities, in particular Baha’is, Christians and Sufi Muslims, being subjected to physical attacks, harassment, detention, arrests and imprisonment.¹¹

Iran is host to one of the largest long-staying refugee populations in the world.¹² The United Nations High Commissioner for Refugees’ (UNHCR) records, sourced from Iran’s Bureau of Aliens and Foreign Immigrants Affairs, indicate that as at March 2010 there are around 1 021 600 Afghan and 43 800 Iraqi registered refugees in Iran. UNHCR also reported that around 70 per cent of Afghan and Iraqi refugees have been resident in Iran for 20 to 30 years. The majority of refugees in Iran live in urban areas, while approximately three per cent live in refugee settlements.¹³

Economic situation

According to a 2010 report by the Congressional Research Service, Iran has enjoyed broad-based economic growth since 2000.¹⁴ However, strong economic performance has been hindered by high levels of inflation¹⁵ and unemployment and low levels of foreign investment.¹⁶ The unemployment rate reached an estimated 14.6 per cent in 2010.¹⁷ Estimates of the number of people living below the poverty line in Iran vary widely from 1.5 per cent¹⁸ to 18 per cent.¹⁹ In September 2010, the World Bank reported that half of the poor in Iran, about 4.5 million people, or 1.5 million households, benefited from social welfare programs run by the government and charity organisations.²⁰

A number of sources, including the RAND Corporation and the United Nations Development Programme, note that there are important disparities in economic development between different provinces in Iran,²¹ with Sistan-Baluchistan reportedly

¹⁰ CX264809: Amnesty International Annual Report Iran 2011, Amnesty International, 13 May 2011.

¹¹ CX264035: USCIRF Annual Report 2011 - Countries of Particular Concern: Iran, US Commission on International Religious Freedom, 28 April 2011.

¹² CIS19754: 2011 UNHCR country operations profile – Islamic Republic of Iran, United Nations High Commissioner for Refugees (UNHCR), December 2010.

¹³ CIS19754: 2011 UNHCR country operations profile – Islamic Republic of Iran, UNHCR, December 2010.

¹⁴ CIS20120: Shayerah Ilias, ‘Iran’s Economic Conditions: US Policy Issues’, Congressional Research Service, 22 April 2010.

¹⁵ See for example CX257359: Prices to soar as Iran cuts subsidies, Associated Press, 20 December 2010, and CX255339: Iran’s cut in fuel and food aid raises protest fears, British Broadcasting Corporation, 19 December 2010.

¹⁶ CIS20120: Shayerah Ilias, ‘Iran’s Economic Conditions: US Policy Issues’, Congressional Research Service, 22 April 2010.

¹⁷ CX260520: Iran jobless rate at 14.6 percent, Press TV, 17 August 2010. See also CX257359: Prices to soar as Iran cuts subsidies, Associated Press, 20 December 2010.

¹⁸ CIS19817: Iran’s Political, Demographic, and Economic Vulnerabilities, RAND Corporation, 2008, p.100.

¹⁹ CIS20195: The World Factbook: Population Below Poverty Line, Central Intelligence Agency, accessed March 2010. According to a World Bank report, 3.1 per cent of the country’s population live below the poverty line. See CX259854: Iran: Country Brief, World Bank Group, September 2010.

²⁰ CX259854: Iran: Country Brief, World Bank Group, September 2010.

²¹ CIS20123: Human Development Report of the Islamic Republic of Iran, UN Development Project, 1999, p. 20; CIS19817, Iran’s Political, Demographic, and Economic Vulnerabilities, The RAND Corporation, 2008, pp.46- 47; CX259853: Urbanization and narrowing rural-urban disparities in the Islamic Republic of Iran, World Bank Group, 6 November 2008.

being the poorest.²² There also appear to be significant differences in income levels of urban and rural populations.²³

Faili Kurds

Alternative spelling variations for Faili include Feyli, Faylee, Faily, Fayli and Feili.

Faili Kurds are Shi'a Muslim Kurds²⁴ who originally inhabited the Iran-Iraq border region along the Zagros mountain range.²⁵ Sources indicate that Faili Kurds speak a distinct dialect which is often referred to as Faili or Luri.²⁶ Originally living a semi-nomadic existence in the territories of modern day Iraq and Iran, many Faili Kurds moved to Iraqi cities during the Ottoman era.²⁷

During the Ottoman period, Faili Kurds who had been living in Iraq had the choice of registering as Ottoman or Persian/Iranian subjects. Many chose to align themselves with Iran both to avoid military service and in line with tribal and familial ties with Failis living in Iran, while continuing to reside in Iraq.²⁸ Iraqi citizenship laws enacted in the early years of the Iraqi state cemented these distinctions by classifying citizens as of Ottoman or Persian descent.²⁹

In the 1970s and 1980s, the Baath regime utilised this classification to expel those it viewed as Iranian and opposed to the Government.³⁰ During this period, the Iraqi military forced several hundred thousand Faili Kurds across the border into Iran.³¹ They were stripped of their Iraqi nationality and had their property and assets confiscated.³² Iraqi

²² CX258830: Iran's minorities forgotten victims as government repression intensifies – new briefing, Minority Rights Group International, 16 February 2011.

²³ CX259855: Iran rising disparities in urban & rural economy, Scoop, New Zealand, 19 November 2007; CIS20122: Rural-Urban Migration and Earning Gains in Iran, Journal of Social Sciences, 2008; CX259853: Urbanization and narrowing rural-urban disparities in the Islamic Republic of Iran, World Bank Group, 6 November 2008.

²⁴ Kurds are predominantly Sunni.

²⁵ CIS17889: Chris Chapman and Preti Taneja, 'Uncertain Refuge, Dangerous Return: Iraq's Uprooted Minorities', Minority Rights Group International, September 2009, p. 6; CX234148: Faili Kurds see way out of identity impasse, UNHCR, 28 May 2008.

²⁶ CIS14345: Iran in Iraq: How much influence?, International Crisis Group, 21 March 2005, p. 5; CX234976: The Faily Kurds: a horrific past, an unstable present, and an unseen future, The Kurdish Globe, 3 October, 2009; CIS21044: Martin van Bruinessen, 'Kurdish nationalism and competing ethnic loyalties', Peoples Méditerranéens, 1994.

²⁷ CIS17889: Uncertain Refuge, Dangerous Return: Iraq's Uprooted Minorities, Minority Rights Group International, September 2009, p. 6; CIS17254: John Fawcett and Victor Tanner, 'The Internally Displaced People of Iraq', The Brookings Institution, October 2002, p. 15; CX112558: Fayli Kurds' Election Leader Talks to RFI About Participation In Elections, Radio Free Europe, 24 January 2005.

²⁸ CIS14345: Iran in Iraq: How much influence?, International Crisis Group, 21 March 2005, p. 4; CX112558: Fayli Kurds' Election Leader Talks to RFI About Participation In Elections, Radio Free Europe, 24 January 2005.

²⁹ CIS14345: Iran in Iraq: How much influence?, International Crisis Group, 21 March 2005, p. 4; CX112558: Fayli Kurds' Election Leader Talks to RFI About Participation In Elections, Radio Free Europe, 24 January 2005.

³⁰ CX241791: The Faili Kurds of Iraq: Thirty Years without Nationality, Refugees International, 2 April 2010; CIS14345: Iran in Iraq: How much influence?, International Crisis Group, 21 March 2005, pp. 4-5; CX237486: Overview of the refugee situation, International Consortium for Refugees in Iran, accessed December 2009.

³¹ CX237486: Overview of the refugee situation, International Consortium for Refugees in Iran, accessed December 2009; CIS17490: Assimilation, Exodus, Eradication: Iraq's Minority communities since 2003, Minority Rights Group International, February 2007.

³² CX241791: The Faili Kurds of Iraq: Thirty Years Without Nationality, Refugees International, 2 April 2010; CX237486: Overview of the refugee situation, International Consortium for Refugees in Iran, accessed 10 December 2009; CIS17490: Assimilation, Exodus, Eradication: Iraq's minority communities since 2003, Minority Rights Group

Shi'a Arabs and other Iraqi Kurds were also forced into Iran during this period to escape persecution by Saddam Hussein's regime.³³

Estimates vary widely as to the number of Faili Kurds of Iraqi origin living in Iran. An article in Refugees Magazine reported that at the beginning of 2003 there were 200 000 Iraqi refugees in Iran, of which 65 per cent were Faili Kurds.³⁴ While in 2008, an article published by the UNHCR stated that there were believed to be some 7 000 registered Faili Kurds remaining in Iran.³⁵ Numbers of Faili Kurd refugees in Iran have reportedly decreased since 2003, with voluntary repatriations to Iraq.³⁶

International, February 2007; CX234148, Faili Kurds seek way out of identity impasse, UNHCR, 28 May 2008; CIS18058, Iraq: Continuous and Silent Ethnic Cleansing -Displaced Persons in Iraqi Kurdistan and Iraqi Refugees in Iran, International Federation for Human Rights, January 2003, p.6.

³³ CIS19783: Shirin Hakimzadeh, 'Iran, A Vast Diaspora Abroad and Millions of Refugees at Home', Migration Policy Institute, September 2006.

³⁴ CX237529: The road home: the Faili Kurds, Refugee Magazine, 1 March 2004.

³⁵ CX234148: Faili Kurds seek way out of identity impasse, UNHCR, 28 May 2008.

³⁶ CX241791: The Faili Kurds of Iraq: Thirty Years without Nationality, Refugees International, 2 April 2010; CX227512: Iraqi citizenship restored to Faili Kurds, AK News, 25 May 2009; CX234148: Faili Kurds seek way out of identity impasse, UNHCR, 28 May 2008.

4. FAILI KURDS IN IRAN

4.1 Claims

Applicants may claim they are Faili Kurds who were formerly resident in Iraq and were forcibly expelled into Iran by Saddam Hussein's regime in the late 1970s and early 1980s, or are the children of Faili Kurds who had been expelled from Iraq to Iran during this period.

Applicants may claim that they fear persecution by the Iranian authorities on the basis of their race or ethnicity (as Faili Kurds), their former citizenship of Iraq, their refugee status, their undocumented status, and/or their statelessness. Key claims include:

- fear of discrimination, including restrictions on accessing education, healthcare and employment, by the Iranian Government
- fear of being harassed, beaten or arbitrarily detained by the Basij and other security forces.

4.2 Country information

Note: There is limited information available on the situation of Faili Kurds of Iraqi origin in Iran. The information in this chapter focuses on the situation of Iraqi refugees in Iran, which includes variously Arabs, Faili Kurds and other Iraqi Kurds.

Security forces in Iran

Reports indicate that Iran has an extensive network of internal security and intelligence services,³⁷ which includes the Islamic Revolutionary Guards Corps and the Basij.³⁸ The Guardian reported in June 2009 that the Basij had formal powers of arrest as an auxiliary force for law enforcement, and were used for emergency management, organising religious ceremonies, "morals policing" and the suppression of dissident gatherings.³⁹ (For more information see *Security forces in Iran* under State Protection).

Laws on refugees and asylum seekers

Iran is a party to the 1951 Convention on the Status of Refugees and the 1967 Protocol. However, it has made reservations to the Convention's provisions on employment, public relief, labour legislation and social security, and freedom of movement.⁴⁰

Shirin Ebadi wrote in 2008 that Iran approved its first legislation on refugees in 1963 and ratified the Refugees Convention in 1976. Since then, Iran has passed a number of other laws and issued several decrees relating to the status and entitlements of refugees.

³⁷ CIS19581: Evaluation of August 2008 Country of Origin Information Report on Iran, Advisory Panel on Country Information (UK Home Office), 23 September 2008.

³⁸ Country Report on Human Rights Practices 2010 – Iran, US Department of State, 8 April 2011.

³⁹ CX228523: The rise of Iran's other police force, The Guardian, 17 June 2009.

⁴⁰ CIS17518: World Refugee Survey 2009 – Iran, US Committee for Refugees and Immigrants (USCRI), 2009.

According to Ebadi, some of these regulations were contradictory and impeded the proper enforcement of the law.⁴¹

In April 2011, the US State Department reported that Iran's laws "provide means for granting asylum or refugee status to qualified applicants, and the government reportedly had a system for providing protection to refugees, but the UNHCR did not have any information as to how the country made asylum determinations".⁴²

The US Committee for Refugees and Immigrants (USCRI) also noted in 2009 that "Iran claims to have a refugee status determination procedure but the legal framework for its implementation is unclear. Individuals cannot challenge before a court the Government's decision regarding their status as a refugee".⁴³

Iraqi refugees and asylum seekers in Iran – location and economic conditions

Iraqi refugees in Iran include Arabs, Fails Kurds and other Iraqi Kurds.⁴⁴ The USCRI reported in 2000 that the Iranian authorities made no distinctions among Iraqi refugees, regardless of whether or not Iraq acknowledged their citizenship.⁴⁵

According to a 2009 USCRI report, Iraqi refugees are concentrated in areas bordering Iraq, with most reportedly living in urban areas and around 5000 living in 12 refugee settlements.⁴⁶ A 2010 report of the UN Office for Coordination of Humanitarian Affairs (OCHA), stated that the majority of Iraqi refugees reside in urban areas in Tehran, Qom, Ahwaz, Mashad and Shiraz, and a small number (3600) are hosted in 11 settlements in Khuzestan, Kurdistan, West Azerbaijan and Fars provinces.⁴⁷

A report by the International Consortium for Refugees in Iran, accessed in 2009, noted that there is a great variation in the situation of individual Kurdish refugee families in Iran, with those who have been in Iran longer being relatively better off than the newer arrivals.⁴⁸

In 2003, the International Federation for Human Rights noted cases of child malnutrition and extreme poverty among Faili Kurd and Shi'a Arab refugee populations it visited in refugee settlements in Iran.⁴⁹

⁴¹ CIS20591: Shirin Ebadi, 'Refugee Rights in Iran', SAQI and UNHCR, 2008, p.149.

⁴² Country Report on Human Rights Practices 2010 – Iran, US Department of State, 8 April 2011.

⁴³ CIS17518: Iran: World Refugee Survey 2009, USCRI, 2009.

⁴⁴ CX237486: Overview of the refugee situation, International Consortium for Refugees in Iran, accessed 10 December 2009; CIS14345: Iran in Iraq: How much influence?, International Crisis Group, 21 March 2005, pp. 4-5.

⁴⁵ CX237017: World Refugee Survey 2000 - Iran, USCRI, 1 June, 2000

⁴⁶ CIS17518: World Refugee Survey 2009 – Iran, USCRI, 2009; CX237017: Iran World Refugee Survey 2000 - Iran, USCRI, 1 June 2000.

⁴⁷ CIS20178: Regional Response Plan for Iraqi Refugees, UN Office for Coordination of Humanitarian Affairs, 2010. The World Food Program reported that 5,000 Iraqi refugees were hosted in settlements. See CIS20179: Food Assistance and Education Incentives for Afghan and Iraqi Refugees in the Islamic Republic of Iran, World Food Programme, 2008.

