



THE RESEARCHER

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Welcome to the October 2014 issue of The Researcher

The Researcher continues to provide lots of interesting articles. In this issue Enda O'Neill and Jennifer Higgins of UNHCR write on the topic of Subsidiary Protection.

Barry Magee, Chairperson of the Refugee Appeals Tribunal (RAT) provides an insight into the recent changes at the Tribunal while Seán O'Connell also of the Refugee Appeals Tribunal writes on the use of the Decision Templates for RSD.

Refugee Documentation Centre researcher David Goggins investigates the issue of forced marriage in Afghanistan.

Patrick Dowling of the Refugee Documentation Centre writes about the almost disappeared minority Mandaean community in Iraq.

Boris Panhölzl of the Austrian Centre for Country of Origin Information and Asylum Research and Documentation ACCORD describes the selection process for document content on the ecoi.net website.

Tudor Rosu of the Hungarian Helsinki Committee writes on the issue of COI and credibility assessment in asylum claims.

Many thanks to all our contributors, if you are interested in contributing to future issues please contact us at the email address below.

Elisabeth Ahmed
Refugee Documentation Centre (Ireland)

Disclaimer

Articles and summaries contained in the Researcher do not necessarily reflect the views of the RDC or of the Irish Legal Aid Board. Some articles contain information relating to the human rights situation and the political, social, cultural and economic background of countries of origin. These are provided for information purposes only and do not purport to be RDC COI query responses.

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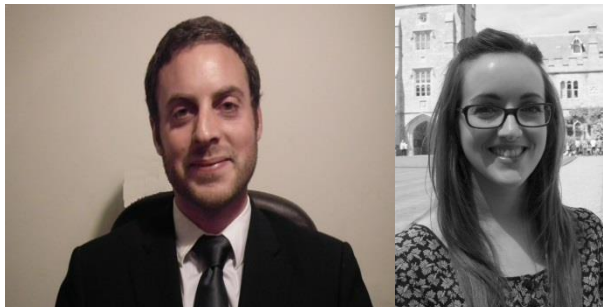
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Subsidiary Protection – a distinct and autonomous form of complementary protection



Edna O'Neill, Jennifer Higgins, UNHCR Ireland¹

The origins of the Common European Asylum System (CEAS) can be traced to the Finnish town of Tampere, which hosted a special EU Council summit dedicated to the creation of an Area of Freedom, Security and Justice in 1999. Under this initiative and the ensuing Tampere (1999-2004) and Hague (2004-2009) Programmes, the first phase of the CEAS was completed in 2006. Between 2001 and 2005 a plethora of Directives and Regulations sought to impose a minimum level of harmonisation in the field. Key to this is the 2004 Qualification Directive², which was introduced with the stated objective of ensuring that Member States apply common criteria for the identification of persons genuinely in need of international protection and that a minimum level of benefits be made available for those who qualify in all Member States.³

In addition to introducing minimum standards in relation to refugee status, the Directive further sought to introduce complementary measures on subsidiary forms of protection, “offering an appropriate status to any person in need of such protection”⁴. Jane McAdam, in her 2005 paper⁵ considers in great detail the *travaux préparatoire* of the Qualification Directive

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² Council Directive 2004/83/EC on the minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as other persons who are otherwise in need of international protection.

³ *Ibid*, Recital 6.

⁴ *Ibid*, Recital 5.

⁵ Jane McAdam, The European Union Qualification Directive: The Creation of a Subsidiary Protection Regime, *International Journal of Refugee Law*, 2005, p. 461-516.

and the original intentions behind the creation of the concept of subsidiary protection. She points out:

“The original concept of a subsidiary protection Directive was liberally conceived. Although the key premise was that ‘harmonisation would be based on the valid international human rights instruments relevant to subsidiary protection’, with specific mention of the [European Convention on Human Rights (ECHR)], the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the 1949 Geneva Conventions and their 1977 Protocols, consideration was also given as to whether certain environmental, compassionate or other triggers might justify subsidiary protection.”⁶

The final version of the Directive, however, ultimately “uses internal cross-referencing as much as possible rather than referring to the international law on which provisions are based.”⁷ This key observation suggests that, notwithstanding the close association of the Directive with other forms of complementary protection, it may nonetheless create a novel and distinct form of European protection.

Articles 2(e) and 15 set out the minimum standards upon which a person can be granted subsidiary protection under the Directive. Article 15 states that persons facing, in their country of origin, (a) death penalty or execution, (b) torture or inhuman or degrading treatment or punishment of a person or (c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in a situation of international or internal armed conflict, and who are unable to avail himself or herself of the protection of that country, are eligible for protection under the Directive. The contents of Article 15(a) and (b) have not been as open to differing interpretations among Member States as subsection (c). There are some key terms contained within Article 15(c) which are not defined clearly within the Directive and its somewhat ambiguous wording has created inconsistencies as to how the Directive has been applied at a domestic level, compromising, therefore, its goal of harmonising practice across Europe.⁸

⁶ *Ibid*, p.464.

⁷ *Ibid*, p.467.

⁸ See for example, UNHCR, *Safe at Last? Law and Practice in Selected EU Member States with Respect to Asylum-Seekers Fleeing Indiscriminate Violence*, 27 July 2011, available at: <http://www.refworld.org/docid/4e2ee0022.html> [accessed 3 September 2014]

The content of Article 15(a) corresponds broadly to Protocols 6 and 13 of the European Convention of Human Rights (ECHR)⁹, which prohibit the imposition of the death penalty, in peace time and absolutely, respectively. Moreover, *Soering*¹⁰ and other judgments¹¹ of the European Court of Human Rights (ECtHR) now suggest that the imposition of the death penalty may contravene the ECHR independently without recourse to those protocols. Accordingly Article 15(a) is often thought to also correspond broadly to Article 2 ECHR, the right to life.

The wording of Article 15(b) is nearly identical to that of Article 3 ECHR, which states “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.” The Court of Justice of the European Union (CJEU) in *Elgafaji*¹² confirmed this correspondence:

“while the fundamental right guaranteed under Article 3 of the ECHR forms part of the general principles of Community law, observance of which is ensured by the Court, and while the case-law of the European Court of Human Rights is taken into consideration in interpreting the scope of that right in the Community legal order, it is, however, Article 15(b) of the Directive which corresponds, in essence, to Article 3 of the ECHR.”¹³

Article 15(c) in comparison, with its confusing juxtaposition of both individual threat and indiscriminate violence, from its inception has divided commentators as to the exact content of the provision. Furthermore, significant questions of interpretation have been raised in relation to some of its other key terms, namely ‘indiscriminate violence’ and ‘internal armed conflict’. Unlike Article 15(a) and (b), the wording of which can be seen to have a direct correspondence with other international human rights

legal frameworks, Article 15(c) does not appear to be directly transposed from or based predominantly on another area of law. Nonetheless, given the context in which the Directive was drafted, efforts to interpret these provisions have tended to rely on two areas of law: international human rights law and international humanitarian law.

The *Elgafaji* ruling was instrumental in clarifying the meaning of the Directive by reference to existing human rights law. The CJEU was asked to determine if Article 15(c) offers supplementary or other protection than Article 3 of the ECHR as interpreted by the ECtHR. This was prompted by a number of cases where the ECtHR considered a risk of generalised violence in the application of Article 3 ECHR¹⁴. The CJEU concluded in *Elgafaji* that the content of that subsection, “is different from that of Article 3 of the ECHR, and the interpretation of which must, therefore, be carried out independently, although with due regard for fundamental rights, as they are guaranteed under the ECHR.”¹⁵

The *Elgafaji* ruling further looked to clarify some of the terms set out within the subsection which do not have their origins in international legislation, namely ‘serious’ and ‘individual’ threat of harm. As noted above, the inclusion of the criteria of both ‘individual threat’ and ‘indiscriminate violence’ has been considered a contradiction in terms within the standard, and has been the source of much variance in interpretation by Member States. Certain countries have opted out of the criteria of ‘individual’ in their domestic legislation, for example, in both Belgian and Hungarian legislation the threat to the ‘individual’ was not transposed.¹⁶ In *Elgafaji* the Court attempted to clarify these issues and it is here that we can begin to see an emergence of an interpretative approach outside of the constraints of the assumed normative frameworks within which states were operating.

The CJEU first compare the three types of ‘serious harm’ defined in Article 15 of the Directive. They

⁹ Protocol No 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the Abolition of the Death Penalty (adopted 28 April 1983, entered into force 1 March 1985) ETS No 114; Protocol No 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the Abolition of the Death Penalty in All Circumstances (adopted 3 May 2002, entered into force 1 July 2003) ETS No 187.

¹⁰ *Soering v. United Kingdom*, Application No. 14038/88, 7 July 1989.

¹¹ *Ocalan v. Turkey* (Grand Chamber), Application No. 46221/99, 12 May 2005; *Bader and Others v. Sweden*, Application No. 13284/04, ECtHR, 8 November 2005.

¹² *Elgafaji v Staatssecretaris van Justitie* (Case C-465/07) [2009] ECR I-921.

¹³ *Supra*, para. 28.

¹⁴ See for example *N.A. v. United Kingdom*, Application No. 25904/07, (ECtHR 6 August 2008) para. 115: “the Court has never excluded the possibility that a general situation of violence in a country of destination will be of a sufficient level of intensity as to entail that any removal to it would necessarily breach Article 3 of the Convention.

Nevertheless, the Court would adopt such an approach only in the most extreme cases of general violence, where there was a real risk of ill-treatment simply by virtue of an individual being exposed to such violence on return.”

¹⁵ *Supra*, para. 28.

¹⁶ ELENA, *The Impact of the EU Qualification Directive on International Protection*, October 2008, p. 202-203.

noted that the standards referred to in Article 15(a) and (b) of the Directive, cover situations in which the applicant for subsidiary protection is specifically exposed to the risk of a particular type of harm. They reasoned that the harm set out in 15(c) is more of a general risk of harm or to the life of a person, as opposed to a specific type or act of violence carried out against them.¹⁷ Furthermore, it was clarified that this threat was inherent in situations of international or internal armed conflict.

The Court further addressed the conflicting content of Recital 26 to the Directive, which sets out that ‘risks to which a population of a country, or a section of the population is generally exposed, do normally not create in themselves an individual threat which would qualify as serious harm’¹⁸. The Court argued that the standards contained within Article 15(c) should in fact operate in their own field of application that is not invalidated by the wording of Recital 26. They reasoned that ‘individual’ should be understood as covering harm to civilians, irrespective of their identity, where the degree of indiscriminate violence characterising the armed conflict taking place reaches such a high level that substantial grounds are shown for believing that a civilian, returned to the relevant country or, as the case may be, to the relevant region, would, solely on account of his presence on the territory of that country or region, face a real risk of being subject to the serious threat.¹⁹ The Court maintained that “in that regard, the more the applicant is able to show that he is specifically affected by reason of factors particular to his personal circumstances, the lower the level of indiscriminate violence required for him to be eligible for subsidiary protection”²⁰. Ironically, following the independent stance taken by the Luxembourg Court, the ECtHR went some lengths to again close the gap in a subsequent case, *Sufi and Elmi*²¹.

In the CJEU’s assessment, Article 15(c) affords a different strand of protection to the ECHR and highlights the importance of having a common interpretative reference point both in law and in practice for subsidiary protection claims.

This approach is similarly evident in a recent reference concerning whether seriously ill persons lacking adequate treatment upon return to their country of origin may qualify for subsidiary protection status.

¹⁷ *Supra*, paras. 32 – 33.

¹⁸ *Supra*, recital 26.

¹⁹ *Ibid*, para. 35.

²⁰ *Ibid*, para. 39.

²¹ *Sufi and Elmi v. The United Kingdom*, Application Nos. 8319/07 And 11449/07, ECtHR, 28 June 2011.

The opinion of Advocate General Bot²² gave a strong indication that the protection afforded under Article 3 ECHR may be wider than those afforded under Article 15(b) of the Qualification Directive. She concluded that the EU legislature has expressly limited the scope of Article 15 to serious harm committed by “Actors of serious harm” as defined in Article 6. A decision of the Court is awaited.

One issue *Elgafaji* did not address was how other terms contained within the Directive may be interpreted by reference to other types of law, specifically international humanitarian law. The exact meaning of the term ‘internal armed conflict’ was not defined in the Directive and so remained open to differing interpretations. Member States, in transposing the Directive, and courts in interpreting it, tended in many instances to rely on instruments of international humanitarian law as their point of reference. It was not until January of this year, in *Diakité*²³ that the CJEU ruled on this question and in so doing, again highlighted the autonomous nature of the Directive. The Conseil d’Etat had asked the Court to determine if Article 15(c) should be interpreted as meaning that the provision offers protection only in a situation of “internal armed conflict” as interpreted by international humanitarian law, in particular by reference to Common Article 3 of the Four Geneva Conventions, and if the concept differs to this, what are the criteria for determining whether such a conflict exists?

As the Directive does not contain a definition, the CJEU determined the meaning and scope of ‘internal armed conflict’ by considering “its usual meaning in everyday language, while also taking into account the context in which it occurs and the purposes of the rules of which it is part.”²⁴ Crucially, it found that international humanitarian law, on the one hand, and subsidiary protection under the Directive, on the other, “pursue different aims and establish quite distinct protection mechanisms”²⁵. The Court found that internal armed conflict for the purposes of granting protection existed where “a State’s armed forces confront one or more armed groups or if two or more armed groups confront each other. It is not necessary for that conflict to be categorised as ‘armed conflict not of an international character’ under international humanitarian law; nor is it necessary to carry out, in

²² C542/13 *Mohamed M’Bodj contre Conseil des ministres*, Opinion of Advocate General Bot, 17 July 2014.

²³ C-285/12 *Diakité v. Commissaire général aux réfugiés et aux apatrides*, CJEU, 30 January 2014.

²⁴ *Ibid*, para. 27.

