

# OPERATIONAL GUIDANCE NOTE

## GEORGIA

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## **1. Introduction**

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

## **Source documents**

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

## **2. Country assessment**

- 2.1** Georgia is a republic with a Constitution that provides for an executive branch that reports to the president. The president appoints ministers with the consent of Parliament. Parliamentary elections took place in November 2003. The electoral process was widely seen as flawed and was severely criticised by international organisations such as the Organisation for Security and Co-operation in Europe (OSCE). Mass, but peaceful street demonstrations resulted in the resignation of then President Shevardnadze on 23 November 2003. New presidential elections were held on 4 January 2004, and opposition leader Mikheil Saakashvili won with 96% of the vote. New parliamentary elections were held in March 2004, and Saakashvili's National Movement Party won the majority of seats.<sup>1</sup>
- 2.2** In May 2004, following public protests in the breakaway Georgian province of Ajara the autocratic President of Ajara, Aslan Abashidze, fled to Moscow. Ajara was restored to central Government control and there was a decline in human rights abuses, particularly concerning the press and freedom of association. Georgia's Parliament introduced a new Ajaran Constitution and fresh Ajaran legislative elections were held on 20 June 2004. Ajara's elections were won by a local offshoot of President Saakashvili's National Movement party.<sup>2</sup>
- 2.3** Municipal elections took place in October 2006 following major decentralization reforms. The Organisation for Security and Co-operation in Europe (OSCE) and the Office for Democratic Institutions and Human Rights (ODIHR) reported that the elections generally respected fundamental freedoms. The ruling National Movement Party prevailed with a wide margin. The OSCE/ODIHR noted several positive developments in the election process but also some concerns, particularly that the National Movement Party manipulated its campaign materials to blur the distinction between the Party and the government thereby reinforcing its advantage.<sup>3</sup>
- 2.4** With continuing Russian political and economic support to separatist governments in Abkhazia and South Ossetia, Russia/Georgian relations remained tense in 2006. Russian troops have a role as peacekeepers in the conflict regions. The conflicts remained unresolved and Saakashvili's public pledge to restore Georgia's territorial integrity remained a source of tension with the separatist regions and Russia.<sup>4</sup> The de facto authorities in the separatist regions remained outside the control of the central government and although ceasefires were in effect, incidents of violence, including deaths, occurred in both areas during 2006.<sup>5</sup>
- 2.5** The law provides for an independent judiciary. The government continued a broad reform of the justice system to improve the investigation and prosecution of some law enforcement abuses and increase the independence of the judiciary. It took steps to increase the effectiveness of the judiciary through increased budgetary allotments and training, and to strengthen the independence of the judiciary by reforming the High Council of Justice. Reports persisted, however, that the executive branch and powerful outside interests continued to pressure judicial authorities. Many NGOs complained that judicial authorities increasingly acted as a rubber stamp for prosecutors' decisions and that the executive branch exerted undue influence. NGOs expressed concerns that recent judicial appointees lacked experience and training to act independently. The high number of vacancies at the trial court level resulted in long delays in scheduling of trials.<sup>6</sup>
- 2.6** The government's human rights record improved in some areas during 2006, although serious problems remained. While the government took significant steps to address these problems, there were some reports of death due to excessive use of force by law enforcement officers, cases of torture and mistreatment of detainees, increased abuse of

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<sup>1</sup> FCO Country Profile October 2005 & USSD 2005 (Introduction)

<sup>2</sup> FCO Country Profile April 2007

<sup>3</sup> USSD Country Reports on Human Rights Practices 2006: Section 2

<sup>4</sup> FCO Country Profile April 2007

<sup>5</sup> USSD 2006 (Introduction)

<sup>6</sup> USSD 2006 (Section 1)

prisoners, impunity, corruption, arbitrary arrest and detention and lack of judicial independence.<sup>7</sup>

