



Upper Tribunal  
(Immigration and Asylum Chamber)

AAH (Iraqi Kurds – internal relocation) Iraq CG UKUT 00212 (IAC)

**THE IMMIGRATION ACTS**

Heard at: Field House  
On: 27<sup>th</sup> and 28<sup>th</sup> February 2018

Decision & Reasons Promulgated

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Before

UPPER TRIBUNAL JUDGE O’CONNOR  
UPPER TRIBUNAL JUDGE BRUCE

Between

AAH  
(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr D. Bazini, Mr M. Bradshaw, Counsel instructed by Hasan Solicitors  
For the Respondent: Mr S. Singh QC, Counsel instructed by the Government Legal Department

**COUNTRY GUIDANCE**

*Section C of Country Guidance annexed to the Court of Appeal’s decision in AA (Iraq) v Secretary of State for the Home Department [2017] Imm AR 1440; [2017] EWCA Civ 944 is supplemented with the following guidance:*

- 1. Whilst it remains possible for an Iraqi national returnee (P) to obtain a new CSID whether P is able to do so, or do so within a reasonable time frame, will depend on the individual circumstances. Factors to be considered include:*

- i) *Whether P has any other form of documentation, or information about the location of his entry in the civil register. An INC, passport, birth/marriage certificates or an expired CSID would all be of substantial assistance. For someone in possession of one or more of these documents the process should be straightforward. A laissez-passer should not be counted for these purposes: these can be issued without any other form of ID being available, are not of any assistance in 'tracing back' to the family record and are confiscated upon arrival at Baghdad;*
- ii) *The location of the relevant civil registry office. If it is in an area held, or formerly held, by ISIL, is it operational?*
- iii) *Are there male family members who would be able and willing to attend the civil registry with P? Because the registration system is patrilineal it will be relevant to consider whether the relative is from the mother or father's side. A maternal uncle in possession of his CSID would be able to assist in locating the original place of registration of the individual's mother, and from there the trail would need to be followed to the place that her records were transferred upon marriage. It must also be borne in mind that a significant number of IDPs in Iraq are themselves undocumented; if that is the case it is unlikely that they could be of assistance. A woman without a male relative to assist with the process of redocumentation would face very significant obstacles in that officials may refuse to deal with her case at all.*

*Section E of Country Guidance annexed to the Court of Appeal's decision in AA (Iraq) v Secretary of State for the Home Department [2017] Imm AR 1440; [2017] EWCA Civ 944 is replaced with the following guidance:*

- 2. *There are currently no international flights to the Iraqi Kurdish Region (IKR). All returns from the United Kingdom are to Baghdad.*
- 3. *For an Iraqi national returnee (P) of Kurdish origin in possession of a valid CSID or Iraqi passport, the journey from Baghdad to the IKR, whether by air or land, is affordable and practical and can be made without a real risk of P suffering persecution, serious harm, Article 3 ill treatment nor would any difficulties on the journey make relocation unduly harsh.*
- 4. *P is unable to board a domestic flight between Baghdad and the IKR without either a CSID or a valid passport.*
- 5. *P will face considerable difficulty in making the journey between Baghdad and the IKR by land without a CSID or valid passport. There are numerous checkpoints en route, including two checkpoints in the immediate vicinity of the airport. If P has neither a CSID nor a valid passport there is a real risk of P being detained at a checkpoint until such time as the security personnel are able to verify P's identity. It is not reasonable to require P to travel between Baghdad and IKR by land absent the ability of P to verify his identity at a checkpoint. This normally requires the attendance of a male family member and production of P's identity documents but may also be achieved by calling upon "connections" higher up in the chain of command.*
- 6. *Once at the IKR border (land or air) P would normally be granted entry to the territory. Subject to security screening, and registering presence with the local mukhtar, P would be permitted to*

*enter and reside in the IKR with no further legal impediments or requirements. There is no sponsorship requirement for Kurds.*

7. *Whether P would be at particular risk of ill-treatment during the security screening process must be assessed on a case-by-case basis. Additional factors that may increase risk include: (i) coming from a family with a known association with ISIL, (ii) coming from an area associated with ISIL and (iii) being a single male of fighting age. P is likely to be able to evidence the fact of recent arrival from the UK, which would dispel any suggestion of having arrived directly from ISIL territory.*
8. *If P has family members living in the IKR cultural norms would require that family to accommodate P. In such circumstances P would, in general, have sufficient assistance from the family so as to lead a 'relatively normal life', which would not be unduly harsh. It is nevertheless important for decision-makers to determine the extent of any assistance likely to be provided by P's family on a case by case basis.*
9. *For those without the assistance of family in the IKR the accommodation options are limited:*
  - (i) *Absent special circumstances it is not reasonably likely that P will be able to gain access to one of the refugee camps in the IKR; these camps are already extremely overcrowded and are closed to newcomers. 64% of IDPs are accommodated in private settings with the vast majority living with family members;*
  - (ii) *If P cannot live with a family member, apartments in a modern block in a new neighbourhood are available for rent at a cost of between \$300 and \$400 per month;*
  - (iii) *P could resort to a 'critical shelter arrangement', living in an unfinished or abandoned structure, makeshift shelter, tent, mosque, church or squatting in a government building. It would be unduly harsh to require P to relocate to the IKR if P will live in a critical housing shelter without access to basic necessities such as food, clean water and clothing;*
  - (iv) *In considering whether P would be able to access basic necessities, account must be taken of the fact that failed asylum seekers are entitled to apply for a grant under the Voluntary Returns Scheme, which could give P access to £1500. Consideration should also be given to whether P can obtain financial support from other sources such as (a) employment, (b) remittances from relatives abroad, (c) the availability of ad hoc charity or by being able to access PDS rations.*
10. *Whether P is able to secure employment must be assessed on a case-by-case basis taking the following matters into account:*
  - (i) *Gender. Lone women are very unlikely to be able to secure legitimate employment;*
  - (ii) *The unemployment rate for Iraqi IDPs living in the IKR is 70%;*
  - (iii) *P cannot work without a CSID;*

- (iv) *Patronage and nepotism continue to be important factors in securing employment. A returnee with family connections to the region will have a significant advantage in that he would ordinarily be able to call upon those contacts to make introductions to prospective employers and to vouch for him;*
- (v) *Skills, education and experience. Unskilled workers are at the greatest disadvantage, with the decline in the construction industry reducing the number of labouring jobs available;*
- (vi) *If P is from an area with a marked association with ISIL, that may deter prospective employers.*

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## GLOSSARY

<i>Asayish</i>	Kurdish security services
CSID	Civil Status Identity Document
GoI	Government of Iraq
<i>Al-Hashd al-Shaabi</i>	Shi'a militia under control of GoI
IDP	Internally Displaced Person
IKR	Iraqi Kurdish Region
INC	Iraqi Nationality Certificate
IOM	International Organisation for Migration
ISF	Iraqi Security Forces
ISIL	Islamic State of Iraq and the Levant
KRG	Kurdish Regional Government
MoMD	Ministry of Migration and Displacement
MoI	Ministry of Interior
<i>Mukhtar</i>	Local official
PARCS	Protection, Assistance and Reintegration Centres
PDS	Public Distribution System
<i>Peshmerga</i>	Kurdish military units under control of respective political parties in the IKR, but not under central command of the KRG
UXO	Unexploded ordinance
VRS	Voluntary Returns Scheme

## ANONYMITY DIRECTION

Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders, we consider it appropriate to make an order in the following terms:

“Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

## DECISION AND REASONS

### **Introduction**

1. In the country guidance case of AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC) the Upper Tribunal found the Iraqi Kurdish Region (the IKR) to be “virtually violence free”. It found that a Kurd who does not originate from the IKR could, if facing a real risk of harm elsewhere in the country, readily enter the area and upon finding employment would be lawfully permitted to remain there. Against that background decision-makers were invited to conduct an individualised, fact-sensitive assessment of whether internal relocation to the IKR would be ‘reasonable’. In this appeal we are asked to revisit those matters.
2. We are not concerned, in this decision, with whether the guidance given in AA (Iraq) in respect of Article 15(c) holds good; this appeal has proceeded on the assumption that it does. Nor are we asked to consider the position of Arab Iraqis, since the parties are in agreement that for this group, there is in general terms no reasonable internal flight alternative to the IKR. This case is primarily concerned with whether Iraqi Kurds can internally relocate to the IKR.
3. AAH himself is a Kurd who was born in Sulaymaniyah, was registered in Kirkuk and latterly lived in Mosul before fleeing from ISIL in 2015. His appeal was dismissed by the First-tier Tribunal on the grounds that he could reasonably be expected to relocate to the IKR.
4. The framework for our enquiry is as follows:
  - i) Is there a route by which a returnee to Baghdad could practicably and reasonably be expected to travel to the IKR?

- ii) Are there any obstacles to a returnee being admitted to the IKR?
  - iii) Are there any legal obstacles to a returnee remaining in the IKR?
  - iv) What factors, in general terms, are relevant to an assessment of whether a returnee will be able to live a 'reasonably normal life' in the IKR?
5. In addition, we heard detailed evidence relating to the issue of the obtaining of a CSID.
6. We have also been asked by the parties to address a dispute that has arisen between them as to the proper approach to the issue of internal flight. We consider this matter before reaching our findings, but we begin with a summary of the evidence before us.

## **The Evidence**

### *Introduction*

7. The principle evidence in the appeal came from Dr Rebwar Fatah. Dr Fatah is an expert witness well known to this Tribunal. He is a specialist in the Middle East and North Africa and since 2000 he has produced more than 2000 expert reports dealing with country conditions, nationality assessments and document authentication. He speaks both Kurdish Sorani and Arabic, and in his collation of evidence for this case he accessed primary source material in these languages as well as English. He regularly travels to the region, and has been to Iraqi Kurdistan five times in the past five years. For the purpose of this report he consulted widely with established contacts in the IKR and Iraq and where necessary instructed three trusted agents to assist him in answering the questions put to him by the parties and Tribunal. His main report is dated the 9<sup>th</sup> January 2018 and contains a caution that the contents must be read with this caveat in mind: the region has become increasingly unstable following the September 2017 referendum, in which the Kurdish population voted overwhelmingly for independence. It must be borne in mind that the situation is volatile and that things can change. Dr Fatah the same day prepared three short addendums, in response to questions posed by the Respondent and from the Tribunal. He gave live evidence over the course of the day on the 27<sup>th</sup> February 2018 and subsequently provided a further short report dated 4<sup>th</sup> May 2018.
8. Although we were provided with a substantial volume of country background material, neither party referred us to very much of it, preferring to concentrate on the evidence of Dr Fatah. We have read all of the material that was placed before us but for the purpose of this decision have only found it necessary to refer to some of those additional reports; those that receive special mention are highlighted in the list of materials at Appendix B. The reader can assume that all of the evidence referred to herein comes from Dr Fatah unless otherwise indicated.
9. We have summarised the material before us thematically, considering in turn the evidence on: internal travel, entry to the IKR and the options for regularising stay there,



and finally, living conditions. Before considering the evidence specific to these matters it is necessary to set it in the context of the current circumstances in northern Iraq, and so we begin by a brief overview of the socio-political situation in the IKR. We also set out, as a preliminary matter, Dr Fatah's evidence on who might be considered to be "from" the IKR, and the matter of documentation.

### *Background and Current Security Situation*

10. There has been some degree of autonomy in the Kurdish region since 1991 when the US led coalition imposed a no-fly zone that enabled the formation of the 'Kurdish Regional Government' (KRG), a body to administer the three governates of Dohuk, Sulaymaniyah and Erbil. Following the removal of Saddam Hussain in 2003 the KRG expanded its area of operation by assuming *de facto*, but not *de jure*, control over Khanaqeen district in Diyala. In 2005 the new Iraqi constitution recognised the IKR as a federal entity within Iraq. The KRG operated independently within Iraq but remained dependent upon the government in Baghdad for budget and the export of oil.
11. In 2014 the Iraqi Army fell back in the face of Islamic State of Iraq and the Levant (ISIL) advances and this permitted the KRG to once again extend its reach, this time sending *peshmerga* into many areas in the disputed territories, notably Kirkuk, where they formed the vanguard of the fight against ISIL.
12. In September 2017 the KRG held a referendum on whether the IKR should declare independence; the population voted overwhelmingly in favour. The Government of Iraq (GoI) declared the referendum to be illegal and unconstitutional. Baghdad responded by taking punitive measures against the authorities in Erbil, such as banning international flights directly into the IKR. Forces aligned with the GoI were ordered to enter, and re-take key territory including Kirkuk and its oil fields. Although the PUK *peshmerga* that had held Kirkuk retreated, there were elsewhere numerous clashes between Kurdish forces, Iraqi Army units and associated Shi'a militias. These reached their peak in October 2017 when fierce fighting led to the large scale displacement of civilians throughout the border area. In Tuz Khurmatu, a town in Salahadin, tens of thousands of Kurdish civilians were displaced, with their homes and shops being allegedly looted and destroyed by GoI troops; Human Rights Watch report that at least 51 civilians were killed. Dr Fatah has been informed by fieldworkers in Ninewa that Shi'a militias have displaced hundreds of Kurdish families and destroyed homes. These groups, primarily *Hashd al-Shaabi*, have impeded the work of international humanitarian organisations and targeted minorities such as the Yezidis; the same militia is reported to be occupying Kurdish neighbourhoods in Kirkuk where they patrol the streets in armed vehicles and harass civilians. Military forces on both sides remain mobilised and 'combat ready'.
13. The position today is that the KRG and the GoI remained locked in territorial dispute over areas in Ninewa, Salahadin, Diyala and particularly in Kirkuk. To summarise the situation in these disputed territories Dr Fatah adopts the language used by the United States' Institute of Peace, stating that they are characterised by a "tangled web of

administrative and security arrangements between the Iraqi government and the Kurdish regional authorities that sit atop poorly defined internal boundaries and amid a toxic legacy of mistrust". The international community have, for the most part, condemned the independence referendum as destabilising and unnecessary. Turkey and Iran, neighbouring countries with significant Kurdish populations, have expressed alarm. Both the GoI and the KRG are attempting to shore up their respective positions by claiming territory, and populations, as either inherently 'Arab' or 'Kurdish'. For example, the Yezidi community, largely abandoned in the face of the ISIL onslaught, are now embraced by Erbil as "Kurdish brothers", the implication being that lands formerly occupied by this minority around Mount Sinjar should fall within the IKR. Similar disputes are played out in Kirkuk, long the scene of demographic manipulations such as the "Arabisation" programme under Saddam Hussain. These factors continue to have significant implications for civilians on the ground: Kurds from Kirkuk are for instance free to come and go within the IKR as they are considered by Erbil to be residents, but they are not permitted to switch their place of formal registration from Kirkuk to anywhere else in the territory, since to do so would be to diminish the official Kurdish population in that disputed city. There is also substantial disagreement between the two governments over the export of, and revenue from, oil. All observers agree that the future is uncertain and that the security situation remains precarious. Dr Fatah considers that the greatest risk is found in those governates with mixed populations: the general rule of thumb is that the bigger the majority of one group over another, the more stable the security situation.

14. Nor has the problem of ISIL terrorism entirely disappeared. Both the GoI and KRG are making extensive efforts to identify and detain remaining ISIL fighters who "melted away" when faced with military defeat. LIFOS (December 2017) report that pockets of resistance and sleeper cells remain, mostly in remote and inaccessible terrain, making their eradication difficult. They are mounting attacks on Shi'a militias, particularly in Diyala, where there is believed to be a considerable ISIL presence. This situation is predicted to prevail for some time.
15. There are today an estimated 2 million IDPs living in the IKR, making up 28% of the population. Despite this huge challenge the overall security situation is relatively stable. Although there is political tension between the two main political parties, the PUK and the KDP, this is generally kept under control. There have been instances of fighting breaking out between other groups, for instance in August 2017 a firefight between Iranian Kurds and locals left two civilians dead. A large bomb that exploded in the north of the Erbil Governate in December 2016 killed seven more; the KDP have accused the Iranian security forces of planting it. There is a limited, but persistent, security threat in Dohuk because of the smugglers and other criminality along the border, and the alleged incursion of PKK fighters has raised tensions with Turkey, which launched further airstrikes on the area in September 2017. All three governates must contend with the land being "littered with landmines and unexploded ordinance" (UXO).
16. Dr Fatah's assessment of the IKR economy was blunt: "they are broke". Although there was a remarkable increase in growth in the years 2003 to 2008 the economy has since suffered badly at the hands of ISIL. The conflict, and in particular its interference with

oil production, has had catastrophic consequences. In Dr Fatah's view, these difficulties have been compounded by poor management. Years ago the IKR was a fertile agricultural region but the past few decades have seen the agrarian economy give way to a dependence on oil and gas production. There has been little diversification and this has resulted in the current predicament that the IKR finds itself in, having lost substantial revenues as a result of the war with ISIL, the continuing dispute with Baghdad and the fall in the oil price. The Erbil government is now almost entirely dependent on Baghdad. Basic food stuffs are imported from neighbouring countries. LIFOS (December 2017) report that civil servants have not been paid properly for approximately two years, many going months at a time without receiving anything at all. One individual of Dr Fatah's acquaintance has just received her first payment in six months, being paid half of the salary she was owed for September 2017.

17. ACCORD (May 2017) report that the World Bank index on poverty has set the 'poverty line' in Iraq and Kurdistan as being 105,000 Iraqi dinars, or around \$87 per month. One in ten of the population nationally are believed to live below that line. The KRG Office of Statistics attributes the dramatic rise in poverty and unemployment in the region to the influx of IDPs, the fall in oil prices and the war against ISIL. 53% of the local population are employed in the public sector but the severe economic crisis means that most no longer receive their full salary. The KRG decided to cut state employees' salaries by 50% in September 2015 but many are not even receiving that.