⁴⁸ CX237486: Overview of the refugee situation, International Consortium for Refugees in Iran, accessed 10 December 2009. For the standard of living of Iraqi refugees see also, CIS13629: Iraqi Refugees, Asylum Seekers and Displaced Persons, Human Rights Watch, February 2003, p. 14; CX237017: World Refugee Survey 2000 - Iran, USCRI, 1 June 2000.

⁴⁹ CIS18058: Iraq: continuous and silent ethnic cleansing: displaced persons in Iraqi Kurdistan and Iraqi refugees in Iran, International Federation for Human Rights, January 2003, p. 24.

According to a 2008 report by a Joint Assessment Mission of UNHCR, the World Food Programme (WFP) and Iran's Bureau of Aliens and Foreign Immigrants Affairs (BAFIA), the overwhelming majority of Iraqi refugees living in refugee settlements have achieved a sustainable level of self-sufficiency.⁵⁰ The report also noted that life for refugees in the urban and semi-urban areas was considerably more expensive than for Iranian citizens in the same areas, and that there were concerns about increasing poverty among these refugees due to the high costs of living and lack of access to government safety net programs.⁵¹

The 2010 OCHA report noted that restrictions placed on Iraqi refugees' right to work, coupled with the duration of their displacement, significant inflation and the global economic downturn, left many Iraqis unable to meet their fundamental needs.⁵²

In June 2010, the UNHCR reported that "despite a generally favourable protection environment, the living conditions of Afghan and Iraqi refugees are expected to deteriorate as a result of high inflation, rising prices and unemployment."⁵³ The UNHCR further reported in December 2010 that registered refugees were not included in the government's plan to provide a cash allowance to destitute Iranian families to compensate for a removal of subsidies for basic goods.⁵⁴ In May 2011, Bernard Doyle, UNHCR representative in Iran, noted that the removal of subsidies on basic commodities had adversely affected the socio-economic situation of vulnerable and destitute registered refugees in Iran.⁵⁵

Treatment of Iraqi refugees in Iran

A number of sources, including the US State Department and Amnesty International, noted that ethnic and religious minorities may face a degree of discrimination and harassment by the Iranian authorities.⁵⁶

In 2010, the UN Committee on the Elimination of Racial Discrimination, expressed concern at the limited enjoyment of political, economic, social and cultural rights by ethnic minorities as well as some communities of non-citizens in Iran, in particular with regard to housing, education, freedom of expression and religion, health and employment, despite the economic growth in the country.⁵⁷

⁵⁰ CIS20176: Joint Assessment Mission Settlement-based Refugees in Iran 8th - 19th June 2008, UNHCR, World Food Programme (WFP) and Bureau for Aliens and Foreign Immigrant Affairs (BAFIA), 2008, p. 1.

⁵¹ CIS20176: Joint Assessment Mission Settlement-based Refugees in Iran 8th - 19th June 2008, UNHCR, WFP and BAFIA, 2008, p. 21.

⁵² CIS20178: Regional Response Plan for Iraqi Refugees, UN Office for Coordination of Humanitarian Affairs, 2010, p. 80

⁵³ CX247772: 2010 UNHCR Country Operations Profile - Islamic Republic of Iran, UNHCR, 14 June 2010.

⁵⁴ CIS19754: 2011 UNHCR Country Operations Profile - Islamic Republic of Iran, UNHCR, December 2010.

⁵⁵ CX268291: Over USD 2 Million Contributions to the Project: "Life Saving Medical Assistance to Refugees in Iran", UNHCR, 1 May 2011.

⁵⁶ Country Report on Human Rights Practices 2010 – Iran, US Department of State, 8 April 2011; CX264809: Amnesty International Annual Report Iran 2011, Amnesty International, 13 May 2011; CIS16293: Human rights abuses against the Kurdish minority, Amnesty International, 30 July 2008; CX245994: State of the World's Minorities and Indigenous Peoples 2010 - Iran, Minority Rights Group International, 1 July 2010.

⁵⁷ CIS20202: Consideration of reports submitted by States parties under article 9 of the convention..., UN Committee on the Elimination of Racial Discrimination, 20 September 2010.

In 2008, a World Food Programme report stated that “due to their assimilation of ethnicity” Iraqi Kurd and Arab refugees were generally better accepted by the local population compared to Afghan refugees.⁵⁸

Human Rights Watch reported in 2003 that the Iranian government’s preference for housing new refugees in camps often made Iraqi refugees in cities – both new arrivals and those who have lived there for many years – extremely vulnerable to police abuse and discriminatory treatment.⁵⁹

Access to education, employment and healthcare

According to UNHCR, participatory assessments conducted in 2010 found that some of the most pressing needs among refugees in Iran included limited access to medical insurance and the high cost of medical expenses, difficulties in covering education expenses and school tuition fees, limited opportunities for income generation and low job security.⁶⁰ An article published by the Stimson Centre also identified medical care, access to schools and work permits among the key needs of refugees in Iran.⁶¹

Sources provide different views on refugees’ rights and access to education, employment and healthcare in Iran. The 2008 Joint Assessment Mission (JAM) of UNHCR, WFP and Iran’s BAFIA noted that “registered Iraqi refugees generally have access to mostly unlawful employment, education and health services on the same basis as Iranian nationals”. The report further noted that registered Iraqi refugees in urban centres appeared to be treated largely on a par with local Iranians in terms of their access to rights and services.⁶²

The UK Foreign and Commonwealth Office stated in 2011 that registered refugees had access to some primary healthcare facilities, primary and secondary education and some state benefits. It also noted that unregistered refugees were not able to access these entitlements and lived “hand to mouth, working as cheap labour”.⁶³

Other sources (see below) indicate that registered and unregistered refugees in Iran face legal and practical restrictions on accessing education, employment and healthcare.

⁵⁸ CIS20179: Food Assistance and Education Incentives for Afghan and Iraqi Refugees in the Islamic Republic of Iran, World Food Programme, 2008.

⁵⁹ CIS13629: Iraqi refugees, Asylum Seekers and Displaced Persons: Current Conditions and Concerns in the Event of War, Human Rights Watch, February 2003, p.13.

⁶⁰ CIS19754: 2011 UNHCR country operations profile – Islamic Republic of Iran, UNHCR, December 2010. See also CIS20178: Regional Response Plan for Iraqi Refugees, UN Office for Coordination of Humanitarian Affairs, 2010, p80.

⁶¹ CIS20196: Jill Goldenziel, ‘Refugees and International Security’ in E. Laipson and A. Pandya eds., *On the Move: Migration Challenges in the Indian Ocean Littoral*, Stimson, 2010.

⁶² CIS20176: Joint Assessment Mission Settlement-based Refugees in Iran 8th - 19th June 2008, UNHCR, WFP and BAFIA, 2008, pp. 10, 11.

⁶³ CX263481: Human Rights and Democracy: The 2010 Foreign & Commonwealth Office Report - Iran, UK Foreign and Commonwealth Office, 31 March 2011.

Access to education

According to the 2008 JAM report, settlement-based refugees benefited from free primary and, where available, secondary education, whereas refugees in urban areas were charged a minimal tuition fee, subject to the payment of municipal taxes. Children of families recognised as destitute were in principle exempted from paying fees.⁶⁴

The USCRI reported in 2009 that Iraqi refugee children may enrol in Iranian primary and secondary schools without paying fees.⁶⁵

According to UNHCR, in July 2009, the government ordered Ministries of Interior, Education and Technology to treat the enrolment of all school-age children, including lawful foreign residents and registered refugees, in the same manner.⁶⁶ The US State Department noted that at the end of 2010 there was no information about how the new policy was enforced and that according to 2009 reports, more than a quarter of primary school-age refugees were not enrolled in school. It also reported that “[i]n some cases, local government officials reportedly suspended education services to refugees to encourage them to repatriate”.⁶⁷

Previously, in 2003, Human Rights Watch had also noted that, despite Government decrees, many local authorities continued to deny refugee children entrance to public schools.⁶⁸

Iran Human Rights Voice reported in 2009 that the Government announced that it would not allow Iraqi and Afghan residents to participate in the country-wide university entrance examinations.⁶⁹ Prior to this, a 2008 study by the Afghan Research and Evaluation Unit noted that Afghan refugees faced restrictions on accessing universities in Iran.⁷⁰

Access to employment

According to a 2009 USCRI report, Iran’s regulations allowed refugees to apply for work permits in a number of job categories. Work permits, valid for one year, cost around US\$75 and were renewable.⁷¹ The US State Department noted in 2011 that the law allowed only male refugees to work, but the UNHCR had in the past provided limited assistance to female refugees.⁷²

⁶⁴ CIS20176: Joint Assessment Mission Settlement-based Refugees in Iran 8th - 19th June 2008, UNHCR, WFP and BAFIA, 2008, p. 11.

⁶⁵ CX241042: World Refugee Survey Iran 2009, USCRI, 17 June 2009.

⁶⁶ CX247772: 2010 UNHCR country operations profile - Islamic Republic of Iran, UNHCR, 14 June 2010. See also CIS13629: Iraqi refugees, Asylum Seekers and Displaced Persons: Current Conditions and Concerns in the Event of War, Human Rights Watch, February 2003.

⁶⁷ Country Report on Human Rights Practices 2010 – Iran, US Department of State, 8 April 2011.

⁶⁸ CIS13629: Iraqi refugees, Asylum Seekers and Displaced Persons: Current Conditions and Concerns in the Event of War, Human Rights Watch, February 2003, p. 14

⁶⁹ CX250839: The report about banning of Afghans’ residents in Iran from studying in Iranian universities, Iran Human Rights Voice, 6 January 2009.

⁷⁰ CIS16916: Second-generation Afghans in Iran: Integration, Identity and Return, Afghanistan Research and Evaluation Unit, April 2008, p. 17.

⁷¹ CX241042: World Refugee Survey Iran 2009, USCRI, 17 June 2009

⁷² Country Report on Human Rights Practices 2010 – Iran, US Department of State, 8 April 2011.

In 2003, Human Rights Watch reported that in 2001 Iran tightened its restrictions on refugees' access to employment and introduced a policy of imprisoning the employers of undocumented workers. These measures reportedly put many refugees out of work.⁷³

In 2008, USCRI noted that few refugees applied for work permits because employers did not wish to hire employees formally and pay required insurances and taxes. The government fined both employers and refugees heavily, and refugees ran the risk of arrest and deportation if found working without a permit. Compared to Afghan refugees, the authorities restricted Iraqi refugees less in employment.⁷⁴

In a more recent report from June 2009, USCRI also noted that there were heavy penalties for employers found to have undocumented foreign workers, including registered Afghan refugees, "although the authorities were more lenient with Iraqis".⁷⁵

The 2008 WFP report noted that compared to Afghans, Iraqi Kurd and Arab refugees seemed to have better options for income-generating activities.⁷⁶

The US State Department reported in 2009 that "Afghan and Iraqi refugees face a lack of job opportunities and the government at times failed to grant them residence or work permits".⁷⁷

Access to healthcare

The 2008 JAM report stated that registered refugees had access to free primary health care. For additional health services they were charged on a par as local Iranians. However, whilst Iranians could access health insurance or receive financial support from charity organisations, refugees could not.⁷⁸ The Islamic Republic News Agency reported in June 2011 that refugees benefited from free primary healthcare, including vaccination and antenatal care, but also that they often found it difficult to pay for surgeries or expensive hospitalisations which were not covered by insurance.⁷⁹

According to the 2009 USCRI report, Iraqi refugees were eligible for national health insurance. The report noted that "[t]he 1963 Regulations allow refugees medical and social services on par with nationals but authorities levy higher premiums and a special tax to encourage repatriation".⁸⁰

⁷³ CIS13629: Iraqi refugees, Asylum Seekers and Displaced Persons: Current Conditions and Concerns in the Event of War, Human Rights Watch, February 2003, pp. 13-14.

⁷⁴ CX203209: World Refugee Survey 2008, USCRI, 19 June 2008

⁷⁵ CX241042: World Refugee Survey Iran 2009, USCRI, 17 June 2009.

⁷⁶ CIS20179: Food Assistance and Education Incentives for Afghan and Iraqi Refugees in the Islamic Republic of Iran, World Food Programme, 2008.

⁷⁷ Country Report on Human Rights Practices 2008 – Iran, US Department of State, 25 February 2009.

⁷⁸ CIS20176: Joint Assessment Mission Settlement-based Refugees in Iran 8th - 19th June 2008, UNHCR, WFP and BAFIA, 2008, p. 11.

⁷⁹ CX267138: All refugees in Iran to get health insurance, Islamic Republic News Agency (IRNA) -Iran, 20 June 2011.

⁸⁰ CX241042: World Refugee Survey Iran 2009, USCRI, 17 June 2009.

The US State Department noted in 2009 that the Iranian Government's failure at times to grant refugees residence and work permits, effectively prevented them from obtaining health insurance coverage.⁸¹

According to the 2010 OCHA report, only refugees suffering from three types of special diseases could access medical insurance policies and that many refugees declined medical treatment even when provided with a UNHCR subsidy, because they could not pay the remaining cost.⁸²

In May 2011, the UNHCR announced a new scheme to assist refugees with medical expenses, noting that the majority of refugees were unable to cover medical costs of family members suffering from serious medical conditions other than haemophilia, thalassemia and kidney failure.⁸³

Status of Faili Kurd refugees in Iran – residence and citizenship

Refugees in Iran have been issued with different types of documents, including the so-called blue, green and white cards.⁸⁴ The UNHCR reported that Faili Kurds who arrived prior to the 1979 Islamic Revolution were mainly issued with white cards, while the majority of those who arrived in the 1980s received green cards.⁸⁵ From 2002 onwards, green cards were replaced by white cards.

A number of sources, including UNHCR, the International Crisis Group and USCRI, have stated that Faili Kurd refugees who could present documentary proof of their Iranian ancestry or family links to Iran have been able to obtain Iranian citizenship.⁸⁶ An article published by UNHCR in 2008 stated that 760 Faili Kurds in Ilam province were able to obtain Iranian citizenship after a complicated process.⁸⁷

The United Nations Children's Fund (UNICEF) reported in 2005 that Iran had not ratified the 1961 Convention on the Reduction of Statelessness, which provides that children should acquire the nationality of the state in which they were born if they are not granted nationality by any other state. It further stated that "no measures have been adopted by Iranian Registry Law to ensure the child's right to acquire a nationality, in particular where the child would otherwise be stateless".⁸⁸

⁸¹ Country Report on Human Rights Practices 2008 – Iran, US Department of State, 25 February 2009.

⁸² CIS20178: Regional Response Plan for Iraqi Refugees, UN Office for Coordination of Humanitarian Affairs, 2010, p.80.