²⁵ *Ibid*, para. 24, and Opinion of Advocate General Mengozzi, paras. 66 and 67.

addition to an appraisal of the level of violence present in the territory concerned, a separate assessment of the intensity of the armed confrontations, the level of organisation of the armed forces involved or the duration of the conflict”.²⁶

This acknowledgement of the separation of the Directive from international humanitarian law was not entirely novel. Jurisprudence and legislation in Member States have provided insight into the establishment of parameters on how ‘internal armed conflict for the purpose of granting subsidiary protection’ is to be interpreted, demonstrating that national courts, in some instances, have distanced themselves from the concept under intentional humanitarian law.²⁷ For example, in the UK, the Court of Appeal considered in *QD (Iraq)*²⁸ the different objectives of international humanitarian law and the EU’s subsidiary protection regime, leading to an “autonomous meaning” of ‘internal armed conflict’ “broad enough to capture any situation of indiscriminate violence, whether caused by one or more armed factions or by a state, which reaches the level described by the CJEU in *Elgafaji*”²⁹. It was noted by the Court that international humanitarian law exists to protect both combatants and non-combatants from collateral harm in the course of an armed conflict; it covers a very specific area of operation and has limited purpose which does not include the granting of protection status to those who flee armed conflict. They ruled, therefore, that the Directive should stand alone and should be treated as autonomous in its usage of the term ‘internal armed conflict’. Further, UNHCR in its submissions to the Court of Appeal in *QD (Iraq)*, as an *amicus curia* in that case, outlined that there is no settled definition of ‘internal armed conflict’ in international humanitarian law, thus it “is informative but Article 15(c) is not tied to international humanitarian law definitions...persistent violent conflict or insurgency which is of unpredictable duration and is of an intensity which gives rise to a real risk of a threat of serious harm should be within Article 15(c)”³⁰. A definition differing from that under

²⁶ *Ibid*, para. 35.

²⁷ Almaz Teffera, “Diakite: The CJEU interprets the concept of ‘internal armed conflict’ for the purpose of granting subsidiary protection under EU law”, *European Database of Asylum Law*, 22 March 2014.

²⁸ *QD (Iraq) v. Secretary of State for the Home Department* [2009] EWCA Civ 620.

²⁹ *Ibid*, para. 35.

³⁰ UNHCR intervention before the Court of Appeal of England and Wales in the case of *QD (Iraq) v. Secretary of State for the Home Department*, 31 May 2009, C5/2008/1706, available at:

international humanitarian law will therefore not deprive international humanitarian law “of any contour” or render “it virtually superfluous”.

In the wake of *Elgafaji* and *Diakité* a number of key questions remain in relation to the interpretation of 15(c). As one must be a “civilian” in order to come within the terms of 15(c), this raises questions of interpretation in relation to former combatants in particular, as well as persons who may be found to have close links to an armed organisation but whose individual activities may have stopped short of taking up arms. The question is further complicated by the myriad variations which an internal armed conflict may take, particularly in a world where political factions, terrorists, warlords and local militias may all overlap or equate depending on the vantage point of the observer. In *QD (Iraq)*³¹, the Court of Appeal found that the term “civilian” “means not simply someone not in uniform which by itself might include a good many terrorists but only genuine non-combatants”.³² UNHCR in its submissions to the Court of Appeal contended that 15(c) “should not exclude a former combatant from protection where they can show that they have renounced military activities. Such a person should not be at risk of being returned because of their former combatant status, and there is nothing in ECHR jurisprudence that would permit such a removal.”³³ That point was not ultimately ruled upon by the Court and it remains very much a live question.

Equally, the question of whether state authorities should distinguish in their consideration of a risk of serious harm between violence characterised as discriminate or indiscriminate remains unresolved by the Luxembourg Court. In *Elgafaji* the CJEU commented that indiscriminate violence “may extend to people irrespective of their personal circumstances”³⁴. In *HM (Iraq)*³⁵ the respondent had submitted that, when determining the levels and extent of indiscriminate violence in a particular country or area, decision-makers should adopt a “non-inclusive approach”, making sure to subtract certain types of violence, in particular that between combatants. The UK Upper Tribunal rejected this contention:

<http://www.refworld.org/docid/4a6464e72.html> [accessed 5 September 2014], para. 38-39.

³¹ *Supra*.

³² *Ibid*, para. 37.

³³ *Ibid*, Annexe.

³⁴ *Supra*, para. 34.

³⁵ *HM (Iraq) v Secretary of State for the Home Department (No 1)* [2010] UKUT 331 (IAC), UT; [2011] EWCA Civ 1536, CA.

“We consider that an attempt to distinguish between a real risk of targeted and incidental killing of civilians during armed conflict ... is not a helpful exercise in the context of Article 15(c) nor does it reflect the purposes of the Directive.... The judgment of the ECJ in *Elgafaji* indicates that the scope of protection in this part of the Article is a broad one at least during such time as the conflict is intense and the risks to civilians greater.... In the light of *Elgafaji* and *QD* it is also clear that a non-inclusive approach ... must be regarded as flawed and in at least some respects unduly restrictive.”³⁶

The Court also agreed with the finding in *GS*³⁷ and *Baskarathas*³⁸ that:

“general criminality that caused harm of the necessary degree of seriousness could be a consequence of armed conflict where normal law and order provisions are significantly disrupted.”

The ECtHR in *Sufi and Elmi* summarised the findings of *HM (Iraq)* under its consideration of “relevant European law” and followed such an approach in its subsequent analysis. Thus we now have a strong indication of a consensus beginning to form in relation to this question in line with the autonomous interpretative approach adopted by the CJEU set out above which focuses firstly on the legislative context in which the provision occurs and the underlying protection purposes of the Directive.

While the number of cases considering the interpretation of subsidiary protection is quite limited, it is already apparent through the existing jurisprudence that, although the Directive was very closely linked in its framing to other forms of complementary protection, it creates a distinct and autonomous form of complementary protection in its own right and must be considered as such within the canon of EU law.



³⁶ *Ibid.* Paras. 73-75.

³⁷ *GS (Article 15(c); indiscriminate violence) Afghanistan v. Secretary of State for the Home Department* [2009] UKAIT 00044.

³⁸ *Office Français de Protection des Réfugiés et Apatrides v Baskarathas*, 3 July 2009, No.32095.

Recent Changes at the Refugee Appeals Tribunal

Barry Magee, Refugee Appeals Tribunal

Introduction:

The Refugee Appeals Tribunal is the second instance decision making body in Ireland for applications for refugee status and subsidiary protection. It also hears appeals from decisions relating to the operation of the Dublin Regulation.

The Tribunal consists of a full time Chairperson, appointed for a 5 year term, and part-time members, appointed by the Minister for Justice and Equality, for a three year term. The Chairperson is recruited by way of open competition and is the head of the organisation. There are currently 17 part time members appointed. Members of the Tribunal are selected from the legal profession, solicitors and barristers, and work as independent decision makers in determining protection status.

Applications for Refugee Status in Ireland have been steadily declining since their peak of over 11,000 in 2002. There were 946 applications in 2013. This has resulted in a consequential reduction in the number of appeals that the Tribunal has received, with 660 appeals being received in 2013. However, applications for asylum at first instance are up approximately 40% for the first eight months of 2014. It remains to be seen whether this increase will continue in the coming months.

The Government has committed itself to introducing a single procedure whereby applications for refugee status and subsidiary protection are considered in a single decision, rather than sequentially as is currently the case. Legislation providing for this is expected to be published later this year.

Over the past year, the Tribunal has introduced various measures to enhance the quality of decisions being taken and also to provide for appropriate governance and accountability of the Tribunal.

Decision Making:

At the start of 2014 the Tribunal introduced a new decision template for use by members. This template was developed in conjunction with UNHCR office in Dublin.

The function of the Template is to provide decision makers with a logical and legally robust framework within which to make their decision. The Template is not overly prescriptive and merely sets out the sequence of steps to be taken in the decision.

Those steps are as follows:-

1. Case Data.
2. Introduction.
3. Case Facts & Documents.
4. Nationality.
5. Analysis of Credibility.
6. Analysis of Well Founded Fear.
 - a. Objective Basis
 - b. Persecution
 - c. Nexus
 - d. State Protection.
 - e. Internal Protection Alternative (IPA).
7. Compelling Reasons.
8. Exclusion.
9. Conclusion.

By breaking a decision down into these constituent components, a decision maker is less likely to fall into error in arriving at a decision. For example, if a particular case turns on the Nationality of an applicant, the template ensures that a specific finding is made on the issue prior to the rest of the claim being determined.

Similarly, issues of State Protection and IPA are only dealt with if it is determined that the applicant has a well founded fear of persecution for a convention reason.

This approach provides applicants, and their legal advisors, with a clear decision as to why their claim is being accepted or rejected.

Prior to the introduction of the template on average 10% of Tribunal decisions which upheld the original decision, were challenged in the High Court by way of an application for Judicial Review. Since the introduction of the template only a single application for Judicial Review has been filed out of 84 decisions issued that upheld the original decision or, in percentage terms, just 1.2% of negative decisions issued. It should also be noted that the mere lodging of an application for Judicial Review does not necessarily mean that such an application will ultimately be successful.

The Tribunal is very conscious that the average time taken for the High Court to determine an application for Judicial Review, in which the Tribunal is a

respondent, has risen from 16 months in 2008 to 35 months in 2013. It was therefore considered vital that the Tribunal take steps to reduce the number of Judicial Reviews being taken against its decisions thus reducing the overall waiting times for applicants while continuing to improve the quality and consistency of decision making.

It is hoped that the current low rate of Judicial Review can be maintained over the coming months and years for the benefit of applicants and decision makers alike.

Guidelines:

The Chairperson of the Tribunal may issue guidelines under the 1996 Refugee Act ‘generally on the practical application and operation of the provisions, or any particular provisions, of this Act and on developments in the law relating to refugees.’”

A series of guidelines have been issued dealing with various aspects of the Tribunal’s work. These are as follows:-

1. UNHCR Eligibility Guidelines Afghanistan.
2. Assigning policy.
3. Access to previous decisions of the Tribunal.

The guideline on the UNHCR Eligibility Guideline, simply adopts the document as the starting point for the consideration of any claim for asylum from a person from Afghanistan.

Cases are assigned to individual members of the Tribunal by the Chairperson under the 1996 Act. A comprehensive policy was prepared and published as a guideline that details how cases are assigned by the Chairperson. In so far as is practicable, cases are assigned equally amongst the members. Additional factors that may be taken into account include content of the notice of appeal, gender factors, age of the applicant, availability of members etc.

The Tribunal maintains a database of previous decisions issued. These are redacted to protect the identity of applicants, as is required by the 1996 Act. Previously access to these decisions was restricted to applicants and their legal representatives, solely for the purposes of preparing their appeal to the Tribunal. Since the 11th of March 2014 this guideline has opened access to database to any person who wishes to have access.

A guideline on how the Tribunal deals with child applicants has been prepared and is expected to be issued shortly.

These guidelines have provided increased transparency into how the Tribunal operates while balancing the requirement to keep the identity of applicants confidential.

The guidelines and the database of previous decisions are accessible on the Tribunal's website www.refappeal.ie

Proposed new Procedural Guideline:

The Tribunal will shortly be publishing a draft set of procedures for public consultation. The intention is to provide a procedure whereby all parties to an appeal, the applicant, the Refugee Applications Commissioner and the Tribunal, are able to properly consider all issues and documents in an appeal well in advance of the oral hearing taking place.

The key proposed mechanism to achieve this result is a requirement that both the applicant's legal representative and the Commissioner confirm in writing that they have lodged all documentation that they will be relying upon in the hearing. It is only once these confirmations have been received that a case will be allocated a hearing date. Once a hearing date is allocated, no further documentation will be accepted without the leave of the Tribunal.

The procedures will also deal with other procedural matters so as to provide a comprehensive set of rules for the operation of the Tribunal.

The public consultation will enable the Tribunal consider ideas and suggestions from interested parties as to how the Tribunal can improve the service it provides.

Strategy Statement:

The Tribunal has recently published its Statement of Strategy 2014 – 2017. It outlines five High Level Goals which will guide the work of the Tribunal over the next three years. It identifies the Strategic Objectives which are the necessary components of the High Level Goal. It also identifies the strategic actions which will be undertaken to achieve the objectives and goals.

The high level goals are as follows:

Goal 1 – To consider and decide Refugee, Protection and Dublin appeals to the highest professional standards.

Goal 2 – To achieve and maintain our quality standards by the training and development of Tribunal Members.

Goal 3 – To efficiently and actively manage cases in the Superior Courts to which the Tribunal is a party.

Goal 4 - To prepare for the changes to be introduced by forthcoming legislation.

Goal 5 - To ensure the good administration of the Tribunal to the highest professional standards with a particular focus on achieving value for money in the deployment of the Tribunal's physical and human resources.

The actions identified to achieve these goals sets out an ambitious programme of reform for the Tribunal which has already commenced. For example, under Goal 3 the Tribunal has recently concluded a review of all active judicial review proceedings in which the Tribunal is a respondent, to ensure that the cases are being actively managed.

Governance:

The Tribunal is at the final stages of agreeing a document with the Department of Justice and Equality that comprehensively sets out how the Tribunal will comply with its obligations under the 'Code of Practice for the Governance of State Bodies 2009'.

This is the corporate governance code issued by the Department of Finance that details the corporate governance arrangements that should be in place to ensure the proper governance of State Bodies. In essence the Code identifies the following goals of corporate governance:

1. Protecting the interests of the taxpayer.
2. Achieving value for money, including appropriate risk management.
3. Transparency.
4. Accountability.

Much of the Code details the role and function of the Board of the State Body. As the legislation which established the Tribunal does not provide for a Board, it was necessary to consider each element of the Code and agree a mechanism to achieve the objectives of the Code in the absence of a Board.

This task was complicated by the fact that the Tribunal is statutorily independent in the exercise of its functions. There is therefore an apparent conflict between independence on the one hand and accountability on the other.

It was necessary to consider each requirement of the Code and agree a mechanism that could achieve the goals of Code, as listed above, while ensuring that the independence of the Tribunal was fully recognised and protected.

Performance Agreement:

Part of the Code of Practice recommends that State Bodies to enter into performance framework agreements with their parent departments. The Tribunal is at an advanced stage of negotiating such an agreement.

The Agreement will provide specific measurable performance targets for the Tribunal to achieve. These targets will come under three headings; productivity, quality and costs. By adopting such targets the Tribunal will then be in a position to adopt various measures and targets over the course of the year so as to ensure that the overall targets will be achieved. Coupled with this, the Department will also agree the resources that they will provide to enable the Tribunal meet the required output levels.