#### *Documentation and Registration*

18. Noting the confused picture as to what districts might be considered to fall within the IKR the parties asked Dr Fatah to clarify whether Kurds who had previously lived outside of its legally defined boundaries might be considered to be 'from' the IKR. His unequivocal reply was that an individual is only 'from' the IKR if his family is 'registered' in one of the three federally-recognised governates, Dohuk, Erbil and Sulaymaniyah.
19. The question of family registration assumed great significance in Dr Fatah's live evidence before us.
20. First, Dr Fatah explained that an individual is considered to be 'from' the governate or district where his family registration is held. Where that is, subject to certain exceptions outlined below, will usually be where his or her father was registered. Thus an individual may be legally 'from' a place where he has never in fact been. His place of birth is largely irrelevant. Dr Fatah gave the following example. A child is born in Baghdad, but his father is from Sulaymaniyah. The father's family will be registered in Sulaymaniyah, that is to say all their births, marriages and deaths will be recorded in the 'family registration book' held at the *Daa'ira*, the civil registration office in that city. Dr Fatah described these books as huge ledgers, their origins in Ottoman bureaucracy, containing handwritten entries updating the official record on what has happened to the family in question. Although the information contained in these volumes is key to Iraqi citizens this is not however a readily searchable database. Because the entries in

these books are all handwritten anyone wishing to make an amendment to the record, or rely on it for the issuance of official documentation, must know the volume and page relating to his or her family. Thus in the example given, the father of the new baby would travel from Baghdad to the office in Sulaymaniyah, and satisfy the Registrar there as to where his family's records might be found, enabling the Registrar to manually record the child's birth. That child is then officially 'from' Sulaymaniyah, a place he might never in fact visit in his life.

21. The exceptions to the rule are threefold. Firstly, women must change their place of registration upon marriage. Once married her change in civil status must be recorded in her own family registration, and entered into the family records of her new husband. Second, once a man reaches adulthood and founds his own family, he will have his own page, upon which all the relevant information about his wife and descendants will be entered. Third, there have been isolated examples of the state interfering in the registration process for political reasons, for instance Saddam Hussain authorised the transfer of many thousands of records during his move to "Arabise" Kirkuk.
22. The system, informally known as *jinsiyya* in Arabic, and variously referred to in English in the documents before us as the 'family register', the 'civil register' the 'Civil Status Affairs Directorate', the 'local population registration office', the 'civil status department' and in AA (Iraq) as the 'Civil Status Affairs Office', is compulsory.
23. As to the practical consequences of this process, these unfolded during Dr Fatah's live evidence. Although an Iraqi's life is recorded in these ledgers, for day to day purposes the information contained therein - his origins, civil status and place of registration - are most conveniently to be found on his 'Civil Status Identity Card' (CSID) card. This card - the physical representation of the information in the family record book - is a crucial document for adult life in Iraq. Without one an individual cannot legally work, or find accommodation. Prospective employers or landlords would not contemplate providing work or housing without one, since they are legally obliged to inform the local security services (in the IKR the *Asayish*) of any new employee or tenant. Failure to do so would expose them to the risk of a raid and detention. Without a CSID one cannot vote, access services such as education or healthcare, receive a pension or food aid, confidently cross a checkpoint, withdraw your own money from the bank, nor even purchase a 'SIM' card for a mobile telephone. Reflecting as it does the contents of the official register, the CSID card is the most comprehensive document Iraqis hold. It also enables the holder to obtain other documents such as a passport, driver's licence or a Public Distribution System (PDS) card, used to obtain food rations. It is not compulsory to have a CSID - young children do not for instance carry them - but without one, life is extremely difficult.
24. An individual who is without a CSID must therefore obtain one as a matter of urgency. In his main report Dr Fatah sets out means by which this might be possible. The ideal would be production of an old or damaged CSID. This would enable the Registrar to quickly and easily locate your family record in the ledger. Absent a CSID or copy thereof there are a number of other ways in which the Registrar could locate an individual's

details. If that individual had an Iraqi passport, an INC or a PDS card these could all be used to 'track back' through layers of bureaucracy in order to locate the original record.

25. Dr Fatah states to his knowledge the documents that must be produced in order to apply for a CSID within Iraq are:

- i) Application form
- ii) Birth certificate
- iii) A 'housing card' or a letter from the local council confirming the applicant's residence
- iv) (In the IKR) a recommendation from the *mukhtar*
- v) PDS card
- vi) Two photographs of the applicant (or in the IKR, four)

This information broadly accords with that reproduced by Landinfo (December 2015), who confirm this list but add that the ID card of a close relative would also be required. Dr Fatah has been told by practitioners in the IKR that a person returned to Iraq from abroad who wishes to replace his CSID would, before making his application, also require a certificate from the Ministry of Foreign Affairs.

26. If applying through a consulate abroad the requirements are different. Having contacted the consulate in London, and checked on the website of the Iraqi embassy in Sweden, Dr Fatah states that the authorities will require the applicant to first make a statement explaining why he needs a CSID and attach this to his application form, which must countersigned by the head of the applicant's family and stamped by the consulate or embassy; he must then produce his Iraqi passport and proof of status in the country where he is applying, the name of a representative (proxy) in Iraq, an additional form completed by the head of the applicant's family verifying that the contents of his application form were true, four colour copies of his INC, and 10 colour photographs. Crucially the applicant must be able to produce something which can establish the location of his family's details in the civil register. This should be a CSID, an INC or birth certificate. If none of these are available to the applicant he must supply the identity documents of his parents. This evidence again accords with that of Landinfo (December 2017) who conclude that it can be difficult to obtain replacement ID documents from an embassy abroad for the individual who is unable to verify his or her identity.

27. If you are in Iraq, and have all of the required documents, in normal circumstances the process is straightforward and quick and should take no more than three days. Dr Fatah's own daughter was born in the United Kingdom and he managed to obtain her a CSID in one day from the office in Sulaymaniyah, upon payment of a small fee. Dr Fatah was less optimistic about the efficiency of the process if in the United Kingdom. He has regular dealings with the consulate in London and he is not impressed. He said that staff there are generally very unhelpful.

28. If some of the documents were missing it might generally take you up to a month to collate and replace them all. In his live evidence, when pressed by Mr Singh, Dr Fatah

acknowledged that it may be possible, when dealing with some officials, to obtain a CSID even if one does not have all of the documents listed above. He conceded that an official might be 'persuaded' to overlook the official requirements, and that there may be some degree of flexibility about the process in some governates. He maintained however that it would normally be the case that these documents would be required. The key piece of information that the individual would however have to have would be his family's volume and page reference number in the civil register. Without that, the individual "is in trouble". He could only obtain a new CSID if the Registrar was prepared to trawl through volume after volume looking for the family record. In his evidence before the Tribunal in AA (Iraq) Dr Fatah wondered if such an official would be willing to undertake such a task, or could be "made willing". The Tribunal concluded that this was not likely. The only way that a totally undocumented Iraqi could realistically hope to obtain a new CSID would be the attendance at the civil registry of a male family member prepared to vouch for him or her. The production of a CSID from, for instance, an uncle, would enable the Registrar to trace back through the record to find the individual's father, and in turn him.

29. As to whether one would need to attend the office of the civil registrar in person, Dr Fatah reiterated the evidence he gave in AA (Iraq). One could delegate the task to a relative or trusted friend, assuming of course that he was in possession of the relevant documents and/or information. Alternatively, Dr Fatah agreed that it was theoretically possible that one could engage a lawyer and grant him or her power of attorney. He had however never known of anyone who had actually done that, but like everything else in Iraq, it depended on whether you had contacts whom you could trust. Dr Fatah was asked about the possibility of attending alternative offices, such as the Central Archive in Baghdad, discussed at paragraphs 180 to 187 of AA (Iraq). He maintained the evidence that he gave in that case: he has never heard of anyone obtaining a CSID from the Central Archive. In his main report Dr Fatah cites the research of NGO 'Ceasefire Centre for Civilian Rights' to the effect that IDPs attempting to recover lost documents are being met with indifference, corruption, incompetence and even sarcasm by the authorities.
30. Dr Fatah explained that this complex bureaucracy has existed in Iraq for many years. The family registration books, and their contents reflected on the CSID, are the foundation of the state's control. Iraq is presently facing significant challenges in maintaining the system in the north of the country, however. Under ISIL control all recording of official events was banned, and some civil register offices, such as that in Mosul, were damaged or destroyed. The effect is that there is now a huge backlog for the bureaucrats to catch up on. Between 2014 and 2017 no marriages, births or deaths were recorded. Catching up will be a mammoth task. In Mosul alone there are 1.5 million Iraqis who will need their records updated. In addition to recording the names of those who have died in the conflict there will be tens of thousands of children whose births have not been registered, or who were not entered into the record before ISIL took power. Their families are now desperate to have their existence recorded, because without that, they cannot obtain CSID cards; without CSID cards the children are not entitled to PDS cards; without PDS cards they cannot receive food rations. In addition many people lost their documents during the conflict when homes were destroyed or

when fighting broke out, causing people to flee at short notice without them. In light of this, the problems of one individual returnee are likely to be given short shrift. No procedures have been implemented to assist the re-documentation of returnees and in the view of Dr Fatah this is because their issues are considered to be trivial compared to the position of IDPs already on the ground. These returnees are a “totally insignificant problem” for the authorities, whose efforts are further hampered by the fact that many of the more experienced civil servants, whose skills could be helpful at this point, were sacked in the “de-Ba’athification” programme. The likelihood of persuading an official to spend precious time trying to find an individual’s records are even further diminished.

31. UNHCR have recognised that undocumented Iraqis find themselves in ‘legal limbo’ and have helped to set up a system in the IDP camps to give people assistance in re-acquiring documents, including the establishment of ‘courts’ to issue papers. In his live evidence Dr Fatah clarified that outside of the camps the UNHCR’s work in this regard, provided through the ‘Protection Assistance and Re-integration Centres’ (PARCs), is limited to advising people about what documents they need to produce, and assisting them in completing their applications. His evidence on this matter has not changed from that he gave in AA (Iraq) [at paragraph 185]. Minority Rights Group International (December 2016) report that the lack of documentation is a significant problem for many IDP families, up to 50% of whom have at least one member without the right papers. The backlog in registering civil status events has led to something of a paralysis in the system, with for instance newborns being refused registration if there are entries outstanding on the records of their fathers. Women face particular obstacles in the “inherently discriminatory” system and are unlikely to succeed if they have no male relative who is able to negotiate with officials on their behalf. The acquisition of documents, including CSIDs, is heavily dependent upon paternal documentation.
32. In addition to holding a CSID, Iraqi citizens must also hold an Iraqi Nationality Certificate (INC). This document establishes the holder’s nationality, and therefore his entitlement to assert citizenship. DFAT (June 2017) report that unlike the CSID, the INC has weak security features and can be easily forged. That is why the CSID is preferred as a means of identification.
33. Iraqi nationals are further entitled to hold a Public Distribution System card (PDS), the purpose of which is to access monthly food rations distributed by the state. The information it contains is based on the civil register. Persons wishing to collect their rations must therefore do so by personally attending at an appointed agent in the governate where their registration is held. It is treated, informally, as a reliable means of identification. Because it reflects the information in the civil register it can be used, like an Iraqi passport, to ‘track back’ through the record to locate the holder’s family and personal details; it can therefore be used in order to obtain a new CSID.
34. Dr Fatah’s evidence on the acquisition of emergency travel documents remains, in essence, unchanged from that given in AA (Iraq). In that appeal Dr Fatah had said that it would be for the individual to satisfy the consular staff as to his identity and nationality. Having a CSID or passport, either expired or current, would obviously be

of great assistance. If the applicant did not have such documents he could demonstrate his identity by calling upon documented relatives to vouch for him. The authorities would consider such applications on a case-by-case basis, but the individual must establish his identity “beyond reasonable doubt”. He might for instance be asked various questions relating to the names of family members, addresses he has lived at, the names of schools attended or medical treatment he has had in the past, and his answers checked against records in Iraq.

### *Getting to the IKR*

35. Dr Fatah reports that Baghdad, Sulaymaniyah and Erbil International Airports are generally considered secure. Since the independence referendum the GoI have banned direct international flights into the IKR. As such the information contained in the Home Office CPIN (September 2017), to the effect that ‘pre-cleared’ returnees can be sent direct to the IKR, is out of date. Although direct flights may be permitted to resume at some point in the future at present all returns are to Baghdad. Individuals returned to Baghdad will be in possession of either an Iraqi passport or *laissez-passer*. *Laissez-passers* are confiscated by the Iraqi authorities upon arrival. DFAT (June 2017) confirm that these documents are not valid for onward internal travel.
36. Dr Fatah explained that most people travelling between the IKR and the Iraqi capital do so by way of internal air travel. Two airlines operate the route. There are four to eight flights to Erbil each day, and three to six to Sulaymaniyah; flights cost between US\$60 and \$78. The international travel ban has resulted in many flights selling out but at the date that Dr Fatah was preparing his report there were seats available on most days on the ‘FlyBaghdad’ website.
37. To board an internal flight a passenger must be in possession of a CSID, or a valid passport. Dr Fatah said that the norm would be to use a CSID but he knows of one friend who used her passport and had no problems doing so. He believes that an individual who was not in possession of one of these documents would have to obtain one in Baghdad before attempting to travel onward to Erbil or Sulaymaniyah. As to whether it would be possible to make this journey using an INC, Dr Fatah would not rule that out, but said that he had never known it to happen. It certainly could not be done using a *laissez-passer*, since these documents are confiscated by the Iraqi authorities on arrival.
38. As to funds, it is the Respondent’s position that most, if not all, returnees would be eligible to apply for a grant of up to £1500 under the ‘Voluntary Returns Scheme’ (VRS). £500 of the grant is ‘pre-loaded’ onto a cash card with the balance being made available, either in cash or in kind, once the returnee reaches Iraq and registers his presence there with the IOM. Any returnee would therefore have the funds to buy a ticket for onward travel. We were provided with a statement by Bill Lacy, Country Research Manager at the Home Office, who explained that Iraq is a country covered by the European Reintegration Network (ERIN) scheme. This means that the grant could include a ‘meet and greet’ at the airport, medical assistance, help in finding a job etc. Mr Lacy also asserts it to be his understanding that returnees pass through routine immigration and



security checks within 24 hours and that the Iraqi authorities will assist with any onward documentation necessary.

39. At the time of AA Iraq there had been the consensus that road travel between Baghdad and the IKR would be extremely difficult, requiring passage through contested areas or territory held by ISIL. These obstacles meant that taxi drivers were taking a circuitous route along the Iranian border, so that a journey that would ordinarily take 4-5 hours would instead take 15. Today Dr Fatah agreed that the roads have become safer and that some road travellers are once again taking the direct route. He cautioned however that the situation remains changeable, and that travellers would run the risk of encountering a militia or “fluid” frontline. People are particularly afraid of armed Shi’a groups. Checkpoints can be erected, and roads closed, without notice. That is why the vast majority of people choose to go by air, even though it costs twice as much. Cars need to pass through numerous checkpoints on such a journey, and at each checkpoint passengers would ordinarily be expected to produce a CSID. Mr Singh questioned whether that was universally so. Dr Fatah agreed that some security personnel would simply wave vehicles through without checking anything, but you would be very lucky if that was the case the whole way to the border. There are no formalised procedures but the norm would be the production of a CSID. If you are unable to produce an acceptable form of ID, you will be detained. There is a special place where they take you. It is considered to be a normal part of life – “it’s nothing scary”. Usually what happens next is that the soldiers would call a member of your family to bring your documents and/or vouch for you. If you are ‘connected’ to someone high up you can call them. If you do not have anyone they can call however, it will be very difficult and you would remain in detention until they were satisfied as to your identity.
40. Dr Fatah further points out that people are not in any case permitted to leave the airport without documentation. There are at least two checkpoints within the immediate vicinity of Baghdad airport, between the terminal and Abas bin Fernas Square, which is about fifteen minutes by car. On the way into the airport passengers must produce a valid flight ticket, passport and if applicable, a valid visa for their destination country. When exiting the airport taxis pass through a checkpoint where the required document for non-Iraqis is a passport with a valid visa, while for Iraqis the required document would be a CSID or Iraqi passport. After the hearing the Tribunal asked Dr Fatah to clarify what would happen to the undocumented returnee, an individual who had been sent back to Baghdad with nothing but a *laissez-passer*. He emphasised that his answer, insofar as it related to Baghdad, was speculative, since he had never known it to happen. The individual concerned would have to explain his or her situation to the immigration officer, who may or may not be understanding of the situation. Dr Fatah assumed that the process might be similar to that which applies at checkpoints: the undocumented individual can expect to be detained until a family member turns up who can vouch for him to the satisfaction of the personnel manning the checkpoint, or in this case the airport security or immigration staff. That is what happens at airports in the IKR: the person would be held there until someone delivered his identity documents or otherwise satisfied the authorities as to his identity. Dr Fatah emphasises that there is no formal procedure governing this situation and that the outcome will largely depend on the view taken by the officers on the ground. If for instance the subject of their

enquiry is a Sunni Arab, the security officers at the airport – in Baghdad overwhelmingly likely to be Shi’a – may subject him to greater scrutiny.