⁸³ CX268291: Over USD2 Million Contributions to the Project: "Life Saving Medical Assistance to Refugees in Iran", UNHCR, 1 May 2011. See also CX267138: All refugees in Iran to get health insurance, Islamic Republic News Agency (IRNA) -Iran, 20 June 2011.

⁸⁴ CX237017: World Refugee Survey 2000 - Iran, USCRI, 1 June 2000.

⁸⁵ CX94068: COI Request on certain groups vis a vis Iraq: Draft Law of Iraqi Nationality, UNHCR, 6 April 2004. See also CX237017: World Refugee Survey 2000 - Iran, USCRI, 1 June 2000.

⁸⁶ CIS14345: Iran in Iraq: How much influence?, International Crisis Group, 21 March 2005, p. 5; CX94068: COI Request on certain groups vis a vis Iraq: Draft Law of Iraqi Nationality, UNHCR, 6 April 2004; CX234148: Faili Kurds seek way out of identity impasse, UNHCR, 28 May 2008; CX237017: World Refugee Survey Iran - 2000, USCRI, 1 June 2000.

⁸⁷ CX234148: Faili Kurds seek way out of identity impasse, UNHCR, 28 May 2008.

⁸⁸ CIS17967: Birth Registration in Iran: An analysis of the state of relevant laws in Iran, UNICEF, July 2005, pp. 7-8.

UNICEF also noted that “[a]s entry to Iran for most asylum seekers, especially Afghans, is not legally registered, marriages cannot be registered with the result that their children cannot get birth certificates”. It further stated that non-nationals cannot get birth certificates for their children easily because having a birth certificate means proof of Iranian nationality.⁸⁹

Faili Kurds in Iraq - Nationality

Article 18 of the 2005 Iraqi Constitution states that “[a]nyone who is born to an Iraqi father or an Iraqi mother shall be considered an Iraqi” and that “[a]ny person who had his citizenship withdrawn shall have the right to demand its reinstatement.”⁹⁰

In 2008, UNHCR observed that according to the new Iraqi Constitution, Iraqis who had been stripped of their nationality could apply to restore it, together with their rights and property.⁹¹

Nationality is regulated by the Iraqi Nationality Law of 2006. Article 17 repeals Decision No. 666 issued in 1980 by the Baath regime,⁹² which stripped “Iraqi citizens of foreign descent”, including Faili Kurds, of Iraqi nationality if their “allegiance to the nation, the people and the revolution's higher national and social objectives were not proved”.⁹³ The 2006 Nationality Law (Articles 17 and 18) restores citizenship to all Iraqis who were affected by Decision No. 666 and any Iraqi whose citizenship was revoked based on political, religious, racist or sectarian grounds.⁹⁴

In November 2009, the Australian Embassy in Baghdad noted that there were reports indicating that the process of re-acquiring Iraqi nationality was long and complicated.⁹⁵ It further advised that although the process of re-obtaining Iraqi nationality can be commenced outside Baghdad, the applicant needed to present in Baghdad at some point to complete the process.⁹⁶

In March 2010, the Embassy reported that since the fall of Saddam Hussein's regime in 2003, approximately 25 000 Faili Kurds had re-obtained their Iraqi nationality.⁹⁷ AK News reported in May 2009, that the Iraqi Ministry of Immigration and Immigrants had restored Iraqi citizenship cards to more than 3500 Iraqi citizens who came back from Iran. The majority of these people were Faili Kurds.⁹⁸

⁸⁹ CIS17967: Birth Registration in Iran: An analysis of the state of relevant laws in Iran, UNICEF, July 2005, pp. 7-8.

⁹⁰ CIS19789: The Constitution of the Republic of Iraq, National Legislative Bodies, 15 October 2005, p. 6.

⁹¹ CX234148: Faili Kurds seek way out of identity impasse, UNHCR, 28 May 2008.

⁹² CIS18097: Iraqi Nationality Law, National Legislative Bodies, Iraq, 7 March 2006, p. 5.

⁹³ CX224072: On 29th anniversary of displacement, Feyli Kurds reject Baathists, Aswat al-Iraq (Voices of Iraq), 3 April 2009. See also CX227512: Iraqi citizenship restored to Faili Kurds, AK News, 25 May 2009.

⁹⁴ CIS18097: Iraqi Nationality Law, National Legislative Bodies, Iraq, 7 March 2006, p. 5.

⁹⁵ CX236340: Emerging caseload of Faili Kurds and Bedouins, Australia: Department of Foreign Affairs and Trade (DFAT- Baghdad), 13 November 2009.

⁹⁶ CX241148: Faili Kurds, DFAT- Baghdad, 18 March 2010.

⁹⁷ CX241148: Faili Kurds, DFAT- Baghdad, 18 March 2010.

⁹⁸ CX227512: Iraqi citizenship restored to Faili Kurds, AK News, 25 May 2009.

In February 2011, a UNHCR representative advised the Australian Embassy in Baghdad that it had become easier for Faili Kurds to re-establish their Iraqi citizenship, but the process could take years.⁹⁹

Faili Kurds in Iraq – reintegration and treatment

In November 2009, the Australian Embassy in Baghdad advised that, after being exiled for a significant period of time, people with no contacts, home or employment may find reintegration difficult. The advice further stated that some Faili Kurds who had returned from Iran were reportedly issued identity cards of a different colour than regular identity cards, thus providing a basis for possible discrimination.¹⁰⁰ A similar observation was made in a 2008 article published by the UNHCR, which claimed that Faili Kurds who had repatriated to Iraq were given identity cards of a different colour from those issued to other Iraqis.¹⁰¹

In April 2009, UNHCR stated that some minority groups, such as Shabak, Turkmen and Faili Kurds, who primarily adhere to the Shi'a branch of Islam, may be targeted by Sunni Islamists on the basis of their sectarian identity.¹⁰²

The Embassy in Baghdad reported in March 2010 that there had been no recent reports of Faili Kurds being specifically targeted by insurgent groups. However, it noted that there were reports that the mainstream Iraqi Shi'a community discriminated against Faili Kurds because they are Kurdish, not Arab, and that remnant Baathist forces in Iraq may still consider Faili Kurds to be "Iranian agents", particularly those returning from years in exile in Iran.¹⁰³

In October 2010, Associated Press reported that a suicide bomber targeted a café in the town of Balad Ruz, north of Baghdad, killing 21 people. The area was known to be home to many Faili Kurds and it was noted that many of the dead were Shi'a.¹⁰⁴

⁹⁹ CX258083: UNHCR views on security and returnees, DFAT - Baghdad, 3 February 2011.

¹⁰⁰ CX236340: Emerging caseload of Faili Kurds and Bedouins, DFAT- Baghdad, 13 November 2009

¹⁰¹ CX234148: Faili Kurds seek way out of identity impasse, UNHCR, 28 May 2008.

¹⁰² CIS17315: UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers, UNHCR, April 2009, p. 26.

¹⁰³ CX241148: Faili Kurds, DFAT- Baghdad, 18 March 2010.

¹⁰⁴ CX257328: IRAQ:Suicide bomber kills 21 north of Baghdad , Associated Press, 29 October 2010. See also CX259849: Suicide bomber kills 25 at cafe in Iraq's Diyala Province, The New York Times, 29 October 2010.

4.3 Framework for assessing claims (for more information see the Refugee Law Guidelines)

An individual with a well-founded fear of persecution on the basis of one of the five grounds in Article 1A of the 1951 Refugees Convention may be eligible for protection.

In order to reach a finding that an asylum seeker has a well-founded fear of persecution, there will need to be evidence that:

- the persecution involves serious harm to the person (s91R(1)(b) of the *Migration Act* refers, and s91R(2) will assist in determining what is serious harm);
- the persecution involves systematic and discriminatory conduct; and
- the ground identified is the essential and significant reason for the persecution (noting that there may be more than one Convention ground for persecution).

Statelessness is not a Refugees Convention ground. All claims raised by the applicants need to be closely examined in order to ascertain whether a fear of persecution can be supported against a Convention ground.

Stateless persons must be assessed against their country of former habitual residence. A legal right to return to a country is not a necessary condition that must be satisfied before that country can be regarded as a country of former habitual residence. Stateless Faili Kurds of Iraqi origin who resided in Iran for a duration that is more than a short term or temporary stay should in the first instance be assessed against Iran as their country of former habitual residence.

In assessing Faili Kurd applicants of Iraqi origin, for whom Iran is their country of former habitual residence, it should be considered whether the applicant has a right to enter and reside in Iraq, and if so, whether or not they would face persecution for a Convention reason in Iraq.

Under s36(3) - (5) of the *Migration Act*, Australia is taken not to have protection obligations to non-citizens who:

- have the right to enter and reside in a country (whether temporarily or permanently); and
- have not taken all possible steps to avail himself or herself of that right; and
- do not have a well-founded fear of being persecuted for a Convention reason in that country; and
- do not have a well-founded fear of being returned to that country where they will be persecuted for a Convention reason.

In all cases, the right to enter and reside must include an element of enforceability, in that the applicant would be able to assert the legal status of the (as yet unrevoked) right, against the authorities of the third country involved.

Authority on the operation of s36(3) indicates that an enforceable right to enter and reside must exist at the time of decision and not be a lapsed right. Accordingly, the existence of a 'legally enforceable right' is a matter to be considered with reference to the facts and circumstances of each application.

Issues for consideration

Reporting from a number of sources, including the UNHCR, WFP and the US State Department, indicates that while there is some level of formal and practical support for refugees and asylum seekers in Iran, they may face varying degrees of discrimination in education, health, employment and other areas. This may be due to their status as refugees or undocumented non-citizens.

Some sources indicate that Faili Kurds may experience a similar situation to other Kurdish and Arab refugees from Iraq. The International Consortium for Refugees in Iran noted that the standard of living of Kurdish refugees in Iran could vary greatly. UNHCR and OCHA expressed concern about deteriorating living conditions of Iraqi refugees due to increased costs of living and lack of access to government safety net programs.

Sources suggest that the Basij may be capable of causing the types of harm claimed by Faili Kurd asylum seekers. However, there is limited information available to assist in making a determination about whether or not this harm would be targeted towards Faili Kurds for Convention reasons.

Case officers need to examine the claims of applicants closely to determine if the cause of the claimed fear of harm in Iran is a Convention reason, and if the harm is of a level serious enough to amount to persecution. For example, the lack of specific information relating directly to the treatment of Faili Kurds makes it difficult to determine if the Iranian Government would discriminate against a Faili Kurd refugee on the basis of their race or ethnicity.

Construction of Faili Kurd claims around the Convention ground of Particular Social Group (PSG) is complex. For PSG claims, as with any other claim, it is necessary to both identify the Convention reason and then explain why it is that the person is being persecuted for that reason. The persecution needs to be for the Convention reason and must be systematic and discriminatory.

Discussion on what constitutes a PSG is contained in the Refugee Law guidelines. In summary, however, for a PSG to exist it is necessary for the group to be socially cognisable (as opposed to just being a demographic group) and persecution itself cannot be the defining element of the group.

Assessing Faili Kurds against the Convention ground of nationality is a matter for case by case assessment. The Refugee Law guidelines provide guidance on the definition of nationality. In this context, nationality refers to membership of an ethnic or linguistic group and may occasionally overlap with race. In the case of Faili Kurds of Iraqi origin, applicants may claim to face persecution for belonging to the 'nation' of Faili Kurds who live in Iran and Iraq or to the 'Iraqi nation'.

A case by case analysis is required to assess whether any harm feared by the individual constitutes persecution within the meaning of s91R of the *Migration Act*. While some acts alone may not equate to "serious harm" to a person, it must be considered if the act, combined with other evidence of discrimination and ill-treatment, amounts cumulatively to persecution.

When considering whether Faili Kurd applicants have a right to enter and reside in Iraq and their likely treatment in that country, it should be noted that according to several sources, including the UNHCR, it is possible for Faili Kurds to re-establish their Iraqi citizenship but also that this process has been described as long and complicated. If the applicant would be persecuted in Iraq for a Convention reason, then effective protection in Iraq is not available. Consideration should be given to the likely difficulties in reintegration, and any reports of discrimination against Faili Kurds in Iraq.

Questions for consideration

The following types of questions should be considered to support a well-evidenced, transparent and robust assessment, regardless of the outcome:

- There is evidence that discrimination against Faili Kurds of Iraqi origin in Iran may occur to varying degrees and may be due to their refugee or undocumented/unregistered status. Is the claimed harm for a Convention reason? Why/why not?
- There is evidence that discrimination against Faili Kurds of Iraqi origin in Iran may occur to varying degrees. Noting the application of Section 91R of the Migration Act, is the claimed harm serious enough to amount to persecution? Why/why not?
- There is evidence to suggest that the Basij are capable of causing harm through harassment and violence.
 - Are the Basij targeting the applicant for a Convention Reason?
 - Is there a real chance that the applicant will be targeted by the Basij in the future?
 - Is the claimed harm serious enough to amount to persecution?
- Will the Iranian government refuse to assist or provide some level of assistance such that the refusal would amount to persecution if the applicant was to be returned to Iran? What evidence suggests this?

5. RACE

5.1 Claims

Applicants may claim that they fear persecution by the Iranian Government on the basis of their race or ethnicity, including as members of Iran's Kurdish or Arab minority.

Key claims referring specifically to race include:

- fear of discrimination and persecution by the Iranian Government
- fear of being harassed, beaten or arbitrarily detained by the Basij or other Iranian security forces.

Note: Case officers will need to specify that claims about ethnicity are referring to the Convention ground of Race.

5.2 Country information

Treatment of ethnic minority groups

Iran is an ethnically diverse country. Persians comprise around 51 per cent of the population followed by Azeris (24 per cent), Gilaki and Mazandarani (8 per cent), Kurds (7 per cent), Arabs (3 per cent). Other smaller minorities include Baluchis, Turkmen and Lur.¹⁰⁵

The Constitution of the Islamic Republic of Iran grants equal rights to all ethnic minorities and allows for minority languages to be used in the media and schools.¹⁰⁶ However, several sources, including the US State Department, Minority Rights Group and Amnesty International, note that despite the constitutional guarantees of equality, members of ethnic minority groups, in particular those who demand greater respect for social and cultural rights, suffer varying levels of discrimination and, in some cases, harassment at the hands of the Iranian authorities.¹⁰⁷

Historically, the main grievances of Iran's ethnic minorities centred on such issues as teaching minority languages in schools, economic underdevelopment of minority regions, poor government representation and discrimination in accessing government jobs.¹⁰⁸

¹⁰⁵ CX241752: The World Factbook, United States of America: Central Intelligence Agency, 23 March 2010. See also CIS19853: Hussein D. Hassan, 'Iran: Ethnic and Religious Minorities', Congressional Research Service, 25 November 2008.