Such an agreement allows both parties, and the general public, to have confidence that the Tribunal is achieving value for money in how it uses the resources provided by the Department and ultimately the taxpayer.

Tribunal Users Group:

A Tribunal Users Group has been established consisting of the Chairperson of the Tribunal and two representatives of both the solicitors and barristers professions, nominated by their respective professional bodies. The group is intended to act as a forum for the users of the Tribunal to discuss matters of common concern. It can also act in an advisory capacity to the Chairperson in certain decisions that are required to make under the relevant legislation.

Such a group has the potential to build a good working relationship between the users of the Tribunal and the Tribunal itself.

Conclusion:

The Statement of Strategy sets out the Tribunal's Mission Statement as follows:-

The Tribunal will strive to determine all appeals:

- fairly;
- with respect for the dignity of applicants;
- in accordance with the law;
- efficiently;
- with the highest standard of professional competence;
- in a spirit of openness and transparency in how the appeals process is managed;

It is hoped that the changes made to date, and those planned to be introduced in the coming months, will enable the Tribunal realise these aspirations.



The Use of Decision Templates for Refugee Status Determination



By Seán O'Connell, Legal Intern, Refugee Appeals Tribunal. Any views expressed are the author's own.

Introduction

Refugee Status Determination (RSD) decision templates are now common among determining authorities across the world. Decision makers rely on these structured checklists to assist them in dealing with complex refugee concepts in a consistent and time efficient manner. Despite their growth, the content and format of, and reliance on, decision templates varies significantly across determining authorities with no universally applicable model available. Although UNHCR have developed a generic decision template that focuses on the essential elements in analysing a refugee claim,³⁹ they more often work with the relevant determining authorities to devise country specific templates that balance international obligations under the Convention with domestic protection procedures and policies.⁴⁰ While decision templates continue to spread and form an ever more central role in RSD, it is worth exploring what they aim to achieve, how they

³⁹ UNHCR, *Building in Quality: A Manual on Building a High Quality Asylum System*, September (2011), p. 16-20.

⁴⁰ UNHCR and national reports outline the coordination of RSD decision templates in Australia, Romania, the UK, Hungary and Ireland with the respective national protection authorities: *See respectively*; Sue Tongue, *Review of refugee decision making within the current POD process*, Minter Ellison Lawyers (2012); UNHCR, 'Romanian judges striving to improve the quality of asylum decisions', *UNHCR-Central Europe* (November 2009); UNHCR-UK, *Quality Initiative Project: Fifth Report to the Minister* (March 2008); UNHCR News, 'Central, Eastern Europe aim to improve refugee status decisions' (September 2008); and, Refugee Appeals Tribunal, *Annual Report 2013* (1st of January 2013-31st of December 2013), p 4.

function, how they are complemented and, most importantly, what they cannot be relied on to achieve.

Purpose of the Decision Template

The development of decision templates can be seen as a natural progression for determining authorities where decision makers are expected to deal with large volumes of applications while applying complex refugee concepts to a variety of case and country specific facts in a limited timeframe. Despite their natural progression and development in some jurisdictions, UNHCR have become central to the proliferation and promotion of decision templates in recent years, in particular among EU Member States as outlined in their 2011 training manual, 'Building in Quality: A Manual on Building a High Quality Asylum System' (the Manual).⁴¹

The Manual aims to assist decision makers in the analysis of difficult refugee concepts through the use of checklists, encouraging a logical progression in decision writing through each stage of the RSD process. It contains a generic decision template, which covers the essential elements for decision makers when analysing a claim for refugee status, and allows sufficient discretion for each determining authority to modify it to suit the protection policies and procedures used in each country. The decision template should ensure the final decision is structured logically so that the basis of the determination is transparent to a reader. The ultimate goal is to produce a decision template that assists in producing short, accurate, decision records, having regard to the circumstances of each particular case, which in turn will promote consistency, transparency and quality across all decisions.⁴²

Despite this common purpose for decision templates, the model adopted can vary considerably among determining authorities given the diversity of RSD systems across the world.

Format and Contents

The decision template outlined in the Manual covers the essential elements for analysing a protection claim, namely the following ten headings: the capacity of the applicant; their identity; the facts of their claim; arising credibility issues; persecution feared; possible state protection; reasons for persecution (the Convention

⁴¹ UNHCR, *Building in Quality*. The Manual was prepared as part of the 'Further developing Quality Asylum in the European Union (FDQ)' project.

⁴² Tongue, *Review of refugee decision making within the current POD process*, p. 5, para. 12.

nexus); internal protection alternative; subsidiary protection claims; and, possible reasons for exclusion.⁴³ These elements provide only the basic considerations for a protection claim and how these headings are dealt with and eventually articulated in a decision is where variance across jurisdictions can be seen. However, as decision templates continue to develop, many countries which use them still fall short of even these basic elements.

The implementation of decision templates goes right from inflexible standardised paragraphs that follow a specific conclusion by a decision maker, to basic suggested headings or steps for analysing claims, which act simply as an aide-memoir.⁴⁴ The former is represented by the template adopted in Germany. This includes specific guidance and standard paragraphs for decision makers, which aims to ensure accordance with the Refugee Convention, the Qualification Directive and the German Constitution.⁴⁵ Similarly, the UK decision makers have a 'stock letters template' with standard wordings ready to be transposed straight into their decision depending on the conclusion reached.⁴⁶ The main advantages of this model are consistency and time efficiency. Decision makers can deal with case specific information that is common across many claims by using such standardised paragraphs, thus allowing them to deal with more decisions by saving time on drafting while not compromising consistency.

On the other hand, the template developed in Bulgaria does not contain much detail or prescriptive instruction and leaves substantial discretion to decision makers concerning the content, format and style of decisions.⁴⁷ As mentioned above, this format acts more as an aide-memoir, including suggested headings or preferred structures for final decisions. Such a model is less time efficient than a more prescriptive one but ensures the specific facts and issues raised in each application are given full consideration and inclusion in the final decision.

While determining authorities' often limit access to view the full contents of their decision templates, UNHCR reports help outline certain common threads.

⁴³ UNHCR, *Building in Quality*, p. 24.

⁴⁴ UNHCR-UK, *Quality Initiative Project: Fifth Report to the Minister* (March 2008), para. 2.2.8, p. 4.

⁴⁵ UNHCR, *Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice*, Detailed Research on Key Asylum Procedures Directive Provisions (March 2010), p. 23.

⁴⁶ *ibid.*, p. 31. Paragraphs are used where refusal includes non-compliance with procedural requirements and formal rejection of human rights-based claims in the UK.

⁴⁷ *ibid.*

Fundamentally, decision templates contain guidance in two important areas to assist decision makers. Firstly, in how to structure the decision so that it follows a logical progression, ensuring coherency and consistency across all final decisions. Secondly, that within that structure, decision makers are assisted in taking the correct approach in applying important substantive issues required for RSD, such as assessing credibility, interpreting COI or applying the relevant elements of the Refugee Convention.⁴⁸ Although adherence to these two principles varies across determining authorities, it is clear that they are considered essential guiding tools for the development of any effective decision template.

UNHCR Review of Template

UNHCR reviewed the use of templates in the EU through analysis of RSD procedures in a selection of Member States in their report 'Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice'.⁴⁹ Templates were being used by determining authorities in Belgium, Bulgaria, the Czech Republic, Germany, the Netherlands, and the United Kingdom.⁵⁰ In Germany, it was observed that there was a heavy reliance on the use of standardised paragraphs found in decision templates. Almost 80% of the average decisions audited were composed of standard paragraphs and only about 16% was dedicated to the reasoning surrounding the specific facts of the application.⁵¹ The UNHCR concluded:

"The predominant use of ready-made templates for the phrasing of decisions seems to divert attention from the specifics of the case and seems to result in an examination of the facts brought forward by the applicant evaluated in light of their 'compatibility' with the given standard paragraphs. One of the stakeholders stated the following in this regard: 'The templates are not tailored to the case, but the case to the templates'."⁵²

A separate review of the Australian RSD decision template highlighted similar concerns to those expressed of the German system.⁵³ While there was general acceptance of the role and benefit of templates

⁴⁸ UNHCR-UK, *Quality Initiative Project*, p. 4, para. 2.2.8.

⁴⁹ UNHCR, March 2010.

⁵⁰ *ibid.*, p. 31.

⁵¹ *ibid.*, p. 23.

⁵² *ibid.*, fn. 66.

⁵³ Tongue, *Review of refugee decision making within the current POD process*.

among decision makers, there was concern about the lack of attention to detail in decision writing where they were overused. This reduced confidence in the system among decision makers, legal representatives and applicants. It was suggested by decision makers that a more fundamental understanding of the principles of international protection and better writing skills would complement the use of templates and improve decision records.⁵⁴ This conclusion was echoed by UNHCR in their annual report on the UK, in that “the decision template will not resolve all the concerns raised by UNHCR and cannot serve as a substitute for clear training and guidance on asylum decision making”.⁵⁵

Quality Control

An essential element for the implementation of an RSD decision template is an accompanying programme or system for ongoing quality review of decisions. Recognised benefits of monitoring quality include, among others; assessment of whether national or international legal standards are being met by decision-makers throughout the determining authority; identifying training and operational policy guidance needs; ensuring consistency across decision makers in structure and the application of legal standards; and, to verify adherence to quality standards adopted by RSD authorities.⁵⁶

In their review of RSD procedures among Member States, UNHCR identified the countries that actively monitor the quality of decisions, including Belgium, Bulgaria, the Czech Republic, France, Finland, Germany, Greece, Italy, the Netherlands, Slovenia, Spain and the UK. There is a wide variety of models adopted for quality review across the Member States above, including internal panel review, supervisory review, peer review and external review by independent research or human rights bodies. However, UNHCR have identified one system of review that represents best practice for determining authorities.

Germany and the UK both satisfy this practice in that they have, in addition to internal legal and administrative supervision, dedicated and specialist quality control functions. In the UK, fifteen auditors work with the Quality Audit and Development Team (QADT) in undertaking audits of case files to monitor decisions, developing quality assessment tools for decision makers and producing periodic reports on

quality. The German system similarly has dedicated staff monitoring the quality of decisions. Germany has established a special unit for quality control to assure and manage a high standard of quality by analysis of decisions, the further development of quality assurance mechanisms and quality management, the development of new tools for decision makers and participation in international projects concerning quality of procedures.⁵⁷

UNHCR recommend that the adoption of any quality assessment system should focus on identifying areas where practical steps can be taken to fill gaps in knowledge, skills or capacity. This can include training, development of guidelines and the use of other templates which could assist the preparation of structured, well-reasoned and legally sound written decisions.⁵⁸ These templates can go beyond those used for RSD and can be developed for complementary protection analysis, how to assess credibility, the correct interpretation of COI or for conducting interviews. While the resource heavy dedicated quality control team is to be preferred, where resources do not allow, other models such as peer review or supervisory review should still be implemented to ensure some method of monitoring the quality of decisions is in place.

Conclusion

In their 2010 report, ‘Improving Asylum Procedures’, UNHCR were unequivocal in championing the adoption of decision templates for RSD. Given the variety of protection systems operating across the world, it is difficult to develop a universally applicable decision template capable of being transposed wholesale by determining authorities. However, the approach adopted by UNHCR, in designing and coordinating templates compatible with domestic policy and practice, has facilitated the proliferation of the decision template. Despite this successful approach, UNHCR have offered in the above mentioned report to develop an EU-wide decision template to guide the EU common asylum policy, but this has not yet come to fruition.⁵⁹

An analysis of templates that have been developed under the guidance of UNHCR identifies certain common threads and a single, overarching principle across the diversity of models and standards adopted. Templates should avoid being overly prescriptive in using standardised terms or paragraphs to the point of

⁵⁴ *ibid*, p. 28.

⁵⁵ UNHCR-UK, *Quality Initiative Project*, p. 4, para. 2.2.9.

⁵⁶ UNHCR, *Improving Asylum Procedures*, p. 32.

⁵⁷ *ibid*, p. 39.

⁵⁸ *ibid*, p. 40.

⁵⁹ *ibid*, p. 32.

failing to take adequate account of the relevant facts of an applicants claim. Ultimately, all decision templates should attempt to tie the facts of the claim to the relevant legal standard being applied in a logical and structured format to ensure consistent, transparent and high quality decisions. To complement the introduction of a template, a system of monitoring the quality of decisions should be implemented, with a dedicated team to be preferred over peer review where resources allow ensuring the enhanced quality of decisions is maintained and improved upon.

Finally, UNHCR warn that a decision template is never an adequate substitute for in-depth and regular training for decision makers. The initial focus must be on ensuring decision makers understand fully the relevant legal standards and principles, can interpret relevant aspects of the claim, correctly source and apply COI, and understand the steps in conducting credibility assessments and interviews. The use of RSD decision templates, and complementary systems for monitoring quality, are only tools to ensure the effective, transparent and consistent application of the relevant legal standards.

Forced Marriage in Afghanistan



David Goggins, Refugee Documentation Centre

Introduction

Despite some advances in recent years Afghanistan remains a deeply conservative society where traditional customs and practices take precedence over laws enacted by a weak central government. Most notably, this is a male-dominated society where the females in a family are expected to be obedient to their husbands or family elders and where there is considerable resistance to the Western concept of equality for women. Women living in this entrenched culture may be denied access to education and employment, but the most serious abuse of their rights is the denial to choose their own marriage partners.

The distinction between an arranged marriage and a forced marriage is explained in a report from Human Rights which states:

“Forced and child marriage in Afghanistan remain widespread and socially accepted. Though the data on prevalence varies, all surveys indicate that well over half of all marriages are forced or involve girls under age 16. Forced marriage includes situations in which women and girls must marry without their consent, face threats or violence, are kidnapped, or are traded through informal dispute mechanisms, such as to settle a rape case, and when they are 15 or younger.”⁶⁰

Teachings of Islam

It is worth noting that although over 99% of Afghans are Muslims there is no basis in Islam for forced marriage. The contradiction between Islamic teaching and Afghan tribal custom is clarified in an article by Afghan author Abdullah Qazi who states:



⁶⁰ Human Rights Watch (December 2009) “We have the promises of the World”: Women’s rights in Afghanistan

“The vast majority of Afghanistan's population professes to be followers of Islam. Over 1400 years ago, Islam demanded that men and women be equal before God, and gave them various rights such the right to inheritance, the right to vote, the right to work, and even choose their own partners in marriage. For centuries now in Afghanistan, women have been denied these rights either by official government decree or by their own husbands, fathers, and brothers.”⁶¹

Despite the fact that forced marriage is not sanctioned by Islam there is irrefutable evidence that this is a widespread practice in Afghanistan.