### *Getting Into the IKR*

41. In April 2017 UNHCR issued country information on the availability of internal flight which reiterated its position that IDPs from Ninewa, including Kurds, would need to have a sponsor in the IKR if they wished to relocate there. The general evidence available to the UNHCR indicated that sponsorship requirements are not grounded in law, nor are they officially announced. They are reportedly subject to frequent change, and might vary depending on the checkpoint the IDP presented to. In the case of those fleeing Ninewa, however, particular issues arose because of the fear of ISIL infiltration. UNHCR reported that specific entry instructions were issued to the *Asayish* in Erbil that persons from Ninewa were not to be granted entry to the IKR without a local sponsor, who must be present at the point of entry and be prepared to attend the *Asayish* office in Erbil with the IDP. Similar evidence had been reported by Landinfo and other agencies.
42. Dr Fatah noted the conclusions of the UNHCR but his own evidence, gathered from conversations with fieldworkers, is that sponsorship requirements are not being enforced in the IKR at present. He acknowledges that procedures are not codified and can appear arbitrary, although in reality they will be dictated by the security situation on the ground. As far Dr Fatah is concerned, it is a straightforward matter for a Kurd in possession of his CSID to enter the IKR. The only group whom Dr Fatah believes would need sponsorship to enter the IKR are Arabs.
43. Sponsorship is not the only issue when considering freedom of movement between the IKR and GoI territory. IDPs wishing to cross into the IKR must also pass through security screening checkpoints. Dr Fatah states that whilst the border between the IKR and Iraq has remained officially open, some entry points are closed and there have been significant restrictions on movement since the referendum in September 2017. Individuals passing through open checkpoints – both Iraqi and Kurdish – are being questioned about their motives and there has been a notable decrease in people travelling across the land border: “movement between the IKR and the rest of Iraq has largely ground to a halt”. There is in general a suspicion of people, particularly single young men, moving from areas formerly (or still) controlled by ISIL. The *Asayish* are understandably concerned about infiltration and the establishment of ‘sleeper cells’ within their territory. Although this applies particularly to Sunni Arabs, who would face significant hostility attempting to enter the IKR, it can also apply to Kurds of fighting age. Dr Fatah confirmed that it is public knowledge there were many Kurds who fought with ISIL. Their ‘Kurdish brigade’ was well-publicised for propaganda purposes, and there were a number of large families, for instance in the Halabja area, known to have joined the organisation. LIFOS (December 2017) report that Kurdish security forces have successfully identified such ‘sleeper cells’ within the IKR. Dr Fatah concludes that single male IDPs face a higher risk of arbitrary detention, and disappearance, than those with families.

44. UNHCR (April 2017) report that the implementation of such on-entry screening varies from governate to governate, and even checkpoint to checkpoint. It is reported to commonly focus on the person's religious/ethnic profile, background, place of origin and family composition. For that reason the groups most likely to be denied entry are Sunni Arabs or Turkmen from former ISIL territory. There have been a number of disturbing cases of IDPs attempting to enter the IKR being detained and tortured on suspicion of being ISIL fighters. This has included, reports Human Rights Watch (June 2017), at least one Kurdish boy amongst a group of Arab children aged between 11 and 17.

#### *Legal requirements for staying in the IKR*

45. UNHCR (April 2017) report that once a Kurdish IDP has entered the IKR he does not need any further legal authority to remain there. Kurds, Turkmen (other than those from Tal Afar), Yazidis, Shabaks and Kaka'is are not generally required to obtain a residence permit. Arabs, Turkmen from Tal Afar and Christians are required to obtain a permit, otherwise referred to as a 'tourist pass' in order to lawfully reside in the IKR. It is needed to pass checkpoints, rent an apartment, stay in a hotel, to register with the Ministry of Migration and Displacement (MoMD) and to access the labour market. Those conditions were considerably tightened after the launch of the Mosul offensive in October 2016; UNHCR reported that after this initial period permits would be granted for 72 hours following which the individual would need approval from the local *Asayish* office to be able to stay in the Erbil Governate. Dr Fatah and DFAT (July 2017) both state that upon entry to the IKR individuals are required to register with the *mukhtar* and the *Asayish* in the neighbourhood in which they would like to reside.

46. There have been some reports of IDPs being deported from the IKR due to *Asayish* concerns about their motives. Dr Fatah cites research from Swedish NGO Qandil about young males in particular facing interrogation and deportation, all of whom were apparently Arab Muslims. Human Rights Watch (3 June 2017) have identified isolated cases of Kurds being targeted. A man from Mosul was detained by the *Asayish* who were suspicious about why he had stayed in the city so long after ISIL had taken it over. His wife and children were permitted to remain in a camp near Sheikhan but he was taken into incommunicado custody and the family's efforts to employ contacts in the *peshmerga* were not successful. HRW report numerous cases of men and boys being detained by the *Asayish* even after passing security screening to get into the IKR and then into the camps, but their ethnicity is not specified.

#### *Living in the IKR*

47. Dr Fatah states that the IDPs in the best position in the IKR are those who have family members to whom they can turn. 64% of IDPs are accommodated in what the UNHCR call 'private settings' and the vast majority of these will be living with relatives. If an individual has relatives in the region Dr Fatah considered that it would be socially unacceptable for him - or especially her - to live apart from them: cultural norms would

demand that they took the person in. The individual would thereby have the immediate benefit not just of safe accommodation, but of a social network. The house would undoubtedly be overcrowded, but they would make room. ACAPS (August 2016) report that two out of three IDP families are sharing accommodation with at least one other family.

48. If the individual does not have relatives in the IKR, the options are limited.
49. Dr Fatah states that women on their own would be particularly vulnerable. As a minimum a woman without a male guardian would be subject to harassment and prejudice, at worst to serious gender based violence. He writes that it would be very difficult for a lone woman to relocate anywhere in Iraq. There is substantial social stigma attached to women who are perceived to be alone. They face significant obstacles in renting property, getting a job, dealing with bureaucracy, and in fending off sexual harassment.
50. A newly arrived man with no connections to the area would have to book into a hotel on arrival. He could only do this if in possession of his CSID, since hoteliers are legally obliged to send a list of residents each day to the *Asayish*. There would be no time limit on stay in a hotel but obviously that would be dependent upon funds. Dr Fatah had never heard of a hostel operating in the IKR.
51. From there he would have three options. Try and gain entry to a camp, rent privately, or resort to what UN Human Rights Council define as 'critical shelter arrangements'.
52. Dr Fatah did not consider it to be reasonably likely that most individuals who had returned to Iraq from the West would be admitted to one of the refugee camps operating in the IKR. There are several reasons for that.
53. First, because many of the camps are already full, and significantly overcrowded: most are currently closed to newcomers. MRGI (June 2017) confirm that many of the camps are closed, and that due to existing overcrowding that is unlikely to change. The report cites a camp official in Dohuk, interviewed in February 2017, to explain why:

"The number of IDPs in this camp has not changed since last year. There is absolutely no space left. When someone leaves the camp, priority to occupy the vacant tent goes to those families in the camp who are currently sharing the same tent with eight people or more. Only then, after these cases are resolved, external IDPs on the waiting list are called".
54. Second, because the camps are primarily intended for the protection of the most vulnerable, that is to say minorities and families. 'REACH' (July 2017) report that 56% of camp inhabitants are children, and that most households are family groups of between 6-8 individuals, living in one or two tents.

55. Thirdly, because the camps have been utilised not to respond to individual cases, but to facilitate reception of large groups displaced by 'security events', ie an upsurge in violence or human rights abuses in a particular area.
56. As a result of these factors Dr Fatah did not think that an individual young man who presented to such a camp would even be considered to be an IDP. Dr Fatah considered that the only way that an individual male returnee would be able to enter a camp would be if he had relatives already residing there, and managed to persuade the camp authorities to grant him entry. Otherwise entry would be dependent on the returnee 'merging' with a large group of incoming IDPs from a future security incident. Lone women may stand a better chance of getting into a camp, but once there would be vulnerable to harassment or worse: there are documented instances of food rations being withheld by officials in exchange for sex, and frequent reports of rape, including by camp officials.
57. Dr Fatah added this: that even if it were possible or likely that an IDP would be admitted to a camp, most would not want to. In many camps there are restrictions on movement, so that persons wishing to leave the camp to look for work, for instance, would need to seek and obtain permission to do so. Conditions are very poor: there are regular interruptions to the supply of safe water; the scant food provided by the World Food Programme is reported to be of very bad quality; healthcare provision is inadequate; people are living in tents unprotected from the environment, or as UNHCR put it, they are at risk from "winterization". As such the camps are seen as the 'last resort'. MRGI (December 2016) report that whilst 45% IDPs claim that their forced displacement has made them ill, those in the camps have a higher vulnerability to health risks. According to the World Health Organisation the leading causes of morbidity in the camps are respiratory infection, acute diarrhoea, and skin infestations including scabies.
58. The private rental market presents its own difficulties. Dr Fatah considered it to be inconceivable that an individual returnee would find it possible to rent a room from a family in what he called a 'traditional' neighbourhood. The accommodation in these old residential areas is designed for large families. A man on his own with no contacts would be viewed with suspicion and as a matter of honour families would not have him in the house where there would be young women of marriageable age. As such what we would think of in the UK as 'lodging' would not be culturally acceptable; it simply does not happen. If a family defied convention to take in a lodger who was a stranger, Dr Fatah predicts that the family themselves would be ostracised. A single woman on her own would be regarded as even stranger. IDPs in a family group would however find it easier to move into such neighbourhoods, particularly if there was someone local who could vouch for them.
59. The individual returnee would have a far better chance in one of the newer neighbourhoods, where modern apartment blocks have been erected. These provide flats for individuals and typically cost between \$300 and \$400 per month. Dr Fatah explained that these expensive areas are generally populated by returning diaspora, NGO workers and other ex-pats. As long as the returnee had money, and a CSID to demonstrate his credentials, he would be able to rent one of these apartments. Whether

he could stay there would of course depend on him finding employment that could provide him with sufficient money to pay that high rent every month. ACCORD (May 2017) report that the pressure on housing caused by the IDP influx has increased rents by approximately 19% in three years. 80% of IDPs report difficulties in paying rent.

60. For those who cannot afford those rents, the final alternative would be 'critical shelter arrangements'. In its April 2016 report the UN Human Rights Council describe these as unfinished, abandoned or damaged buildings, informal settlements (ie squatter camps), religious buildings and schools. MRGI (June 2017) state:

"Living in abandoned or unfinished buildings is the most common type of critical shelter arrangement, especially in the Kurdistan region, where the sudden interruption of the real estate boom by the Kurdish political and economic crisis has left numerous unfinished buildings and abandoned construction projects...."

61. Approximately 26% of IDPs in the IKR are living in these conditions. Dr Fatah estimates that the majority of these would be young men but you also find families in such circumstances. Depending on the state of the 'critical shelter arrangement' in question the residents are faced with various problems. Those in unfinished or damaged buildings are unlikely to have access to running water, and may be exposed to the elements. Those in the more fortunate position of having a roof over their head do however continue to face insecurity: forced evictions are commonplace, for instance the Ministry of Education is currently demanding the return of occupied school buildings. IDPs who are evicted are commonly forced to move on to another critical shelter.
62. In respect of employment Dr Fatah again emphasised the importance of having a CSID. Employers are legally obliged to inform the *Asayish* about every individual they employ, and failure to do so could result in big problems for them. The *Asayish* raid businesses and detain those who have violated the law. Dr Fatah explained that "ISIL have made everything complicated - people are fearful". The production of a CSID reassures prospective employers, and anyone else who needs to see it, as to who you are, where you are from and who your family are. It enables people to trust you. If you do not have a CSID no-one will employ you.
63. Simply having the CSID does not of course guarantee regular work, or even make it likely. Dr Fatah remarked on the striking difference in the position between Iraqi IDPs and Syrian refugees who have sought sanctuary in the IKR. The Syrians have a reputation for being educated, hardworking and skilled. Many of them have brought funds with them from Syria and used them to set up businesses, particularly in the hotel and restaurant trade. They can then employ their relatives and countrymen. Dr Fatah said that all the best restaurants have Syrian staff - they are known to be excellent chefs and waiters. As a result, the rate of unemployment in the Syrian refugee population is relatively low - approximately 20%. This is to be contrasted with the high rate among Iraqi IDPs: 70%. If a returnee has some particular skill, then he may be able to find work, but again this is difficult without family contacts to make introductions. It is those with family connections who are in the most advantageous position. Unemployment

amongst Iraqi IDPs is very high, but if you have a relative who can employ you, vouch for you, or put you in contact with a prospective employer, your chances are substantially increased. As DFAT (June 2017) put it: “patronage and nepotism significantly influence employment opportunities, making it difficult to internally relocate to the Kurdish region without existing networks”.

64. The most disadvantaged male group in terms of the legal job market are the unskilled. Dr Fatah said that for them, life is “really complicated”. He did not want to say that it would be impossible for them to find work, but there are several difficulties. First, there are many other unskilled people looking for work. If you are a Kurd from outside the IKR the chances are you will be from one of the contested areas and people will be frightened and suspicious of you: for instance, someone arriving today whose CSID shows his home to be Ninewa might be asked why he did not leave sooner. For this group the jobs available, such as labouring, would likely be irregular and poorly paid.
65. The group that faces the most significant difficulty in securing employment is lone women. The social stigma associated with being without a male guardian means that the legal job market is largely inaccessible to this group. Dr Fatah cites research by Amnesty International to the effect that poverty and lack of jobs has forced women into prostitution and into situations of sex slavery. Women on their own are vulnerable to regular sexual harassment, and to an increased risk of gender based violence.
66. For those without a regular income food security is poor. Food is generally expensive, in part because 65% of it, since the decline in the agricultural sector, is now imported. IDPs in possession of PDS cards are entitled to monthly food baskets which are reported by ACCORD (May 2017) to contain oil, sugar, vegetable oil, flour and powdered milk. ACCORD summarise that the system is beset by poor management, delays and corruption but Dr Fatah identifies an additional problem for IDPs in the IKR: PDS baskets are only distributed in the individual’s local governate, ie the place where his civil registration is held. An IDP from Mosul would thus need to travel back there every month in order to claim his ration. Where there is a large family group there might be one or two nominated individuals who are able to claim the ration – they would have to take it in turns travelling to get to the dispensing agent each month. Dr Fatah states that within GoI territory it is possible, albeit time consuming, to transfer the rations, but it is not permitted to transfer ration distribution from outside the IKR to within it. Reliance on the PDS is not therefore a realistic option for many IDPs within the IKR. REACH (June 2016) report that in Sulaymaniyah, for instance, 48% of households were unable to access their PDS rations. 75% of IDPs questioned by REACH reported food to be a priority need. Families and individuals alike were using ‘negative coping strategies’ in respect of food: taking on debt, buying lower quality food, eating less overall and limiting the amount of meals eaten per day.
67. Alternative sources of support might be remittances from relatives abroad or in other parts of Iraq, or charitable donations. Dr Fatah gave the example of a businessman who recently paid for thousands of loaves of bread to be distributed to IDPs, but this was only on one day. In the past few months UNHCR have made a ‘winter assistance’ cash payment of between \$200 and \$400 to almost 60,000 IDPs in the IKR but it would appear

that these were all “vulnerable families” living in camps and urban areas. During the winter UNHCR have also made core relief items available including blankets, heating stoves, plastic sheets and jerry cans.

68. Healthcare in the IKR has a reputation for being far better than in the rest of the country. Dr Fatah explained that this was due to significant foreign and diaspora-led investment after 2003. The IKR was relatively stable compared to the rest of Iraq and for that reason was the ideal location for a number of new private hospitals which were built to attract business from neighbouring countries. The services, attests Dr Fatah, are excellent. They are not however cheap, and are beyond the reach of most IDPs. In the public hospitals conditions are not so good. Staff are widely reported to be demanding bribes in the form of ‘payment’ for medicines that are supposed to be free. Public hospitals are desperately short of trained clinicians and nursing staff. For those in the lowest income bracket treatment can be prohibitively expensive, with diagnostic tests, even in the public sector, costing between \$5-10 each; prescription charges prevent many with chronic illnesses, such as diabetes, from taking medicine that they know they need. As a result of these problems many IDPs are entirely reliant on humanitarian assistance to meet their healthcare needs.
69. In respect of security and socialisation Dr Fatah states that relations between IDPs and the host community have traditionally been good, albeit that the events of the past year or so has created suspicion of those from areas formerly controlled by ISIL; the increase in numbers has led to increased resentment. There is reported to be considerable tension between the different ethnic and religious groupings within the IDP communities, with for instance, Yezidi Kurds and Shi’a Arabs in the same camp having no interaction at all. In his evidence on why individual males would face obstacles in trying to move to a ‘traditional’ neighbourhood Dr Fatah said that men in those situations would find themselves isolated and ostracised. He agreed that those who joined other IDPs in critical housing settlements would “make their own community”.
70. ACAPS (August 2016) confirm whilst refugees were initially welcomed by the host community, attitudes turned to ‘neutral’ as numbers increased, and “social tensions have been worsening as the crisis is dragging on”. These tensions are attributed to the increased demand on services and opportunities, as locals, Iraqi IDPs and an estimated 250,000 Syrian refugees compete for resources. Targeting of the displaced population in preference to the host community by humanitarian actors exacerbates the perception of injustice. Some groups, in particular Arabs, experience discrimination and even hostility; language has emerged as a major source of contention, with the host community voicing criticism of Arab reluctance to learn Kurdish.
71. In respect of the position of children Dr Fatah cites research to the effect that 59% of primary age IDPs in Iraq have access to formal education, but does not provide a figure specifically relating to the IKR. He notes that there are numerous obstacles to children being enrolled, including lack of school places, the necessity for children to work to supplement family incomes, lack of money to pay for uniforms, books etc, and the fact that many IDPs are forced to live in peripheral suburban neighbourhoods where accommodation is more affordable, but infrastructure is lacking. The most persistent



complaint about education in the IKR is the language barrier, with little or no provision for non-Kurdish speakers.

## Legal Framework

72. Article 8 of the Qualification Directive is concerned with the matter of internal protection:

1. As part of the assessment of international protection, Member States may determine that an applicant is not in need of international protection if in a part of the country of origin there is no well-founded fear of being persecuted or no real risk of suffering serious harm and the applicant can reasonably be expected to stay in that part of the country.