¹⁰⁶ CIS19806: Constitution of the Islamic Republic of Iran, National Legislative Bodies, 24 October 1979

¹⁰⁷ Country Report on Human Rights Practices 2010 – Iran, US Department of State, 8 April 2011; CX264809: Amnesty International Annual Report Iran 2011, Amnesty International, 13 May 2011; CX245994: State of the World's Minorities and Indigenous Peoples 2010 - Iran, Minority Rights Group International, 1 July 2010; CX256861: Restricting Iran's second mother tongue, Radio Free Europe / Radio Liberty, 23 February 2009; CIS19981: Seeking justice and an end to neglect: Iran's minorities today, Minority Rights Group, 16 February 2011.

¹⁰⁸ CIS19981: Seeking justice and an end to neglect: Iran's minorities today, Minority Rights Group International, 16 February 2011, p. 3; CIS19853: H. D. Hassan, 'Iran: Ethnic and Religious Minorities', Congressional Research Service, 25 November 2008; CIS19328: The hidden side of Iran: discrimination against ethnic and religious minorities, International Federation for Human Rights, October 2010, pp. 13-18.

In its 2010 country report on Iran, the US State Department stated that “the government disproportionately targeted minority groups, including Kurds, Arabs, Azeris and Baluch, for arbitrary arrest, prolonged detention, and physical abuse. These groups reported political and economic discrimination, particularly in their access to economic aid, business licences, university admissions, permission to publish books and housing and land rights.”¹⁰⁹ In February 2011, the US State Department noted that of the dozens of prisoners reportedly executed in 2011, most were members of ethnic minorities.¹¹⁰

Kurds

Reports note that since the 1940s, successive Iranian governments have sought to suppress the self-determination efforts of the country’s Kurdish minority, often viewing Kurdish political, social and cultural activism as a challenge to the unity of the Iranian state.¹¹¹ In 2008, the RAND Corporation noted that the government’s concern about Kurdish separatist tendencies could continue to drive its policy.¹¹²

Many sources, including Human Rights Watch and Amnesty International, report widespread discrimination against Iran’s Kurdish minority, particularly in areas such as employment, housing and education.¹¹³ Human Rights Watch reported in January 2011 that “the government restricts cultural and political activities among the country’s Azeri, Kurdish and Arab minorities, including the organisations that focus on social issues”.¹¹⁴

A western embassy interviewed by a 2008 fact finding mission of the Danish Immigration Service asserted that “even Kurds who are not politically active face increasing difficulties with the Iranian authorities such as discrimination and harassment solely on the grounds of their ethnicity”.¹¹⁵

A 2008 report by the Foreign Policy Centre stated that the “authorities find pretexts for persecuting Kurds who openly and non-violently profess their group identity”.¹¹⁶

The Kurdish Human Rights Project commented in 2009 that “expressions of minority identity are often seen as connected with conspiracy against the state. Journalists, activists and teachers who assert their Kurdish identity or who engage in social or political

¹⁰⁹ Country Report on Human Rights Practices 2010 – Iran, US Department of State, 8 April 2011.

¹¹⁰ CX259275: Deteriorating human rights situation in Iran, US Department of State, 23 February 2011.

¹¹¹ CIS17868: Human Rights and Kurds in Iran, Kurdish Human Rights Project, 26 August 2009; CIS16293: Human Rights Abuses against the Kurdish Minority, Amnesty International, 30 July 2008; CIS16900: Iran: Freedom of Expression and Association in the Kurdish Region, Human Rights Watch, 9 January 2009; CIS19817: Iran’s Political, Demographic, and Economic Vulnerabilities, RAND Corporation, 2008, pp. 52-53.

¹¹² CIS19817: Iran’s Political, Demographic, and Economic Vulnerabilities, RAND Corporation, 2008, p. 53.

¹¹³ See for example CIS16062: Report of the Special rapporteur on adequate housing – mission to the Islamic Republic of Iran, UN Economic and Social Council, 21 March 2006; CIS16293: Human Rights Abuses against the Kurdish Minority, Amnesty International, 30 July 2008, pp. 9-13; CIS16900: Iran: Freedom of Expression and Association in the Kurdish Region, Human Rights Watch, 9 January 2009; CIS16794: A revolution without rights? Women, Kurds and Bahais searching for equality in Iran, The Foreign Policy Centre, 24 November 2008, p. 40.

¹¹⁴ CIS19838: World Report 2011 - Iran, Human Rights Watch, 24 January 2011.

¹¹⁵ CIS17329: Human Rights Situation for Minorities, Women and Converts, and Entry and Exit Procedures, Danish Immigration Service, April 2009, p. 9.

¹¹⁶ CIS16794: A revolution without rights? Women, Kurd and Bahais searching for equality in Iran”, Foreign Policy Centre, 24 November 2008.

criticism are therefore frequently targeted with arbitrary arrest and prosecution on the pretext of national security".¹¹⁷

The UK Foreign and Commonwealth Office reported in 2011 that the Iranian authorities had used their fight against the Party of Free Life of Kurdistan to suppress the rights of the Kurdish minority, including cultural and linguistic rights.¹¹⁸

Numerous cases of arrest and detention of Kurdish political and human rights activists, media workers and students have been reported in recent years.¹¹⁹ (For more information on the treatment of Kurdish political activists see *People associated with Kurdish political organisations* under Political Opinion).

Arabs

Iran's Arabs, who are also referred to as Ahwazi Arabs, live mainly in the oil rich province of Khuzestan.¹²⁰ A 2011 report by the Minority Rights Group International stated that Khuzestan is beset by a range of problems resulting from a century of deliberate neglect and underdevelopment: higher illiteracy and unemployment rates and lower life expectancy than the rest of the country.¹²¹ In April 2011, Human Rights Watch noted that despite Khuzestan's natural resource wealth, its Arab population had long complained about the lack of socio-economic development in the region, alleging systematic government discrimination against them, especially in the areas of employment, housing, and civil and political rights.¹²²

In 2005, clashes erupted between Iranian security forces and Arabs protesting against alleged government plans to transfer Arabs from Khuzestan to other parts of Iran. According to a 2010 report of the International Federation for Human Rights (FIDH), as a result of excessive use of force by the authorities, scores of people were reported to have died during the clashes.¹²³

A 2010 report by the Unrepresented Nations and Peoples Organization stated that since the 2005 protests, there have been multiple instances of Ahwazi Arab activists being

¹¹⁷ CIS17868: Human Rights and the Kurds in Iran, Kurdish Human Rights Project, 26 August 2009, p.9.

¹¹⁸ CX263481: Human Rights and Democracy: The 2010 Foreign & Commonwealth Office Report - Iran, UK Foreign and Commonwealth Office, 31 March 2011.

¹¹⁹ CIS16293: Human Rights Abuses against the Kurdish Minority, Amnesty International, 30 July 2008; CIS16900: Iran: Freedom of Expression and Association in the Kurdish Regions, Human Rights Watch, 9 January 2009; CIS19158: Steadfast in Protest – Annual Report 2010, The Observatory for the Protection of Human Rights Defenders, 13 September 2010, p. 277; CX254075: A new wave of Arrests in Iran, Iran Human Rights Voice, 23 November 2010; CX250989: Freedom of the Press Country Report Iran 2010, Freedom House, 1 October 2010.

¹²⁰ CIS19103: Ahwazi Arabs, Unrepresented Nations and Peoples Organization, June 2010.

¹²¹ CIS19981: Nazila Ghanea and Binesh Hass, 'Seeking justice and an end to neglect: Iran's minorities today', Minority Rights Group International, 16 February 2011, p. 4. See also CIS19328: The hidden side of Iran: Discrimination against ethnic and religious minorities, International Federation for Human Rights, October 2010, pp. 14-15; CIS19103: Ahwazi Arabs, Unrepresented Nations and Peoples Organisation, June 2010, p. 2.

¹²² CX263720: Investigate reported killings of demonstrators, Human Rights Watch, 29 April 2011.

¹²³ CIS19328: The hidden side of Iran: Discrimination against ethnic and religious minorities, International Federation for Human Rights (FIDH), October 2010, p.13.

imprisoned with little explanation.¹²⁴ The 2010 FIDH report noted that since 2005, there have been reports of high numbers of executions of Arabs every year.¹²⁵

In April 2011, the US State Department reported that foreign representatives of the Ahwazi Arabs claimed their community “encountered oppression and discrimination, including the lack of freedom to study and speak Arabic”, and that human rights groups alleged torture and mistreatment of Ahwazi Arab activists.¹²⁶

In April 2011, a number of anti-government protests by Ahwazi Arabs took place in Khuzestan. Iranian human rights activists reported that security forces used live ammunition and teargas against the protesters, killing and injuring several people.¹²⁷ Human Rights Watch received reports that several hundred protesters and rights activists were arrested in connection with the protests.¹²⁸ Amnesty International noted that confirming details of events in Khuzestan was difficult, as security forces maintained tight control over the flow of information in and out of the region.¹²⁹

5.3 Framework for assessing claims (for more information see the Refugee Law Guidelines)

An individual with a well-founded fear of persecution on the basis of Race (one of the five grounds in Article 1A of the 1951 Refugees Convention) may be eligible for protection.

In order to reach a finding that an Iranian asylum seeker has a well-founded fear of persecution on the basis of race, there will need to be evidence that:

- the persecution involves serious harm to the person (s91R(1)(b) of the *Migration Act* refers, and s91R(2) will assist in determining what is serious harm);
- the persecution involves systematic and discriminatory conduct; and
- the applicant’s race is the essential and significant reason for the persecution (noting that there may be more than one Convention ground for persecution).

Applicants may claim that they are denied access to education and work opportunities. Such claims need to be explored carefully to determine if they constitute persecution for the purposes of the *Migration Act* and whether the denial is targeted and for a Convention reason, including by determining whether they can be classed as serious harm to the person.

¹²⁴ CIS19103: Ahwazi Arabs, Unrepresented Nations and Peoples Organization, June 2010, p.7.

¹²⁵ CIS19328: The hidden side of Iran: Discrimination against ethnic and religious minorities, FIDH, October 2010, p.15.

¹²⁶ Country Report on Human Rights Practices 2010 – Iran, US Department of State, 8 April 2011.

¹²⁷ CX263721: Violent suppression of protests in Khuzestan must stop , International Campaign for Human Rights in Iran, 28 April 2011; CX263720: Investigate reported killings of demonstrators, Human Rights Watch, 29 April 2011; CX263656: Fifteen dead in Iran's Ahwaz, Al Arabiya (TV), 18 April 2011.

¹²⁸ CX263720: Investigate reported killings of demonstrators, Human Rights Watch, 29 April 2011.

¹²⁹ CX264041: Iran Arab minority protest deaths must be investigated, Amnesty International, 19 April 2011.

Issues for consideration

The following issues for consideration are based primarily on information from the US State Department, the UK Foreign and Commonwealth Office, Human Rights Watch and Amnesty International.

These sources indicate that Kurds and Arabs of Iran may face discrimination in such areas as employment, education, housing and other social and cultural rights. Case officers need to determine whether such treatment equates to 'serious harm' and if the discrimination claimed amounts to persecution.

Regarding claims of harassment, arrest and detention, a case by case analysis is required to assess whether ethnic identity or race is the reason for such harassment. Sources indicate that members of the Kurdish minority who actively advocate for cultural and social rights may come to the attention of Iranian authorities. There are also reports of imprisonment and mistreatment of Arab activists.

Clear reasoning must be provided to illustrate how any claimed persecution relates to the Convention ground of race and not another ground such as political opinion.

Consideration should be given to the application of s91R(1)(a) and the requirement that the relevant Convention ground is the "essential and significant" reason for the persecution. This is in addition to the requirements that the persecution involves serious harm (as defined in s91R(2)) and that the persecution involves "systematic and discriminatory conduct".

Whether or not a "real chance" of persecution exists if the client were to return to Iran must also be considered. A 'real chance' is one that is not remote or far-fetched.

Questions for consideration

The following types of questions should be considered to support a well-evidenced, transparent and robust assessment, regardless of the outcome:

- What evidence supports the applicant's claims of persecution for the Convention ground of race? How is the agent of persecution responsible for the harm feared?
- If the applicant is claiming fear of harassment by the Basij, is the harassment due to their race? Why / why not?
- Certain acts of discrimination against minority groups may by themselves not constitute serious harm. Is the discrimination or harm claimed sufficiently serious to be considered persecution? Why / why not?
- Will the applicant, based on their race, be denied access to education or the ability to generate a livelihood, noting the application of s91R(2) of the Act? What evidence supports this?
- How does a 'real chance' of persecution exist if the applicant were to be returned to his or her home region?

6. RELIGION

6.1 Claims

Applicants may claim to fear persecution by Iranian authorities or non-state agents on the basis of their religion as Christians or Baha'is. Applicants may claim that they converted from Islam to Christianity or that they belong or converted to the Baha'i faith.

Key claims referring specifically to religion include:

- fear of being harassed, arrested, imprisoned and pressured to renounce their faith
- fear of being prosecuted and sentenced to death by the Iranian authorities
- fear of being harassed, beaten and seriously harmed by non-state agents, including family members, hardline Islamists and the general community.

6.2 Country Information

Treatment of religious minorities

The majority of Iran's population, 89 per cent, is Shi'a Muslim, 9 per cent is Sunni Muslim, and other religious groups, including Zoroastrians, Christians and Baha'is, constitute 2 per cent of the population.¹³⁰ Islam is the official state religion.¹³¹

In May 2011, Amnesty International reported that members of religious minorities in Iran suffered discrimination, harassment, arbitrary arrest and damage to community property.¹³²

In November 2010, the US State Department similarly noted that all non-Shi'a religious minorities suffered varying degrees of officially sanctioned discrimination, particularly in the areas of employment, education and housing. It further stated that government actions supported elements of society that created a threatening atmosphere for some religious minorities.¹³³

Sunni Muslims

Sunni Muslims are officially given a higher status than other religious minorities in Iran.¹³⁴ Iran's Sunni Muslims are comprised mostly of Kurds, Baluchis, Turkmen and Arabs.¹³⁵

A 2011 report by the US Commission on International Religious Freedom stated that Sunni leaders reported widespread abuses and restrictions on their religious practice, including abuse and detention of Sunni clerics, bans on Sunni teachings in public schools and

¹³⁰ CX241752: CIA The World Factbook, USA: Central Intelligence Agency, 23 March 2010.

¹³¹ CIS19806: Constitution of the Islamic Republic of Iran, National Legislative Bodies, 24 October 1979.

¹³² CX264809: Amnesty International Annual Report Iran 2011, Amnesty International, 13 May 2011. See also CIS17667: Iran: Christians and Converts, Landinfo, 10 June 2009, p. 6.

¹³³ Iran: International Religious Freedom Report 2010, US Department of State, 17 November 2010.

¹³⁴ CIS19861: Discrimination against Ethnic and Religious Minorities in Iran, International Federation for Human Rights, July 2010, p. 5.