This unconcern for the teachings of Islam is noted by the Institute for War & Peace Reporting, which states:

“In conservative Afghan society, many decisions about a woman’s future are taken by male family members. Observers say customary law takes precedence over Islamic law, which gives women the right to choose their own husband and forbids forced marriage.”⁶²

This disregard of Islamic teaching on forced marriage is further remarked on in a Deutsche Welle article which states:

“According to Islamic law, a man and woman should agree on a marriage for it to be valid. However, tradition tends to take priority in Afghanistan. Parents often decide upon their daughters’ future without asking them for an opinion. Men, on the other hand, are generally able to reject their family’s choice of bride and can even choose their own bride sometimes.”⁶³

Not every Afghan agrees with daughters being forced into marriage. In a report on women’s rights published by the Afghanistan Research and Evaluation Unit (AREU) an older man living in urban Bamyan is quoted as saying:

“Some customs and traditions jeopardise society. Forced marriage is against Islamic law and should be abolished.”⁶⁴

⁶¹ Afghanistan Online (undated) The Plight of the Afghan Woman

⁶² Institute for War & Peace Reporting (26 November 2010) Afghan Runaways Flee Forced Marriages

⁶³ Deutsche Welle (18 April 2013) Afghan women escape marriage through suicide

⁶⁴ Afghanistan Research and Evaluation Unit (AREU) (February 2009) Decisions, Desires and Diversity: Marriage Practices in Afghanistan

What is Forced Marriage?

In a report on harmful traditional practices published by the United Nations Assistance Mission in Afghanistan (UNAMA) forced marriage is defined as:

“A forced marriage is one in which the free and full consent of one or both of the intended spouses is missing. Forced marriage in Afghanistan encompasses baad (the exchange of girls for dispute resolution), baadal (exchange marriages), child marriage (by its very nature forced) and coercion of widows to marry a relative of a deceased husband. According to a 2008 report by UNIFEM, 70 to 80 per cent of Afghan marriages are forced.”⁶⁵

A manual on family law published by the Max Planck Institute of Germany states:

“According to observations reported by national and international organisations, forced marriages do take place in Afghanistan. These are marriages of under-age children, married by their parents or other persons, as well as marriages of adults, mostly women, against their free will and consent. According to the Afghan Independent Human Rights Commission, 60-80% of the marriages in Afghanistan are concluded without the consent or against the will of one of the spouses.”⁶⁶

In 2006 a Finnish fact-finding mission reported that:

“According to an official of the Ministry of Women’s Affairs, the modern western understanding of marriage is not valid in Afghanistan: marriage has more to do with power and economic interests than with love. Historically, gender roles and women’s status have been tied to property relations. In Afghanistan property includes livestock, land, and houses or tents. Women and children tend to be assimilated into the concept of property and to belong to a male.”⁶⁷

The Marriage Agreement

In Traditional Afghan culture a marriage agreement is reached by the two sets of parents rather than the prospective bride and groom.

⁶⁵ UN Assistance Mission in Afghanistan (UNAMA) (9 December 2010) Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women in Afghanistan

⁶⁶ Max Planck Institute (July 2012) Max Planck Manual on Family Law in Afghanistan

⁶⁷ Finnish Immigration Service (1 May 2007) Report from a fact-finding mission to Afghanistan

The Norwegian Country of Origin Information Centre (Landinfo) reveals the extent to which marriages in Afghanistan are arranged, saying that:

“Irrespective of kinship group, ethnicity and geographical region, most of the marriages in Afghanistan are arranged, in the sense that they are entered into following an agreement between families/groups. The extent to which the parties themselves are involved in the process tends to vary.”⁶⁸

This report explains the logic behind such agreements as follows:

“The marriage contract is thus an agreement between two families and not a confirmation of an emotional relationship between two individuals. In Afghanistan, arranged marriages are part of a complex set of traditions, loyalties and authorities. The marriage institution plays a key role in the establishment of alliances between families or in strengthening pre-existing networks. Marriage agreements have strong political and economical aspects.”⁶⁹

The role of the parents in choosing a marriage partner is illustrated in an article published on the Islam Online website in which Afghan freelance writer Fazl ur Rahim Muzaffary states:

“Marriage in the traditional Afghan culture has a deep-rooted process through which it treads step by step. Rarely do young men and women have an opportunity to meet each other, and the to-be wife is usually chosen in a haste. When a young man wants to marry a young lady who is from an unknown family, first his parents do some kind of background check about her, trying to know more about her morals, beauty, and other family affairs. If they are contented with what they find, his parents will send a female family member or a relative to her house in order to understand, indirectly or directly, and would disclose the proposal, if the situation is favourable. This consultation process takes some time, and a date is usually fixed to announce the decision among the relatives, if both sides are satisfied with this deal.”⁷⁰

The cultural pressures which oblige an individual to acquiesce with the wishes of their parents are acknowledged in a report on marriage practices from

⁶⁸ Landinfo Country of Origin Information Centre (19 May 2011) Afghanistan: Marriage

⁶⁹ Landinfo Country of Origin Information Centre (19 May 2011) Afghanistan: Marriage

⁷⁰ IslamOnline (18 June 2008) Afghan Muslim Wedding

the Afghanistan Research and Evaluation Unit (AREU) which states:

“In a social order where obeying elders, particularly parents, is deeply entrenched as the correct way to behave, it is very difficult for a child, regardless of their age or gender, to object to a decision a parent has made for them. Many children will consent to marriages that they are not entirely happy with if they feel that not consenting will disappoint their parents or because doing so would go against cultural expectations.”⁷¹

Child marriage

One consequence of traditional marriage customs is that many Afghan girls are married before the legal age of 16. Regarding this practice the UN Population Fund states:

“Afghani civil law sets the minimum marriage age for females at 16. Moreover forced marriage is forbidden in Islam, which holds that marriage should be entered into with total commitment and full knowledge of what it involves. In Afghanistan, however, coerced child marriage persists. Although getting reliable data is difficult, the most recent surveys estimate some 46 per cent of Afghani women are married by age 18, 15 per cent of them before age 15.”⁷²

The occurrence of under-age marriage is also referred to in the AREU report mentioned above which states:

“The legal age for marriage is 16 for girls and 18 for boys, but data suggests that more than half of all Afghan girls are married before the age of 16. Adequate steps have yet to be taken to raise the legal marriage age for girls to 18, in line with gender equality commitments and international standards”⁷³

The difficulty in obtaining accurate data on child marriages results from the fact that very few marriages in Afghanistan are formally registered, a fact noted by the Max Planck manual referred to above which states:

“Current reports and surveys with regard to the marriage registration in Afghanistan indicate that in

⁷¹ Afghanistan Research and Evaluation Unit (AREU) (February 2009) Decisions, Desires and Diversity: Marriage Practices in Afghanistan

⁷² UN Population Fund (UNFPA) (4 October 2012) Escaping Child Marriage in Afghanistan

⁷³ Afghanistan Research and Evaluation Unit (AREU) (September 2013) Women’s Rights, Gender Equality, and Transition: Securing gains, moving forward

most parts of the country marriages are neither certified or registered. According to interviews, only 5% of all marriages in Afghanistan have been registered. In spite of the existing regulations, registration authorities which could function systemically have not been created in Afghanistan.”⁷⁴

Referring to Afghanistan’s Elimination of Violence Against Women law the US Department of State notes that:

“The ERAW law criminalizes forced or underage marriage and *baadh*. According to the UN and Human Rights Watch, an estimated 70 percent of marriages were forced. Despite laws banning the practice, many brides continued to be younger than the legal marriage age of 16.”⁷⁵

Risks to Health

Underage marriage and subsequent early pregnancy often results in serious health problems for the girls involved. According to the World Health Organisation Afghanistan has one of the highest maternal death rates in the World.

Underage brides are also at risk of domestic violence, which is so pervasive in Afghan society that it is widely regarded as normal behaviour. A survey undertaken in 2008 on behalf of Global Rights indicated that women in a forced marriage were exposed to nearly twice the level of domestic violence compared to women who were not in a forced marriage. According to this survey child brides were especially at risk, with the levels of violence being reported as follows:

“Girls aged 10-14 were more likely to experience all forms of violence than girls and women 15 years of age and older. In particular, 33.3% of girls in this age group reported sexual violence, which was almost double the incidence for females aged 15 years and older. 62.5% reported physical violence compared to 52.3% for older girls and women.”⁷⁶

Harmful traditional practices

⁷⁴ Max Planck Institute (July 2012) Max Planck Manual on Family Law in Afghanistan

⁷⁵ US Department of State (27 February 2014) 2013 Country Reports on Human Rights Practices - Afghanistan

⁷⁶ Global Rights & Partners for Justice (March 2008) Living With Violence: A National Report on Domestic Abuse in Afghanistan

Among the harmful traditional practices relating to marriage in Afghanistan are *baadal* and *baad* marriages.

Baadal is defined by Landinfo as:

“Exchange marriage, or *baadal*, is an agreement between two families on ‘exchanging’ daughters or other family members through marriage. The daughter (the agreements may involve several women from each family) of one of the parties is married into the other party’s family and vice versa.”⁷⁷

Regarding this practice the AREU states:

“Exchanging daughters in marriage is recognised by the communities where the research was conducted as a practice that perpetuates violence toward women in families. It was also said to be un-Islamic by some. Despite this, exchange marriage is one of the most common forms of marriage practised in the communities.”⁷⁸

The reprehensible custom known as *baad* is explained by Landinfo as follows:

“*Baad* marriages are agreements concluded as a consequence of a family, a clan or a tribe acknowledging the responsibility to compensate the victim of a crime. It involves giving a young girl(s) to the victim’s family/group. The marriages are agreed with a view to solving/ending conflicts that may involve, or have developed into, a blood feud. Often, local jirgas or shuras will decide that a conflict must or can be solved by intermarriage.”⁷⁹

Another harmful traditional practice is the coercion of widows into a forced marriage, which is commented on in the UNAMA report on marriage which states:

“Harmful traditional practices not only curtail Afghan women’s rights before and during marriage but also after their husband dies. Forced marriage of widows stems in part from widows being considered the property of their in-laws, but is also often due to the desire to deny a widow her right to inheritance by marrying her to a relative and keeping any inheritance within the family. The woman concerned is thus forced

⁷⁷ Landinfo Country of Origin Information Centre (19 May 2011) Afghanistan: Marriage

⁷⁸ Afghanistan Research and Evaluation Unit (AREU) (February 2009) Decisions, Desires and Diversity: Marriage Practices in Afghanistan

⁷⁹ Landinfo Country of Origin Information Centre (19 May 2011) Afghanistan: Marriage

into a marriage against her will, contrary to all national and international law, as well as Sharia law – where consent is a prerequisite for any marriage.”⁸⁰

Divorce

Divorce is legal in Afghanistan but is difficult to obtain due to the associated stigma, particularly for the woman. Regarding the consequences of divorce Landinfo states:

“in accordance with Islam, Afghan legislation allows for divorce, although it is far easier for a man to obtain a divorce than it is for a woman. However, divorce is associated with loss of esteem. In general, the stigma is greater for the woman, but even men lose status as a consequence of divorce. In his *Culture and Customs of Afghanistan*, Hafizullah Emadi points out that: ‘Termination of marriage by either party is regarded as a disgrace, and the social stigma attached to it usually compel couples to remain married.’”⁸¹

The predicament of the divorced woman is summed up in an article on the Pashtun Women Viewpoint website which states:

“In Afghan society, marriages are supposed to last for life. The divorce rate is low, but when a marriage does fail, it is always the woman’s fault.”⁸²

Running Away

An Afghan woman faced with the prospect of a forced marriage may resort to running away from home, but there is a very real danger that by doing so she may incur a prison sentence. A New York Times article on the fate of runaways states:

“An often-invoked customary offense that does not exist in written Afghan law is that of running away from home. Even if the runaway girl is 18, legally an adult, courts still frequently impose a jail term of one year, based entirely on customary law.”⁸³

UNAMA reports that despite the risks running away is a common occurrence, saying that:

⁸⁰ UN Assistance Mission in Afghanistan (UNAMA) (9 December 2010) *Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women in Afghanistan*

⁸¹ Landinfo Country of Origin Information Centre (19 May 2011) *Afghanistan: Marriage*

⁸² Pashtun Women Viewpoint (28 January 2013) *To be Divorced – and Disgraced – in Afghanistan*

⁸³ New York Times (3 May 2014) *In Spite of the Law, Afghan ‘Honor Killings’ of Women Continue*

While “running away” is not a crime under Afghan law, law enforcement authorities often arrest, jail and even prosecute girls for running away, usually qualifying the charge as “intention” to commit *zina* (sexual intercourse outside of marriage).⁸⁴

An Associated Press report on women imprisoned in Badam Bagh, Afghanistan's central women's prison, states:

“The majority of the women packed are serving sentences of up to seven years for leaving their husbands, refusing to accept a marriage arranged by their parents, or choosing to leave their parent’s home with a man of their choice – all so-called ‘moral’ crimes.”⁸⁵

Honour Killing and Suicide

Imprisonment is not the only risk to a woman fleeing a forced marriage, there is also the very real possibility of being killed by male relations who feel that she has brought shame on the family.