2. In examining whether a part of the country of origin is in accordance with paragraph 1, Member States shall at the time of taking the decision on the application have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant.

3. Paragraph 1 may apply notwithstanding technical obstacles to return to the country of origin.”

73. The first limb of Article 8(1) is entirely uncontentious. The parties and Tribunal are in agreement that there will be no ‘internal flight alternative’ where the applicant would be exposed to a real risk of serious harm, persecution or Article 3 ill treatment in the place of the proposed internal relocation.

74. Article 8(1) further provides that member states may decline international protection where the applicant can “reasonably be expected to stay” in another part of his country of origin. The meaning and ambit of that second limb was hotly disputed before us.

### *The Respondent’s Case*

75. For the Respondent Mr Singh contended that when assessing the ‘reasonableness’ of internal relocation it was appropriate that we use, as a point of comparison, the lives and circumstances of a ‘significant minority’ of other people in Iraq. If, upon our examination of the evidence, we found there to be a ‘significant minority’ living in comparable circumstances to those that the Appellant might find himself in, and he is as well able to bear it as most, we were invited to dismiss the appeal on the grounds that the very equivalence established that the Appellant would be living a “relatively normal life”. Mr Singh founded his argument on the speech of Lord Brown in AH (Sudan) v Secretary of State for the Home Department [2007] UKHL 49 [at 42], and in particular the highlighted words:

“As mentioned, one touchstone of whether relocation would involve undue hardship, identified in the UNHCR guidelines and referred to in the passage already

cited from para 47 of Lord Hope's speech in Januzi, is whether "in the context of the country concerned" the claimant can live "a relatively normal life". The respondents are fiercely critical of the Tribunal's approach to this question in the present case. In particular they criticise the Tribunal's conclusion as to "the subsistence level existence in which people in Sudan generally live". To my mind, however, this criticism is misplaced. It is not necessary to establish that a *majority* of the population live at subsistence level for that to be regarded as a "relatively normal" existence in the country as a whole. **If a significant minority suffer equivalent hardship to that likely to be suffered by a claimant on relocation and if the claimant is as well able to bear it as most, it may well be appropriate to refuse him international protection.** Hard-hearted as this may sound, and sympathetic although inevitably one feels towards those who have suffered as have these respondents (and the tens of thousands like them), the Refugee Convention, as I have sought to explain, is really intended only to protect those threatened with specific forms of persecution. It is not a general humanitarian measure. For these respondents, persecution is no longer a risk. **Given that they can now safely be returned home, only proof that their lives on return would be quite simply intolerable compared even to the problems and deprivations of so many of their fellow countrymen would entitle them to refugee status.** Compassion alone cannot justify the grant of asylum". (emphasis added)

76. From this passage Mr Singh drew the following propositions, set out in his skeleton argument:

"The Respondent's position is that the words 'significant minority' (of 'fellow countrymen') mean what they say. 'Significant' in this context means sufficiently great in number to be worthy of attention; it is the opposite of 'insignificant', which concerns *de minimis* numbers that can be ignored.

In this regard, it follows from the numbers involved that the population of IKR is itself a significant minority of the population of Iraq, and indeed even a significant minority of the population of the IKR is a significant minority of the population of Iraq.

Therefore, the Appellant (or any other proposed returnee to the IKR) cannot succeed in an internal relocation argument simply by demonstrating on the basis of the objective evidence that the lives of significant number of people in the IKR (or in Iraq as a whole) are hard and that he would face '*equivalent hardship*' on return – indeed, that would *disqualify* him from succeeding, as then his life on return would be a 'relatively' normal one (relative to a 'significant minority' of his 'fellow countrymen'). In order for any harshness to be 'undue' he would have to show that, in comparison to the 'significant minority' his likely life on return to the IKR 'would be quite simply intolerable', ie significantly worse than the lives of the 'significant minority' (whilst recognising that the 'undue' threshold remains lower than the Article 3 (of the ECHR) ill-treatment threshold, as AH (Sudan) makes clear)"

77. In support of his argument Mr Singh further placed reliance on the decision of the Court of Appeal in AA (Uganda) v Secretary of State for the Home Department [2008] EWCA Civ 579 in which Lord Buxton described Lord Brown's judgment as having "valuably explained some further aspects of the jurisprudence of undue harshness".

### *The Appellant's Submissions*

78. For the Appellant, Mr Bazini's primary position was that we should respectfully find Lord Brown to be wrong. He submitted the 'significant minority' formulation to be fundamentally incompatible with all of the other speeches in AH, and in the unanimous judgment of the Appellate Committee in Januzi v Secretary of State for the Home Department [2006] UKHL 5. These opinions invite a broader approach, where the reasonableness of relocation was to be judged against the circumstances prevailing *generally* in the country of origin, the classic test being that formulated by Lord Bingham in Januzi. In light of that fundamental incompatibility Mr Bazini, in the alternative, asked us to treat Lord Brown's opinion as a minority judgment.

### *The Correct Approach*

79. Our starting point is the decision of their Lordships in Januzi. In his lead judgment Lord Bingham rejects the contention for the appellants that whether conditions are 'reasonable' is a matter to be evaluated by comparison with the conditions they would enjoy in a State signatory to the Convention. He endorses the decision of the Court of Appeal in E and Anr v Secretary of State for the Home Department [2003] EWCA Civ 1032 in which the court rejected the 'human-rights based approach' advocated by Professor Hathaway and adopted in several New Zealand cases [at §15-19 and see further Lord Hope at §45-46]. That is not to say however that the degree to which basic norms of civil, political, social and economic rights are enjoyed in the area of relocation are entirely irrelevant to the enquiry. Lord Bingham [at §20] goes on to endorse the "valuable guidance" given on the matter by the UNCHR in its *Guidelines on International Protection* (23 July 2003):

#### *"Respect for human rights*

Where respect for basic human rights standards, including in particular non-derogable rights, is clearly problematic, the proposed area cannot be considered a reasonable alternative. This does not mean that the deprivation of any civil, political or socio-economic human right in the proposed area will disqualify it from being an internal flight or relocation alternative. Rather, it requires, from a practical perspective, an assessment of whether the rights that will not be respected or protected are fundamental to the individual, such that the deprivation of those rights would be sufficiently harmful to render the area an unreasonable alternative.

...

#### *Economic survival*

The socio-economic conditions in the proposed area will be relevant in this part of the analysis. If the situation is such that the claimant will be unable to earn a living or to access accommodation, or where medical care cannot be provided or is clearly inadequate, the area may not be a reasonable alternative. It would be unreasonable,

including from a human rights perspective, to expect a person to relocate to face economic destitution or existence below at least an adequate level of subsistence. At the other end of the spectrum, a simple lowering of living standards or worsening of economic status may not be sufficient to reject a proposed area as unreasonable. Conditions in the area must be such that a relatively normal life can be led in the context of the country concerned. If, for instance, an individual would be without family links and unable to benefit from an informal social safety net, relocation may not be reasonable, unless the person would otherwise be able to sustain a relatively normal life at more than just a minimum subsistence level.

If the person would be denied access to land, resources and protection in the proposed area because he or she does not belong to the dominant clan, tribe, ethnic, religious and/or cultural group, relocation there would not be reasonable. For example, in many parts of Africa, Asia and elsewhere, common ethnic, tribal, religious and/or cultural factors enable access to land, resources and protection. In such situations, it would not be reasonable to expect someone who does not belong to the dominant group, to take up residence there. A person should also not be required to relocate to areas, such as the slums of an urban area, where they would be required to live in conditions of severe hardship”.

80. Lord Bingham further describes as helpful the discussion in Storey, H. *The Internal Flight Alternative Test: The Jurisprudence Re-examined* (1998) 10 *International Journal of Refugee Law*

“Bearing in mind the frequency with which decision-makers suspect certain asylum seekers to be simply economic migrants, it is useful to examine the relevance to IFA claims of socio-economic factors. Again, terminology differs widely, but there seems to be broad agreement that if life for the individual claimant in an IFA would involve economic annihilation, utter destitution or existence below a bare subsistence level (*Existenzminimum*) or deny 'decent means of subsistence' that would be unreasonable. On the other end of the spectrum a simple lowering of living standards or worsening of economic status would not. What must be shown to be lacking is the real possibility to survive economically, given the particular circumstances of the individual concerned (language, knowledge, education, skills, previous stay or employment there, local ties, sex, civil status, age and life experience, family responsibilities, health; available or realisable assets, and so forth). Moreover, in the context of return, the possibility of avoidance of destitution by means of financial assistance from abroad, whether from relatives, friends or even governmental or non-governmental sources, cannot be excluded”.

81. He concludes [at §21], with the approval of the entire committee, what has become the accepted test:

“The decision-maker, **taking account of all relevant circumstances pertaining to the claimant and his country of origin**, must decide whether it is reasonable to expect the claimant to relocate or whether it would be unduly harsh to expect him to do so”. (emphasis added)

82. When the House of Lords were asked to revisit the issue of internal flight in AH (Sudan) this test was once again unanimously approved, with Lord Bingham placing renewed emphasis on the holistic evaluative exercise that must be undertaken:

“It is not easy to see how the rule could be more simply or clearly expressed. It is, or should be, evident that the enquiry must be directed to the situation of the particular applicant, whose age, gender, experience, health, skills and family ties may all be very relevant. There is no warrant for excluding, or giving priority to, consideration of the applicant’s way of life in the place of persecution. There is no warrant for excluding, or giving priority to, consideration of conditions generally prevailing in the home country. I do not underestimate the difficulty of making decisions in some cases. But the difficulty lies in applying the test, not in expressing it. The humanitarian object of the Refugee Convention is to secure a reasonable measure of protection for those with a well-founded fear of persecution in their home country or some part of it; it is not to procure a general levelling-up of living standards around the world, desirable though of course that is”.

83. The specific question that arose on appeal in AH was whether the Upper Tribunal, in its consideration of the remitted appeals in Januzi, had conflated the test of ‘undue harshness’ with Article 3 ECHR. To do so, held Lord Bingham (with whom Lord Hoffman and Lord Hope agreed) would have been an “egregious and inexplicable error”. The tests are not the same and as Lady Hale explained, it is an error that can be avoided by properly applying Lord Bingham’s holistic approach. Further, decision-makers must make the assessment in the round, not simply look to find others enduring similar levels of hardship, or even worse:

“27. That concern is allied to another. We know that the standard of comparison is not the lives which the returning claimants are living here: that is what *Januzi* was all about. We know that the lives they led before the persecution are a relevant factor but not, as the Court of Appeal thought, the starting point. We know that the lives they will face on return have to be considered in the context of “standards prevailing generally in the country of nationality”: Lord Bingham in *Januzi*, para 20. If people can return to live a life which is normal in that context, and free from the well-founded fear of persecution, they cannot take advantage of past persecution to achieve a better life in the country to which they have fled: see Lord Bingham in para 5 of his opinion. But this does not mean that the holistic consideration of all the relevant factors, looked at cumulatively, can be replaced by a consideration of whether their circumstances will be worse than the circumstances of *anyone else* in that country.

28. Yet the Tribunal concluded that because the conditions faced by returning Darfuris, however appalling, would be no worse than those faced by other Sudanese IDPs it would not be not “unduly harsh” to expect them to return. The standard of comparison was, not with their lives in Darfur before their persecution, not with the general run of ordinary lives in Sudan, not even with the lives of poor people in Sudan, but with the lives of the poorest of the poor, internally displaced victims of the civil war in the south, living in camps or squatter slums, and “subject from time to time to relocations, sometimes involving force and human rights violations” (para 244). They too had been subsistence farmers, ill-equipped to survive in the city slums (para 239); they too had suffered the psychological horrors of civil war (para

238), if not of government-backed genocide; the Darfuris would be no worse off, unless particular individuals attracted the adverse interest of the authorities (para 242). With respect, this is not the individualised, holistic assessment which the question requires”.

84. And then there is the speech of Lord Brown upon which Mr Singh relies. As we have set out above, it gives rise to two points of contention between the parties. First, whether it is appropriate to use, as a benchmark of reasonableness, the conditions of a ‘significant minority’ of the population:

“It is not necessary to establish that a *majority* of the population live at subsistence level for that to be regarded as a “relatively normal” existence in the country as a whole. **If a significant minority suffer equivalent hardship to that likely to be suffered by a claimant on relocation and if the claimant is as well able to bear it as most, it may well be appropriate to refuse him international protection**”. (emphasis added)

And second, to what standard must conditions have sunk before they will become ‘unreasonable’:

“**Given that they can now safely be returned home, only proof that their lives on return would be quite simply intolerable compared even to the problems and deprivations of so many of their fellow countrymen would entitle them to refugee status.** Compassion alone cannot justify the grant of asylum”. (emphasis added)

85. In our view it is quite plain that in respect of the first matter Lord Brown was not dissenting from the view of the majority: he expressly endorses it, repeats it himself [at §35], and approves [at §39-40] the UNHCR guidelines cited by Lord Bingham (and Lady Hale). How then can his opinion be squared with that majority view, with its emphasis on the “conditions generally prevailing” in the home country?

86. As far as we are aware, in the nine years since AH, the only time that the higher courts have considered Lord Brown’s ‘significant minority’ formulation was in the appeal in AA (Uganda). The Court was there asked to examine the case of a young Ugandan woman refused asylum on the ground that she could internally relocate to Kampala. The Upper Tribunal had dismissed AA’s appeal because it found that she would be in no worse a position than other single women in the city. The Court held that as a matter of legal direction the Tribunal was there doing no more than applying the approach advocated by Lord Hope in Januzi, asking itself whether the “claimant can live a relatively normal life there judged by the standards that prevail in the country of his nationality generally”. The Court did not regard that as inconsistent with the speech of Lord Brown, saying [at §16]:

“Whilst Immigration Judge Coker did not have the benefit of the House of Lords in AH(Sudan) she clearly had the jurisprudence that their Lordships confirmed in mind when she said, at the end of her §38, that the situation facing AA was the same as that of many other young women living in Kampala, and quoted Lord Hope of Craighead, who asked whether the claimant could live a relatively normal life judged by the standards that prevail in his country of nationality generally: those

standards, or the relevant hardship, being as Lord Brown of Eaton-under-Haywood explained in *AH(Sudan)* that of a significant minority in the country...”

87. We agree that the propositions are not mutually exclusive. Lord Brown was doing no more than pointing out that there will never be a situation where everyone in the country enjoys a parity of conditions. The “conditions generally prevailing” in any given state must entail a diversity of experience. He was not, as Mr Singh appeared to submit, suggesting that the existence of a comparator group would *necessarily* render relocation ‘reasonable’. He was simply underlining that where a significant part of the population live in such conditions, it *may* be reasonable to expect this individual to do so too. The question remains whether, for that individual, and taking all relevant factors into account, there is the reasonable likelihood of a “relatively normal life”, to be judged against the standards generally prevailing in that country. We are not therefore prepared to find, as Mr Bazini invites us to do, that Lord Brown was wrong. His comments must however be read and understood in the context in which they are made. They should not be read in isolation; the significant minority ‘test’ will rarely, if ever, be determinative.
88. The perils inherent in simply identifying a ‘significant minority’ are well illustrated by the decision in AA (Uganda). In focusing as it did on the comparator group of ‘single women in Kampala’ the Tribunal erred in excluding wider, more general considerations about the country as a whole. The Court held that the Tribunal should have considered whether it was appropriate to apply the test “to a case where the comparator or constituency in the place of relocation is limited to persons who suffer from the same specific characteristics that expose the applicants to danger and hardship in the place of relocation”. In that particular case the error was all the more problematic because those dangers and hardships in fact amounted to a violation of Article 3 ECHR, including as they did the real risk of AA having to turn to prostitution in order to survive. The fact that many other young women in Kampala faced those risks did not lessen the impact upon AA. See to the same effect the decision of the Upper Tribunal in EB (Lone Women - PSG - internal relocation - AA(Uganda) considered) Sierra Leone [2008] UKAIT 00090.
89. As the decisions in AA (Uganda) and EB (Sierra Leone) make clear, there is no reasonable internal relocation alternative if that alternative involves a real risk inhuman and degrading treatment, persecution or serious harm. In such a situation it matters not whether the size of the group facing that degradation is one individual, a significant minority or indeed a significant majority of the population. Once conditions fall below that baseline internal flight is no longer an issue, since removal would be prevented by the real risk of serious harm. That much is accepted by the Respondent. We find however that the same logic must apply to conditions which would, if endured by the putative refugee, be ‘unreasonable’ or ‘unduly harsh’: that is the effect of Lady Hale’s speech in AH, which we have set out above. For that reason we are satisfied that Lord Brown was not inviting identification of a comparator group to the exclusion of all other considerations. The fact that an applicant may endure the same living conditions as a ‘significant minority’ of his countrymen cannot *of itself* render his internal relocation ‘reasonable’. The test is, and remains, whether those living conditions are, for the

individual concerned, 'unduly harsh': that is an assessment to be made taking account of "all relevant circumstances pertaining to the claimant and his country of origin".

90. That brings us to the second matter in contention: Mr Singh's submission that "in order for any harshness to be 'undue' [the Appellant] would have to show that, in comparison to the 'significant minority' his likely life on return to the IKR 'would be quite simply intolerable', ie significantly worse than the lives of the 'significant minority'". On this matter we can be brief. It is accepted that in the spectrum of suffering there is a difference between Article 3 ill-treatment and what might be considered 'unduly harsh'. This is made clear in Lord Bingham's speech in AH (Sudan) at [9]. One involves serious harm or inhuman and degrading treatment; the other a life that cannot be considered 'reasonable'. Given his express agreement with the other judgments in both Januzi and AH we do not accept that Lord Brown was here seeking to conflate the two, or to elevate one to the other. Whilst the words "quite simply intolerable" could be given their literal meaning, "unable to be endured", we can only read the phrase in context, and doing so we find that that it can mean no more than 'unreasonable' or 'unduly harsh'. We do not think that any further gloss on the concept is required. As Lord Bingham puts it: "the difficulty lies in applying the test, not in expressing it".