- 2.7** However, since 2004, the Georgian authorities have introduced or implemented a number of measures to tackle the issue of torture and ill-treatment and at least 10 perpetrators of such crimes are serving prison terms. The measures have included legal amendments and extensive monitoring activities of detention facilities under the jurisdiction of the Ministry of Internal Affairs conducted in particular by the office of the Public Defender of Georgia (Ombudsman).<sup>8</sup> Public confidence in the patrol police remained high during 2006 due to a continuing low incidence of corruption. Police misconduct, such as the fabrication or planting of evidence, reportedly decreased; however, allegations persisted that authorities continued to use threats to plant or fabricate evidence against suspects or their families.<sup>9</sup> Amnesty International has continued to receive reports about torture and ill-treatment<sup>10</sup> and Human Rights Watch reported that torture, impunity, and denial of due process remained serious problems in Georgia.<sup>11</sup>
- 2.8** The general prosecutor was in charge of investigations into allegations of torture and ill treatment. Prosecutors were required to investigate police use of force when a detainee with injuries sustained during arrest was registered. If they concluded that charges were not warranted, the decision could be appealed to a higher level of the general prosecutor's office. NGOs reported that investigations usually substantiated the reasonable use of force by police. Any person subjected to abuse was able to pursue a civil action against the abuser.<sup>12</sup> Eleven perpetrators of crimes amounting to torture or ill-treatment were serving prison terms handed down since the "Rose Revolution" in November 2003. In June 2005 Georgia recognized the competence of the UN Committee against Torture to consider individual complaints and in August 2005 it acceded to the Optional Protocol to the Convention against Torture.<sup>13</sup>
- 2.9** The UN Committee against Torture reviewed Georgia in May 2006. The committee noted some progress but found many shortcomings, including the use of excessive force, torture, and other forms of ill-treatment by law enforcement officials, and the low number of convictions for those crimes; it also expressed concern about prison conditions. The committee called for investigations of all allegations of torture and ill-treatment and for implementation of policies to reduced prison overcrowding.

### **Abkhazia**

- 2.10** The latest phase in the long-standing tension between Abkhazia and Georgia began in July 1992 when the Abkhaz parliament, reinstated the Abkhaz constitution of 1925 which gave Abkhazia equal status with Georgia. In consequence Georgian troops invaded. After prolonged fighting, the Georgian government lost control of the entire territory of the Autonomous Republic of Abkhazia in September 1993, and a de facto 'border' between Georgia and Abkhazia was established along the Inguri River.<sup>14</sup>
- 2.11** The situation on the ground continued to deteriorate until the parties agreed to a cease-fire in May 1994. A separation of forces agreement was brokered by the Russian Federation and peacekeeping forces were sent to the area. There has been little progress on agreeing the outlines of a comprehensive political settlement based on a possible division of constitutional competences between Georgia and Abkhazia. Progress on the return of refugees and improving the security environment has also been slow.<sup>15</sup>

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<sup>7</sup> USSD 2006 (Introduction)

<sup>8</sup> AI summary on torture and ill-treatment 2006

<sup>9</sup> USSD 2006 (Section 1(d))

<sup>10</sup> AI summary on torture and ill-treatment 2006

<sup>11</sup> HRW 2007

<sup>12</sup> USSD 2006 (Section 1)

<sup>13</sup> AI Report 2006

<sup>14</sup> FCO Country Profile 2007

<sup>15</sup> FCO Country Profile 2007

- 2.12** In 2006 the Georgian government reaffirmed their control of the upper Kodori valley (also known as upper Akhazia) and installed the local Georgian government which had been exiled during the 1992/93 campaign. The government has pledged to redevelop the area under its control and has built schools, hospitals and entertainment facilities.<sup>16</sup>

### **South Ossetia**

- 2.13** In September 1990 the South Ossetians proclaimed their independence from Georgia in response to moves being made by Georgian nationalists to loosen Moscow's control. In late November 1990 tension between Georgians and South Ossetians led to clashes and intervention by Soviet Interior troops. In December 1991 the South Ossetian parliament declared independence and appealed to former republics of the USSR for support and recognition.<sup>17</sup>
- 2.14** At a meeting in Dagomys on 24 June 1992 an outline agreement on settling the conflict was signed. The agreement included a cease-fire, the withdrawal of armed formations, a demilitarised zone, military observers, Joint Peacekeeping Forces, and a quadripartite Joint Control Commission, conditions for the return of refugees, and the resumption of gas supplies to Georgia.<sup>18</sup>
- 2.15** In 2004, Georgia mounted a limited, unsuccessful operation to restore territorial integrity. The current Georgian peace plan focuses on demilitarising the conflict zone and economic development ahead of a final political settlement. To support this approach the OSCE launched a 10 million Euro economic reconstruction project to which the UK is contributing.<sup>19</sup>
- 2.16** Approximately 234,000 from Abkhazia and 13,000 from South Ossetia remained displaced as a result of the conflicts. During 2006 the government, in conjunction with international organisations and NGOs, developed its first national strategy on Internally Displaced Persons. The strategy seeks to integrate IDPs into Georgian society while creating the necessary conditions for their eventual return.<sup>20</sup>

## **3. Main categories of claims**

- 3.1** This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in Georgia. It also contains any common claims that may raise issues covered by the Asylum Instructions on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant Asylum Instructions, but how these affect particular categories of claim are set out in the instructions below.
- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the claimant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in *Karanakaran* should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum Instruction on Assessing the Claim).