Referring to the potential fate of runaways the New York Times states:

“Returned runaways are often shot or stabbed in honor killings because the families fear they have spent time unchaperoned with a man. Women and girls are still stoned to death.”⁸⁶

Furthermore, in February 2014 the Afghan parliament passed a new law which would make it impossible to prosecute the perpetrators of such so-called “honour killings”. Commenting on this law The Guardian states:

“‘Honour’ killings by fathers and brothers who disapprove of a woman’s behavior would be almost impossible to punish. Forced marriage and the sale or trading of daughters to end feuds or settle debt would also be largely beyond the control of the law in a country where the prosecution of abuse is already rare.”⁸⁷

⁸⁴ UN Assistance Mission in Afghanistan (UNAMA) (9 December 2010) *Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women in Afghanistan*

⁸⁵ Associated Press (9 April 2013) *Afghan Women in Kabul prison over ‘moral crimes’*

⁸⁶ New York Times (7 November 2010) *For Afghan Wives, a Desperate, Fiery Way Out*

⁸⁷ The Guardian (4 February 2014) *New Afghanistan law to silence victims of violence against women*

Tragically, life in a forced marriage is so harsh and unbearable for some women that they are driven to commit suicide, usually by self-immolation. This practice is acknowledged in a UNAMA report which states:

“Self-immolation is one of the most tragic consequences of harmful traditional practices and violence against women in Afghanistan. The authorities investigate very few cases where family members of women who set themselves alight are alleged to have caused the act. This is due to lack of evidence, but also due to reluctance on the part of State authorities to investigate or prosecute such cases.”⁸⁸

A New Conservatism?

The issue of forced marriage is linked to the wider campaign for basic human rights for women. Afghan women, who suffered grievous human rights abuses under the Taliban regime, saw considerable progress towards gender equality once the Taliban were removed from power. Unfortunately the steadily increasing influence of conservative elements in the Afghan parliament could mean that this progress may be reversed. Regarding the opposition to rights for women the AREU states:

“Top-down efforts to promote reform have repeatedly met with a political backlash from more conservative, mostly rural segments of society.”⁸⁹

The AREU also comments on women’s even greater fear that the Taliban may return to power, either by themselves or as part of an accommodation with the Kabul government:

“Despite claims that the Taliban have adjusted their stance and become more moderate, their actions demonstrate that views on women’s rights are largely unchanged. Afghan urban women interviewed as part of this research were highly suspicious of the Taliban’s agenda for women, and remained deeply concerned that the departure of foreign troops could pave the way for a new era of conservatism.”⁹⁰

⁸⁸ UN Assistance Mission in Afghanistan (UNAMA) (9 December 2010) Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women in Afghanistan

⁸⁹ Afghanistan Research and Evaluation Unit (AREU) (September 2013) Women’s Rights, Gender Equality, and Transition: Securing gains, moving forward

⁹⁰ Afghanistan Research and Evaluation Unit (September 2013) Women’s Rights, Gender Equality, and Transition: Securing gains, moving forward

The fear that rights for women may be sacrificed in the interests of reconciliation with the Taliban is articulated by member of parliament Shinkai Karokhail who asserts:

“After the fall of the Taliban everyone wanted to come and work for women’s rights, they were proud to say they were here to help Afghan women. Slowly, slowly this disappeared. Maybe the international community saw that we had two or three women in the cabinet, and thought, it’s ok, now they have their rights. But we have lost everything, from those cabinet positions to the donor attention. Women are not a priority for our own government or the international community. We’ve been forgotten.”⁹¹

The fears of Afghan women would appear to be well founded. In a conservative society which no longer feels the need to placate the international community harmful traditional practices such as forced marriage are unlikely to be eradicated anytime in the foreseeable future.

All documents referenced in this article may be obtained upon request from the Refugee Documentation Centre.



⁹¹ Human Rights Watch (December 2009) “We Have the Promises of the World”: Women’s Rights in Afghanistan

Houses of the Holy: Iraq and the last days of the Mandaeans



Patrick Dowling

Introduction

Since the 2003 ouster of Saddam Hussein the Mandaean⁹² community in Iraq has significantly declined.⁹³ Local activists, national and international NGOs, and international Human Rights organisations, have voiced concerns over the continued survival of the Mandaeans in Iraq.⁹⁴ The extinction of Mandaeans in Iraq remains a prevailing possibility.⁹⁵

⁹² For purposes of clarity I have used the name “Mandaean” to denote this group though the names “Mandaean” and “Sabian” are used interchangeably by various sources. See the following for etymological descriptions:

Masarat (2013) *Minorities in Iraq: Memory, Identity and Challenges*

<http://masaratiraq.org/books/>;

UNHCR (August 2007) *UNHCR's Eligibility Guidelines For Assessing The International Protection Needs Of Iraqi Asylum-Seekers*, p.68

<http://www.refworld.org/publisher.UNHCR.,IRO,46deb05557,0.htm>;

Agence France Presse (20 July 2010) *Iraq's last Sabeans take sad New Year dip in Tigris*

<http://reliefweb.int/report/iraq/iraqs-last-sabeans-take-sad-new-year-dip-tigris>;

International Crisis Group (26 September 2005) *Unmaking Iraq: A Constitutional Process Gone Awry*, p.3/footnote 6

<http://www.crisisgroup.org/en/regions/middle-east-north-africa/iraq-iran-gulf/iraq/B019-unmaking-iraq-a-constitutional-process-gone-awry.aspx>;

Society for Threatened Peoples (March 2006) *Mandaeans in Iraq*

<http://www.gfbv.de/inhaltsDok.php?id=694>; &

Middle East Online (26 April 2003) *Sabeian Mandaeans pray for peace in Iraq*

<http://www.middle-east-online.com/english/?id=5307>

⁹³ BBC Monitoring (17 July 2014) *The minorities of Iraq's Nineveh Valley*

<http://monmol01.monitor.bbc.co.uk/mmu/>; &

Chicago Tribune (16 November 2008) *This is one of the world's oldest religions, and it is going to die.*

http://articles.chicagotribune.com/2008-11-16/news/0811160073_1_sect-iraqi-kurdistan-sunni-nor-shiite

⁹⁴ Azzaman (21 March 2013) *Ancient community on verge of extinction in Iraq*

History

The largest Mandaean communities were established in the marshlands of southern Iraq in areas between the Euphrates and Tigris rivers, including the towns of Nassriyah and Basrah.⁹⁶ Places where other

<http://www.azzaman.com/english/?p=677>;

Agence France Presse (20 July 2010) *op.cit.*,

<http://reliefweb.int/report/iraq/iraqs-last-sabeans-take-sad-new-year-dip-tigris>;

Mandaean Human Rights Group (12 April 2013) *Mandaean Killing Goes On While The Iraqi Government Looks Away*

<http://mandaeunion.com/mhrg/item/301-mandaean-killing-goes-on-while-the-iraqi-government-looks-away>;

Azzaman (6 December 2012) *Ancient language on verge of extinction in Iraq*

<http://www.azzaman.com/english/?p=500>; &

Minority Rights Group International (11 March 2008) *State of the World's Minorities 2008*, p.153

<http://www.minorityrights.org/6138/state-of-the-worlds-minorities/state-of-the-worlds-minorities-2008.html>

⁹⁵The Mandaean Associations Union (27 July 2014) *Mandaean Statement about The current situation in Iraq*

<http://mandaeunion.com/mhrg/item/1315-mandaean-statement>;

BBC Monitoring (17 July 2014) *op.cit.*,

<http://monmol01.monitor.bbc.co.uk/mmu/>;

United States Commission on International Religious Freedom (30 April 2014) *Annual Report 2014, Iraq*, p.2

<http://www.uscirf.gov/countries/iraq>;

Institute for International Law & Human Rights (May 2013) *Iraq's Minorities and Other Vulnerable Groups: Legal Framework, Documentation and Human Rights*, p.111

<http://lawandhumanrights.org/>;

Mandaean Human Rights Group (26 April 2013) *The Mandaean Crisis in Iraq*

<http://mandaeunion.com/mhrg/item/518-the-mandaean-crisis-in-iraq>;

Mandaean Human Rights Group (12 April 2013) *Mandaean Killing Goes On While The Iraqi Government Looks Away*

<http://mandaeunion.com/mhrg/item/301-mandaean-killing-goes-on-while-the-iraqi-government-looks-away>;

Azzaman (21 March 2013) *Ancient community on verge of extinction in Iraq*

<http://www.azzaman.com/english/?p=677>;

Masarat (2013) *op.cit.*, p.79; p.89

<http://masaratiraq.org/books/>;

Mehrdad Arabestani (2012) *Ritual Purity and the Mandaeans' Identity*, pp.153-155

http://www.academia.edu/1850895/Ritual_Purity_and_the_Mandaeans'_Identity;

Minority Rights Group International (24 September 2009) *Uncertain Refuge, Dangerous Return: Iraq's Uprooted Minorities*, p.15

<http://www.minorityrights.org/8132/reports/uncertain-refuge-dangerous-return-iraqs-uprooted-minorities.html>; &

Minority Rights Group International (April 2008) *Sabian Mandaeans*

<http://www.minorityrights.org/5746/iraq/sabian-mandaeans.html>;

⁹⁶ Azzaman (6 December 2012) *Ancient language on verge of extinction in Iraq*

<http://www.azzaman.com/english/?p=500>;

Minority Rights Group International (11 March 2008) *State of the World's Minorities 2008*, p.152

<http://www.minorityrights.org/6138/state-of-the-worlds-minorities/state-of-the-worlds-minorities-2008.html>;

communities settled include Baghdad, Kirkuk and Mosul.⁹⁷ Most Mandeans presently reside in Baghdad, Amara, Basrah, Nassriyah and the southern marshlands.⁹⁸ Sources differ, however, regarding the precise origin of the Mandaean community:⁹⁹ Babylonian, Islamic and gnostic evidence, for example, provides contending theories of Mandaean history;¹⁰⁰ loss of evidence and persecution of the Mandeans due to their beliefs have additionally hampered historical practice.¹⁰¹ Ongoing research into Mandaean history is not widespread¹⁰² though Mandaean leaders nonetheless, trace their origins in Iraq to the pre-Christian era, approximately 6BC.¹⁰³

Institute for International Law & Human Rights (May 2013) *op.cit.*, p.112

<http://lawandhumanrights.org/>;

UNHCR (August 2007) *op.cit.*, p.69

<http://www.refworld.org/publisher.UNHCR.,IRQ.46deb05557.0.html>;

Minority Rights Group International (April 2008) *Sabian Mandeans*

<http://www.minorityrights.org/5746/iraq/sabian-mandeans.html>;

& Azzaman (24 August 2013) *Southern province establishes key post for Sabeans*

<http://www.azzaman.com/english/?p=928>

⁹⁷ UNHCR (August 2007) *op.cit.*, p.69

<http://www.refworld.org/publisher.UNHCR.,IRQ.46deb05557.0.html>

For information on historical geography affecting the Mandeans see:

Masarat (2013) *op.cit.*, p.80

<http://masaratiraq.org/books/>;

Mandaean Associations Union (25 March 2013) *Where Are The Mandeans*

<http://mandaeunion.com/component/k2/item/168-where-in-the-world-are-the-mandeans>

⁹⁸ Institute for International Law & Human Rights (May 2013) *op.cit.*, p.112

<http://lawandhumanrights.org/>

See also:

Masarat (2013) *op.cit.*, p.80

<http://masaratiraq.org/books/>

⁹⁹ UNHCR (August 2007) *op.cit.*, p.68

<http://www.refworld.org/publisher.UNHCR.,IRQ.46deb05557.0.html>

¹⁰⁰ Society for Threatened Peoples (March 2006) *op.cit.*,

<http://www.gfbv.de/inhaltsDok.php?id=694>;

Middle East Online (26 April 2003) *op.cit.*,

<http://www.middle-east-online.com/english/?id=5307>; &

Agence France Presse (20 July 2010) *op.cit.*,

<http://reliefweb.int/report/iraq/iraqs-last-sabeans-take-sad-new-year-dip-tigris>

¹⁰¹ Masarat (2013) *op.cit.*, p.80

<http://masaratiraq.org/books/>

¹⁰² Mandaean Human Rights Group (26 April 2013) *The Mandaean Crisis in Iraq*

<http://mandaeunion.com/mhrg/item/518-the-mandaean-crisis-in-iraq>;

Institute of Near Eastern & African Studies (1997) *The Mandeans: An Unknown Religious Minority in the Near East*

<http://www.ineas.org/in/ne/199704mandeans.htm>

¹⁰³ Agence France Presse (20 March 2007) *Iraq: Baghdad fighting prompts exodus of religious minorities*

Religion

John the Baptist is the central prophet of the Mandaean religion and Mandaism is among the oldest surviving Gnostic religions in the world.¹⁰⁴

Baptism plays a cardinal role in Mandaean religious practice including for significant life milestones and everyday habitudes.¹⁰⁵ This is one of the reasons why Mandeans have traditionally settled in areas close to clean natural water such as the marshlands and rivers of southern Iraq.¹⁰⁶ Mandeans are both a religious and

<http://reliefweb.int/report/iraq/iraq-baghdad-fighting-prompts-exodus-religious-minorities>

See also:

Radio Free Europe/Radio Liberty (14 July 2004) *Iraq: Old Sabaean-Mandaean Community Is Proud of Its Ancient Faith*

<http://www.rferl.org/content/article/1053864.html>;

Chicago Tribune (16 November 2008) *op.cit.*,

http://articles.chicagotribune.com/2008-11-16/news/0811160073_1_sect-iraqi-kurdistan-sunni-nor-shiite; &

Azzaman (24 August 2013) *op.cit.*,

<http://www.azzaman.com/english/?p=928>

For commentary on Mandaean historiography, see:

Mehrdad Arabestani (2012) *op.cit.*, p.156

http://www.academia.edu/1850895/Ritual_Purity_and_the_Mandaean_Identity

¹⁰⁴ Society for Threatened Peoples (March 2006) *op.cit.*,

<http://www.gfbv.de/inhaltsDok.php?id=694>;

Human Rights Watch (November 2009) *On Vulnerable Ground Violence against Minority Communities in Nineveh Province's Disputed Territories*, p.16/footnote 14

<http://www.hrw.org/reports/2009/11/10/vulnerable-ground>;

BBC News (20 September 2005) *Iraq chaos threatens ancient faith*

http://news.bbc.co.uk/2/hi/middle_east/4260170.stm; &

Agence France Presse (19 July 2014) *Facts about Iraq's Christians*

http://www.lexisnexis.com/uk/legal/results/docview/docview.do?docLinkInd=true&risb=21_T20339809713&format=GPNBFULL&sort=BOOLEAN&startDocNo=1&resultsUrlKey=29_T20339809717&cisb=22_T20339809716&treeMax=true&treeWidth=0&csi=10903&docNo=8