¹³⁵ CIS19853: H. D. Hassan, 'Iran: Ethnic and Religious Minorities', Congressional Research Service, 25 November 2008, p. 7.

discrimination in the areas of government employment, particularly in leadership positions.¹³⁶

The Minority Rights Group International observed that Sunni Muslims do not have a single mosque in Tehran, where they form a sizeable population.¹³⁷

In November 2010, the US State Department noted that while many Sunnis claimed government discrimination against them, “it is difficult to distinguish whether the cause of discrimination was religious or ethnic, since most Sunnis are also members of ethnic minorities”.¹³⁸

Recognised religious minorities

According to the Iranian Constitution, Zoroastrians, Jews, and Christians are the only recognised religious minorities in Iran and, as such, are guaranteed freedom to practise their religion.¹³⁹

In May 2011, Freedom House reported that recognised religious minorities were generally allowed to worship without interference, so long as they did not proselytise.¹⁴⁰

The November 2010 US State Department report on International Religious Freedom noted that recognised minorities reported government harassment, intimidation and discrimination based on their religious beliefs.¹⁴¹

A 2009 report by Christian Solidarity Worldwide stated that although Armenian, Assyrian and Chaldean Christians live in relative peace in Iran, they suffer discrimination and limitations similar to those experienced by other recognised minorities, in terms of access to education, government and army positions.¹⁴²

Conversion to Christianity

The US State Department’s November 2010 report stated that proselytising of Muslims by non-Muslims is illegal. Evangelical church leaders are pressured by the authorities not to evangelise Muslims or allow Muslims to attend church services.¹⁴³

An April 2009 report of the Danish fact finding mission to Iran, which includes information gathered from Iranian and foreign sources in 2008, stated that conversion of a Muslim to any other religion and the act of proselytising to Muslims is considered apostasy in Iran.¹⁴⁴

¹³⁶ CX264035: USCIRF Annual Report 2011 - Countries of Particular Concern: Iran, US Commission on International Religious Freedom, 28 April 2011.

¹³⁷ CX258830: Iran’s minorities forgotten victims as government repression intensifies – new briefing, Minority Rights Group International, 16 February 2011.

¹³⁸ Iran: International Religious Freedom Report 2010, US Department of State, 17 November 2010.

¹³⁹ CIS19806: Constitution of the Islamic Republic of Iran, National Legislative Bodies, 24 October 1979.

¹⁴⁰ CX264609: Freedom in the World Country Report Iran 2011, Freedom House, 12 May 2011

¹⁴¹ Iran: International Religious Freedom Report 2010, US Department of State, 17 November 2010.

¹⁴² CIS19337: Iran Religious Freedom Profile 2009, Christian Solidarity Worldwide, September 2009, p. 12.

¹⁴³ Iran International Religious Freedom Report 2010, US Department of State, 17 November 2010.

¹⁴⁴ CIS17329: Human Rights Situation for Minorities, Women and Converts, and Entry and Exit Procedures..., Danish Immigration Service, April 2009, p. 29.

According to a number of sources, Armenian and Assyrian Churches in Iran do not accept converts.¹⁴⁵ Conversions reportedly also rarely happen within the Catholic Church.¹⁴⁶ The Danish fact finding mission's report indicated that most conversions took place within Christian groups in "house churches".¹⁴⁷ A source interviewed by the Danish mission also stated that evangelical churches accepted converts and were watched more carefully by the authorities.¹⁴⁸ In June 2009, the Norwegian Country of Origin Information Centre, Landinfo, reported that three protestant churches in Iran were evangelising toward Muslims.¹⁴⁹

Reports by Landinfo and the Danish Immigration Service observed that some Iranians wish to convert to Christianity in order to be able to seek asylum in Western countries.¹⁵⁰

Treatment of Christian Converts

In recent years, there have been reports of Christian converts being arrested and detained, including for propagation of Christianity, proselytising, apostasy, holding Bible studies and engaging in underground house church activity.¹⁵¹

Two western embassies interviewed by the Danish fact finding mission stated that many Iranians chose to convert to Christianity in secrecy as they feared the consequences, and that people rarely converted openly. They further noted that "if conversion comes to the knowledge of the authorities, then the person could face persecution". Another source interviewed by the Danish mission suggested that conversion only caused problems within the family and not with the authorities.¹⁵²

Landinfo reported in June 2009 that it was a precondition for avoiding problems that Christian converts behave discreetly and allow religious practice to take place within the confines of the religious community. The report further stated that all Christians, including converts, who evangelise in relation to Muslims, risk problems in the workplace and in the

¹⁴⁵ CIS17667: Iran: Christians and Converts, Landinfo, 10 June 2009, pp. 6-7; CIS19337: Iran Religious Freedom Profile 2009, Christian Solidarity Worldwide, September 2009, p. 12; CIS17329: Human Rights Situation for Minorities, Women and Converts, and Entry and Exit Procedures..., Danish Immigration Service, April 2009, p. 32.

¹⁴⁶ CIS17329: Human Rights Situation for Minorities, Women and Converts, and Entry and Exit Procedures..., Danish Immigration Service, April 2009, p. 32; CIS17667: Iran: Christians and Converts, Landinfo, 10 June 2009, p. 7.

¹⁴⁷ CIS17329: Human Rights Situation for Minorities, Women and Converts, and Entry and Exit Procedures..., Danish Immigration Service, April 2009, p. 33. See also CIS:17667: Iran: Christians and Converts, Landinfo, 10 June 2009, p. 7.

¹⁴⁸ CIS17329: Human Rights Situation for Minorities, Women and Converts, and Entry and Exit Procedures..., Danish Immigration Service, April 2009, p. 32.

¹⁴⁹ CIS 17667: Iran: Christians and Converts, Landinfo, 10 June 2009, p. 7.

¹⁵⁰ CIS17329: Human Rights Situation for Minorities, Women and Converts, and Entry and Exit Procedures..., Danish Immigration Service, April 2009, p. 32, CIS 17667: Iran: Christians and Converts, Landinfo, 10 June 2009, p. 7.

¹⁵¹ See for example CX264035: USCIRF Annual Report 2011 - Countries of Particular Concern: Iran, US Commission on International Religious Freedom, 28 April 2011; CIS19337: Iran Religious Freedom Profile 2009, Christian Solidarity Worldwide, September 2009, pp. 5-7; CX251191: The assault and arrest of a house-church pastor in Karaj, Farsi Christian News Network, 21 April 2010; CX240650: Iranian pastor tortured, threatened for 'converting Muslims', Compass Direct, 8 March 2010; CX234508: Authorities tighten grip on Christians amid unrest, Compass Direct, 11 August 2009; CX244491: Two Iranian Christian Women Acquitted of all Charges, Compass Direct, 27 May 2010; Iran: International Religious Freedom Report 2010, US Department of State, 17 November 2010.

¹⁵² CIS17329: Human Rights Situation for Minorities, Women and Converts, and Entry and Exit Procedures..., Danish Immigration Service, April 2009, p. 31.

local community. If a person is reported for apostasy, they can expect to be summoned for questioning and arrested by the authorities. The Landinfo report observed that “there are examples of converts who have enjoyed untroubled lives for many years only to experience problems with the authorities once they have been ordained as priests.”¹⁵³

A September 2009 report by Christian Solidarity Worldwide stated that Muslim converts to Christianity were the most vulnerable among Christians in Iran. Even though Christians from a Muslim background were able to practise their faith, those who were in leadership positions and led Christian ministries faced serious risk of detention, intimidation, imprisonment and extra-judicial harm.¹⁵⁴ The report further noted that the Iranian police continued to detain apostates for brief periods, pressured them to recant their Christian faith, and that there were reports of apostates being denied exit at the borders.¹⁵⁵

The UK Foreign and Commonwealth Office reported that at the end of 2010, Christians from informal “house churches”, those who had converted from Islam and those involved in evangelism faced mounting harassment.¹⁵⁶

In January 2011, several sources reported that in two weeks since 25 December 2010 the Iranian authorities arrested dozens of Christians and that the arrests appeared focused on individuals who had converted or sought to convert others from Islam.¹⁵⁷ Tehran’s governor reportedly confirmed there had been detentions and suggested that the arrests targeted “Protestant evangelicals” who were conducting an “enemy cultural invasion”.¹⁵⁸

Penalties for apostasy

Apostasy is not codified in the Penal Code of Iran.¹⁵⁹ In September 2008, the Parliament enacted a revision to the Penal Code to make conversion from Islam punishable by death for men or life imprisonment for women. On 23 June 2009, the Legal and Judicial Committee of the Parliament recommended removing the revision from the Penal Code.¹⁶⁰

The April 2009 report of the Danish fact finding mission noted that, in accordance with the Shari’a law, apostasy is punishable by death or lifetime imprisonment. It further stated that the arbitrariness in the application of law made it difficult to know the degree of punishment for conversion.¹⁶¹

¹⁵³ CIS 17667: Iran: Christians and Converts, Landinfo, 10 June 2009, pp. 11, 12.

¹⁵⁴ CIS19337: Iran Religious Freedom Profile 2009, Christian Solidarity Worldwide, September 2009, p. 7.

¹⁵⁵ CIS19337: Iran Religious Freedom Profile 2009, Christian Solidarity Worldwide, September 2009.

¹⁵⁶ CX263481: Human Rights and Democracy: The 2010 Foreign & Commonwealth Office Report - Iran, UK Foreign and Commonwealth Office, 31 March 2011.

¹⁵⁷ CX256086: Farnaz Fassihi and Matt Bradley, ‘Iran Targets Christians with a Wave of Arrests’, The Wall Street Journal, 7 January 2011; CX256208: Iran arrests dozens of evangelical Christians, Voice of America, 7 January 2011; CX255947: Iran arrests Christian missionaries: official, Agence France Presse, 4 January 2011.

¹⁵⁸ Cited in CX256208: Iran Arrests Dozens of Evangelical Christians, Voice of America, 7 January 2011.

¹⁵⁹ CIS 17667: Iran: Christians and Converts, Landinfo, 10 June 2009, p. 9.

¹⁶⁰ Iran: International Religious Freedom Report 2010, US Department of State, 17 November 2010.

¹⁶¹ CIS17329, Human Rights Situation for Minorities, Women and Converts, and Entry and Exit Procedures..., Danish Immigration Service, April 2009, p. 29.

In May 2010, Amnesty International reported that “[c]onverts from Islam were at risk of attack as well as prosecution for “apostasy”, which is punishable by death”.¹⁶²

In November 2010, the US State Department reported that death sentences for apostasy have previously been issued under judicial interpretations of Shari’a.¹⁶³ According to Landinfo, the last time such a verdict was carried out was in 1990, when a priest was executed for apostasy, evangelisation and US espionage.¹⁶⁴

In December 2010, the International Campaign for Human Rights in Iran reported that a Christian pastor, Youcef Nadarkhani, was sentenced to death for renouncing his Muslim religion.¹⁶⁵ In July 2011, Iran’s Supreme Court reportedly overturned Nadarkhani’s death sentence and sent the case back to the court in Rasht, asking the accused to repent.¹⁶⁶

Baha’is

In its August 2010 report, Amnesty International stated that the Iranian authorities denied Baha’is equal rights to education, work and a decent standard of living by restricting their access to employment and benefits, such as pensions. It further noted that Baha’is were not permitted to meet, hold religious ceremonies or practise their religion communally.¹⁶⁷

The UN Secretary General’s report from September 2010 stated that members of unrecognised religions in Iran, in particular the Baha’is, faced multiple forms of discrimination and harassment, including denial of employment, government benefits and access to higher education. The report noted that some members of the Baha’i community had faced arbitrary detention or the confiscation and destruction of their property.¹⁶⁸

The US State Department’s November 2010 report stated that throughout 2009 Baha’is in several cities were targets of arson attacks and that in all cases police said nothing could be done to find the perpetrators. It also noted that as of June 2010 dozens of Baha’is were awaiting trial, while others were sentenced to different prison terms in 2009 and 2010.¹⁶⁹

Amnesty International reported that on 7 August 2010, seven Baha’i leaders were convicted of crimes, including “espionage for Israel”, “insulting religious sanctities”, and “propaganda against the system”.¹⁷⁰ In October 2010, Cable News Network reported that

¹⁶² CX244399: Amnesty International Annual Report Iran 2010, Amnesty International, 28 May 2010.

¹⁶³ Iran: International Religious Freedom Report 2010, US State Department, 17 November 2010.

¹⁶⁴ CIS 17667: Iran: Christians and Converts, Landinfo, 10 June 2009, p. 11. See also CX212223: Hanged for being a Christian in Iran, Telegraph Group - UK, 11 October 2008.

¹⁶⁵ CX254856: Unprecedented death sentence for Christian pastor on charge of apostasy, International Campaign for Human Rights in Iran, 7 December 2010. See also, CX264809: Amnesty International Annual Report Iran 2011, Amnesty International, 13 May 2011.

¹⁶⁶ CX268006: Iran 'annuls death term' for Christian pastor, Agence France Presse, 3 July 2011.

¹⁶⁷ CX247349: Sentences against jailed Iranian religious minority leaders condemned, Amnesty International, 10 August 2010. See also CX264609: Freedom in the World Country Report Iran 2011, Freedom House, 12 May 2011.

¹⁶⁸ CIS19633: The Situation of Human Rights in the Islamic Republic of Iran – Report of the Secretary-General, UN General Assembly, 15 September 2010. p. 11.

¹⁶⁹ Iran: International Religious Freedom Report 2010, US State Department, 17 November 2010.

¹⁷⁰ CX247349: Sentences against jailed Iranian religious minority leaders condemned, Amnesty International, 10 August 2010.

ten Baha'is were arrested in January 2010 and accused of organising the Ashura Day anti-government protests.¹⁷¹

6.3 Framework for assessing claims (for more information see the Refugee Law Guidelines)

Claims of persecution involving serious harm (s91R(1)(b) and s91R(2)) perpetrated for reasons of religious belief must be carefully investigated and assessed.

An individual with a well-founded fear of persecution on the basis of religion (one of the five grounds in Article 1A of the 1951 Refugees Convention) may be eligible for further assessment of protection.

Applicants may claim they are targeted due to their religion and that they are subject to restrictions on practising their religion, or that they suffer discrimination because of their religion. The details of each applicant's claim need to be explored in order to assess whether the harm feared amounts to persecution as defined by the *Migration Act*.

In order for a case officer to be satisfied that an asylum seeker is suffering persecution on the basis of religion, there must be evidence that:

- the harm feared involves serious harm to the person (s91R(1)(b) of the *Migration Act* refers, and s91R(2) will assist in determining what is serious harm);
- the persecution involves systematic and discriminatory conduct; and
- the applicant's religion is the essential and significant reason for the persecution (noting that there may be more than one Convention reason for persecution).