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<sup>16</sup> FCO Country Profile 2007

<sup>17</sup> FCO Country Profile 2005, BBC Country Profile October 2005

<sup>18</sup> FCO Country Profile 2005

<sup>19</sup> FCO Country Profile 2007

<sup>20</sup> USSD Country Report 2006

- 3.3** If the claimant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the claimant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.
- 3.4** This guidance is **not** designed to cover issues of credibility. Caseowners will need to consider credibility issues based on all the information available to them. (For guidance on credibility see para 11 of the Asylum Instruction on Assessing the Claim)
- 3.5** All Asylum Instructions can be accessed via the IND website at:  
<http://www.ind.homeoffice.gov.uk/lawandpolicy/asylum>
- 3.6** **Minority ethnic groups: Abkhazians, South Ossetians and Yezidi Kurds**
- 3.6.1** Most claimants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the authorities or ordinary Georgian civilians due to their Abkhaz, South Ossetian or Yezidi Kurdish ethnicity. Some Abkhaz and South Ossetian claimants will claim that they fear persecution because they are accused of being spies and/or supporters of the respective separatist governments.
- 3.6.2** **Treatment.** The government generally respected the rights of ethnic minorities in non conflict areas during 2006. The law stipulates that Georgian is the state language. Ethnic Armenians, Azeris, Greeks, Abkhaz, Ossetians, and Russians usually communicated in their native languages or in Russian in the areas where they are the dominant ethnic group. The government also requires that ethnic minority students learn Georgian as a second language and that all government officials speak Georgian, which some minorities claim excludes their participation in the government; however, this law was not strictly enforced and recent local government reform legislation significantly increased ethnic minority representation.<sup>21</sup>
- 3.6.3** The government funds foreign language schools throughout the country for people whose first language is not Georgian. During the year the government addressed ethnic minority region concerns by allocating \$100 million (171.4 million lari) in foreign assistance to build roads and infrastructure linking Akhalkalaki and Tbilisi and Armenia, thereby improving opportunities to bring the agricultural region's goods to market, and to open special educational resource centres in both ethnic minority regions to improve access to Georgian language instruction resources.<sup>22</sup>
- 3.6.4** Separatist conflicts in the regions of Abkhazia and South Ossetia remained unresolved, although ceasefires were in effect. Russian peacekeepers were present in Abkhazia. Russian, Ossetian, and Georgian forces participated in a joint peacekeeping force in South Ossetia. Incidents of violence occurred in both Abkhazia and South Ossetia during 2006. The government gained effective control over the upper Kodori valley in Abkhazia following a police operation in July 2006 but the rest of the region remained under the control of separatist authorities. The government continued to have no effective control over South Ossetia. Despite ceasefires, killings were committed by elements on both sides of the separatist conflict in South Ossetia.<sup>23</sup>
- 3.6.5** Approximately 245,000 persons, 234,000 from Abkhazia and 13,000 from South Ossetia, remained displaced as a result of the conflicts. During 2006 the government, in conjunction with international organisations and NGOs, developed its first national strategy on IDPs. The strategy seeks to integrate IDPs into Georgian society while creating the necessary conditions for their eventual return. Approximately 110,000 IDPs occupied collective centres in hotel, hospital and other civil buildings throughout the country. The remaining

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<sup>21</sup> USSD 2006 (Section 5)

<sup>22</sup> USSD 2006 (Section 5)

<sup>23</sup> USSD 2006

135,000 lived in private homes with relatives or friends. Although some IDPs have returned to the Gali district, the Abkhaz separatist regime and de facto South Ossetian authorities continued to prevent repatriation of IDPs to their respective regions.<sup>24</sup>