Mandaean Gnostic theology is espoused in:

Masarat (2013) *op.cit.*, p.81

<http://masaratiraq.org/books/> &

Society for Threatened Peoples (March 2006) *op.cit.*,

<http://www.gfbv.de/inhaltsDok.php?id=694>

¹⁰⁵ BBC News (20 September 2005) *op.cit.*,

http://news.bbc.co.uk/2/hi/middle_east/4260170.stm; &

Society for Threatened Peoples (March 2006) *op.cit.*,

<http://www.gfbv.de/inhaltsDok.php?id=694>

¹⁰⁶ Institute for International Law & Human Rights (May 2013)

op.cit., p.112

<http://lawandhumanrights.org/>;

& UNHCR (August 2007) *op.cit.*, p.68

<http://www.refworld.org/publisher.UNHCR.,IRQ.46deb05557.0.html>;

BBC Monitoring (17 July 2014) *op.cit.*,

<http://monmol01.monitor.bbc.co.uk/mmu/>;

Azzaman (21 March 2013) *Ancient community on verge of extinction in Iraq*

<http://www.azzaman.com/english/?p=677>;

Minority Rights Group International (10 June 2010) *Still Targeted: Continued Persecution of Iraq's Minorities*, p.7

ethnic group¹⁰⁷ and their religion is the community's principal identifier.¹⁰⁸ They do not consider themselves Christians, though have been influenced by Abrahamic faiths; rather, they constitute a separate independent monotheistic religious entity.¹⁰⁹ Nonetheless Mandaean religious similarities to Islam, for example, include describing God as singular and indivisible; and similar to Christianity is their belief in the power of baptism.¹¹⁰ Mandaean scriptures, however, do contain, for example, accounts of John the Baptist that differ considerably from that of the Christian tradition: one of a number of religious issues which Christians alongside Jews and Muslims would find peregrine.¹¹¹ Mandeans also consider Moses, Jesus and Muhammad to be false prophets.¹¹² Mandeans are mentioned in the Qur'an though whether they are considered 'People of the Book' by Muslims is disputed.¹¹³

<http://www.minorityrights.org/10042/reports/still-targeted-continued-persecution-of-iraqminorities.html>; & Washington Post (10 February 2007) *Survival of Ancient Faith Threatened by Fighting in Iraq* http://www.washingtonpost.com/wp-dyn/content/article/2007/02/09/AR2007020901687_pf.html

¹⁰⁷ Mehrdad Arabestani (2012) *op.cit.*, p.153 http://www.academia.edu/1850895/Ritual_Purity_and_the_Mandaean_Identity; &

Mandaean Human Rights Group (26 April 2013) *op.cit.*, <http://mandaeunion.com/mhrg/item/518-the-mandaean-crisis-in-iraq>

¹⁰⁸ Mehrdad Arabestani (2012) *op.cit.*, pp.153-155 http://www.academia.edu/1850895/Ritual_Purity_and_the_Mandaean_Identity

¹⁰⁹ UNHCR (1 October 2005) *Background Information on the Situation of Non-Muslim Religious Minorities in Iraq*, p.4 <http://www.refworld.org/docid/4371cf5b4.html>;

International Crisis Group (26 September 2005) *op.cit.*, p.3/footnote 6 <http://www.crisisgroup.org/en/regions/middle-east-north-africa/iraq-iran-gulf/iraq/B019-unmaking-iraq-a-constitutional-process-gone-awry.aspx>;

UNHCR (August 2007) *UNHCR's Eligibility Guidelines For Assessing The International Protection Needs Of Iraqi Asylum-Seekers*, p.68

<http://www.refworld.org/publisher.UNHCR.,IRQ.46deb05557.0.html>; &

Mandaean Human Rights Group (26 April 2013) *op.cit.*, <http://mandaeunion.com/mhrg/item/518-the-mandaean-crisis-in-iraq>

¹¹⁰ Radio Free Europe/Radio Liberty (14 July 2004) *op.cit.*, <http://www.rferl.org/content/article/1053864.html>

¹¹¹ John Bolender (26 April 2013) *The Plight of Iraq's Mandeans* <http://mandaeunion.com/mhrg/item/510-the-plight-of-iraq-s-mandeans>; &

Mehrdad Arabestani (2012) *op.cit.*, p.158 http://www.academia.edu/1850895/Ritual_Purity_and_the_Mandaean_Identity

¹¹² Radio Free Europe/Radio Liberty (23 September 2009) *Ethnic Mandeans Killed In Iraqi Jewellery Store Robberies* http://www.rferl.org/content/Ethnic_Mandaean_Killed_In_Iraqi_Jewelry_Store_Robberies/1829230.html

¹¹³ Minority Rights Group International (26 February 2007) *Assimilation, Exodus, Eradication: Iraq's minority communities since 2003*, p.11

Threats

Religious fatwas, forced conversions, increased discrimination and security concerns feature among the reasons why Mandeans have fled Iraq since the fall of Saddam in 2003.¹¹⁴ Islamist extremism in the wake of Saddam has put the Mandaean community at increased risk.¹¹⁵ The UNHCR in 2007 reported on ongoing and increased security threats to the Mandeans.¹¹⁶ Minority

<http://www.minorityrights.org/?lid=682#>;
UNHCR (August 2007) *op.cit.*, p.69
<http://www.refworld.org/publisher.UNHCR.,IRQ.46deb05557.0.html>;

UNHCR (1 October 2005) *Background Information on the Situation of Non-Muslim Religious Minorities in Iraq*, p.5

<http://www.refworld.org/docid/4371cf5b4.html>;
Minority Rights Group International (April 2008) *Sabian Mandaean*

<http://www.minorityrights.org/5746/iraq/sabian-mandaean.html>;
BBC News (20 September 2005) *op.cit.*,

http://news.bbc.co.uk/2/hi/middle_east/4260170.stm;
Minority Rights Group International (11 March 2008) *State of the World's Minorities 2008*, p.152

<http://www.minorityrights.org/6138/state-of-the-worlds-minorities/state-of-the-worlds-minorities-2008.html>;

Mandaean Human Rights Group (26 April 2013) *The Mandaean Crisis in Iraq*

<http://mandaeunion.com/mhrg/item/518-the-mandaean-crisis-in-iraq>; &

Chicago Tribune (16 November 2008) *op.cit.*,
http://articles.chicagotribune.com/2008-11-16/news/0811160073_1_sect-iraqi-kurdistan-sunni-nor-shiite

¹¹⁴ UNHCR (1 October 2005) *op.cit.*, p.5
<http://www.refworld.org/docid/4371cf5b4.html>
Evidence of historical persecution can be found in the following:

UNHCR (August 2007) *UNHCR's Eligibility Guidelines For Assessing The International Protection Needs Of Iraqi Asylum-Seekers*, p.71

<http://www.refworld.org/publisher.UNHCR.,IRQ.46deb05557.0.html>; &

Masarat (2013) *op.cit.*, p.87

<http://masaratiraq.org/books/>

¹¹⁵ UNHCR (1 October 2005) *Background Information on the Situation of Non-Muslim Religious Minorities in Iraq*, p.5

<http://www.refworld.org/docid/4371cf5b4.html>;

BBC News (20 September 2005) *op.cit.*,
http://news.bbc.co.uk/2/hi/middle_east/4260170.stm;

United States Department of State (15 September 2006) *International Religious Freedom Report 2006, Iraq*

<http://www.state.gov/j/drl/rls/irf/2006/71422.htm>;
Genocide Watch (4 June 2007) *Mandaean of Iraq*

<http://www.genocidewatch.org/iraq.html>;

Washington Post (10 February 2007) *op.cit.*,
http://www.washingtonpost.com/wp-dyn/content/article/2007/02/09/AR2007020901687_pf.html; &

Danish Immigration Service (10 September 2010) *Security and Human Rights in South/Central Iraq*, p.24
<http://www.refworld.org/docid/4cc552282.html>

¹¹⁶ UNHCR (August 2007) *UNHCR's Eligibility Guidelines For Assessing The International Protection Needs Of Iraqi Asylum-Seekers*, p.72

<http://www.refworld.org/publisher.UNHCR.,IRQ.46deb05557.0.html>

See also:

Rights Group International in 2008 reported on the specific targeting of Mandaeans in the aftermath of the American led invasion of Iraq in 2003.¹¹⁷ A publication in 2009 by Minority Rights Group International expressed fears that the Mandaeans in Iraq faced extinction if the ongoing violence against the community continued.¹¹⁸ Minority Rights Group International produced a report on minorities in Iraq in 2010 which included grave concerns regarding the fortitude of the Mandaean community.¹¹⁹ Human Rights Watch in 2011 reported that nearly 90% of the Mandaean community had fled Iraq since 2003.¹²⁰ Those fleeing Iraq include the community's religious leaders which has resulted in a diminution of devotional capacity alongside the enduring security threat for all Mandaeans according to a UNHCR publication issued in 2012.¹²¹

Minority Rights Group International (26 February 2007) *Assimilation, Exodus, Eradication: Iraq's minority communities since 2003*, p.12

<http://www.minorityrights.org/?lid=682#;> &

Amnesty International (24 September 2007) *Iraq: Millions in flight: the Iraqi refugee crisis*, p.8

<http://www.amnesty.org/en/library/info/MDE14/041/2007/en>

¹¹⁷ Minority Rights Group International (11 March 2008) *State of the World's Minorities 2008*, p.152

<http://www.minorityrights.org/6138/state-of-the-worlds-minorities/state-of-the-worlds-minorities-2008.html>;

See also:

Minority Rights Group International (2008) *Peoples under Threat 2008*

<http://www.minorityrights.org/837/peoples-under-threat/peoples-under-threat-2008.html>; &

UNHCR (August 2007) *op.cit.*, p.73

<http://www.refworld.org/publisher,UNHCR,,IRQ,46deb05557,0.html>

¹¹⁸ Minority Rights Group International (24 September 2009) *Uncertain Refuge, Dangerous Return: Iraq's Uprooted Minorities*, p.9

<http://www.minorityrights.org/8132/reports/uncertain-refuge-dangerous-return-iraqs-uprooted-minorities.html>

¹¹⁹ Minority Rights Group International (10 June 2010) *Still Targeted: Continued Persecution of Iraq's Minorities*, p.7

<http://www.minorityrights.org/10042/reports/still-targeted-continued-persecution-of-iraqsmminorities.html>

¹²⁰ Human Rights Watch (22 February 2011) *At a Crossroads, Human Rights in Iraq Eight Years after the US-Led Invasion*, p.66

<http://www.hrw.org/reports/2011/02/21/crossroads>

See also:

Minority Rights Group International (19 July 2012) *Improving security for minorities in Iraq*, p.1

<http://www.minorityrights.org/11409/briefing-papers/improving-security-for-minorities-in-iraq.html>

¹²¹ UNHCR (31 May 2012) *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq*, p.29

<http://www.refworld.org/publisher,UNHCR,,IRQ,4fc77d522,0.html>

See also:

Refugee Studies Centre (May 2013) *Forced Migration Review No. 43 - States of fragility*, p.59

<http://www.fmreview.org/fragilestates/ali>;

Mandaean Human Rights Group (26 April 2013) *op.cit.*,

The threats facing the Mandaeans according to a report published in 2013 by the Institute for International Law & Human Rights include: kidnapping, forced displacement, sexual assault and targeted killings.¹²² The United Nations Assistance Mission in Iraq included Mandaeans among minorities whose situation continued to decline in a report covering events during 2013.¹²³ Minority Rights Group International in 2014 includes Mandaeans in a listing of "Peoples under Threat" in Iraq.¹²⁴ State protection has not been available for Mandaeans.¹²⁵ In 2014 the rise of ISIS in Iraq has increased the threat to religious minorities including Mandaeans.¹²⁶

The Mandaeans in Iraq number among the minority groups who lack protection against Islamist extremists; Mandaeans have suffered a significant level of violence against their community according to a report published in 2014 by Minority Rights Group International.¹²⁷ Mandaeans do not belong to any clan

<http://mandaeunion.com/mhrg/item/518-the-mandaean-crisis-in-iraq>;

Minority Rights Group International (26 February 2007)

Assimilation, Exodus, Eradication: Iraq's minority communities since 2003, p13

<http://www.minorityrights.org/?lid=682#;> &

Chicago Tribune (16 November 2008) *op.cit.*,

http://articles.chicagotribune.com/2008-11-16/news/0811160073_1_sect-iraqi-kurdistan-sunni-nor-shiite

¹²² Institute for International Law & Human Rights (May 2013) *op.cit.*, p.113

<http://lawandhumanrights.org/>

¹²³ United Nations Assistance Mission in Iraq (20 January 2014)

Report on Human Rights in Iraq: January - June 2013, p.viii

http://www.uniraq.org/index.php?option=com_k2&view=itemlist&layout=category&task=category&id=164&Itemid=650&lang=en

¹²⁴ Minority Rights Group International (29 April 2014) *Peoples under Threat 2014*

<http://www.minorityrights.org/12369/peoples-under-threat/peoples-under-threat-2014.html>

¹²⁵ Refugee Studies Centre (May 2013) *op.cit.*, p.59

<http://www.fmreview.org/fragilestates/ali>; &

Amnesty International (1 September 2009) *Iraq: Submission to the UN Universal Periodic Review: Seventh session of the UPR Working Group of the Human Rights Council, February 2010*, p.7

<http://www.amnesty.org/en/library/info/MDE14/022/2009/en>

¹²⁶ Minority Rights Group International (3 July 2014) *State of the World's Minorities and Indigenous Peoples 2014*, p.193

<http://www.minorityrights.org/12473/state-of-the-worlds-minorities/state-of-the-worlds-minorities-and-indigenous-peoples-2014.html>

See also:

Wall Street Journal (20 June 2014) *Iraqis Fleeing to Jordan Don't Plan to Return; They Have Passports, Money and They've Embarked on Struggle to Survive*

<http://online.wsj.com/articles/iraqis-fleeing-to-jordan-dont-plan-to-return-1403306861>; &

The Mandaean Associations Union (27 July 2014) *Mandaean Statement about The current situation in Iraq*