## Discussion and Findings

### *Dr Fatah's evidence*

91. We record at the outset our gratitude to Dr Fatah, who prepared a comprehensive report, took the time to answer in writing further questions put to him by the parties and Tribunal, and gave oral evidence that all present recognised as insightful and helpful. We found Dr Fatah's evidence to be measured, detailed and well-sourced; when he was unable to give a definitive answer, he made that clear; he declined to speculate; he was markedly objective and did not hesitate to give evidence that could potentially have enhanced the Respondent's case. Both advocates described him as an "excellent" expert witness and we were urged to give substantial weight to all of his evidence. We have done so. We note the large measure of consistency between Dr Fatah's reports and the other material before us. The only real point of divergence was on the question of sponsorship, and on that point we prefer – without objection by Mr Bazini – the evidence of Dr Fatah, as we explain below.

### *Existing Guidance*

92. Before we turn to address the thematic questions raised in the appeal we mark the conclusions of the Tribunal in AA (Iraq) on the question of violence in the IKR:

"112. In Dr Fatah's opinion the IKR "is virtually violence free, and only exceptional one offs disrupt this". The most recent security incident in the IKR referred to in Dr Fatah's evidence was a suicide car bomb outside the governorate office in Erbil on 19 November 2014, which killed six people, including the driver, and wounded dozens. Prior to that there was a bomb in Erbil on 29 September 2013, which also



killed six people. The Home Office April 2015 CIG also makes reference to the November 2014 attack, but identifies there having been 10 deaths as a consequence. It concludes that the IKR is stable and has very low levels of violence.

113. The evidence before us does not establish that there is an Article 15(c) risk to an ordinary civilian in the IKR; and neither does a person's ethnicity, religion or sex, whether taken individually or cumulatively, enhance the level of risk so as to engage Article 15(c)".

And on internal flight:

"171. We have found at paragraphs 112 and 113 above that there is no Article 15(c) risk to an ordinary civilian in the IKR. What, though, of internal relocation? So far as a Kurd is concerned, the evidence of Dr Fatah was not seriously challenged by the respondent and we, in any event, accept it (see esp. paragraph 24 above). The position of Iraqi Kurds not from the IKR is that they can gain temporary entry to the IKR; that formal permission to remain can be obtained if employment is secured; and that the authorities in the IKR do not pro-actively remove Kurds whose permits have come to an end. Whether this state of affairs is such as to make it reasonable for an Iraqi Kurd to relocate to the IKR is a question that may fall to be addressed by judicial fact-finders, if it is established that, on the particular facts, permanent relocation to Baghdad would be unduly harsh. In such circumstances, the person concerned might be reasonably expected to relocate to the IKR. In this scenario, whether such further relocation would be reasonable will itself be fact sensitive, being likely to involve (a) the practicality of travel from Baghdad to the IKR (such as to Irbil by air); (b) the likelihood of securing employment; and (c) the availability of assistance from friends and family in the IKR.

172. So far as non-Kurds are concerned, we do not consider that, as a general matter, relocation to the IKR is a reasonable proposition. The risk of being turned away at the point of entry is significant, unless a person has connections with people in the IKR".

#### *The Respondent's concession*

93. We also note and consider an important concession made by the Respondent in that case. She accepted that returnees who were not in possession of a CSID, and who were unable to obtain one, would face a real risk of destitution in all parts of Iraq such that Article 3 ECHR would be engaged.

94. The Tribunal agreed that to be the case [see paragraphs 151-152] save that it considered that there may be situations in which such an individual would not face destitution, namely where the returnee has friends or family to whom he could turn in Baghdad. Today the Respondent's policy position has been amended so that it accords with the Tribunal's view on that matter. The current policy is set out at paragraph 2.4.9 of the Respondent's September 2017 Country Policy and Information Note *Iraq: Return/Internal Relocation*:

A person who:

- a. is unable to replace their CSID or INC; and
- b. is unable to obtain support from family members or others

is likely to face significant difficulties in accessing services and humanitarian conditions which may reach the Article 3 threshold. In these circumstances a grant of Humanitarian Protection (HP) will be appropriate.

95. The Respondent defines at (a), for the purpose of this assessment, an undocumented person to be someone “unable to replace their CSID or INC”. On the evidence that we have heard that is a curious formulation. An INC simply serves to confirm that the holder is an Iraqi citizen. It does not hold the practical significance of a CSID. Dr Fatah explained that on occasion an individual might produce his INC as evidence of his identity but the norm would be to rely on a CSID, and it is this document that is required to obtain access to employment, housing and services. The Respondent’s policy would suggest that a person in possession of a CSID but not an INC would qualify for a grant of humanitarian protection. We do not consider that to be correct. An Iraqi in possession of a CSID can ordinarily use that document to obtain a replacement INC and in any event, the absence of an INC would not have any particular consequences for his ability to function in society. Conversely possession of an INC could assist the holder in replacing a lost CSID.
96. We read ‘others’ at (b) as ‘friends who may be able to assist’. Whether this is applicable must be determined on a case by case basis but it must be borne in mind that the primary unit of social interaction, and support, in Iraq is the family. As Dr Fatah has repeatedly stressed, Iraq is a collectivist society where the norm would be for people to look to their relatives for sustenance. In the event of external stressors – such as war, disorder or a collapsing economy – that inward dependency is increased. The chances of friends being able to support non-relatives must be assessed in that context.
97. The nature of Iraqi society is also important in assessing who ‘family members’ might be. It was Dr Fatah’s evidence that any relatives in the IKR would be compelled by social convention to take in any newly arrived IDP. It was our understanding of that evidence that this would include ‘family members’ who in this country might be regarded as rather distant, for instance great-uncles, cousins etc.
98. With those caveats in mind we accept that a person who is unable to replace a missing CSID, *and* who has no family or others to whom he could turn for assistance, is likely to face significant difficulties in accessing housing, employment, healthcare and other services. We do not need to dwell on the issue of whether a return to a situation of destitution would, of itself, breach Article 3 – see for example the consideration of this issue by the Court of Appeal in Said v SSHD [2016] Imm AR 1084 and MA (Somalia) [2018] EWCA Civ 994 - it is sufficient that we conclude that it would not be reasonable to require a returnee to internally relocate to a situation of destitution.

99. As Dr Fatah explained, there is a legal duty on prospective landlords to provide the *Asayish* with a list of their tenants. The same duty extends to hoteliers in respect of the guests that they accommodate each night, to employers in respect of even temporary employees, and even to vendors in respect of mobile telephone SIM cards. Even if such individuals were somehow able to make their way from Baghdad to the IKR, without a CSID they would not be able to access food rations, healthcare or any government-affiliated humanitarian services. Such an individual would, without assistance from friends or relatives, be pushed to the very margins of society, and would most likely end up on the streets, or at best in what are euphemistically referred to as 'critical shelter arrangements', that is a squatter tent, an abandoned building or a building site. With the prospect of finding work negligible, food security would be extremely poor. Such an individual may in the first instance be able to rely on the funds from the VRS to obtain basic necessities, but the prospect of such necessities being obtained once the monies have been exhausted is remote.

### *Documentation and Registration*

100. As can be seen from the foregoing, a critical part of a decision-maker's enquiry will be what documents the individual in question has, or might reasonably be expected to get. The first question to be asked is whether the proposed returnee is in possession of a CSID; if he is not, the second question is whether it is reasonably likely he will not be able to obtain one.

101. The returnee's ability to obtain a new CSID was a matter considered in AA (Iraq) at paragraphs 173 to 187. The evidence on consular assistance was summarised as follows:

"173. As regards those who have an expired or current Iraqi passport but no CSID - Dr Fatah identifies in his first report that a CSID may be obtained through the "Consular section of the Iraqi Embassy in London", which will send a request for a replacement or renewed CSID to the General Directorate for Travel and Nationality - Directorate of Civil Status. A request for a replacement CSID must be accompanied, *inter alia*, by "any form of official document in support of the applicant's identity" and the application form must be signed by "the head of the family, or the legal guardian or representative to verify the truth of its contents." He also added that an applicant must also authorise a person in Iraq to act as his representative in order for that person to "follow up on the progress of the application".

174. However, Dr Fatah continued by explaining that if an individual has lost his CSID and does not know the relevant page and book number for it, then the Iraq Embassy in London will not be able to obtain one on his behalf. Instead, he or she will have to attend the appropriate local office of family registration in Iraq or give a relative, friend or lawyer power of attorney to obtain his or her CSID. The process of a giving power of attorney to a lawyer in Iraq to act "as a proxy" is commonplace and Dr Fatah had done this himself. He also explained that the power of attorney could be obtained through the Iraq Embassy.

175. Dr Fatah gave further evidence to the effect that having a marriage certificate may be useful as it would contain data found in the family records. It is, however, not possible to use a "health card" in order to obtain a CSID because there is no primary health care or GP system in Iraq, but instead patients attended hospital when they needed to do so and no central records are held.

176. There is a consensus between Dr Fatah's evidence and the following more general evidence provided by UNHCR-Iraq in April 2015 on the issue of obtaining CSID's from abroad.

"In principle, a failed asylum seeker, or indeed any Iraqi citizen abroad, can acquire Iraqi documents through Iraqi embassies and consulates. There is a special authorization granted to these bodies to provide documents for Iraqi abroad on the condition that the beneficiaries should have any available documents in order to prove their nationality."

177. In summary, we conclude that it is possible for an Iraqi national living in the UK to obtain a CSID through the consular section of the Iraqi Embassy in London, if such a person is able to produce a current or expired passport and/or the book and page number for their family registration details. For persons without such a passport, or who are unable to produce the relevant family registration details, a power of attorney can be provided to someone in Iraq who can thereafter undertake the process of obtaining the CSID for such person from the Civil Status Affairs Office in their home governorate. For reasons identified in the section that follows below, at the present time the process of obtaining a CSID from Iraq is likely to be severely hampered if the person wishing to obtain the CSID is from an area where Article 15(c) serious harm is occurring".

102. The findings in respect of obtaining a CSID upon return to Iraq read:

"178. The evidence before us in this regard is largely undisputed.

179. Dr Fatah in his most recent report indicates that the starting position is that in order to obtain a new or replacement CSID a person usually had to return to the governorate where his or her birth was registered and where the primary family registration book is held i.e. in the local population registration/civil status office. He went on to explain that there are 300 population registration offices in Iraq which are responsible to a central Civil Status Affairs Directorate.

180. Births are registered manually in volumes held at these local population registration offices and these offices are responsible for checking the manual register before issuing a CSID. They also send information on to the central population registry in Baghdad. USAID Iraq told Dr Fatah that the central population registry/central archive is not a searchable data base. Instead a "*search of the central archive needs an officer to open doors (literally or metaphorically). The search must be done by a government official - members of the public cannot search through the "central archive"*". The key issue is whether the official is willing to do the search - or can be made willing. In addition, the individual would need to know his volume and page numbers or the official would have to trawl through a given governorate's entire archive of back-up files. As a consequence, if an individual does not have his volume

and page number his only option will be to locate a close family member with the same details and hope that an official will assist him.

181. There is also some doubt as to whether a CSID could be handed over to anyone but the individual whose details it contained, even if an individual did hold a power of attorney. In addition, if the person is outside Iraq the details of an individual's CSID would have to be sent to him and he would have to ask the Iraqi Embassy to send any application for a CSID through the Ministry of Foreign Affairs to Iraq. The Ministry of the Interior would then need to issue the CSID and send it to the Ministry of Foreign Affairs who would send it back to the Iraqi Embassy in London.

182. UNHCR-Iraq told Dr Fatah that there is no database or any electronic system in place to issue CSIDs. Scanned copies of local paper records are archived in the General Directorate of Civil Status Affairs in Baghdad. Having discussed the situation with Landinfo Dr Fatah concluded that registration is undertaken in the local area and that the Civil Status Affairs Directorate or central population registry in Baghdad does not generally issue CSIDs.

183. This is confirmed to some extent by the fact that the Iraqi government has set up two Alternative Civil Status Affairs Offices to issue CSIDs to IDPs from governorates which have been captured by ISIL. One office has been set up in Najaf to issue copies of CSIDs archived from Mosul, and another office has been set up in Baghdad to issue copies of CSIDs to individuals from Anbar and Salahaddin. These offices are only authorised to issue CSIDs to IDPs from these governorates.

184. Dr Fatah was further informed by a source at the Norwegian Refugee Council that the Ministry of the Interior had refused to open up more Alternative Civil Status Affairs offices so as to protect civil records from fraud, to protect confidentiality and to avoid duplication, as there was no database or electronic system.

185. UNHCR-Iraq provides some support to those without a CSID through its Protection, Assistance and Re-integration Centres ("PARC"), but such support is limited to providing guidance and legal advice on required procedures and documents needed to obtain a CSID. It did not issue these or other documents itself. It also confirmed that Harikar and Qandil [8] have indicated that they do not issue CSIDs. The Norwegian Refugee Council told Dr Fatah that there is a network of legal aid clinics in Iraq, which is funded as part of USAID's Iraq Access to Justice Programme. They also provide legal advice, but do not issue CSIDs.

186. Drawing all of this together we conclude that an Iraqi national should as a general matter be able to obtain a CSID from the Civil Status Affairs Office for their home Governorate, using an Iraqi passport (whether current or expired), if they have one. If they do not have such a passport, their ability to obtain a CSID may depend on whether they know the page and volume number of the book holding their information (and that of their family members). Their ability to persuade the officials that they are the person named on the relevant page is likely to depend on whether they have family members or other individuals who are prepared to vouch for them.

187. An Iraqi national's ability to obtain a CSID is likely to be severely hampered if they are unable to go to the Civil Status Affairs Office of their home Governorate

because it is in an area where Article 15(c) serious harm is occurring. As a result of the violence, alternative CSA Offices for Mosul, Anbar and Saluhaddin have been established in Baghdad and Kerbala. The evidence does not demonstrate that the "Central Archive", which exists in Baghdad, is in practice able to provide CSIDs to those in need of them. There is, however, a National Status Court in Baghdad, to which a person could apply for formal recognition of identity. The precise operation of this court is, however, unclear".

103. Before us Dr Fatah confirmed that this guidance remains accurate, but he added two caveats.

104. First, it must be recognised that the Iraqi civil registration system is in disarray. Between 2014 and 2017 ISIL closed down all of the relevant offices in areas under its control, damaging or destroying many of them. No marriages, births or deaths were recorded in these offices during that period and officials are today preoccupied with trying to register and re-document the many hundreds of thousands men, women and children currently in need of assistance in Iraq. In this context the problems of individual returnees are regarded as "totally insignificant"; no procedures have been implemented to assist in their re-documentation. Dr Fatah maintained that he has never known anyone to obtain new documents from the central registry in Baghdad. Minority Rights Group International (December 2016) state that 50% of IDP families have at least one member who is missing papers. There is a 'domino' effect at play: where a father has moved district no births or deaths in his family can be recorded until *his* record is amended, which may not be possible if his records have been destroyed or remain inaccessible. Where entire families have fled fighting at short notice they may all be missing papers. Women face particularly high hurdles and find that officials will not assist them without the intervention of a male representative.

105. Second, the anecdotal evidence on the willingness of officials to assist undocumented IDPs is not promising. Dr Fatah cites the findings of the NGO 'Ceasefire Centre for Civilian Rights' who were told by interviewees that they were met with indifference, corruption, incompetence and even sarcasm by bureaucrats. Dr Fatah confined his own observations on embassy staff in the UK to saying that they are, in general, "not helpful". Dr Fatah attributes this, in part, to the fact that post-Saddam many professional career civil servants were sacked in the process of 'de-Ba'athification'.

106. The evaluation of whether there is a reasonable likelihood that an applicant will not be able to obtain a new CSID, either directly or by way of a proxy, must be assessed against that background. Whilst it remains possible for an undocumented returnee to obtain a new CSID whether he is able to do so, or do so within a reasonable time frame, will depend on his individual circumstances. Factors to be considered include:

- i) Whether he has any other form of documentation, or information about the location of his entry in the civil register. An INC, passport, birth/marriage certificates or an expired CSID would all be of substantial assistance. For someone in possession of one or more of these documents the process should be straightforward. A *laissez-passer* should not be counted for these purposes:

these can be issued without any other form of ID being available, are not of any assistance in 'tracing back' to the family record and are confiscated upon arrival at Baghdad.

- ii) The location of the relevant civil registry office. If it is in an area held, or formerly held, by ISIL, is it operational?
- iii) Are there male family members who would be able and willing to attend the civil registry with the returnee? Because the registration system is patrilineal it will be relevant to consider whether the relative is from the mother or father's side. A maternal uncle in possession of his CSID would be able to assist in locating the original place of registration of the individual's mother, and from there the trail would need to be followed to the place that her records were transferred upon marriage. It must also be borne in mind that a significant number of IDPs in Iraq are themselves undocumented; if that is the case it is unlikely that they could be of assistance. A woman without a male relative to assist with the process of redocumentation would face very significant obstacles in that officials may refuse to deal with her case at all.

107. These questions are significant not just to the assessment of whether the returnee might be able to live a 'relatively normal life' once he or she gets to the IKR; they are also relevant to whether he can get there at all.

#### *Getting To the IKR*

108. We are not concerned, in determining this case, with technical obstacles to return to Iraq. For the purpose of our enquiry we do not need to consider whether an individual *could* be returned; we start from the assumption that return has taken place. We also assume, given the current ban on international flights into the IKR, that there are at present no returns being made direct to the IKR. All flights will be to Baghdad.