- 3.6.6** There was limited information on the human rights situation in Abkhazia and South Ossetia due to limited access to these regions. The situation in the Gali region of Abkhazia, where many ethnic Georgians live, remained tense as a result of kidnapping, arbitrary arrest and deaths in custody. The incidence of abuse by law enforcement increased and failures in the criminal justice system sustained a climate of impunity. In South Ossetia, kidnapping was used reciprocally both as a way to secure release for captured compatriots and for ransom.<sup>25</sup>
- 3.6.7** The government took significant steps in 2006 to improve the human rights situation in Georgia and continued a broad reform of the justice system to improve the investigation and prosecution of some law enforcement abuses and increase the independence of the judiciary. Human rights advocates reported that, because of ongoing unannounced and random monitoring of police stations, allegations of abuse by law enforcement officials at police stations remained low. However, they reported that the number of detainees registered with signs of abuse upon arrival at police stations or pre-trial facilities remained high. There were also allegations that plainclothes security service agents attacked people in unpopulated places.<sup>26</sup>
- 3.6.8** During 2006 there were several cases of police officers brought to trial, dismissed, or demoted for abuses. However, impunity remained a problem, particularly in outlying regions. Public confidence in the patrol police remained high due to a continuing low incidence of corruption. Police misconduct, such as the fabrication or planting of evidence, reportedly decreased; however, allegations persisted that authorities continued to use threats to plant or fabricate evidence against suspects or their families.<sup>27</sup>
- 3.6.9** **Sufficiency of protection.** The government continued its reforms to improve investigation and prosecution of law enforcement abuses. The general prosecutor's office handled 137 criminal cases concerned with alleged mistreatment, abuse, or torture by law enforcement officers and brought charges against at least 16 officials, 7 of whom were found guilty.<sup>28</sup> Public confidence in the police continued to increase due to a reduction in corruption and because the authorities arrested or administratively disciplined police officers in high-profile cases of physical abuse or deaths in custody. If this category of claimants' fear is of ill treatment/persecution by non-state agents, there is no evidence that they would not be able to seek and receive adequate protection from the authorities.
- 3.6.10** **Internal relocation.** The law provides for freedom of movement, and the government generally respected this in practice in areas under its control. However, freedom of movement was restricted by the de facto authorities in the separatist regions of Abkhazia and South Ossetia and police checkpoints often obstructed citizens' internal movement in these regions.<sup>29</sup> Internal relocation to a different area of the country to escape this threat is therefore feasible.
- 3.6.11** **Conclusion.** Due to the ongoing tense relationship between the Georgian government and the separatist regions there may be some antipathy directed towards Abkhazians and South Ossetians within Georgia, and Yezidi Kurds are often viewed as being at the lower end of the social scale.<sup>30</sup> However, the Georgian government generally respects the rights

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<sup>24</sup> USSD 2006

<sup>25</sup> USSD 2006

<sup>26</sup> USSD 2006

<sup>27</sup> USSD 2006

<sup>28</sup> USSD 2006

<sup>29</sup> USSD 2006 (Section 2)

<sup>30</sup> International Federation of Human Rights (IDFH): 2005 report on ethnic minorities

of ethnic minority groups and there is no evidence that either state or non-state agents persecute such individuals on account of their regional origins, minority ethnic group or imputed association with the separatist authorities in those regions. Therefore it is unlikely that claimants from this category of claim will qualify for a grant of asylum or Humanitarian Protection.

- 3.6.12** Caseowners should note that members of separatist organisations have been responsible for serious human rights abuses. If it is accepted that a claimant was an active operational member or combatant for either the South Ossetian or Abkhaz separatist forces and the evidence suggests he/she has been involved in such actions, then caseowners should consider whether one of the Exclusion clauses is applicable. Caseowners should refer such cases to a Senior Caseworker in the first instance.

### **3.7 Members of minority religious groups**

- 3.7.1** Some claimants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the authorities or ordinary Georgians due to their affiliation to minority religious groups.
- 3.7.2** *Treatment.* The constitution provides for freedom of religion, and the Government generally respected this right in practice. During 2006, the status of religious freedom continued to improve. Beginning in July 2005 the Government approved the registration applications of previously unregistered religious groups, pursuant to a new law enabling religious groups to operate more freely. A total of fourteen organisations subsequently registered under the law. Police were generally more responsive to the needs of minority religious groups but failed at times to adequately protect them.<sup>31</sup>
- 3.7.3** Citizens generally did not interfere with religious groups considered to be "traditional"; however, there was widespread suspicion of "non-traditional" ones. Attacks on religious minorities, including violence, verbal harassment, and disruption of services and meetings, continued to decrease. While the Prosecutor General's Office increasingly initiated investigations of religious-based violence, past complaints remained unresolved.<sup>32</sup>
- 3.7.4** Most ethnic Georgians (more than 80 percent of the population, according to the 2002 census) nominally associate themselves with the Georgian Orthodox Church (GOC). Several religions, including the Armenian Apostolic Church, Roman Catholicism, Judaism, and Islam, traditionally have coexisted with Georgian Orthodoxy. Approximately 9.9 percent of the population is nominally Muslim and approximately 3.9 percent of the population belongs to the Armenian Apostolic Church which forms the third largest religious group in Georgia. All other religious groups constitute less than one percent of the population each. Jews, (approximately 4,000) and a small number of Kurdish Yezidis (approximately 18,000) have lived in the country for centuries.<sup>33</sup>
- 3.7.5** Since the collapse of the Soviet Union, Protestant denominations have become more active and prominent. They include Baptists (composed of Russian, Georgian, Armenian, Ossetian, and Kurdish groups totalling approximately 8,000 adherents); Seventh-day Adventists (approximately 350 members); Pentecostals (both Georgian and Russian, estimated at approximately 9,000 adherents); Jehovah's Witnesses (approximately 16,000 adherents); and the New Apostolic Church. The number of Mormons in the country is small. There also are a few Baha'is, Hare Krishnas, and Buddhists. The membership of all these groups combined is officially estimated at 34,000 persons.<sup>34</sup>
- 3.7.6** While most citizens practise their religion without restriction, the worship of some, particularly members of non-traditional faiths, has been restricted by threats and