<http://mandaeunion.com/mhrg/item/1315-mandaean-statement>

¹²⁷ Minority Rights Group International (3 July 2014) *op.cit.*, pp.192-193

system or maintain any militias to protect their communities.¹²⁸ They are strictly pacifist, forbidding any usage of violence or carrying of weapons.¹²⁹ Adding to the Mandeans vulnerability is the small size of their community and lack of a specific region to find communal safety.¹³⁰

Conclusion

Estimates range between 35,000 and over 70,000 as to the number of Mandeans in Iraq at the time of Saddam Hussein's overthrow in 2003.¹³¹ At the beginning of Saddam's reign in Iraq, it is estimated that the population of Mandeans in the country was

<http://www.minorityrights.org/12473/state-of-the-worlds-minorities/state-of-the-worlds-minorities-and-indigenous-peoples-2014.html>

¹²⁸ BBC Monitoring (17 July 2014) *op.cit.*, <http://monmol01.monitor.bbc.co.uk/mmu/>; & Institute for International Law & Human Rights (May 2013) *op.cit.*, p.112

<http://lawandhumanrights.org/>

¹²⁹ UNHCR (1 October 2005) *Background Information on the Situation of Non-Muslim Religious Minorities in Iraq*, p.5

<http://www.refworld.org/docid/4371cf5b4.html>; Institute for International Law & Human Rights (May 2013) *op.cit.*, p.112

<http://lawandhumanrights.org/>; &

Genocide Watch (4 June 2007) *op.cit.*, <http://www.genocidewatch.org/iraq.html>

¹³⁰ UNHCR (August 2007) *UNHCR's Eligibility Guidelines For Assessing The International Protection Needs Of Iraqi Asylum-Seekers*, p.72

<http://www.refworld.org/publisher,UNHCR,,IRQ,46deb05557,0.html>; &

Institute for International Law & Human Rights (May 2013) *op.cit.*, p.112

<http://lawandhumanrights.org/>

¹³¹ Agence France Presse (20 July 2010) *Iraq's last Sabeans take sad New Year dip in Tigris*

<http://reliefweb.int/report/iraq/iraqs-last-sabeans-take-sad-new-year-dip-tigris>;

UNHCR (3 October 2005) *Guidelines Relating to the Eligibility of Iraqi Asylum-Seekers*, p.10

<http://www.refworld.org/publisher,UNHCR,COUNTRYPOS,IRQ,4354e3594,0.html>;

Minority Rights Group International (24 September 2009) *Uncertain Refuge, Dangerous Return: Iraq's Uprooted Minorities*, p.7

<http://www.minorityrights.org/8132/reports/uncertain-refuge-dangerous-return-iraqs-uprooted-minorities.html>;

Radio Free Europe/Radio Liberty (14 July 2004) *Iraq: Old Sabaean-Mandaean Community Is Proud of Its Ancient Faith* <http://www.rferl.org/content/article/1053864.html>;

Washington Post (10 February 2007) *Survival of Ancient Faith Threatened by Fighting in Iraq*

http://www.washingtonpost.com/wp-dyn/content/article/2007/02/09/AR2007020901687_pf.html;

Society for Threatened Peoples (March 2006) *op.cit.*, <http://www.gfbv.de/inhaltsDok.php?id=694>; &

Institute for International Law & Human Rights (May 2013) *op.cit.*, p.111

<http://lawandhumanrights.org/>

approximately 100,000.¹³² In 2014 the Mandaean population in Iraq is around 4,000.¹³³ Fleeing Iraq, Mandaean communities have scattered all over the world:¹³⁴ many fled to neighbouring Syria and Jordan, while others have attempted to re-establish in countries such as the United States, Australia, Germany and Sweden.¹³⁵ A consequence of the worldwide dispersal is that of the community's overall viability and Minority Rights Group International have been among those expressing concerns for the future of the Mandeans.¹³⁶ It is not possible to convert to the

¹³² Agence France Presse (20 July 2010) *op.cit.*, <http://reliefweb.int/report/iraq/iraqs-last-sabeans-take-sad-new-year-dip-tigris>; &

Azzaman (24 August 2013) *Southern province establishes key post for Sabeans*

<http://www.azzaman.com/english/?p=928>

¹³³ United States Department of State (28 July 2014) 2013

International Religious Freedom Report – Iraq

http://www.ecoi.net/local_link/281910/399003_en.html;

United States Congressional Research Service (2 July 2014) *Iraq: Politics, Governance, and Human Rights*

<http://www.refworld.org/docid/53d62d684.html>; &

Minority Rights Group International (3 July 2014) *State of the World's Minorities and Indigenous Peoples 2014*, p.194

<http://www.minorityrights.org/12473/state-of-the-worlds-minorities/state-of-the-worlds-minorities-and-indigenous-peoples-2014.html>

¹³⁴ Minority Rights Group International (11 March 2008) *State of the World's Minorities 2008*, p.152

<http://www.minorityrights.org/6138/state-of-the-worlds-minorities/state-of-the-worlds-minorities-2008.html>;

Washington Post (10 February 2007) *op.cit.*,

http://www.washingtonpost.com/wp-dyn/content/article/2007/02/09/AR2007020901687_pf.html; &

Agence France Presse (20 July 2010) *op.cit.*, <http://reliefweb.int/report/iraq/iraqs-last-sabeans-take-sad-new-year-dip-tigris>

For commentary on issues facing Mandaean refugees, see: Mandaean Human Rights Group (26 April 2013) *op.cit.*, <http://mandaeunion.com/mhrg/item/518-the-mandaean-crisis-in-iraq>;

Minority Rights Group International (24 September 2009)

Uncertain Refuge, Dangerous Return: Iraq's Uprooted Minorities, p.16

<http://www.minorityrights.org/8132/reports/uncertain-refuge-dangerous-return-iraqs-uprooted-minorities.html>;

Masarat (2013) *op.cit.*, p.89

<http://masaratiraq.org/books/>; &

Mehrdad Arabestani (2012) *op.cit.*, p.153

http://www.academia.edu/1850895/Ritual_Purity_and_the_Mandaean_Identity

¹³⁵ Radio Free Europe/Radio Liberty (23 September 2009) *Ethnic Mandeans Killed In Iraqi Jewellery Store Robberies*

http://www.rferl.org/content/Ethnic_Mandaean_Robberies/1829230.html;

Mandaean Human Rights Group (26 April 2013) *op.cit.*, <http://mandaeunion.com/mhrg/item/518-the-mandaean-crisis-in-iraq>; &

Masarat (2013) *op.cit.*, p.88

<http://masaratiraq.org/books/>

¹³⁶ Minority Rights Group International (10 June 2010) *Still Targeted: Continued Persecution of Iraq's Minorities*, p.13

<http://www.minorityrights.org/10042/reports/still-targeted-continued-persecution-of-iraqsminorities.html>;

Mandean religion as proselytizing is not practiced and only those who are born to two Mandaean parents are recognized.¹³⁷ Mandeans are only allowed to marry other Mandeans which has been another factor in the decline of adherents.¹³⁸ The thin worldwide spread of emigrated Mandeans has resulted in fewer opportunities to marry within their own community and many of the younger generation have married outside.¹³⁹ The flight of Mandeans from Iraq since 2003 has been sporadic and outside of international sponsorship.¹⁴⁰ Some Mandeans have expressed, therefore, the notion of a single country to accept all Mandaean resettlement from Iraq.¹⁴¹ Most Mandeans who have left Iraq have not returned;¹⁴² Australia now has the world's largest Mandaean population.¹⁴³

BBC News (20 September 2005) *op.cit.*,
http://news.bbc.co.uk/2/hi/middle_east/4260170.stm; &
 Chicago Tribune (16 November 2008) *op.cit.*,
http://articles.chicagotribune.com/2008-11-16/news/0811160073_1_sect-iraqi-kurdistan-sunni-nor-shiite
¹³⁷ Mandaean Human Rights Group (26 April 2013) *op.cit.*,
<http://mandaeunion.com/mhrg/item/518-the-mandaean-crisis-in-iraq>;
 Minority Rights Group International (24 September 2009)
Uncertain Refuge, Dangerous Return: Iraq's Uprooted Minorities, p.16
<http://www.minorityrights.org/8132/reports/uncertain-refuge-dangerous-return-iraqs-uprooted-minorities.html>;
 Washington Post (10 February 2007) *op.cit.*,
http://www.washingtonpost.com/wp-dyn/content/article/2007/02/09/AR2007020901687_pf.html;
 Society for Threatened Peoples (March 2006) *op.cit.*,
<http://www.gfbv.de/inhaltsDok.php?id=694>; &
 Radio Free Europe/Radio Liberty (14 July 2004) *Iraq: Old Sabaeon-Mandaean Community Is Proud of Its Ancient Faith*
<http://www.rferl.org/content/article/1053864.html>
 See also:
 Mehrdad Arabestani (2012) *op.cit.*, p.153
http://www.academia.edu/1850895/Ritual_Purity_and_the_Mandaean_Identity
¹³⁸ Masarat (2013) *op.cit.*, p.88
<http://masaratiraq.org/books/>; &
 UNHCR (August 2007) *UNHCR's Eligibility Guidelines For Assessing The International Protection Needs Of Iraqi Asylum-Seekers*, p.69
<http://www.refworld.org/publisher.UNHCR.,IRO,46deb05557.0.html>
¹³⁹ Washington Post (10 February 2007) *op.cit.*,
http://www.washingtonpost.com/wp-dyn/content/article/2007/02/09/AR2007020901687_pf.html
¹⁴⁰ Masarat (2013) *op.cit.*, p.88
<http://masaratiraq.org/books/>
¹⁴¹ Minority Rights Group International (10 June 2010) *Still Targeted: Continued Persecution of Iraq's Minorities*, p.28
<http://www.minorityrights.org/10042/reports/still-targeted-continued-persecution-of-iraqminorities.html>
¹⁴² Institute for International Law & Human Rights (May 2013)
op.cit., p.116
<http://lawandhumanrights.org/>
¹⁴³ Mandaean Human Rights Group (26 April 2013) *op.cit.*,
<http://mandaeunion.com/mhrg/item/518-the-mandaean-crisis-in-iraq>;
 Institute for International Law & Human Rights (May 2013) *op.cit.*, p.116

How does ecoi.net select information?



Boris Panhölzl, ACCORD

The European Country of Origin Information Network known as ecoi.net focuses on the information needs of persons deciding on claims for asylum or other forms of international protection, as well as of asylum lawyers and refugee counsel. The content management staff at ecoi.net select information according to its relevance for decision making processes in the context of claims for international protection. Comprehensive country of origin information does not only encompass the numerous dimensions of human rights, but also other aspects not usually covered by human rights reports. This includes information on the living situation in a given country, on ethnic groups, political developments, the health system and the security situation, as well as relevant laws and maps.

There are now more than 230,000 publicly accessible documents in the collection, more than 4 times as many as at the time ecoi.net was first featured in this publication (in the September 2006 issue of *The Researcher*).

Documents you will find on ecoi.net include reports, news articles, position papers, expert opinions, appeals and press releases, as well as maps and national laws. Additionally, ecoi.net contains the broadest collection of COI query responses & COI Seminar Reports available publicly on the web (with publications from

<http://lawandhumanrights.org/>;
 Minority Rights Group International (26 February 2007)
Assimilation, Exodus, Eradication: Iraq's minority communities since 2003
<http://www.minorityrights.org/?lid=682#>; &
 Agence France Presse (20 July 2010) *op.cit.*,
<http://reliefweb.int/report/iraq/iraqs-last-sabeans-take-sad-new-year-dip-tigris>

ACCORD as well as from the Austrian Federal Office for Immigration and Asylum's COI unit, the Canadian IRB's Research Directorate, the Irish Legal Aid Board's Refugee Documentation Centre, the Norwegian COI Centre Landinfo, the Swedish Migration Board, the Swiss Refugee Council, and other COI research services).

For easy access to the different kinds of publications, the content management staff categorises new entries into the following types of documents:

- periodical reports (annual reports, monthly briefs, etc.)
- special and analytical reports (special publications, reports that are not published periodically)
- appeals and news releases (by human rights NGOs, for instance)
- media reports (news articles by international or local media)
- expert opinions and positions
- national laws
- (COI) query responses
- maps

Using these categories as filters when searching can help you find specific information from annual reports, or query responses, for example.

These documents come from several hundred sources, 160 of them being covered regularly. Depending on their publication cycle, some sources are covered daily (like BBC World News, IRIN or Amnesty International), others weekly (like UNHCR, Forum 18 or the International Crisis Group), and some others once a month (like CEDAW or the Afghanistan Research and Evaluation Unit) or even quarterly (like the UK Foreign & Commonwealth Office's human rights updates).

ecoi.net links to the original URL for most documents. For reasons of sustainable links and improved usability, however, we offer a rising number of documents directly on ecoi.net. These documents either are in the public domain or published under a *Creative Commons* license, or come from sources which granted us permission to republish their content.

When ACCORD's researchers discover valuable new sources while working on reports or query responses, they suggest adding them to the regularly covered sources on ecoi.net. The criteria for inclusion are a source's quality (based on a source assessment), its

publication cycle and thematic scope, and our content management resources. Where appropriate, reports of added value published by sources that are not covered regularly are also included in the database on an ad-hoc basis. We are also happy to receive suggestions from our users.

For each of our regularly covered sources, ecoi.net offers a description in English and German language. You can find these source descriptions by clicking on the "i"-icon next to a source's name, or by following the respective link in the list of [our sources](#).

The COI unit of the Austrian Federal Office for Immigration and Asylum also contributes to the content on ecoi.net. The unit publishes their COI reports and query responses in a special section of the database, which is publicly accessible after registration at www.staatendokumentation.at.

ecoi.net does not include every document from every source it regularly covers. Besides the relevance criteria mentioned above, we do not cover every source for each of the 165 countries featured on ecoi.net. The extent of coverage depends on a country's importance in the European asylum system: There is a focus on countries generating most of the asylum cases in Europe. This is implemented by a set of country priorities.

Countries with priority "A", like Syria and Afghanistan, generate the highest number of asylum seekers in Europe and accordingly receive the most coverage on ecoi.net. For these countries, we strive to cover multiple country-specific sources in addition to all our other sources. For some of "A" countries we offer an overview on selected issues, the so called "Featured Topics", these are updated monthly.