109. We must therefore consider whether it is safe, reasonable or practicable for a returnee to travel from Baghdad to the IKR.

110. In respect of travel by land we accept that this continues to be the less preferred option. Whilst cars need no longer to cross ISIL territory there remains a fear of encountering Shi'a militias and 'fluid' frontlines. The journey is however today much safer than at the time of AA (Iraq). The cost of a taxi is approximately \$40 and it can take up to 15 hours, depending on the route taken by the driver.

111. A CSID, or valid Iraqi passport, would be required to leave Baghdad Airport by road. Checks are made on passengers entering and exiting the vicinity of the airport. Once you have exited the airport there are then innumerable checkpoints on the journey to the border with the IKR. These can be fixed, and their locations well known, but they can also be *ad hoc* and erected without notice. They are, depending on the location, manned by GoI security personnel, Shi'a militias or Kurds. Although Mr Singh secured Dr Fatah's agreement that sometimes the personnel manning a checkpoint will just

“wave through” a car, Dr Fatah considered that a traveller would be very lucky to avoid actual checks all the way to the border. The reality is that travellers are all expected by the security forces to be in possession of a CSID, and given the current security climate in Iraq we find that it would be extremely unusual if a car was “waved through” multiple checkpoints, and in particular those surrounding the airport, whose very purpose is to monitor traffic in and out of this strategic location. Whilst we note the evidence of Country Research Manager Bill Lacy that the Iraqi authorities have assured the Home Office they will “assist with any onward travel documentation” we have been shown no evidence that this has actually happened, or what such documentation might be. Dr Fatah’s uncontested evidence was that a failure to produce a CSID - or in the environs of the airport a passport - would likely result in detention until such time as the authorities could be satisfied as to the individual’s identity.

112.If the journey is to be made by air, obtaining a ticket is a straightforward matter. Flights cost between \$60 and \$80 and are so frequent that even in the current climate, where the international flight ban has led to increased demand, there are seats available on a daily basis. Once again, however, the issue of documentation is important. In order to take a flight from Baghdad to one of the IKR airports a traveller must be in possession of a CSID or a valid passport. Dr Fatah considered the possibility of onward travel using an INC but said that he had never witnessed anyone boarding an internal flight using one of these documents. One could certainly not use a *laissez-passer*, since these documents are confiscated on arrival.

113.We bear in mind that failed asylum seekers are entitled to apply for the Voluntary Returns Scheme grant which provide an individual returnee with at least £500 in cash, and up to a total of £1500. We conclude that where a returnee is in possession of a CSID or valid passport it would be affordable, possible and reasonable to expect him or her to make the journey to the IKR by air, or if they chose to do so, by land.

114.For those without such documents, the position is entirely different. Although Dr Fatah’s evidence on the point was, by his own admission, somewhat speculative, we accept that persons without a CSID or passport are likely to face significant obstacles in trying to make the journey between Baghdad and the IKR. To begin with they would not be able to take the most straightforward route, by air, since they would not be permitted to board a plane. Without one of those documents the traveller would also face difficulties in leaving the airport by road. The purpose of the checkpoints on the airport perimeter is to enforce security. Given that it is standard practice at checkpoints elsewhere in the country to detain those without documentation, we have no reason to believe that it would be any different at this key location. Dr Fatah acknowledged that the returnee may be able to talk his way out of the airport, and we accept that this is the case: he could for instance produce his ticket and other documentation to show that he has just returned from the UK. The officers in charge may be prepared to let him through. The difficulty the traveller then faces is getting through all of the many remaining checkpoints that lie between him and the Kurdish border.

115.Dr Fatah told us that it is standard practice at these checkpoints to detain persons who cannot produce a CSID. There are places of detention specifically designated for this



purpose. Although Dr Fatah reassured us that the conditions in such holding centres were “nothing scary”, the norm would be for the traveller to be held there until his or her identity documents are produced. Alternatively, release could be secured by a documented male relative attending and agreeing to vouch for the detainee. Since much depends on the view taken by the officer in charge, this exercise may have to be repeated at each of the numerous checkpoints all the way to the border of the IKR. If the whereabouts of the returnee’s family are unknown, or they are themselves some distance away, the period of detention is likely to be longer.

116. Decision makers must therefore give careful consideration to the circumstances in each case. A returnee who has, for instance, friends or relatives in Baghdad with whom he could stay temporarily, and who is in a good position to make contact with documented male family members, has someone in position in his home area who could attend the civil registry for him and/or is already in possession of much of the material he would need to obtain a new CSID, it would not be unreasonable to expect him to remain in Baghdad until he has secured his papers. Conversely a returnee who has no connection with Baghdad, is entirely undocumented and whose family are not themselves in a position to assist could be facing potentially lengthy – and potentially repeated – periods of detention at various points between Baghdad airport and the IKR. We do not consider that this would be a ‘reasonable’ means to access the place of internal flight.

#### *Getting into the IKR*

117. The material before us consistently points to three issues that might face an IDP trying to gain access in to the IKR.

118. The first is the closure of the border. There have been instances of Kurdish forces closing individual checkpoints, particularly at times of heightened tension, or where there is a direct security threat. It was Dr Fatah’s evidence that in the weeks leading up to the hearing movement over the land border had virtually ground to a halt. It does not appear however that such closures are permanent. Nor would it appear that they result from IKR policy. The individual governorates may well take a decision to close certain checkpoints in response to events on the ground, but the pattern has been for these to re-open. There is no evidence that flights from Baghdad in to Erbil or Sulaymaniyah have been affected by such closures. In fact, they have led to increased demand for flights.

119. The second issue is sponsorship. A number of reputable agencies have for some time been reporting the revival of this on-entry requirement, which would obviously be a significant obstacle for someone with no connection to the IKR. Given the prevalence of the reporting we do not doubt that the sponsorship requirement must have been imposed in certain circumstances, but it is entirely unclear what they might be. Dr Fatah, UNHCR, Landinfo and EASO have all, for instance, reported that Arabs must have a sponsor to be permitted entry, but it is not apparent whether the requirement was imposed on the large number of Arab families that fled *en masse* into the IKR in response to heavy fighting in the war with ISIL. It seems unlikely that all of the 2

million IDPs currently residing in the region have a proven connection there. It seems more likely that when imposed, the sponsorship requirement has been introduced on an *ad hoc* basis by individual governorates, or even individual checkpoint commanders. Dr Fatah's position at the date of the appeal before us was however that he had been unable to find any direct evidence of it being used today. None of the sources he consulted could confirm that the policy had been reintroduced. We are satisfied, at the date of the hearing before us, that for Kurds there is no sponsorship requirement upon entry to the IKR.

120. The third potential obstacle for a person seeking refuge in the IKR is the security clearance procedure. IDPs wishing to enter the territory must pass through security screening checkpoints, where they are questioned about their origins, experiences and motives. The KRG is understandably concerned about infiltration by ISIL fighters who 'melted away' after the assault on Mosul and other strongholds. There is a general suspicion of people, particularly single young men, particularly those who have moved from areas formerly (or still) under ISIL control such as Ninewa and Diyala. A number of organisations, notably Human Rights Watch, have reported on the *Asayish* not simply refusing entry to suspects at these checkpoints, but detaining them and subjecting them to ill-treatment including torture. The majority of the cases reported concern Arabs and Turkmen, but Dr Fatah stressed that one could not rule out the possibility of Kurds being subjected to similar levels of scrutiny: there were after all Kurds who fought with ISIL. HRW report on at least one case of a Kurd being detained on the basis that he had remained in Mosul whilst it was under ISIL control; in another a young Kurdish boy amongst a group of Arabs was held and allegedly tortured. The current stand-off with the GoI means any relaxation of this security screening is unlikely. Whether a Kurd would be at risk of ill-treatment by the security services in the IKR must be assessed on a case-by-case basis. Factors that could increase risk include coming from a family with a known association with ISIL, coming from an area associated with ISIL and being a single male of fighting age. It is however the case that returnees should be able to evidence the fact that they have recently arrived from the UK, thus dispelling any suggestion that they have come straight from ISIL territory.

#### *Legal requirements for staying in the IKR*

121. The consistent evidence of Dr Fatah, UNHCR and DFAT is that once a Kurdish IDP has been given entry to the IKR he needs no further legal authority to remain there. The only persons who are required to obtain a permit are Arabs, Turkmen and Christians. Kurdish IDPs are required only to notify the *mukhtar* of their arrival in a neighbourhood, and to register with the local *Asayish* office. Although this latter formality does appear to involve some security screening, the evidence on Kurds 'failing' this process is very limited: in all of the material before us only one example is cited, of the man from Mosul who was taken into incommunicado custody upon suspicion of being an ISIL collaborator.

122. An estimated 64% of IDPs living in the IKR are accommodated in 'private settings' and the vast majority of these are living with other family members. Some of these families will be living in extremely straightened circumstances, with one or more adults unemployed, but they benefit from pooling resources and having some security in their accommodation. It is the cultural norm in Iraq for individuals, even married adults, to remain living within the extended family. Dr Fatah thought, and we accept, that it would be socially unacceptable for a lone IDP to live apart from his family, and it would be the norm for him to live with them.
123. Family connections are not only important for securing accommodation, but are also a significant advantage in the challenging job market. With fierce competition for work of any kind, connections to someone who can vouch for you, or who can make introductions, would be of immediate benefit.
124. For those reasons we are satisfied that a returnee with family members already in the IKR would, in general, be able to lead what for Iraq could be called a 'relatively normal life'. He would have a ready-made social network, a roof over his head, and the economic benefit of a shared household income. He would be more likely to find some employment, although we caution that this would only be possible if in possession of a CSID. Life would be difficult, but it would not in general be unduly harsh. Decision-makers must however have regard to the particular circumstances of the family in question, to assess whether they would offer the returnee any material assistance. For instance, if the relative in the IKR is himself an undocumented IDP living on the streets it is unlikely that he will be able to be of much help. If the relative is a woman who has married into a different family she may not be able to extend a welcome. These examples underline the point that our general observations must be applied on a case-by-case basis.
125. For the individual with no family in the region, the immediate priority would be finding accommodation. We accept Dr Fatah's evidence that a single returnee would not be able to rent somewhere in what he termed the 'traditional neighbourhoods' of Erbil or other towns. The homes in those areas have been built to cater for the default social unit of large extended families and the concept of single strangers 'lodging' is alien to the culture: it simply does not happen. We further accept that entry into one of the many refugee camps in the region is no longer an option. The camps are full, and where space is being made by the expansion of camps or opening new ones, priority is given to those families already in the camp system, who are living in desperately overcrowded conditions.
126. There are two other options. In the short term it would remain open to the returnee to rent an apartment in one of the newer neighbourhoods, where modern blocks have been erected to cater for NGO workers, other ex-pats and Kurds who have chosen to come back to the region from the West. We say 'in the short term' because rents for such flats are said by Dr Fatah to be between \$300 and \$400 per month. Even taking the VRS resettlement grant into account it is difficult to envisage that a returnee would

be able to pay that rent beyond the first few weeks of his arrival. It may be possible for someone who is highly skilled, has the connections to obtain a well-paid job, is independently wealthy or has external support such as remittances from abroad, but for the vast majority of returnees that level of rent would be prohibitively expensive. For the same reasons we are satisfied that paying for a hotel room would only be a temporary solution.

127. That leaves the 'critical shelter arrangements'. Approximately 26% of IDPs in the IKR are living in abandoned or unfinished buildings, makeshift shelters erected on spare ground, or are squatting in government or religious buildings. The conditions in such shelters vary. You may be living in a mosque where you have access to clean water and sanitation facilities and are fed at least one hot meal every day; on the other hand, you may be living in a makeshift tent on the verge of a busy road and not know where your next meal is coming from. In the middle of those extremes there will be buildings in various stages of dilapidation or development, some with roofs, some with access to water or heating, and some without. Some of these living arrangements will be of a comparable standard to those widely found elsewhere in Iraq, where basic standards of sanitation and protection from the elements are provided; some fall substantially below such standards.

128. If the Respondent accepts that an individual facing destitution – by which we understand to mean living on the street and having no food security – cannot be returned to Iraq because to do so could violate the United Kingdom's obligations under Article 3 ECHR, it must logically be the case that living conditions coming close to, or occasionally touching, such depths could be described as 'unduly harsh'. It seems to us that the key determinant of where a returnee is likely to fall on that spectrum is whether he or she is reasonably likely to find regular employment, or receive income from another source.

129. The unemployment rate for Iraqi IDPs is startling. The materials before us uniformly state that up to 70% of the IDP population is unemployed. That is to be contrasted with the national average of approximately 15%, a figure that rises to 20% in the IKR, for both the host population and the other group of statistical significance, Syrian refugees. Whether an individual returnee is likely to be able to get some employment – even if it is only a few days per month – is likely to depend on the confluence of the following factors:

- i) Gender. Women with male guardians face discrimination in obtaining and keeping work, but women on their own are very unlikely to be able to secure legitimate employment. Social stigma and prejudice would present very significant obstacles for prospective employers. Lone women may be forced into prostitution or situations of sex trafficking.
- ii) Any returnee seeking lawful employment must be in possession of a CSID. As Dr Fatah makes clear, and the Respondent accepts, this document is vital. Employers are legally obliged to inform the *Asayish* of

the identity of their employees, and they cannot be confident of that information unless they have seen the individual's CSID.

- iii) As we note above, family or other connections are of substantial assistance in getting work: DFAT find that "patronage and nepotism significantly influence employment opportunities, making it difficult to internally relocate to the Kurdish region without existing networks".
- iv) Skills and experience. It is perhaps self-evident that in a stagnating economy it will be of particular advantage to have proficiency in a core sector, such as food production or education. The evidence before us indicates that the oil industry has been severely impacted and that the construction boom of the past decade has come to an abrupt halt. Those at the greatest disadvantage are the unskilled, who are now competing for fewer and fewer opportunities in roles such as labouring.
- v) Where they are 'from'. Although we think it unlikely that this factor would on its own be determinative, we recognise Dr Fatah's evidence that some potential employers may be suspicious of IDPs who are from areas of intense ISIL activity such as Diyala or Ninewa.

130. The World Bank has set the 'poverty line' in Kurdistan as \$87 per month. Whether an individual appellant is likely to be able to earn an income sufficient to obtain basic food, clothing, heating and shelter must be decided on a case-by case basis having regard to his history, personal characteristics and level of education. Consideration should also be given to whether it would be reasonable to expect an individual to be supported by remittances from abroad; where for instance the returnee is being supported by relatives in this country, decision-makers should explore whether this support could be continued if necessary when the individual returns to Iraq. Finally, the accessibility of government rations should be assessed. Any Iraqi citizen in possession of a PDS card would be entitled to rations, but could only collect them from the designated distributing agent in his home area, that is to say his place of registration. Whether that would be possible would depend on the individual circumstances.

131. Whilst a meagre income may not be sufficient to radically improve an individual's living conditions, the connection between food and dignity is an obvious one. Decision-makers must assess whether an individual is likely to have any kind of income at all, and if so whether that income would be sufficient to provide a 'relatively normal life' in the context of Iraq, and having regard to that individual's personal history.

132. For those with no realistic prospect of securing a regular income, or support by other means, internal relocation to the IKR is likely to be unduly harsh. Although we were shown no evidence of IDPs starving, it is clear that food security would be extremely poor, with such an individual entirely reliant upon charity and *ad hoc* humanitarian intervention. Whilst organisations such as WHO and the UNHCR are active in providing food within the camps, we were not directed to any evidence to show that

such organisations are regularly providing food ‘on the street’. Rather the support offered would appear to be the provision of ‘emergency’ items such as blankets and jerry cans.

## Country Guidance

133. The Kurds of northern Iraq have much to contend with. Dependent upon a central government, and surrounded by neighbours, implacably opposed to their independence, and having resisted conflict and bloodshed on their southern borders for many years, it is perhaps a testament to the Kurdish people that the IKR continues to be “virtually violence free”. Apart from isolated incidents it can be said today that the Tribunal’s 2015 assessment of the security situation has held good. We are satisfied that there is at present no general risk of indiscriminate violence for Kurds living in the IKR, whether they are ‘from’ one of the three governates or IDPs from elsewhere in Iraq.

134. We are however conscious that our comments are made against the backdrop of continuing instability in the region. The divisions that have wreaked havoc in Iraq since the fall of Saddam Hussain – Islamist v secularist, Sunni v Shi’a, extremist v moderate – may soon be joined by yet another depressing dichotomy: Kurd v Arab. The coalition that defeated ISIL has disbanded, and its constituent parts are reported to remain “combat ready”, this time for a potential fight that will determine the future shape of the country itself. As the Kurdish clamour for self-determination grows, so too does the resolve of the Arab majority to maintain the political integrity of Iraq. There are also other active and interested actors within the region. Whilst it is to be hoped that this belligerence will give way to negotiation, decision-makers should remain alert for developments on the ground.