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<sup>31</sup> USIRF 2006 (Introduction)

<sup>32</sup> USIRF 2006 (Introduction)

<sup>33</sup> USIRF 2006 (Section I)

<sup>34</sup> USIRF 2006 (Section I)

intimidation from some local Orthodox priests and congregations. On some occasions during 2005, local police were slow to prevent the harassment of non-Orthodox religious groups, including members of Jehovah's Witnesses, Baptists, and Pentecostals. Some politicians used the supremacy of the GOC in their platforms and criticized some Protestant groups, particularly evangelical groups, as subversive. Jehovah's Witnesses in particular were the targets of some politician's derogatory comments.<sup>35</sup>

- 3.7.7** During 2006 attacks on religious minorities, including violence, verbal harassment and disruption of services and meetings, continued to decrease. Although police rarely facilitated harassment of religious minority groups, they sometimes failed to protect them. While the prosecutor general's office increasingly initiated investigations of religious based violence, past complaints remained unresolved. While members of Jehovah's Witnesses no longer felt the need to hold their services in private homes for security reasons, delays in obtaining permits to build and occupy Kingdom Halls required congregations to continue meeting in private homes. In April 2006, at the request of Jehovah's Witnesses, authorities dropped criminal charges against two persons in connection with a series of attacks by local residents on members of Jehovah's Witnesses in Kutaisi that began in June 2005. The two individuals who were detained publicly apologised to the Jehovah's Witnesses. The group in Kutaisi has operated freely since that time.<sup>36</sup>
- 3.7.8 Sufficiency of protection.** Public confidence in the police continued to increase during 2006 due to a reduction in corruption and a number of police officers were arrested or administratively disciplined in high-profile cases of physical abuse or deaths in custody.<sup>37</sup> Although at times the police failed to adequately protect minority religious groups, in general the police and the authorities were generally more responsive to the needs of these groups in 2006 than compared to previous years and those who attack religious minority groups face prosecution within the law. If this category of claimants' fear is of ill treatment/persecution by non-state agents then, although individual police officers may at times not be able or willing to provide adequate protection, there is no evidence that this is sanctioned by the authorities and, in general, the authorities are willing to provide sufficiency of protection.
- 3.7.9 Internal relocation.** The law provides for freedom of movement, and the government generally respected this in practice in areas under its control. Internal relocation to a different area of the country to escape this threat is therefore feasible. However, freedom of movement was restricted by the de facto authorities in the separatist regions of Abkhazia and South Ossetia and police checkpoints often obstructed citizens' internal movement in these regions.<sup>38</sup>
- 3.7.10 Conclusion.** There is some general societal discrimination against religious minority groups in Georgia and in particular against non-traditional Protestant evangelical groups and some local authorities have imposed restrictions on members of these groups. However, since the new Government has come to power the situation has improved with attacks on religious minorities decreasing significantly. Minority groups are able to freely practise their religions and are now able to register with the authorities. The state authorities do not persecute members of minority religious groups and are willing and able to protect religious minorities from attacks. Therefore claimants from this category of claim are unlikely to qualify for a grant of asylum or Humanitarian Protection.

### **3.8 Involvement with the former Shevardnadze government**

- 3.8.1** Some claimants will make an asylum or human rights claim based on ill treatment amounting to persecution at the hands of the Georgian authorities due to their involvement with the previous government of Edward Shevardnadze

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<sup>35</sup> USIRF 2006 (Section II)

<sup>36</sup> USSD 2006 (Section 2)

<sup>37</sup> USSD 2006 (Section 1)

<sup>38</sup> USSD 2006 (Section 2)