Applicants may also claim that while they had not experienced persecution, they fear it upon return due to their conversion to Christianity or the Baha'i faith in Australia. It should be noted that it is a requirement under s91R (3) of the *Migration Act* to discount any conduct engaged in by a claimant in Australia for the sole purpose of strengthening refugee claims.

Issues for consideration

Most sources, including Amnesty International and the US State Department, acknowledge that religious minorities in Iran may be subject to various degrees of discrimination.

Freedom House has indicated that members of recognised minority religions may experience greater religious freedoms than non-recognised minorities.

Case officers must assess whether claimed discrimination faced by individuals belonging to religious minorities, in particular in the areas of accessing employment and education, amounts to serious harm, including "significant economic hardship" or "denial of capacity to earn a livelihood".

¹⁷¹ CX250639: Iran sentences Baha'i aide to Nobel laureate to 2 years in jail, Cable News Network, 2 October 2010.

Regarding claims of harassment, arrest and detention, consideration should be given to the evidence that some members of religious minorities, including converts to Christianity, Baha'is and Christians involved in proselytising, have reportedly been subject to arbitrary arrest and harassment by the authorities and non-state agents. The circumstances of individual applicants must be considered to assess whether the Convention ground of religion is the reason for such harassment, and whether or not the harm feared amounts to persecution.

Sources acknowledge that both conversion to Christianity, which can be considered apostasy, and proselytising do occur, the penalties for which can reportedly include imprisonment. Landinfo and Christian Solidarity Worldwide suggest that converts to Christianity who occupy leadership positions in the church or engage in active proselytising may be at risk of harm by the Iranian authorities.

Consideration should also be given to whether such claims of persecution are related to any other Convention ground. For example, religious leaders may be at risk due to their influence in the community and/or opposition to the current regime rather than being targeted because of their religious beliefs.

Where harm stems from a family situation, such as being cast out for transgressing a family or social norm, consideration should be given to the level of involvement of the State. For example, if a son is cast out of home on account of his conversion to a new religion, the fact that the son has been cast out is, by itself, not likely to lead to protection obligations being owed. However, where the State is also an agent in the persecution, by virtue of them turning a blind eye to the situation, and where the level of persecution meets the s91R test, then a successful claim for protection is more likely.

Whether or not a "real chance" of persecution exists if the client were to return to Iran should be established.

Questions for consideration

The following types of questions should be considered to support a well-evidenced, transparent and robust assessment, regardless of the outcome:

- Country information suggests that members of some minority religions are able to practise their religion. How does the applicant's claim of persecution relate to the Convention ground of religion? What evidence supports this?
- Evidence indicates that religious minorities may experience discrimination in Iran. Is the harm or discrimination feared sufficiently serious to be considered persecution? Why/why not?
- Country information indicates that it may primarily be religious leaders and people engaged in active proselytising that come to the attention of the authorities. Can the applicant establish that they have a particular profile which likely would draw them to the attention of the State?

7. POLITICAL OPINION

7.1 Claims

Applicants may claim to fear persecution by state agents for reasons of their real or imputed political opinion. Many of these claims may relate to protests that occurred following the post-June 2009 presidential election.

Applicants may claim that:

- they, or a family member, participated in post-June 2009 election anti-government demonstrations and have been identified by Iranian security agents
- they, or a family member, supported opposition candidates and helped organise protests
- they, or a family member, organised or participated in anti-Iranian government protests outside Iran and have been identified by Iranian government agents or informants
- they have used social networking websites to voice their opposition to the Iranian regime
- they, or a family member, supported a Kurdish political party
- if returned to Iran, they will face persecution on the basis of an imputed political opinion because they sought asylum abroad.

Fear of persecution for the above reasons includes fear of being arrested, imprisoned, seriously harmed or killed by state agents.

7.2 Country information

Treatment of post-June 2009 election protesters

Following the announcement of the 12 June 2009 presidential election results mass protests broke out throughout Iran. According to Amnesty International, the police, Revolutionary Guard and the Basij militia used excessive force to disperse protesters, including tear gas, baton and motorcycle charges and sometimes live ammunition.¹⁷² Iranian officials estimated that 36 people were killed during the post-election unrest, however, opposition and other sources put the figure of those killed by the security forces at over 70.¹⁷³

According to a range of sources, approximately 4000 to 5000 people were detained in the aftermath of the June 2009 protests.¹⁷⁴ A further 1000 people were reportedly detained during and after the Ashura Day protests on 27 December 2009.¹⁷⁵

¹⁷² CIS18098: Iran: elections contested, repression compounded, Amnesty International, December 2009.

¹⁷³ CX231494: Iran admits 4,000 June detentions, British Broadcasting Corporation, 11 August 2009; CX230867: Iran election protests: the dead, jailed and missing, The Guardian, 29 July 2009; CIS18288: K. Katzman, 'Iran: U.S. Concerns and Policy Responses', Congressional Research Service, 6 January 2010.

¹⁷⁴ CIS18830: From protest to prison: Iran one year after the election, Amnesty International, 9 June 2010; CX238868: Human Rights Watch World Report Iran 2010, Human Rights Watch, 20 January 2010; Country Report on Human Rights Practices 2009 – Iran, US Department of State, 11 March 2010.

¹⁷⁵ CIS18830: From protest to prison: Iran one year after the election, Amnesty International, 9 June 2010, p. 5.

According to numerous reports and witness testimonies, detainees arrested in connection with the post-election protests were held in harsh conditions, with many being subjected to torture and other forms of ill-treatment.¹⁷⁶

As noted in a number of sources, on 1 August 2009, the first in a series of televised mass “show trials” of more than 100 opposition politicians and activists detained after the 12 June election was held by the Tehran Revolutionary Court. Among those on trial were senior pro-reform politicians, lawyers and journalists.¹⁷⁷

In January 2010, Agence France Presse reported that the police published photographs of Ashura Day protesters encouraging the public to help with their arrest.¹⁷⁸ In August 2010, The Christian Science Monitor also reported that photographs of Ashura Day protesters were published on a pro-government website *Raja news*. The readers were asked to identify those in the photographs to the police.¹⁷⁹

In June 2010, Amnesty International stated that most of those arrested in the aftermath of June 2009 protests were released after days or weeks, but some were held for months.¹⁸⁰ Amnesty International has also noted that at mid-November 2009, as many as 200 alleged protesters remained in jail.¹⁸¹ In a more recent May 2011 report, Amnesty International stated that “scores if not hundreds of people arrested in connection with the mass protests in 2009 continued to be held, most of them serving prison terms, although others were released. Scores more were arrested throughout 2010”.¹⁸²

In January 2011, Reuters reported that the majority of those detained for fomenting unrest after the 2009 election were freed, but more than 80 people were jailed for up to 15 years and five were sentenced to death.¹⁸³

A number of sources reported that according to Iran’s state media, on 23 January 2011, two men were executed for their membership of the opposition Mujahedin-e Khalq Organisation and for making and distributing videos and photographs of post-election protests.¹⁸⁴

¹⁷⁶ CIS18098: Iran: Elections Contested, Repression Compounded, Amnesty International, December 2009, p. 10; CIS18245: The Islamic Republic at 31: Post-election Abuses Show Serious Human Rights Crisis, Human Rights Watch, 11 February 2010; CIS18316: Violent Aftermath: The 2009 election and suppression of dissent in Iran, Iran Human Rights Documentation Center, 10 February 2010; CIS18046: Accelerating Slide into Dictatorship, International Campaign for Human Rights in Iran, 21 September 2009.

¹⁷⁷ Country Report on Human Rights Practices 2010 – Iran, US Department of State, 8 April 2011; CX231212: Show trial exposes arbitrary detention, Human Rights Watch, 4 August 2009; CX231344: Iranian writers in danger at “Show Trials”, Middle East Report Online, 7 August 2009; CIS18316: Violent Aftermath: The 2009 Election and Suppression of Dissent in Iran, Iran Human Rights Documentation Centre, 10 February 2010, pp. 75-85.

¹⁷⁸ CX243609: More than 40 arrested after demo photos: Iran police, Agence France Presse, 19 January 2010.

¹⁷⁹ CX254138: Iran uses Internet as tool against protesters, The Christian Science Monitor, 4 January 2010.

¹⁸⁰ CIS18830: From protest to prison: Iran one year after the election, Amnesty International, 9 June 2010, p. 9.

¹⁸¹ CIS18098: Iran: Elections Contested, Repression Compounded, Amnesty International, December 2009, p. 10.

¹⁸² CX264809: Amnesty International Annual Report Iran 2011, Amnesty International, 13 May 2011.

¹⁸³ CX257014: Iran hangs two for involvement in vote unrest – report, Reuters, 24 January 2011.

¹⁸⁴ CX257026: Report: Iran hangs 2 men who made videos of post-election turmoil, Cable News Network, 24 January 2011; CX257014: Iran hangs two for involvement in vote unrest – report, Reuters, 24 January 2011; CX257028: Two political prisoners arrested after elections executed, International Campaign for Human Rights in Iran, 24 January 2011.

Treatment of government opponents and political and civil society activists

A range of sources have reported that following the post-June 2009 election protests, the authorities arrested politicians affiliated with the reform movement, human rights and student activists, writers, academics, lawyers who defended political detainees, journalists, bloggers and family members of high profile reformist or opposition politicians.¹⁸⁵

According to the US-based Iran Human Rights Documentation Center (IHRDC), the scope of the post-election arrests went far beyond individuals associated with the reformist movement. In February 2010, the IHRDC reported that, "it appears that the regime was targeting anyone who might be a potential leader in opposing government policies."¹⁸⁶

On 8 February 2010, The Christian Science Monitor noted that "while several prominent journalists and human rights activists have been detained at the airport, a large number believed to be on government watchlists have slipped through, thanks to bureaucratic delays and also because Tehran's new airport may not be integrated into the country's security network."¹⁸⁷

In January 2011, Human Rights Watch reported that authorities have executed at least nine political dissidents since November 2009, all of them convicted of "enmity against God" for their alleged ties to armed groups.¹⁸⁸

The US State Department's April 2011 report noted that human rights activists estimated that hundreds of citizens were imprisoned for their political beliefs and that approximately 500 democracy activists and journalists were in detention in Evin Prison alone. It also noted that according to opposition reports, the government arrested, convicted and executed persons on questionable criminal charges when their actual offences were reportedly political.¹⁸⁹

In its May 2011 report Amnesty International stated that security officials continued to arbitrarily arrest government opponents and people seen to be dissenting from officially approved values on account of their views or lifestyle. Those arrested included human rights activists, independent trade unionists, students and political dissidents.¹⁹⁰

¹⁸⁵ CIS18245: The Islamic Republic at 31: Post-election Abuses Show Serious Human Rights Crisis, Human Rights Watch, 11 February 2010, pp.12-14; CIS18830: From protest to prison: Iran one year after the election, Amnesty International, 9 June 2010, p 9; CX232270: Relative of Iranian Election Candidate Held, Amnesty International, 24 August 2009; CIS17657: Crackdown in Iran, Iran Human Rights Documentation Center, July 2009; CX240908: Journalists forced to confess in show trials; detainees tortured, IFEX, 23 September 2009; CX240008: Attacks on the Press 2009: Iran, Committee to Protect Journalists, 16 February 2010; CX240342: Press freedom violations recounted in real time (from 1st January 2010), Reporters sans Frontieres, 19 February 2010

¹⁸⁶ CIS18316: Violent Aftermath: The 2009 Election and Suppression of Dissent in Iran, Iran Human Rights Documentation Center, 10 February 2010, p. 61.

¹⁸⁷ CX253261: How Iranian dissidents slip through Tehran's airport dragnet, The Christian Science Monitor, 8 February 2010.

¹⁸⁸ CIS19838: World Report 2011 - Iran, Human Rights Watch, 24 January 2011.

¹⁸⁹ Country Report on Human Rights Practices 2010 – Iran, US Department of State, 8 April 2011.

¹⁹⁰ CX264809: Amnesty International Annual Report Iran 2011, Amnesty International, 13 May 2011. See also CX268210: Regime rejects UN rapporteur visit, continues to crack down on free expression, Reporters sans Frontieres, 5 July 2011

February-March 2011 demonstrations

The latest wave of arrests of government opponents was sparked by demonstrations called for on 14 February 2011 by opposition leaders Mehdi Karroubi and Mir Hossein Mousavi,¹⁹¹ who were subsequently detained by the authorities along with their family members.¹⁹² On 2 March 2011, Human Rights Watch reported that since 14 February, three mass protests organised by the opposition had taken place in Tehran and other cities. According to Human Rights Watch, the authorities responded with violent attacks on peaceful protesters and reportedly arrested dozens in Tehran and other major cities.¹⁹³ Human Rights Watch noted that it could not verify the number of arrests during the protests that began on 14 February.¹⁹⁴

Treatment of relatives of dissidents and government critics

There are a number of reports of detention by the Iranian authorities of family members of prominent dissidents and critics of the government. Most of the detained family members have themselves reportedly been politically active.¹⁹⁵

The US State Department noted that the Ministry of Intelligence and Security reportedly “arrested and harassed family members of political prisoners and human rights activists, banning them from speaking to foreign media or travelling abroad, blocking their telephone conversations, making false criminal charges against them, and blocking their access to higher education.”¹⁹⁶

Treatment of people who participated in protests outside Iran

Several reports in Western and Australian media stated that the Iranian regime monitored post-election protests organised by Iranians living abroad and that some of the participants of these protests were intimidated by the authorities upon their return to Iran.¹⁹⁷

¹⁹¹ CX261476: UN to monitor human rights situation in Iran, Amnesty International, 25 March 2011. See also CX259797: Iran arrests hundreds of protesters, Radio Zamaneh, 2 March 2011.

¹⁹² CX259806: Free opposition leaders and their families, Human Rights Watch, 2 March 2011.

¹⁹³ CX259806: Free opposition leaders and their families, Human Rights Watch, 2 March 2011; CX259804: End violence against protesters, Human Rights Watch, 3 March 2011. See also CX259146: Additional Iranian student arrested, Amnesty International, 22 February 2011; CX259797: Iran arrests hundreds of protesters, Radio Zamaneh, 2 March 2011.

¹⁹⁴ CX259804: End violence against protesters, Human Rights Watch, 3 March 2011.

¹⁹⁵ CX258930: Ex-president Rafsanjani daughter arrested in Iran, British Broadcasting Corporation, 20 February 2011; CX233489: Iran arrests children of dissident clerics, The New York Times, 15 September 2009; CX232270: Relative of Iranian Election Candidate Held, Amnesty International, 24 August 2009; CIS17657: Crackdown in Iran, Iran Human Rights Documentation Centre, July 2009; CX232852: Harsh crackdown extends to leading opposition figures, Inter Press Service, 23 June 2009; CX229909: Son of Iranian opposition theoretician arrested, Tabnak, 13 July 2009; CX259806: Free opposition leaders and their families, Human Rights Watch, 2 March 2011.