135. Against that background we give the following ‘country guidance’ on the availability of ‘internal flight’ in the IKR for individuals of Kurdish origin:

*Section C of Country Guidance annexed to the Court of Appeal’s decision in AA (Iraq) v Secretary of State for the Home Department [2017] Imm AR 1440; [2017] EWCA Civ 944 is supplemented with the following guidance:*

1. *Whilst it remains possible for an Iraqi national returnee (P) to obtain a new CSID whether P is able to do so, or do so within a reasonable time frame, will depend on the individual circumstances. Factors to be considered include:*
  - i) *Whether P has any other form of documentation, or information about the location of his entry in the civil register. An INC, passport, birth/marriage certificates or an expired CSID would all be of substantial assistance. For someone in possession of one or more of these documents the process should be straightforward. A laissez-passer should not be counted for these purposes: these can be issued without any other form of ID being available, are not of any assistance in ‘tracing back’ to the family record and are confiscated upon arrival at Baghdad;*

- ii) *The location of the relevant civil registry office. If it is in an area held, or formerly held, by ISIL, is it operational?*
- iii) *Are there male family members who would be able and willing to attend the civil registry with P? Because the registration system is patrilineal it will be relevant to consider whether the relative is from the mother or father's side. A maternal uncle in possession of his CSID would be able to assist in locating the original place of registration of the individual's mother, and from there the trail would need to be followed to the place that her records were transferred upon marriage. It must also be borne in mind that a significant number of IDPs in Iraq are themselves undocumented; if that is the case it is unlikely that they could be of assistance. A woman without a male relative to assist with the process of redocumentation would face very significant obstacles in that officials may refuse to deal with her case at all.*

*Section E of Country Guidance annexed to the Court of Appeal's decision in AA (Iraq) v Secretary of State for the Home Department [2017] Imm AR 1440; [2017] EWCA Civ 944 is replaced with the following guidance:*

2. *There are currently no international flights to the Iraqi Kurdish Region (IKR). All returns from the United Kingdom are to Baghdad.*
3. *For an Iraqi national returnee (P) of Kurdish origin in possession of a valid CSID or Iraqi passport, the journey from Baghdad to the IKR, whether by air or land, is affordable and practical and can be made without a real risk of P suffering persecution, serious harm, Article 3 ill treatment nor would any difficulties on the journey make relocation unduly harsh.*
4. *P is unable to board a domestic flight between Baghdad and the IKR without either a CSID or a valid passport.*
5. *P will face considerable difficulty in making the journey between Baghdad and the IKR by land without a CSID or valid passport. There are numerous checkpoints en route, including two checkpoints in the immediate vicinity of the airport. If P has neither a CSID nor a valid passport there is a real risk of P being detained at a checkpoint until such time as the security personnel are able to verify P's identity. It is not reasonable to require P to travel between Baghdad and IKR by land absent the ability of P to verify his identity at a checkpoint. This normally requires the attendance of a male family member and production of P's identity documents but may also be achieved by calling upon "connections" higher up in the chain of command.*
6. *Once at the IKR border (land or air) P would normally be granted entry to the territory. Subject to security screening, and registering presence with the local mukhtar, P would be permitted to enter and reside in the IKR with no further legal impediments or requirements. There is no sponsorship requirement for Kurds.*
7. *Whether P would be at particular risk of ill-treatment during the security screening process must be assessed on a case-by-case basis. Additional factors that may increase risk include: (i) coming from a family with a known association with ISIL, (ii) coming from an area associated with ISIL and (iii) being a single male of fighting age. P is likely to be able to evidence the fact of recent*

*arrival from the UK, which would dispel any suggestion of having arrived directly from ISIL territory.*

8. *If P has family members living in the IKR cultural norms would require that family to accommodate P. In such circumstances P would, in general, have sufficient assistance from the family so as to lead a 'relatively normal life', which would not be unduly harsh. It is nevertheless important for decision-makers to determine the extent of any assistance likely to be provided by P's family on a case by case basis.*
9. *For those without the assistance of family in the IKR the accommodation options are limited:*
  - i) *Absent special circumstances it is not reasonably likely that P will be able to gain access to one of the refugee camps in the IKR; these camps are already extremely overcrowded and are closed to newcomers. 64% of IDPs are accommodated in private settings with the vast majority living with family members;*
  - ii) *If P cannot live with a family member, apartments in a modern block in a new neighbourhood are available for rent at a cost of between \$300 and \$400 per month;*
  - iii) *P could resort to a 'critical shelter arrangement', living in an unfinished or abandoned structure, makeshift shelter, tent, mosque, church or squatting in a government building. It would be unduly harsh to require P to relocate to the IKR if P will live in a critical housing shelter without access to basic necessities such as food, clean water and clothing;*
  - iv) *In considering whether P would be able to access basic necessities, account must be taken of the fact that failed asylum seekers are entitled to apply for a grant under the Voluntary Returns Scheme, which could give P access to £1500. Consideration should also be given to whether P can obtain financial support from other sources such as (a) employment, (b) remittances from relatives abroad, (c) the availability of ad hoc charity or by being able to access PDS rations.*
10. *Whether P is able to secure employment must be assessed on a case-by-case basis taking the following matters into account:*
  - (i) *Gender. Lone women are very unlikely to be able to secure legitimate employment;*
  - (ii) *The unemployment rate for Iraqi IDPs living in the IKR is 70%;*
  - (iii) *P cannot work without a CSID;*
  - (iv) *Patronage and nepotism continue to be important factors in securing employment. A returnee with family connections to the region will have a significant advantage in that he would ordinarily be able to call upon those contacts to make introductions to prospective employers and to vouch for him;*



- (v) *Skills, education and experience. Unskilled workers are at the greatest disadvantage, with the decline in the construction industry reducing the number of labouring jobs available.*
- (vi) *If P is from an area with a marked association with ISIL, that may deter prospective employers.*

## **The Appeal of AAH**

136. The agreed facts in the appeal of AAH, that is to say evidence unchallenged and/or matters positively found by the First-tier Tribunal in its determination dated the 17<sup>th</sup> October 2017, are:

- i) The Appellant was born in Sulaymaniyah, but was registered in Kirkuk where he lived with his family until 2004;
- ii) He is Kurdish and is a member of the Jaaf tribe;
- iii) He speaks Sorani and Arabic, and can read and write in both languages;
- iv) In 2004 he married a Kurdish woman against the wishes of their respective families. They moved as a couple to Mosul where they lived together without any problems until the Appellant left in 2015;
- v) They have two children together, sons who are now aged 12 and 10;
- vi) He has limited education. Whilst living in Mosul the Appellant worked as a labourer and as an operator of an electrical generator;
- vii) The Appellant left Mosul because of ISIL;
- viii) His family stayed behind, in hiding with a family friend in Mosul;
- ix) He has family members in Kirkuk and Baghdad, but is estranged from them because of his decision to marry his wife;
- x) The Appellant is in possession of a valid CSID and INC. He has also produced copies and translations of the CSIDs belonging to his wife and sons;

In respect of risk the Tribunal made the following findings:

- xi) The Appellant was at risk of serious harm in Mosul from ISIL;

- xii) Although the Appellant may have concerns about his wife's family these fears are not objectively well-founded: the couple lived in Mosul for 11 years after they eloped without experiencing any problems;
- xiii) The Appellant cannot reasonably be expected to relocate to Baghdad because he is Kurdish and has no connection to the city. As a result he would be at risk of destitution and violence.

137. The Appellant avers that sometime in 2016 an acquaintance of his from the UK returned to Iraq and happened to meet the Appellant's wife's uncle in a shop. When he told him that the Appellant was here the uncle said that their family had not forgotten that the Appellant had insulted their honour and that they still wished to kill him, his wife and children. Since then the Appellant received further threats, via Facebook. In a statement prepared since the First-tier Tribunal made its findings the Appellant states that he has lost contact with his wife, and that the telephone number he had previously contacted her on has gone dead. The last time he spoke with her was December 2016.

138. We assess the reasonableness of the Appellant's internal relocation to the IKR against that factual background.

139. We are satisfied that the Appellant would be able to travel from Baghdad to Erbil without any difficulty. He is in possession of a CSID and an INC and would be able to board an internal flight. He is eligible to apply for the VRS grant and would therefore have the money -approximately \$80 - needed to pay for the trip. Flights leave up to three times a day and it is always possible to get a ticket. If he chose to travel by land this would take longer, but would cost about half the price. With a CSID the Appellant would be able to pass through checkpoints with no problems.

140. We are satisfied that the Appellant would be admitted to the IKR without any difficulty. The border has consistently remained open. He speaks Sorani and identifies as Kurdish. His CSID shows him to be 'from' Kirkuk but it also shows that he was born in Sulaymaniyah, so there is unlikely to be any dispute as to his ethnicity. As a Kurd he would not be required to have a sponsor. If the security personnel at the border have any concerns about the Appellant's intentions, arising from him being a man on his own from Kirkuk, these could be dispelled by production of documentary evidence demonstrating that he has been in the UK since 2015. He would be able to explain that he had been living in Mosul and that he fled ISIL. In those circumstances we are satisfied that he would be able to pass through the security screening without any problems.

141. Once the Appellant has entered the IKR there would be no legal impediment to him remaining there. He must register with the *mukhtar* in the area that he chooses to stay in, and will have to notify the local *Asayish* of his presence. As above, nothing in his profile suggests that he would face any problems in dealing with either of these administrative requirements.

142. The Appellant avers that he cannot be returned to the IKR because he remains at risk of 'honour' based violence. We are not satisfied that he has demonstrated, to the lower standard, that there is an objectively well-founded risk of harm to him in the IKR. As the First-tier Tribunal noted, he and his wife were able to live in Mosul for 11 years without experiencing any problems from either family. The recent threats appear to have been precipitated by a chance meeting in a shop between the Appellant's friend and his wife's uncle, rather than the family actively pursuing the couple. We bear in mind that the family are based in Kirkuk, outside of the IKR. There is no evidential foundation for believing that they would have the ability or inclination to track him down in Erbil or one of the other Kurdish governates.
143. In assessing whether it would be unduly harsh to expect the Appellant to remain living in the IKR we have taken the following factors into account.
144. The Appellant has no family connection to the region. His natal family are based in Kirkuk and he has no contact with them. As such the Appellant will not have the immediate benefit of being welcomed into a home and provided for. He has no connections whom he can call upon to help him find work. This places him at a significant disadvantage compared to returnees who have such connections.
145. The Appellant is estranged from his own family, and that of his wife. He cannot therefore expect any material support in the form of remittances from them. Similarly, he has no relatives in the UK or anywhere else who could send him money from abroad. He would therefore have to be entirely self-sufficient.
146. In respect of accommodation, the Appellant would not be able to gain access to a refugee camp. The camps are closed to newcomers. Nor would he be able to rent a room in one of the traditional neighbourhoods, since on Dr Fatah's evidence this would be regarded as socially unacceptable. He has no family members to take him in. It would be open to the Appellant to rent an apartment in a new neighbourhood at the cost for \$300-\$400 per month, or to pay for a hotel room. Whilst these are options that would certainly be available to him in the immediate period after his arrival – assuming he has applied for the VRS grant – we think it very unlikely that the Appellant would be able to earn enough money to keep paying that level of rent. In those circumstances the most likely outcome is that within a couple of months of his arrival in the IKR the Appellant will find himself living in a 'critical housing arrangement'. Whether his quality of life in this accommodation can be said to be 'unduly harsh' depends on whether or not he is able to secure sufficient income to obtain basic necessities such as food, clean water and clothing.
147. Although the Appellant is literate in both Sorani and Arabic he has limited education and no qualifications. Those are factors that weigh against him in the job market. His experience as a labourer is of negligible value given the very high unemployment rate in the IKR, and the decline in the construction industry. We recognise that the Appellant has no connections to call upon to help him get a job. In this regard we also note that the Appellant has in the past demonstrated an ability to overcome that particular obstacle: he had no connections to Mosul when he and his wife moved there,

and yet he managed to find employment and provide for his family for some 11 years before he left that city. The last job he had in Mosul was as a generator operator. We consider that to be a real advantage. It is a semi-skilled role that is unlikely to be affected by the economic downturn: most businesses and many homes will be dependent upon such generators. Finally, what the Appellant has that many IDPs do not, is a valid CSID. The Appellant is physically able, literate, experienced and crucially, he is documented. Taking those factors into account we are satisfied that he will be one of the minority of IDPs in the IKR who are able to secure some form of employment.

148. We do not underestimate the difficulties that the Appellant will face. Taking all of the relevant factors into account we are however satisfied that he will be able to lead what is in general for Iraq today a relatively 'normal' life. His accommodation will be far from ideal, but we find that he will be able to feed and clothe himself. He will be able, as he has done here, to establish a private life in the form of friendships with others, be it locals or other IDPs in his area. It is not reasonably likely that he will become destitute or that his human dignity will be otherwise compromised to an unacceptable extent.

149. We do not therefore accept that it would be unreasonable to expect the Appellant to relocate to the IKR and his appeal must be dismissed.

## **Decision**

The appeal is dismissed.

A handwritten signature in black ink, consisting of the letters 'CBE' in a cursive, stylized font.

Upper Tribunal Judge Bruce  
12<sup>th</sup> June 2018

## APPENDIX A- ERROR OF LAW DECISION



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: PA/02583/16

### THE IMMIGRATION ACTS

Heard at: City Tower, Birmingham  
On: 21<sup>st</sup> April 2017

Decision Promulgated  
.....

Before

UPPER TRIBUNAL JUDGE BRUCE

Between

AAH  
(ANONYMITY DIRECTION MADE)

Appellant

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

### Representation:

For the Appellant: Mr Bradshaw, Counsel instructed by Hasan Solicitors  
For the Respondent: Mr Mills, Senior Home Office Presenting Officer

### ERROR OF LAW DECISION DECISION TO ADJOURN AND DIRECTIONS

1. The Appellant is a national of Iraq date of birth 25<sup>th</sup> January 1983. He appeals with permission<sup>1</sup> the decision of the First-tier Tribunal (Judge A.M.S Green) dated 12<sup>th</sup> October 2016 to dismiss his appeal on protection grounds.

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<sup>1</sup> Permission was granted on the 14<sup>th</sup> November 2016 by First-tier Tribunal Judge Adio.

## **Anonymity Order**

2. This case involves a claim for international protection. Having had regard to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 and the Presidential Guidance Note No 1 of 2013: Anonymity Orders I therefore consider it appropriate to make an order in the following terms:

“Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of his family. This direction applies to, amongst others, both the Appellant and the Respondent. Failure to comply with this direction could lead to contempt of court proceedings”

## **Background and Decision of the First-tier Tribunal**

3. The Appellant is a Kurd, originally from Kirkuk but latterly of Mosul, who claimed asylum on the day that he arrived in the UK in August 2015. He advanced a fear of the so-called ‘Islamic State’ or Daesh. The claim was rejected by the Respondent on credibility grounds but the First-tier Tribunal heard his live evidence and read the written materials and having done so concluded that the Appellant was a generally reliable witness. The core of the Tribunal’s findings on risk in the home area are found at paragraph 14 of the decision:

“He is a Kurd from Kirkuk. He speaks Kurdish (Sorani) and some Arabic. He has a CSID and the nationality certificate. He is married with two children. He married against his wife’s family’s wishes and the couple fled to Mosul shortly after the wedding in 2004, where they managed to live there in relative safety without any difficulties from her family for 11 years. However, Mosul rapidly fell to ISIS in 2014 and their widespread brutality against its inhabitants is well known. One only has to recall the graphic BBC news footage of that brutality and the countless reports and articles of mass executions and headings to appreciate the horror and depravity that time. In that context, I accept that he had the difficulties with ISIS that he said he encountered in Mosul. He had to escape and on his own admission, he fled Iraq because of ISIS”.

The Tribunal found there to be a currently well-founded fear of serious harm at present in Mosul.

4. The final matter to be determined was whether there was a reasonable internal flight alternative. The Respondent posited either Baghdad or Erbil as places where the Appellant could live without suffering any unduly harsh consequences. The Tribunal was referred to the guidance of the Upper Tribunal in AA (Article 15(c)) Iraq CG [2015] UKUT 00544 (IAC), and to two documents produced by the Respondent’s Country

Information and Guidance Unit: *Iraq Security Situation* published in April 2016 and *Iraq Humanitarian Situation* published in June of the same year.

5. The Tribunal concluded that it would not be reasonable to expect the Appellant to relocate to Baghdad. Although he had a CSID and a nationality certificate and could speak Arabic, he is a member of a minority group and has no family there that he could rely upon. He has no sponsor in Baghdad and would find it very difficult to access accommodation and employment there. The Tribunal found that he would be at risk of destitution and the violence that faces hundreds of thousands of IDPs in that city. There has been no challenge to those findings.
6. In respect of Erbil and the Independent Kurdish Region (IKR) the Tribunal said this [at 18]:

“I am not satisfied that he has established even the lower standard of proof that he would be at risk of being found by his wife’s family who are from Kirkuk. He managed to live in Mosul for 11 years without detection. We will be able to gain access to the IKR and would have a reasonable prospect of work. There is no suggestion by the Respondent that if he was returned to Baghdad that he would be expected to travel overland to Erbil through the contested areas. That would put him at risk. Instead, he may be expected to fly to Erbil or he may be flown to Erbil directly from this country. It will also be able to obtain financial assistance to help him return.”

7. Finding that there was a reasonable alternative flight alternative in the IKR, the Tribunal dismissed the appeal.

### **The Appeal**

8. The grounds of appeal are that the First-tier Tribunal erred in its approach to internal flight.
9. First, some complaint is made about the suggestion that the Appellant could fly direct from the UK to Erbil, when there is no evidence to that effect and it appears to run contrary to the position taken in AA (Iraq). At the hearing before me Mr Bradshaw acknowledged that this was not his strongest point since the determination also suggests that the Appellant could take an internal flight from Baghdad to Erbil. That was of course the route envisaged by the Tribunal in AA (Iraq); Mr Bradshaw realistically conceded that in view of the IOM resettlement grant it was unlikely that he could make submissions that this was, for instance, prohibitively expensive.
10. Instead Mr Bradshaw concentrated on his second ground, which was that the internal flight assessment made in respect of the IKR was wholly inadequate. The Tribunal identifies only three issues to find relocation to be reasonable. It finds there to be no objectively well-founded risk of “honour” based violence, concludes that the Appellant

would be able to gain entry, and that he would be able to work. The determination does not address any of the following matters:

- (i) Whether the Appellant's family would be able to join him there (their last known whereabouts was Mosul);
- (ii) Whether the Appellant would be able to secure accommodation and employment such that he/he and his family would be able to live a relatively "normal life";
- (iii) To what extent the Appellant's lack of support network (he has no family or other connection to Erbil) might be relevant to those issues (particularly where this was found to be a relevant factor in respect of Baghdad);
- (iv) Whether there would be any security of residence (ie would it be a durable solution);
- (v) Would he, as an IDP, be facing a challenging humanitarian situation (albeit one that fell short of violating Article 3 ECHR).