- 3.8.2 Treatment.** While the new Government prioritised rooting out corruption in 2004, its efforts sometimes infringed on the rule of law. For example, between January and March 2004, the Government arrested a number of high profile, wealthy figures close to former President Shevardnadze, charged them with abuse of office or tax arrears, sentenced them to pre-trial detention, and fined them a pre-determined sum, which was reportedly deposited in the State treasury. Detainees were released without charge if they paid. If the individual refused to pay, he or she remained in isolated pre-trial detention and experienced intimidation. The Government, in effect, used pre-trial detention as a bargaining tactic to induce payment.<sup>39</sup>
- 3.8.3** During 2004, President Saakashvili and other government officials often made public statements concerning the guilt of detained suspects in high-profile corruption cases before a trial had commenced, thus exerting undue influence on impending court cases, as judges felt pressured to uphold the President's "opinions."<sup>40</sup>
- 3.8.4** In February 2004, law enforcement agents arrested Gia Jokhtaberidze, majority shareholder in a large telecommunications company and son-in-law of former President Shevardnadze. Jokhtaberidze was forcibly removed from a departing airplane in an arrest widely broadcast throughout the country, and immediately placed in pre-trial detention. Commenting on the arrest, President Saakashvili made public statements that violated due process. In March 2004, in contradiction to the law, Jokhtaberidze was transferred to Isolator Number Five. Jokhtaberidze's lawyers claimed he was repeatedly threatened. The General Prosecutor offered to drop all charges if Jokhtaberidze paid \$15 million (30 million GEL). On 26 April 2004, after payment, Jokhtaberidze was released from detention with all charges dropped. Government officials, including the President, and media claimed that the money was a fine; Jokhtaberidze and his company denied the payment was an admission of wrongdoing.<sup>41</sup>
- 3.8.5 Sufficiency of protection.** As this category of claimants' fear is of ill treatment/persecution by the state authorities, they cannot apply to these authorities for protection.
- 3.8.6 Internal relocation.** As this category of claimants' fear is of ill treatment/persecution by the state authorities, relocation to a different area of the country to escape this threat is not feasible.
- 3.8.7 Conclusion.** There is no evidence that individuals who had low or medium level involvement with the previous regime are targeted or discriminated against by the current authorities simply because they were associated with that government. Some high profile members of the Shevardnadze administration have been the subject of arrests and criminal charges but this has been on account of illegal activity and/or corruption. Low or medium level member or activists affiliated to the previous government are not likely to encounter persecution by the state authorities, while higher profile individuals are likely to fear prosecution rather than persecution. Therefore a claimant from this category of claim is unlikely to qualify for a grant of asylum or Humanitarian Protection.
- 3.9 Organised crime and corruption**
- 3.9.1** Some claimants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of organised criminal gangs and that the authorities are unable or unwilling to offer sufficiency of protection.
- 3.9.2 Treatment.** In 2006 the government adopted an anti-corruption strategy aimed at the formation of an effective state management system and activation of legal and public feedback mechanisms in order to prevent corruption. A World Bank report reviewing the 2002-05 period, noted that the leadership had taken bold actions to lessen the burden of

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<sup>39</sup> USSD 2004

<sup>40</sup> USSD 2004

<sup>41</sup> USSD 2004

the state on the economy, improve fiscal transparency, and strengthen oversight of institutions, all of which had contributed to the decline in corruption. During the year government officials continued to receive salaries in a timely manner, and salaries in the executive and legislative branches increased, reducing incentives for corruption. The country's score on Transparency International's index of public perceptions of corruption was a significant improvement over its score in 2005 but still indicated a perception that corruption remained a serious problem.<sup>42</sup>

- 3.9.3** In June 2005 the head of the Tbilisi city tax department and seven other officials were arrested on corruption charges. In a six-month period in 2005, more than 60 police officers were charged with corruption, in addition to three mayors and six prosecutors. During 2006 members of the government and the ruling party were investigated for corruption. In October the Parliament stripped the immunity of two ruling party parliamentarians implicated in a corruption scandal. One was arrested and was under investigation at the end of 2006.<sup>43</sup>
- 3.9.4** Public confidence in the police increased during 2006 due to a reduction in corruption. A significant rise in the salary of police officers as well as regular payment of these salaries provided an incentive to police officers to refrain from ill treatment or abuse of detainees so as to not jeopardise their jobs.<sup>44</sup>
- 3.9.5** The ministry of justice has established a Penitentiary and Probation Training Center at which all new employees were required to complete training in human rights standards. The conveying service within the department of prisons was reformed to eliminate delays in transporting inmates to court proceedings. Previous corruption and inefficiencies resulted in frequent delays and postponements of court proceedings.<sup>45</sup>
- 3.9.6** To address a serious crime problem dating back to the immediate post-independence period when organised crime and armed gangs operated openly, the government announced a 'zero tolerance' of crime policy during 2006. NGOs criticised the policy which they claimed violated the presumption of innocence and resulted in a reported 12 deaths in Tbilisi from the excessive use of force by police. Investigations into 5 of the 12 deaths highlighted by NGOs were continuing at the end of 2006.<sup>46</sup>
- 3.9.7** During 2006, prison authorities ended the influence of the Thieves-in-Law organised crime gangs network, which since the Soviet era had exercised de facto control of prisons through bribes, extortion, and violence. The gangs also co-ordinated criminal activity outside prisons by using contraband mobile telephones. Gang members were isolated from the general prison population and subject to 24-hour surveillance. During the year lawyers and family members were denied access to these prisoners. According to Human Rights Watch, in some cases the treatment of detainees in Tbilisi Prison No. 7, where authorities detained those it considered to be members of the gangs, rose to the level of torture.<sup>47</sup>
- 3.9.8** Salaries for prison guards were increased and paid regularly. Although corruption among guards diminished since the isolation of the Thieves-in-Law, which used a system of *obshiak* to extort money from fellow prisoners in order to bribe prison officials, some guards reportedly demanded money from inmates' family members. Nevertheless, according to prison officials, the surge in turnover in prison guards was due in part to the loss of income from bribes and also to prison authorities' intolerance of this behaviour.<sup>48</sup>