¹⁹⁶ Country Report on Human Rights Practices 2010 – Iran, US Department of State, 8 April 2011.

¹⁹⁷ CX254009: 2,000 protest in heart of London over ‘rigged’ Iranian election, The Times, 11 July 2009; CX239671: Iranian crackdown goes global, The Wall Street Journal, 3 December 2009; CX241920: Iranian embassy in Canberra ‘spying on activist students’, The Australian, 6 April 2010; CX241919: Iranian students living in Australia held on trips back to Iran, The Australian, 8 April 2010; CX241305: Inside Iran’s crackdown, The Wall Street Journal, 19 March 2010. See also CX254025: Using Photographs of Protests Outside Iran to Intimidate Arriving Passengers at the Airport, International Campaign for Human Rights in Iran, 7 February 2010.

An investigation by The Wall Street Journal, published in December 2009, found that Iranian expatriates who criticised the Iranian regime online or in public demonstrations faced threats intended to silence them. Several people interviewed by the paper stated that they were intimidated and detained on arrival at Tehran International Airport, while others claimed that their relatives in Iran were temporarily detained.¹⁹⁸

According to a February 2010 report by the International Campaign for Human Rights in Iran, authorities in the Tehran International Airport had been collecting photographs of Iranians in protest gatherings outside Iran. Several people reported being detained at the airport while their faces were being compared to these photographs.¹⁹⁹

In April 2010, the Iranian embassy in Canberra rejected accusations that it closely monitored the movements of Iranian students in Australia and reported back to Tehran.²⁰⁰

Amnesty International stated in June 2010 that Iranians who left Iran to study or for other non-political reasons, but who have publicly expressed dissatisfaction with the events in Iran, may face increased risks should they return to Iran.²⁰¹

Government monitoring of the Internet

In April 2011, Freedom House reported that “Iranian internet users suffer from routine surveillance, harassment, and the threat of imprisonment for their online activities, particularly those who are more critical of the authorities”.²⁰²

In April 2011, the US State Department noted that during 2009 the government prosecuted and punished persons for peaceful expression of dissenting views via the Internet. It further stated that the government monitored Internet communications, especially via social networking websites such as Facebook, Twitter and Youtube.²⁰³

In November 2010, Reporters Without Borders noted that ten Iranian bloggers were in prison in Iran.²⁰⁴

According to the December 2009 Wall Street Journal article, dozens of individuals in the US and Europe who criticised Iran on Facebook and Twitter claimed that their relatives back in Iran were questioned or temporarily detained because of their online postings.²⁰⁵

People associated with Kurdish political organisations

A number of banned Kurdish political parties operate in Iran, including the Kurdistan Democratic Party of Iran (KDPI), Komala and the Kurdistan Independent Life Party

¹⁹⁸ CX239671: Farnaz Fassihi, ‘Iranian crackdown goes global’, The Wall Street Journal, 3 December 2009.

¹⁹⁹ CX254025: Using Photographs of Protests Outside Iran to Intimidate Arriving Passengers at the Airport, International Campaign for Human Rights in Iran, 7 February 2010.

²⁰⁰ CX241919: Iranian students living in Australia held on trips back to Iran, The Australian, 8 April 2010.

²⁰¹ CIS18830: From protest to prison: Iran one year after the election, Amnesty International, 9 June 2010, p. 61.

²⁰² CIS20461: Freedom on the Net 2011 – Iran, Freedom House, 18 April 2011.

²⁰³ Country Report on Human Rights Practices 2010 – Iran, US Department of State, 8 April 2011.

²⁰⁴ CX253808: World’s youngest detained blogger on trial in northern Iran, Reporters sans Frontieres, 18 November 2010.

²⁰⁵ CX239671: Farnaz Fassihi, ‘Iranian crackdown goes global’, The Wall Street Journal, 3 December 2009.

(PJAK).²⁰⁶ In February 2009, the US Department of the Treasury designated PJAK a terrorist organisation controlled by Turkey-based Kurdistan Workers' Party.²⁰⁷

According to a July 2008 Amnesty International report "scores if not hundreds of political prisoners affiliated to the KDPI and other proscribed political parties are serving prison sentences, convicted after unfair trials. Others face prosecution for membership of or sympathy with the KDPI".²⁰⁸

A source interviewed by the Danish fact finding mission in 2008 noted that being in possession of a CD or a pamphlet made by the KDPI, Komala or other Kurdish organisations, may be considered as an act against national security.²⁰⁹

In January 2010, Human Rights Watch stated that in the provinces of Azerbaijan and Kurdistan, the government restricted cultural and political activities.²¹⁰

The US State Department noted that according to human rights groups 21 Kurdish political prisoners faced execution in Iran in 2010.²¹¹ In June 2011, Amnesty International reported that at least 16 Kurds were believed to be on death row in connection with their alleged membership of and activities for banned Kurdish organisations.²¹² Many of the Kurds sentenced to death in Iran are reportedly accused of membership or support of PJAK.²¹³

Freedom House reported in May 2011 that "Kurdish opposition groups suspected of separatist aspirations, such as the KDPI, are brutally suppressed".²¹⁴

Reports by Amnesty International (2008) and Human Rights Watch (2009) documented numerous cases of government targeting of Kurdish rights activists, media workers and students.²¹⁵

²⁰⁶ CIS16293: Human Rights Abuses Against the Kurdish Minority, Amnesty International, 30 July 2008, pp. 5-6.

²⁰⁷ CX235658: Treasury designates Free Life Party of Kurdistan a terrorist organization, US Department of the Treasury, 4 February 2009.

²⁰⁸ CIS16293: Human Rights Abuses Against the Kurdish Minority, Amnesty International, 30 July 2008, p. 5. See also CX264809: Amnesty International Annual Report Iran 2011, Amnesty International, 13 May 2011 and CX244399: Amnesty International Annual Report Iran 2010, Amnesty International, 28 May 2010.

²⁰⁹ CIS17329: Human Rights Situation for Minorities, Women and Converts, and Entry and Exit Procedures..., Danish Immigration Service, April 2009, p. 9.

²¹⁰ CX238868: Human Rights Watch World Report Iran 2010, Human Rights Watch, 20 January 2010.

²¹¹ Country Report on Human Rights Practices 2010 – Iran, US Department of State, 8 April 2011.

²¹² CX267665: Environmentalist arrested in Iran, Amnesty International, 22 June 2011. See also CX263709: Halt execution of Kurdish activist, Human Rights Watch, 30 April 2011, and CX236313: Iran executes Kurdish activist, The New York Times, 11 November 2009.

²¹³ CIS17899: Iran: Worsening Repression of Dissent as Election Approaches, Amnesty International, February 2009; CIS17193: Human rights situation in the Islamic Republic of Iran, International Federation for Human Rights, March 2009; CX256947: Iran has hanged 47 people in three weeks, say human rights groups, The Guardian, 18 January 2011

²¹⁴ CX264609: Freedom in the World Country Report Iran 2011, Freedom House, 12 May 2011.

²¹⁵ CIS16293: Human Rights Abuses against the Kurdish Minority, Amnesty International, 30 July 2008; CIS16900: Iran: Freedom of Expression and Association in the Kurdish Regions, Human Rights Watch, 9 January 2009. See also CIS19158: Steadfast in Protest – Annual Report 2010, The Observatory for the Protection of Human Rights Defenders, 13 September 2010, p. 277.

Treatment of returned failed asylum seekers

The US State Department reported in 2008 that “[c]itizens returning from abroad occasionally were subjected to searches and extensive questioning by government authorities for evidence of anti-government activities abroad.”²¹⁶

Several sources interviewed by the Danish fact finding mission in 2008 indicated that persons arriving in Iran on a travel document issued by an Iranian embassy, especially those who left Iran illegally, may be questioned on arrival.²¹⁷

In August 2008, in response to a question posed by the Belgian government on the treatment of returned failed asylum seekers to Iran, eight Western countries (Canada, Germany, Ireland, the Netherlands, New Zealand, Spain, Sweden and Switzerland) indicated that they had no information “on problems of persecution for returned failed asylum seekers in Iran since 2006”.²¹⁸

Conversely, Western media and NGOs have reported several incidents of mistreatment and detention of returned failed asylum seekers.²¹⁹ Some of these reports suggest that returned asylum seekers detained by the Iranian authorities had ‘anti-government’ profiles, such as being a student activist²²⁰ or perceived Arab political activist,²²¹ or drew attention to their bid for asylum abroad.²²²

According to Dr David Corlett (formerly of La Trobe University) in 2005, the experiences of returnees to Iran varied, with some not being “particularly targeted on arrival”, while others were detained and interrogated.²²³ Dr Corlett, who interviewed ten repatriated failed asylum seekers in Iran, also stated that one of the returnees was detained and tortured but that it was unclear as to why this person was targeted.²²⁴

On 17 February 2011, in an article published by *Iran Newspaper*, a retired Iranian Supreme Court judge suggested that returned failed asylum seekers could be prosecuted for creating accounts of alleged persecution in Iran.²²⁵

²¹⁶ Country Report on Human Rights Practices 2007 - Iran, US Department of State, 11 March 2008.

²¹⁷ CIS17329: Human Rights Situation for Minorities, Women and Converts, and Entry and Exit Procedures..., Danish Immigration Service, April 2009, pp. 38-39.

²¹⁸ CIS16569: Return of Rejected Asylum Seekers from Iran: Request by Belgium, Intergovernmental Consultation on Migration, Asylum and Refugees, 12 September 2008, p. 2.

²¹⁹ CX126256: Deportations to Iran rising despite torture concerns, *Globe and Mail*, 2 April 2005; CX181118: 'How I escaped from torture in Iran', British Broadcasting Corporation, 16 July 2007; CX174973: Ethnic Arab Refugees Face Persecution if Returned to Iran, Human Rights Watch, 5 April 2007; CX176702: British abandon MoU with Iran on asylum seekers, but questions remain, British Ahwazi Friendship Society, 1 May 2007.

²²⁰ CX126256: Deportations to Iran rising despite torture concerns, *Globe and Mail*, 2 April 2005. See also CX113754: Women's activist deported to Iran despite fear of persecution, *Global BC*, 7 December 2004.

²²¹ CX174973: Ethnic Arab Refugees Face Persecution if Returned to Iran, Human Rights Watch, 5 April 2007.

²²² CX181118: 'How I escaped from torture in Iran', British Broadcasting Corporation, 16 July 2007.

²²³ CX259161: Removal of Failed Asylum Seekers, Australian Broadcasting Corporation Radio, 10 May 2005; CIS20016: Dr David Corlett, 'Fearing Going Home: Australia's return of rejected asylum seekers, temporary refugees and others from refugee-like situations', Don Chip Foundation, 9 December 2004.

²²⁴ CX259161: Removal of Failed Asylum Seekers, Australian Broadcasting Corporation Radio, 10 May 2005.

²²⁵ CIS20418: Expert's view: Abdolnabi Mallahzadeh, Retired Judge and Lawyer, *Iran Newspaper* (unofficial translation), 17 February 2011. See also CX264288: Student activists held in Iran, Amnesty International, 6 May 2011.

On 23 March 2011, Iran Human Rights website, maintained by Iranian human rights activists, reported that a Kurdish failed asylum seeker, Rahim Rostami, was imprisoned after being returned to Iran. The report said that it was not clear what charges were raised against Rostami.²²⁶ According to a Norwegian NGO PeoplePeace, Rostami appeared in a documentary on Norwegian television.²²⁷

On 6 May 2011, Amnesty International reported that student activist Arash Fakhrahan “was reportedly arrested on arrival in Tehran after returning from France where he was an asylum seeker.”²²⁸ Mr Fakhrahan was previously arrested for his participation in December 2009 protests and charged by the Iranian authorities with “insulting the Supreme Leader and taking part in riots and unrest”.²²⁹

7.3 Framework for assessing claims (for more information see the Refugee Law Guidelines)

An individual with a well-founded fear of persecution on the basis of Political Opinion (one of the five grounds in Article 1A of the 1951 Refugees Convention) may be eligible for protection.

It is important to note that when assessing whether a person has a well-founded fear of persecution on the basis of political opinion, the person does not need to hold a particular political opinion – it is enough that a person is believed to hold a political opinion.

Whether or not the applicant has a well-founded fear of persecution will need to be assessed, noting that the harm feared must involve serious harm, be systematic and discriminatory in nature and that the applicant’s political opinion is the essential and significant reason for the persecution (noting that there may be more than one Convention reason for persecution).

Applicants may also claim that while they had not experienced persecution, they fear it upon return due to their political opinion (imputed or held). In such cases the requirement under 91R (3) of the *Migration Act* to discount any conduct engaged in by a claimant in Australia for the sole purpose of strengthening refugee claims should be noted.

Issues for consideration

The issues for consideration below are based on a range of sources, including international news outlets, human rights organisations, the US State Department and the Danish fact finding mission to Iran.

Country information indicates that high profile political and civil society activists and their family members, as well as people associated with Kurdish political parties, may be at risk of harm from the Iranian authorities. Consideration should be given as to whether

²²⁶ CX261259: An Iranian-Kurdish asylum seeker extradited from Norway to Iran is in danger of torture, ill-treatment or death at Tehran's Evin prison, Iran Human Rights, 23 March 2011.

²²⁷ CX261493: Teenager imprisoned after being deported from Iran, Peoplepeace.org, 23 March 2011.

²²⁸ CX264288: Student activists held in Iran, Amnesty International, 6 May 2011.

²²⁹ CX264288: Student activists held in Iran, Amnesty International, 6 May 2011.

individuals claiming persecution on the basis of real or imputed political opinion are able to provide adequate detail to demonstrate that they have been, or will be, perceived to be engaged in activities where they are identifiable as having this profile.

Country information indicates that the vast majority of people who were detained after participating in post-election protests were released within days or weeks without being charged. Amnesty International and Reuters also reported that a number of anti-government demonstrators remained in prison, most serving prison terms. More arrests of anti-government demonstrators were reported in 2010 and 2011. A case by case assessment is required to determine if an applicant claiming to be involved in protests is likely to come to the attention of authorities.

Reports indicate that there is a possibility that individuals who participated in anti-regime demonstrations abroad, or posted comments critical of the Iranian government on the Internet, may come to the attention of the Iranian authorities.

Claims relating to applicants' involvement in demonstrations or posting of anti-government comments after their departure from Iran should be assessed by taking into consideration Section 91R(3) of the *Migration Act*. Case officers must be satisfied that the political activities undertaken by applicants in Australia have been undertaken other than for the sole purpose of strengthening their claims.

Sources indicate that there is a possibility that a failed asylum seeker could come to the attention of the authorities on arrival in Iran. An assessment should be made as to whether the applicant's profile and activities in Iran or/and abroad may place them at risk of mistreatment on arrival.