Countries with priority "B", like Pakistan, Serbia and Somalia, also generate a high number of asylum seekers. At least one source reporting specifically on these countries or their region is covered in addition to our general sources.

Countries with priority "C", like Belarus, Kenya and Mexico, receive "standard" coverage, i.e. documents from all sources without a narrow geographic focus are included for these countries (like HRW, Forum 18 or OMCT).

Countries with priority "D" range from industrialised countries to countries that might generate a high number of asylum seekers, but not so in Europe. This group receives limited coverage on ecoi.net: we only include selected publications from a smaller set of

sources – for instance the annual human rights reports from the US Department of State or from Amnesty International, as well as publications from COI units and UNHCR.

These country priorities are reviewed regularly, at least once a year. The reviews are based on asylum application statistics and to a smaller extent the information requests directed to ACCORD and the COI unit of the Austrian Federal Office for Immigration and Asylum as well as feedback from ecoi.net users. These reviews have in the past years resulted in the up- or downgrading of only a few countries.

With these country priorities in mind, ecoi.net's content managers browse through the list of sources according to a time schedule and select relevant documents. They then add metadata such as the country and the document type, and write a brief summary in English and German for each document. Quality control of the work of our content management staff is carried out by ACCORD's researchers, who also select documents to be included in ecoi.net's weekly e-mail-alerts or in the list of "important documents" on each country page.

The list of important documents on an ecoi.net country page serves to give easy access to publications people working on that country should know. They give an overview on the general human rights situation in the country.

Documents selected for our e-mail-alerts service should keep you up-to-date regarding current developments in a country. To subscribe to these alerts, register for ecoi.net (it is free) and select the countries you want to receive alerts about.

In addition to the "important documents" and the search through all documents, ecoi.net's country pages offer quick links to national laws, maps, country background profiles, and further links next to the country's flag. The country background profiles offer direct links to a selection of country pages from other sources, which give information on politics, economy and statistics. These profiles are subject to frequent changes; that is why we refrain from including them in the database as regular documents.

Under "Links" you will find links to country specific sources, including sources not covered on ecoi.net. Additionally, the links contain country profiles on health issues.

One of the key challenges in our work is to invest the limited resources for the coverage of sources in an optimal way. Currently, we are evaluating potential modifications of the country priority structure: we are thinking of reducing the coverage of daily media sources for a set of countries, and in return increasing the number of country-specific sources.

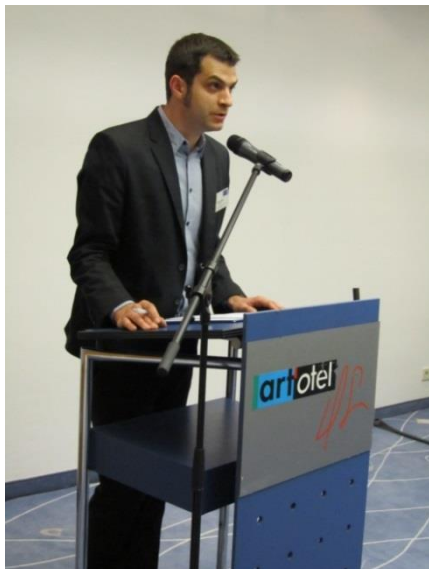
ecoi.net constantly strives to improve its services. If you have thoughts or wishes regarding ecoi.net's work, or if you want to recommend a source to cover, your feedback is very welcome. Please do not hesitate to send a message to info@ecoi.net.

For a list of sources regularly covered on ecoi.net, and ecoi.net's country priorities, please see <http://www.ecoi.net/our-sources>.

ecoi.net, the European Country of Origin Network, is run by [ACCORD](#), the Austrian Centre of Country of Origin and Asylum Research and Documentation (a department of the Austrian Red Cross), in cooperation Informationsverbund Asyl & Migration. ecoi.net is co-funded by the European Refugee Fund and the Austrian Ministry of the Interior. Some other organizations contribute to a limited extent financially and/or with content to ecoi.net.



Taking the body of evidence in the round – Country of origin information and credibility assessment in asylum claims



Tudor Rosu, Hungarian Helsinki Committee

When looking at what these two concepts have in common in the work of asylum practitioners (be they asylum officers, judges, lawyers, UNHCR staff, NGO practitioners, policy makers, researchers etc.) maybe the first thing that comes to mind is the indivisible relation between them: COI is used to establish the credibility of a claim and a story told by an asylum-seeker is deemed credible if it is confirmed by the available COI. Beyond this, the manner in which these two concepts were developed in recent years tends to differ, depending on the point of view. COI has been the topic of a number of important initiatives (spearheaded by both NGO practitioners and state authorities) which resulted in a revolution of the topic about ten years ago; research methodologies have been developed, quality standards were put forward and agreed upon¹⁴⁴, methods to check the final product were developed and transposed into practice. Credibility assessment, although a crucial part in the RSD procedure, did not benefit from the same kind of attention and this is shown by the far more limited number of initiatives to develop similar quality standards and knowledge for this.

¹⁴⁴ Although there are more guidelines/training manuals on the topic and the number of quality standards put forward differs from one to another, there is no major conflict regarding the content of these publications and the difference in number of standards can be, for the most part, explained through the methodology of grouping or detailing the standards.

There is a common and agreed understanding on how COI should be obtained and presented. This is also reflected by the provisions of the Procedures Directive¹⁴⁵ which goes into details about the sources where information could be found, the quality standards that the country information obtained should uphold and how COI should be used in the procedure. Credibility assessment, although mentioned as part of the procedure, is not equally well detailed in the Qualification Directive¹⁴⁶. It is also worth mentioning that the terms and concepts used to describe the process do not portray the same understanding across the board (e.g. genuine effort, satisfactory explanation, general credibility of the applicant etc.).

The majority of Member States do not have guidelines which the decision makers could follow when assessing the credibility of a claim. Those European countries that do have such a guiding document have developed it mainly within the national context and, so far, we did not witness the situation when more than one member state adheres to the same extensive set of rules and principles¹⁴⁷.

The conclusion is that credibility assessment is done in a less harmonised manner in the EU. However, this seems to be a particularly sensitive topic, since research¹⁴⁸ shows that, at one point, three out of five negative decisions are taken based on adverse credibility findings.

Prominent non-governmental organisations active in the asylum field and the UNHCR have argued in recent years that credibility assessment is a complicated process and the methodology used should also make

¹⁴⁵ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (hereinafter: Procedures Directive), Article 10(3)(b)

¹⁴⁶ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) (hereinafter: Recast Qualification Directive), Article 4(5)

¹⁴⁷ Although there are common points in the respective guidelines of Member States that have such documents, they are adapted to the national practice and have several particular aspects.

¹⁴⁸ UNHCR, Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice - Detailed Research on Key Asylum Procedures Directive Provisions, March 2010, available at <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=4c63e52d2>

use of the latest progress made in fields of science such as psychology, anthropology and medicine, besides considering just questions of law. Country of origin information is also an important element in the process. However, research on the practices of how credibility is assessed¹⁴⁹ has raised some interesting questions on how the available country information is compared with the story provided by the asylum seeker.

The information provided by the applicant is the starting point in gathering the evidence to substantiate the asylum claim. At the same time it is also part of the evidence and, in some cases, may represent the only available information about certain elements connected to the reason for asking asylum. The studies conducted on how credibility assessment is being done¹⁵⁰ have shown that, in some cases, this approach was reversed – country information was researched in advance and these reports represented the starting point. Instead of basing the examination of the case on the information provided by the applicant in the interview, the decision in practice is taken on whether this is in line with the COI consulted. Although it might not look like a major methodological adjustment, this scenario creates higher chances that the story provided by the asylum seeker is not properly considered as core evidence in the procedure.

Research and audits of interviews and examination of cases have also shown that there is confusion about an important procedural principle – taking the entire body of evidence available in the round¹⁵¹. In some cases COI is considered to be a more reliable piece of evidence than the information provided by the applicant. This conclusion derives from the fact that it is presumably gathered from objective and reputable sources. The reputation of these sources is established by applying source assessment tests and/or by past positive experiences of using the information provided by those particular sources.

In a considerable number of cases the statements of the applicant are suspected to be subjective and not verified. In practice, this creates a no-win scenario for the applicant. In some instances the information provided by the applicant is considered not credible on

the reason that it is not detailed enough and inconsistent with the country information available; there are also situations when a large amount of information is provided by the applicant and it triggers the suspicion that this was researched in advance from publicly available sources and it is not the personal recollection of facts.

Decision makers, in most Member States, are tasked with a considerable volume of cases to adjudicate. In some of these it may be more difficult to retrieve evidence and, although the necessary steps were taken and a professional and detailed COI research was conducted, the information in question was not found amongst the sources consulted. It is worth mentioning that, for this category of cases, the information that might be needed is rarely part of the COI reports available. However, there might be information that is connected to the topic in question but not specifically about the aspect presented in the case. There is the temptation to draw conclusions based on these and formulate an argument which is afterwards used to motivate negative credibility findings. An example of such a situation would be the search for procedures and practices for obtaining of documents. It is possible that several COI reports contain information about the laws that govern such procedures, details about what documents should look like, but in most cases they rarely are able to attest with certainty if a member of a certain ethnic group, from a particular village can obtain the document in question. Moreover, it is also possible that it will not describe the practices on how the documents in question (e.g. birth certificates, identity documents, property documents etc.) are obtained, as these might relate more to cultural or gender aspects. If these are not taken into account, relying solely on the strict and often technical-type of COI available might inevitably lead to the conclusion that the story of the applicant is lacking credibility.

In another category of cases, the COI obtained is lengthy, rich in details and contains more information than the story presented by the applicant. The contrast may also lead decision makers to deem the accounts given by asylum-seekers as not credible. One example of this kind of situations would be when the applicant has escaped from a prison and is asked to present details on how he managed to do this including information about the facility, floor plans, number of guards etc. The applicant will most likely be able to describe only a part of it and will have difficulties in remembering even the route used to escape. Recent studies on how human memory functions show that this is a normal response, as the plan of the prison and other details about the facility were gathered through a series of traumatic experiences (imprisonment,

¹⁴⁹ UN High Commissioner for Refugees (UNHCR), *Beyond Proof, Credibility Assessment in EU Asylum Systems* : Full Report, May 2013, available at:

<http://www.refworld.org/docid/519b1fb54.html>

¹⁵⁰ Amnesty International / *Still Human Still Here*, A question of credibility, April 2013, available at

http://www.amnesty.org.uk/sites/default/files/a_question_of_credibility_final_0.pdf

¹⁵¹ Recast Qualification Directive, Article 4(2)

possibly torture, high stress during the escape). In these situations, the mind focuses on peripheral details and will not work as a video camera. The information contained in COI reports usually are more technical and may include details such as blueprint of the facility, number of cells, number of guards and inmates, security details etc. Not being able to match the level of detail of COI reports, the story of the applicant might be considered not credible. The difference between the information given by the applicant and the COI reports on the topic can be very well explained by comparing how the data was gathered: on the one hand there is the asylum-seeker who had traumatic experiences in the facility for months or even years and on the other hand there are international organisations, local NGOs or journalists who gather the information in a larger time-span, focusing on a structured approach and either have direct access to the facility or are able to compose the picture through several secondary sources. It is fair to assume that it is impossible that the description provided by the applicant would match the one retrieved from COI reports.

Differences may also occur when the applicant mentions in his or her story being part of a series of protests. In order to test the credibility of the claim, often decision makers ask more details about the protest: how many events took place, on which dates, where did they happen, how many people took part in them, how were they organised etc. If the applicant did not take part in all of them, there are high chances that he will omit some or might actually mention others that were not reported in the media. The inconsistency of this account with the available COI might again lead the decision maker to believe that the story of the applicant is not credible.

These are just a few examples to highlight situations where assessing the credibility of a claim requires additional efforts than consulting the available COI. They also draw attention to an area where there is a need to further clarify the concepts used and to detail how the process should be conducted in practice. A growing number of Member States have realised the complexity of assessing credibility in asylum cases and have worked towards drafting detailed guidelines for decision makers to follow. In some countries, this process is at the stage where the available guidance is re-evaluated based on initial research results on how it influenced the practice. Additional efforts in the EU to harmonise practices in this regard, together with further guidance from UNHCR will help the progress towards a unitary understanding of this process, one based on high-quality standards and objective methods.



A Refugee Settlement Rises Again in Northern Uganda

Fighting in South Sudan has forced tens of thousands of people to seek shelter in Northern Uganda. In a September 2014 UNHCR map the population of South Sudanese refugees and asylum seekers is reported as more than 148,000 (UNHCR (1 September 2014) Uganda: Refugees and Asylum Seekers)



A truck carrying refugees arrives at the Nyumanzi I settlement from the Dzaipi transit centre. At the entrance to the newly reopened settlement, local Ugandans sell a range of goods to the refugees, including wooden poles for use in building their shelters. / UNHCR / F. NOY / January 2014



After the refugees are dropped off at the settlement, they set up temporary shelters to protect them from the hot sun and cool nights as they wait to be allocated plots of land by the Ugandan government. Some refugees have to wait a few days before receiving their land. / UNHCR / F. NOY / January 2014



On arrival in the Nyumanzi I settlement, refugees are given basic relief items from UNHCR. These include mats, blankets, plastic sheeting, construction tools,

mosquito nets, kitchenware, basins and jerry cans. The quantity of items they receive is based on the size of their families. Getting the aid items to the refugees is a logistical challenge.

UNHCR / F. NOY / January 2014



Along with UNHCR basic relief items and food provided by the World Food Programme, newly arrived South Sudanese refugees are provided with 30-square-metre plots of land. Uganda provides refugees with land, freedom of movement and the right to work. Here, refugees are shown to their plots of land by a government official. UNHCR / F. NOY / January 2014



As the sun sets on Nyumanzi I settlement, many refugees are still hard at work constructing shelters. UNHCR provides the plastic sheeting and machetes and hoes, but other material such as thatch is bought locally by the refugees. UNHCR / F. NOY / January 2014



Water was a huge problem when the settlement was first reopened and there were long queues. But UNHCR and its partners have drilled or rehabilitated six boreholes and have been trucking water into the settlement from a nearby river on a daily basis to ensure the refugees receive enough water. UNHCR / F. NOY / January 2014