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<sup>42</sup> USSD 2006 (Section 3)

<sup>43</sup> USSD 2006 (Section 3)

<sup>44</sup> USSD 2006 (Section 1(d))

<sup>45</sup> USSD 2006 (Section 1)

<sup>46</sup> USSD 2006 (Section 1(a))

<sup>47</sup> USSD 2006 (Section 1)

<sup>48</sup> USSD 2006 (Section 1(a))

- 3.9.9 Sufficiency of protection.** The implementation of legislation in 2004 to counter corruption and organised crime, the subsequent adoption of an anti-corruption strategy, improvements in public officials' salaries and training, and the active investigation of corruption has considerably enhanced the authorities' capacity to counteract organised crime and corruption. There is therefore no evidence that such claimants are not able to seek and receive adequate protection from the state authorities.
- 3.9.10 Internal relocation.** The law provides for freedom of movement, and the government generally respected this in practice in areas under its control. However, freedom of movement was restricted by the de facto authorities in the separatist regions of Abkhazia and South Ossetia and police checkpoints often obstructed citizens' internal movement in these regions.<sup>49</sup> Internal relocation to a different area of the country to escape this threat is therefore feasible.
- 3.9.11 Conclusion.** Though organised crime and corruption persist, the government has set out to tackle these issues as its top priority and corruption among the police and law enforcement officials is falling. The availability of adequate protection from the state authorities and a viable internal relocation option means that claimants in this category of claim are unlikely to engage the UK's obligations under the terms of the 1951 Convention and are unlikely to qualify for a grant of asylum or Humanitarian Protection.
- 3.10 Prison conditions**
- 3.10.1** Claimants may claim that they cannot return to Georgia due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in the Georgia are so poor as to amount to torture or inhuman treatment or punishment.
- 3.10.2** The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of ECHR and warrant a grant of Humanitarian Protection. If imprisonment would be for a Refugee Convention reason, or in cases where for a Convention reason a prison sentence is extended above the norm, the claim should be considered as a whole but it is not necessary for prison conditions to breach Article 3 in order to justify a grant of asylum.
- 3.10.3 Consideration.** During 2006 the ministry of justice, which includes the department of prisons, launched a comprehensive multi-year effort to reform all aspects of the penitentiary system. This first year was funded by an 87% increase in the government's budgetary allotment compared with the previous year. During the same period, however, the inmate population grew approximately 68%, eroding some of the benefits that could have been realised by the increased allotment.
- 3.10.4** The justice ministry opened new prisons that met international physical standards in Rustavi and Kutaisi as well as new separate pre-trial detention facilities for male juveniles and women. Despite the opening of new and remodelled facilities, conditions in prison and pre-trial detention facilities generally remained poor, did not meet international standards, and even worsened during the year. The International Committee of the Red Cross (ICRC), the public defender's office, the OSCE, and many NGOs, continued to report inhumane and life threatening conditions, including poor facilities, overcrowding, and inadequate nutrition.<sup>50</sup>
- 3.10.5** The majority of prisons and pre-trial detention facilities were severely overcrowded, sometimes at double their capacity, due to the increased prison population. Since December 2005, Human Rights Watch noted a serious increase in the number of reports of frequent beatings and degrading treatment of inmates. Despite recent increases in

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<sup>49</sup> USSD 2006 (Section 2)

<sup>50</sup> USSD 2006 (Section 1)

government funding for prisoner well-being, prisoners often relied on packages from family for necessary food, clothing and hygiene items.<sup>51</sup>