Members of PJAK have been responsible for serious human rights abuses. Consideration should be given as to whether the exclusion clause under Article 1F of the 1951 Refugee Convention should be applied to applicants who have been active operational members of PJAK.

Whether or not a "real chance" of persecution exists if the client were to return to Iran should be established.

Questions for consideration

The following types of questions should be considered to support a well-evidenced, transparent and robust assessment, regardless of the outcome:

- How is the harm feared related to the specific Convention ground of actual or imputed political opinion? What evidence supports this?
- Is the fear of harm or discrimination claimed sufficiently serious to be considered persecution? Why / why not?
- How is the applicant identifiable as having an actual or imputed political opinion?

- Can the applicant establish that they have a particular political profile which likely would draw them to the attention of the State? Why / why not?
- How is the applicant considered to have been politically active, or to be currently politically active, thereby making them a target?
- Has the applicant engaged in actions in Australia designed to strengthen their claim?
- Has the applicant engaged in actions that breach appropriate laws of domestic application, and are, therefore, not related to persecution for a Convention reason?

8. STATE PROTECTION

8.1 Claims

Applicants may state that they fear persecution for Convention grounds. They may also state that they believe the Iranian authorities are unable or unwilling to protect them, including because the Iranian security forces are the perpetrators of the harm.

Where the claimed perpetrator of harm is not the state, such as in cases where the harm feared is for the Convention reason of religion and the claimed perpetrators may be family members or the community in general, the applicant may claim the state is unwilling to provide protection in these circumstances.

8.2 Country information

Security forces in Iran

According to a 2009 report by the Bertelsmann Stiftung Foundation, Iranian military and police forces control almost all areas of the country, with the exception of some territories bordering Afghanistan and Pakistan.²³⁰

Iran has an extensive network of internal security and intelligence services,²³¹ which includes the Ministry of Intelligence and Security, the Law Enforcement Forces under the Interior Ministry, the Islamic Revolutionary Guards Corps (IRGC) and the Basij.²³²

According to Dr Abbas Milani of Stanford University, the Islamic Republic of Iran has at its disposal a sophisticated system of authoritarian control, which includes such components as multiple and increasingly powerful intelligence agencies, state control over media and overt censorship.²³³

According to the Council on Foreign Relations, the IRGC was formed to defend the country's Islamic system against internal and external threats, but has since expanded far beyond this mandate.²³⁴ The IRGC has an estimated 120 000 – 125 000 serving personnel who fulfil a number of functions primarily related to internal security.²³⁵ The IRGC control a volunteer people's militia known as the Basij. In October 2009, the government announced the merger of the Basij into the IRGC ground forces.²³⁶

²³⁰ CIS19943: BTI 2010 - Iran Country Report, Bertelsmann Stiftung, 2009, p. 7.

²³¹ CIS19581: Evaluation of the August 2008 Country of Origin Information Report on Iran, Advisory Panel on Country Information (UK Home Office), 23 September 2008.

²³² Country Report on Human Rights Practices 2010 – Iran, US Department of State, 8 April 2011; CX263481: Human Rights and Democracy: The 2010 Foreign & Commonwealth Office Report - Iran, UK Foreign and Commonwealth Office, 31 March 2011.

²³³ CIS17503: Abbas Milani, 'Iran: Clerical Authoritarianism', in *Undermining Democracy: 21st Century Authoritarians*, Freedom House, June 2009, p. 31.

²³⁴ CX254134: Iran's Revolutionary Guards, Council on Foreign Relations, 22 June 2009; CX235125: Profile: Iran's Revolutionary Guards, British Broadcasting Corporation, 18 October 2009.

²³⁵ CIS16959: The Rise of the Pasdaran: Assessing the Domestic Roles of Iran's Islamic Revolutionary Guards Corps, RAND, 8 January 2009; CX254134: Iran's Revolutionary Guards, Council on Foreign Relations, 22 June 2009.

²³⁶ Country Report on Human Rights Practices 2010 – Iran, US Department of State, 8 April 2011.

Sources report that throughout its history the Basij undertook a range of functions, including securing law and order in cities, being deployed at the front during the Iran-Iraq war, quelling riots and separatist insurgencies, and playing the role of a “morality police” by enforcing Islamic codes of behaviour.²³⁷

Radio Free Europe noted in December 2008 that since the early 1990s, the role of the Basij increasingly shifted to domestic security and preserving the political status quo.²³⁸

Sources interviewed by the Danish fact finding mission in 2008 stated that the presence of the Basij on the streets of Tehran had increased and that they had become stricter in confronting anyone considered to be ‘improperly’ dressed.²³⁹

The Guardian reported in June 2009 that the Basij had formal powers of arrest as an auxiliary force for law enforcement, and were used for emergency management, organising religious ceremonies, “morals policing” and the suppression of dissident gatherings. They had a local organisation in every city.²⁴⁰

Estimates of the total number of Basij vary widely. A 2005 study by the Centre for Strategic and International Studies put the number of full-time active members at 90 000 with another 300 000 reservists and some one million that could be mobilised when necessary.²⁴¹ A 2008 report prepared for the UK Advisory Panel on Country Information states that the Basij force numbered over one million.²⁴² Sources indicate that the Basij is present in schools, universities, government offices, private institutions, factories and even among tribes throughout Iran.²⁴³

Large numbers of the Basij and Revolutionary Guards were mobilised to suppress the anti-government protests after the disputed presidential election in June 2009.²⁴⁴ According to the US State Department, “the Basij were primarily responsible for the violence against the protestors”.²⁴⁵

Courts and legal system

According to a May 2011 Freedom House report, the Iranian judicial system is not independent, as the Supreme Leader directly appoints the head of the judiciary, who in

²³⁷ CX216099: Iran's Basij Force - The Mainstay of Domestic Security, Radio Free Europe/Radio Liberty, 7 December 2008; CX253781: Iran Primer: The Basij Resistance Force, Public Broadcasting Service, 21 October 2010; CX204971: Mass mobilisation - the rise of Iran's paramilitary enforcer, Jane's Intelligence Review, 12 June 2008; CX146388: Basij – the revolutionary people's militia of Iran, Middle East Media Research Institute, 1 February 2006.

²³⁸ CX216099: Iran's Basij Force - The Mainstay of Domestic Security, Radio Free Europe/Radio Liberty, 7 December 2008.

²³⁹ CIS17329: Human Rights Situation for Minorities, Women and Converts, and Entry and Exit Procedures..., Danish Immigration Service, April 2009, pp. 22-23.

²⁴⁰ CX228523: The rise of Iran's other police force, The Guardian, 17 June 2009.

²⁴¹ Cited in CX253781: Iran Primer: The Basij Resistance Force, Public Broadcasting Service, 21 October 2010

²⁴² CIS19581: Evaluation of the August 2008 Country of Origin Information Report on Iran, Advisory Panel on Country Information (UK Home Office), 23 September 2008.

²⁴³ CX216099: Iran's Basij Force - The Mainstay of Domestic Security, Radio Free Europe/Radio Liberty, 7 December 2008; CX204971: Mass mobilisation – the rise of Iran's paramilitary enforcer, Jane's Intelligence Review, 12 June 2008.

²⁴⁴ CIS18098: Iran: elections contested, repression compounded, Amnesty International, December 2009.

²⁴⁵ Country Report on Human Rights Practices 2010 – Iran, US Department of State, 8 April 2011.

turn appoints senior judges.²⁴⁶ The report noted that general courts ostensibly safeguard the rights of defendants, but in practice suspects are frequently tried in closed sessions without access to legal counsel. The report also stated that although the constitution prohibits arbitrary arrest and detention, such abuses are increasingly routine.²⁴⁷

Amnesty International stated in May 2011 that Iran's criminal justice system offered little protection of human rights, and that political suspects received grossly unfair trials.²⁴⁸

The April 2011 US State Department report noted that although defendants in Iran have the right to a public trial, a lawyer of their choice, presumption of innocence and the right to appeal, these rights were not respected in practice. The report also noted that the government often charged individuals with vague crimes, such as "antirevolutionary behaviour", "moral corruption" and "siding with global arrogance", and that prosecutors imposed strict penalties on government critics for minor violations.²⁴⁹

A September 2010 report by the UN Secretary General stated that although the Iranian Constitution, the Penal Code and the Code of Criminal Procedure provide procedural guarantees to ensure due process of law, observers raised concerns about the degree to which these procedures were applied in practice, in particular in relation to the trials of opponents of the Government.²⁵⁰

8.3 Framework for assessing claims (For more information see the Refugee Law Guidelines)

It is accepted that persecution within the Convention definition of refugee can exist although the relevant harm is (or may be) inflicted, for a Convention reason by non-state actors. This may be because the State condones or tolerates the 'persecution' in a discriminatory manner or it may be because the State is unable to provide protection from such persecution.

In cases where the State does not itself actively condone or tolerate persecution, the question will be whether the protection it offers is sufficient by international standards. Measures giving such protection would include an appropriate criminal law, and the provision of a reasonably effective and impartial police force and justice system. Complete protection of its citizens from harm is not expected of a country of nationality. It is sufficient that the protection provided meets international standards. If this standard of protection is met there will be no justifiable unwillingness to seek the protection of the country of nationality, and the applicant will not come within the Convention definition of refugee.

In assessing whether an applicant has a well-founded fear of persecution, decision makers may take into account the fact that protection is afforded by surrogate authorities other than those of the government.

²⁴⁶ CX264609: Freedom in the World Country Report Iran 2011, Freedom House, 12 May 2011.

²⁴⁷ CX264609: Freedom in the World Country Report Iran 2011, Freedom House, 12 May 2011.

²⁴⁸ CX264809: Amnesty International Annual Report Iran 2011, Amnesty International, 13 May 2011.

²⁴⁹ Country Report on Human Rights Practices 2010 – Iran, US Department of State, 8 April 2011.

²⁵⁰ CIS19633, The situation of human rights in the Islamic Republic of Iran – Report of the Secretary-General, UN General Assembly, 15 September 2010, p. 14.

Issues for consideration

Sources indicate that the Iranian government and security forces exercise effective control over the country's entire territory, with a possible exception of some border areas in the east.

As the majority of applicants from Iran claim to fear persecution by state agents, including for reasons related to their race, religion or political opinion, they are generally not likely to be able to seek protection from state authorities.

In some circumstances where the State is not the claimed agent of harm, such as in cases where the harm feared is for the Convention reason of religion, the State may not provide protection.

The possibility of any perceived political profile or other factor preventing the availability of state protection must be thoroughly explored on a case by case basis and clear reasoning as to why effective protection is not available must be provided.

Question for consideration

The following types of questions should be considered to support a well-evidenced, transparent and robust assessment, regardless of the outcome:

- Is the State able to provide effective protection to the individual concerned? Why / why not? What evidence supports this?
- In cases where the claimed perpetrators of harm are non-state agents, is the State unwilling to provide protection? What evidence suggests this?

9. INTERNAL RELOCATION

The definition of a 'refugee' in Article 1A of the Refugees Convention requires that an applicant's fear of persecution for a Convention reason must be well-founded. Depending on the circumstances of the case, it may be reasonable for the applicant to relocate in the country of nationality to a region where there is no appreciable risk of occurrence of the feared persecution.

9.1 Claim

The applicant may claim that there is no internal flight or relocation alternative available.

9.2 Country information

In its 2007 Country Report on Human Rights Practices, the US State Department noted that Iranian citizens could travel within the country and change their place of residence without obtaining official permission.²⁵¹

In a more recent 2010 report, the US State Department noted that the Iranian Constitution provided for freedom of movement within the country, foreign travel, emigration and repatriation, however, the government placed some restrictions on these rights. The report also noted that 22 of 30 Iranian provinces were partially or fully closed to refugees, and Afghan refugees in these areas were generally required to relocate or repatriate.²⁵²

The International Organization for Migration noted in 2009 that Iran has been experiencing a significant rise in internal migration from rural to urban areas due to unbalanced progress of development.²⁵³

Evidence suggests that state agents have an effective presence throughout Iran. (see section on *Security forces* under State Protection)

9.3 Framework for assessing claims (for more information see the Refugee Law Guidelines)

Case officers need to consider whether or not the applicant's fear of persecution for a Convention reason is well-founded in relation to the country as a whole. Where it would be reasonable in all circumstances to expect an applicant to internally relocate to another part of the country to avoid persecution, then the fear is not well-founded.

Whether or not it is reasonable to expect an applicant to relocate must be considered. What is considered reasonable will change from case to case, so each individual's circumstances and the impact relocating would have on them should also be considered. Relocation may not be reasonable if the applicant will be required to significantly alter their behaviour to avoid persecution in the new location.

²⁵¹ Country Report on Human Rights Practices 2007 – Iran, US Department of State, 11 March 2008.

²⁵² Country Report on Human Rights Practices 2010 – Iran, US Department of State, 8 April 2011.

²⁵³ CIS19600: Migration initiatives appeal 2009 Iran (Islamic Republic of), International Organization for Migration, 2009.

The primary consideration is whether the applicant is able to avoid persecution in the new location and can reasonably relocate there. In this context the ability of the State or surrogate authorities to protect applicants in the alternative location should be assessed.

Issues for consideration

The UNHCR guidance is not necessarily indicative or compliant with Australian law on the issue of internal relocation. The Australian position, and the one to be considered, is that a well-founded fear must be held with regard to the relevant country as a whole. Australian case law also necessitates a consideration of the practicalities of internally relocating (see the Refugee Law Guidelines).

It must be noted that Australian policy differs from the UNHCR guidelines particularly on the principles of relocation, the availability of protection and who provides it. The Refugee Law guidelines and relevant case law support the position that as long as an area is safe for an applicant to return to, it does not matter whether that safety is provided by state or surrogate authorities.

For applicants who fear persecution by state authorities, in general, internal relocation to escape persecution may not be an option.

Internal relocation may be a viable option for applicants fearing persecution by non-state actors, such as those fearing religious persecution from family members or the general community. Some sources of country information suggest that Iranians are able to migrate internally.

Consideration should be given to the practicality of internal relocation and whether the applicant is able to reasonably (giving consideration to the individual circumstances) get to a place where they will not be persecuted for a Convention reason.

Questions for consideration

The following types of questions should be considered to support a well-evidenced, transparent and robust assessment, regardless of the result:

- Is the applicant's fear of persecution well-founded for the country as a whole? What evidence supports this?
- Is it reasonable, or unreasonable, for the applicant to safely relocate to another area to escape persecution?
- If the applicant were to relocate, what is the likely future risk of persecution in the new location?

10. MAP OF IRAN²⁵⁴



²⁵⁴ CIS18346: Returning to Iran, International Organisation for Migration, 30 November 2009, p. 15. For ethno-religious distribution of population see CIS19328: The hidden side of Iran: Discrimination against ethnic and religious minorities, International Federation for Human Rights, October 2010, p. 4.