- 3.10.6** During 2006 prison authorities ended the influence of the Thieves-in-Law organised crime gangs network, which since the Soviet era had exercised de facto control of prisons through bribes, extortion, and violence. The gangs also co-ordinated criminal activity outside prisons by using contraband mobile telephones. Gang members were isolated from the general prison population and subject to 24-hour surveillance. During the year lawyers and family members were denied access to these prisoners. According to Human Rights Watch, in some cases the treatment of detainees in Tbilisi Prison No. 7, where authorities detained those it considered to be members of the gangs, rose to the level of torture.<sup>52</sup>
- 3.10.7** Salaries for prison guards were increased and paid regularly. Although corruption among guards diminished since the isolation of the Thieves-in-Law, which used a system of *obshiak* to extort money from fellow prisoners in order to bribe prison officials, some guards reportedly demanded money from inmates' family members. Nevertheless, according to prison officials, the surge in turnover in prison guards was due in part to the loss of income from bribes and also to prison authorities' intolerance of this.<sup>53</sup>
- 3.10.8** The prison mortality rate reportedly worsened during 2006. The justice ministry reported that 92 inmates died in the prison system compared with 46 deaths during 2005. From early July to late September, when inadequate conditions were exacerbated by very high seasonal temperatures, 31 inmates died. The justice ministry made efforts to improve conditions during that period. Attempted suicides and self-mutilation occurred in prisons as protests against declining prison conditions and human rights violations..<sup>54</sup>
- 3.10.9** During 2006 the justice ministry began setting up a series of local commissions to monitor conditions at prisons. By requiring that commission members live in proximity to a facility, the ministry believed commission members would take a more active role in monitoring prisons than did members of the former prison monitoring council. Local commissions were fully implemented for 11 facilities including the prison hospital facility and the women and juvenile detention facility.<sup>55</sup>
- 3.10.10** The ICRC had full access to detention facilities, including those in Abkhazia and South Ossetia. Prison conditions in the two regions were chronically substandard, although overcrowding was reportedly not a problem.<sup>56</sup>
- 3.10.11 *Conclusion.*** While prison condition in Georgia generally remained poor with severe overcrowding, unsanitary conditions and abuse being particular problems, conditions are unlikely to reach the Article 3 threshold. Therefore, even where claimants can demonstrate a real risk of imprisonment on return to Georgia a grant of Humanitarian Protection will not generally be appropriate. However, the individual factors of each case should be considered to determine whether detention will cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3, relevant factors being the likely length of detention, the likely type of detention facility and the individual's age and state of health. Where in an individual case treatment does reach the Article 3 threshold a grant of Humanitarian Protection will be appropriate.

#### **4. Discretionary Leave**

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

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<sup>51</sup> USSD 2006 (Section 1)

<sup>52</sup> USSD 2006 (Section 1)

<sup>53</sup> USSD 2006 (Section 1)

<sup>54</sup> USSD 2006 (Section 1)

<sup>55</sup> USSD 2006 (Section 1)

<sup>56</sup> USSD 2006 (Section 1)

(See Asylum Instruction on Discretionary Leave) Where the claim includes dependent family members consideration must also be given to the particular situation of those dependants in accordance with the Asylum Instruction on Article 8 ECHR.

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

### **4.3 Minors claiming in their own right**

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

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

### **4.4 Medical treatment**

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

**4.4.2** In 2000 the Georgian government adopted a State programme for a national health policy. The same year saw the adoption of a Strategic plan for health care development in Georgia. According to the latest World Health Organisation (WHO) health indicators for Georgia of May 2005, 100% of the population have access to primary healthcare. Between 90 and 100% of children have received all major inoculations. Per 10,000 people in 2003 there were a total of 48.4 doctors and 41.9 hospital beds. Measles and tuberculosis are the main causes of death by disease.<sup>57</sup>

### **HIV/AIDS**

**4.4.3** The law expressly prohibits discrimination on the basis of HIV/AIDS status; however, there is no penalty for violating this prohibition. NGOs reported societal stigmas that resulted in individuals avoiding testing or obtaining health care for fear of discrimination. Some health care providers, especially dentists, often refused to provide services to HIV-positive persons. Individuals often concealed their HIV-positive status from employers for fear of losing their jobs. The MOIA conducted mandatory testing on all job applicants.<sup>58</sup>

**4.4.4** The Article 3 threshold will not be reached in the majority of medical cases and a grant of Discretionary Leave will not usually be appropriate. Where a caseworker considers that the circumstances of the individual claimant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

## **5. Returns**

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<sup>57</sup> WHO Profile 2005 & WHO health indicators 2000-2005

<sup>58</sup> USSD 2006 (Section 5)

**5.1** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.

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

## **6. List of source documents**

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- US Department of State (USSD) Report on Human Rights Practices 2004 – Georgia issued 28 February 2005 <http://www.state.gov/g/drl/rls/hrrpt/2004/41682.htm>
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- US Department of State International Religious Freedom (USIRF) Report 2005 (8 November 2005) <http://www.state.gov/g/drl/rls/irf/2005/51553.htm>
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- Human rights Watch (HRW) report 18 January 2007 <http://hrw.org/englishwr2k7/docs/2007/01/11/georgi14790.htm>
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- International Federation for Human Rights (FIDH) 'Ethnic minorities in Georgia' April 2005 <http://www.fidh.org/IMG/pdf/ge412ang.pdf>
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- British Broadcasting Corporation (BBC) News Country Profile - Georgia – updated 13 November 2006 [http://news.bbc.co.uk/1/hi/world/europe/country\\_profiles/1102477.stm](http://news.bbc.co.uk/1/hi/world/europe/country_profiles/1102477.stm)

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