11. Mr Bradshaw conceded that on the limited material before the First-tier Tribunal he could not submit that its conclusions on internal flight were perverse, but he submitted that absent the holistic evaluation of all relevant issues they could not be regarded as safe.

12. I agree. There appears to have been no consideration to the uncontested fact that the Appellant has no family connection to the IKR, and no assessment of the humanitarian situation on the ground. The country guidance in AA (Iraq) had said very little about the region other than that there was, at the time, very little violence there. The test, as Mr Bradshaw rightly identified, is not however one of risk of serious harm. It is whether, taking all of the circumstances and the personal characteristics of the appellant into account, internal relocation would be reasonable. The very limited exercise conducted at paragraph 18 does not reflect that test. The reasoning is set aside for that reason.

13. I am not satisfied that ground (i) is made out. In light of the extant country guidance the Tribunal was entitled to find that the Appellant could fly to Erbil from Baghdad.

### **The Re-Making: Directions**

14. The parties before me were in agreement about one matter. That is that the situation in Iraq has changed since the last country guidance in AA, and that that decision said very little about the situation in the IKR other than that there was, at the time, minimal violence there. Mr Bradshaw requested that consideration be given to whether this case could be listed for country guidance, so that expert evidence might be taken about the security and humanitarian situation in the IKR. Mr Mills did not oppose that request.



15. I indicated to the parties that this case **may** be considered suitable for country guidance on that point. I adjourned the proceedings until the 12<sup>th</sup> May in order that Mr Bradshaw could take instructions and seek to identify a potential expert.
16. The hearing will resume as a 'case management review' on the 12<sup>th</sup> May 2017 in Birmingham. The parties are directed that the following case management tasks must have been completed by the close of that hearing:
- (i) The parties are to agree a succinct formulation of the issues to be decided as country guidance (This formulation of the issues to be addressed and determined is provisional. It will be open to the parties and their representatives to make representations to the Upper Tribunal about this matter. The Upper Tribunal will be the final arbiter. This matter will be resolved authoritatively at such stage as the Upper Tribunal considers appropriate).
  - (ii) The Appellants' representative will provide the following information:
    - (a) The number of witnesses expected to be called and information on their availability
    - (b) The identity of any expert witness
    - (c) The date upon which any expert witness was instructed
    - (d) Whether any expert witness's report is available **OR** the date that it will be available
  - (iii) The name of the designated solicitor
  - (iv) The names of Counsel
  - (v) The name of any Home Office Presenting Officer involved
17. It would also be helpful if the Respondent's representative was in a position to advise the Tribunal with basic information/figures about the comparable cases 'in the system'
18. The parties and their representatives are reminded that CG appeals are of a distinctive category. Decisions of the Upper Tribunal in CG cases are designed to provide broad guidance on the question of whether the United Kingdom Government would be acting unlawfully in compelling certain persons or classes of person to depart the United Kingdom and travel to a specific country or area thereof. CG decisions have been described as authoritative rulings upon the state of affairs in any given territory. They have a status and significance comparable to that which declarations possess in judicial review proceedings.
19. The question of whether this appeal receives the formal CG designation will be reviewed by the Upper Tribunal country guidance committee following the case

management review. A further review will be conducted upon the conclusion of the proceedings.

20. The parties and their representatives are reminded that it is their obligation to cooperate fully with and assist the Upper Tribunal at all stages in the conduct of these proceedings.
21. Further directions will follow the case management review.

### **Decisions**

22. The decision of the First-tier Tribunal contains an error of law such that the decision must be set aside to the limited extent identified above.
23. The hearing is to resume as a case management review on the 12<sup>th</sup> May 2017.
24. There is a direction for anonymity.

Upper Tribunal Judge Bruce  
24<sup>th</sup> April 2017

## APPENDIX B

### ADDITIONAL MATERIALS USED

<b>Date</b>	<b>Document</b>	<b>Source</b>
20 January 2018	Rudaw, More than 4 million Iraqi children affected by conflict and poverty, UN	<a href="http://www.rudaw.net/mobile/english/middleeast/iraq/200120181">http://www.rudaw.net/mobile/english/middleeast/iraq/200120181</a>
18 January 2018	Human Rights Watch, World Report 2018 - Iraq	<a href="http://www.refworld.org/country,,,IRQ,,5a61ee64a,0.html">http://www.refworld.org/country,,,IRQ,,5a61ee64a,0.html</a>
18 January 2018	UNHCR, Situation Update - Iraq	<a href="https://reliefweb.int/sites/reliefweb.int/files/resources/20180126%20UNHCR%20Iraq%20Flash%20Update.pdf">https://reliefweb.int/sites/reliefweb.int/files/resources/20180126%20UNHCR%20Iraq%20Flash%20Update.pdf</a>
18 January 2018	Rudaw, Iraq's closure of schools for IDPs sparks fear of forced returns	<a href="http://www.rudaw.net/mobile/english/middleeast/iraq/180120181">http://www.rudaw.net/mobile/english/middleeast/iraq/180120181</a>
16 January 2018	International Crisis Group, Twilight of the Kurds	<a href="https://www.crisisgroup.org/middle-east-north-africa/gulf-and-arabian-peninsula/iraq/twilight-kurds">https://www.crisisgroup.org/middle-east-north-africa/gulf-and-arabian-peninsula/iraq/twilight-kurds</a>
11 January 2018	US Institute of Peace, Iraq's Impasse with Kurds Puts Post-ISIS Stabilization at Risk	<a href="https://reliefweb.int/report/iraq/iraq-s-impasse-kurds-puts-post-isis-stabilization-risk">https://reliefweb.int/report/iraq/iraq-s-impasse-kurds-puts-post-isis-stabilization-risk</a>
27 December 2017	The New Arab, The Iraq Report: Kurdistan in turmoil	<a href="https://www.alaraby.co.uk/english/indepth/2017/12/27/the-iraq-report-kurdistan-in-turmoil">https://www.alaraby.co.uk/english/indepth/2017/12/27/the-iraq-report-kurdistan-in-turmoil</a>
21 December 2017	The New Arab, Protests in Iraqi Kurdistan sparked by long-held grievances	<a href="https://www.alaraby.co.uk/english/comment/2017/12/21/long-held-grievances-fuel-protest-in-iraqi-kurdistan">https://www.alaraby.co.uk/english/comment/2017/12/21/long-held-grievances-fuel-protest-in-iraqi-kurdistan</a>
19 December 2017	Iraqi News, Eight IS militants killed in Peshmerga attack on Makhmour hideout	<a href="https://www.iraqinews.com/iraq-war/peshmerga-fighters-kill-eight-islamic-state/">https://www.iraqinews.com/iraq-war/peshmerga-fighters-kill-eight-islamic-state/</a>

18 December 2017	Lifos (Swedish Migration Agency), The Security Situation in Iraq: July 2016–November 2017	<a href="https://lifos.migrationsverket.se/dokument?documentAttachmentId=45403">https://lifos.migrationsverket.se/dokument?documentAttachmentId=45403</a>
18 December 2017	Reuters, Kurdish authorities say Iraq forces preparing fresh attack; Iraq denies	<a href="https://www.reuters.com/article/us-mideast-crisis-iraq-kurds/kurdish-authorities-say-iraq-forces-preparing-fresh-attack-iraq-denies-idUSKBN1EC27R">https://www.reuters.com/article/us-mideast-crisis-iraq-kurds/kurdish-authorities-say-iraq-forces-preparing-fresh-attack-iraq-denies-idUSKBN1EC27R</a>
18 December 2017	Rudaw, Iraqi forces building up near Makhmour, warns Kurdish security body	<a href="http://www.rudaw.net/english/kurdistan/181220175">http://www.rudaw.net/english/kurdistan/181220175</a>
8 December 2017	UN Office for the Coordination of Humanitarian Affairs (UN OCHA), Humanitarian Bulletin, Iraq	<a href="https://reliefweb.int/sites/reliefweb.int/files/resources/OCHA%20Iraq%20Humanitarian%20Bulletin%20%28November%202017%29Final.pdf">https://reliefweb.int/sites/reliefweb.int/files/resources/OCHA%20Iraq%20Humanitarian%20Bulletin%20%28November%202017%29Final.pdf</a>
29 November 2017	Rudaw, Kurdish 'Liberation Army' threatens to attack Hashd in Tuz Khurmatu	<a href="http://www.rudaw.net/english/kurdistan/291120179">http://www.rudaw.net/english/kurdistan/291120179</a>
14 November 2017	UN OCHA, Earthquake in northeast Iraq 14 November 2017 - 12:30, Flash Update #3 [EN/AR/KU]	<a href="https://reliefweb.int/report/iraq/earthquake-northeast-iraq-14-november-2017-1230-flash-update-3-enarku">https://reliefweb.int/report/iraq/earthquake-northeast-iraq-14-november-2017-1230-flash-update-3-enarku</a>
2 November 2017	UNHCR, Mosul weekly protection update (27 October - 2 November 2017)	<a href="https://reliefweb.int/report/iraq/mosul-weekly-protection-update-27-october-2-november-2017">https://reliefweb.int/report/iraq/mosul-weekly-protection-update-27-october-2-november-2017</a>
30 October 2017	The Independent, Iraq to end decades-old policy of semi-independent rule in Kurdistan, says PM	<a href="http://www.independent.co.uk/news/world/middle-east/kurdistan-iraq-prime-minister-abadi-interview-independence-haider-baghdad-kirkuk-patrick-cockburn-a8028201.html">http://www.independent.co.uk/news/world/middle-east/kurdistan-iraq-prime-minister-abadi-interview-independence-haider-baghdad-kirkuk-patrick-cockburn-a8028201.html</a>
25 October 2017	Al Arabiya, Nearly 30,000 Kurds displaced from city near Kirkuk: Aid groups	<a href="https://english.alarabiya.net/en/News/middle-east/2017/10/25/Nearly-30-000-Kurds-displaced-">https://english.alarabiya.net/en/News/middle-east/2017/10/25/Nearly-30-000-Kurds-displaced-</a>

		<a href="#">from-city-near-Kirkuk-Aid-groups.html</a>
24 October 2017	Amnesty International, Iraq: fresh evidence that tens of thousands forced to flee Tuz Khurmatu amid indiscriminate attacks, looting and arson	<a href="https://www.amnesty.org/en/latest/news/2017/10/iraq-fresh-evidence-that-tens-of-thousands-forced-to-flee-tuz-khurmatu-amid-indiscriminate-attacks-lootings-and-arson/">https://www.amnesty.org/en/latest/news/2017/10/iraq-fresh-evidence-that-tens-of-thousands-forced-to-flee-tuz-khurmatu-amid-indiscriminate-attacks-lootings-and-arson/</a>
24 October 2017	Rudaw, Peshmerga repel Iraqi forces attack in Makhmour	<a href="http://www.rudaw.net/english/kurdistan/241020174">http://www.rudaw.net/english/kurdistan/241020174</a>
20 October 2017	Al Jazeera, '100,000 flee Kirkuk' since Iraqi army takeover	<a href="http://www.aljazeera.com/news/2017/10/000-flee-kirkuk-iraqi-army-takeover-171019215041252.html">http://www.aljazeera.com/news/2017/10/000-flee-kirkuk-iraqi-army-takeover-171019215041252.html</a>
20 October 2017	Human Rights Watch, Iraq: Fighting in Disputed Territories Kills Civilians	<a href="https://www.hrw.org/news/2017/10/20/iraq-fighting-disputed-territories-kills-civilians">https://www.hrw.org/news/2017/10/20/iraq-fighting-disputed-territories-kills-civilians</a>
20 October 2017	Washington Post, Kurdish and Iraqi forces in fierce clash for remaining district of Kirkuk	<a href="https://www.washingtonpost.com/world/middle-east/kurdish-and-iraqi-forces-in-fierce-clash-for-remaining-district-of-kirkuk/2017/10/20/3564bdd0-b5a2-11e7-9b93-b97043e57a22_story.html?utm_term=.4ab5b3b9c13b">https://www.washingtonpost.com/world/middle-east/kurdish-and-iraqi-forces-in-fierce-clash-for-remaining-district-of-kirkuk/2017/10/20/3564bdd0-b5a2-11e7-9b93-b97043e57a22_story.html?utm_term=.4ab5b3b9c13b</a>
19 October 2017	International Medical Corps, Iraq Complex Emergency: Kirkuk and Disputed Areas	<a href="https://internationalmedicalcorps.org/updates/iraq-complex-emergency-kirkuk-and-disputed-areas/">https://internationalmedicalcorps.org/updates/iraq-complex-emergency-kirkuk-and-disputed-areas/</a>
19 October 2017	United Nations, Report of the Secretary-General pursuant to resolution 2367 (2017)	<a href="http://www.un.org/ga/search/view_doc.asp?symbol=S/2017/881">http://www.un.org/ga/search/view_doc.asp?symbol=S/2017/881</a>
17 October 2017	International Crisis Group, Oil and Borders: How to Fix Iraq's Kurdish Crisis	<a href="https://www.crisisgroup.org/middle-east-north-africa/gulf-and-arabian-peninsula/iraq/55-settling-iraqi-kurdistan-boundaries-will-help-">https://www.crisisgroup.org/middle-east-north-africa/gulf-and-arabian-peninsula/iraq/55-settling-iraqi-kurdistan-boundaries-will-help-</a>

		<a href="#"><u>defuse-post-referendum-tensions</u></a>
17 October 2017	The Guardian, Iraqi forces drive Kurdish fighters out of town of Sinjar	<a href="https://www.theguardian.com/world/2017/oct/17/iraqi-forces-drive-kurdish-fighters-out-of-sinjar"><u>https://www.theguardian.com/world/2017/oct/17/iraqi-forces-drive-kurdish-fighters-out-of-sinjar</u></a>
16 October 2017	Al Arabiya, Save the Children: 400,000 children still displaced from Mosul fighting	<a href="http://english.alarabiya.net/en/features/2017/10/16/Save-the-Children-400-000-children-still-displaced-from-Mosul-fighting.html"><u>http://english.alarabiya.net/en/features/2017/10/16/Save-the-Children-400-000-children-still-displaced-from-Mosul-fighting.html</u></a>
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## APPENDIX C

Guidance given in AA (Iraq) v Secretary of State for the Home Department [2017] Imm AR 1440; [2017] EWCA Civ 944

### A. INDISCRIMINATE VIOLENCE IN IRAQ: ARTICLE 15(C) OF THE QUALIFICATION DIRECTIVE

1. *There is at present a state of internal armed conflict in certain parts of Iraq, involving government security forces, militias of various kinds, and the Islamist group known as ISIL. The intensity of this armed conflict in the so-called "contested areas", comprising the governorates of Anbar, Diyala, Kirkuk, (aka Ta'min), Ninewah and Salah Al-din, is such that, as a general matter, there are substantial grounds for believing that any civilian returned there, solely on account of his or her presence there, faces a real risk of being subjected to indiscriminate violence amounting to serious harm within the scope of Article 15(c) of the Qualification Directive.*

2. *The degree of armed conflict in certain parts of the "Baghdad Belts" (the urban environs around Baghdad City) is also of the intensity described in paragraph 1 above, thereby giving rise to a generalised Article 15(c) risk. The parts of the Baghdad Belts concerned are those forming the border between the Baghdad Governorate and the contested areas described in paragraph 1.*

3. *The degree of armed conflict in the remainder of Iraq (including Baghdad City) is not such as to give rise to indiscriminate violence amounting to such serious harm to civilians, irrespective of their individual characteristics, so as to engage Article 15(c).*

4. *In accordance with the principles set out in Elgafaji (C-465/07) and QD (Iraq) v Secretary of State for the Home Department [2009] EWCA Civ 620, decision-makers in Iraqi cases should assess the individual characteristics of the person claiming humanitarian protection, in order to ascertain whether those characteristics are such as to put that person at real risk of Article 15(c) harm.*

### B. DOCUMENTATION AND FEASIBILITY OF RETURN (EXCLUDING IKR)

5. *Return of former residents of the Iraqi Kurdish Region (IKR) will be to the IKR and all other Iraqis will be to Baghdad. The Iraqi authorities will allow an Iraqi national (P) in the United Kingdom to enter Iraq only if P is in possession of a current or expired Iraqi passport relating to P, or a laissez passer.*

6. *No Iraqi national will be returnable to Baghdad if not in possession of one of these documents.*

7. *In the light of the Court of Appeal's judgment in HF (Iraq) and Others v Secretary of State for the Home Department [2013] EWCA Civ 1276, an international protection claim made by P cannot succeed by reference to any alleged risk of harm arising from an absence of a current or expired Iraqi passport or a laissez passer, if the Tribunal finds that P's return is not currently feasible on account of a lack of any of those documents.*

8. *Where P is returned to Iraq on a laissez passer or expired passport, P will be at no risk of serious harm at the point of return by reason of not having a current passport.*

### C. The CSID

9. Regardless of the feasibility of P's return, it will be necessary to decide whether P has a CSID, or will be able to obtain one, reasonably soon after arrival in Iraq. A CSID is generally required in order for an Iraqi to access financial assistance from the authorities; employment; education; housing; and medical treatment. If P shows there are no family or other members likely to be able to provide means of support, P is in general likely to face a real risk of destitution, amounting to serious harm, if, by the time any funds provided to P by the Secretary of State or her agents to assist P's return have been exhausted, it is reasonably likely that P will still have no CSID.

10. Where return is feasible but P does not have a CSID, P should as a general matter be able to obtain one from the Civil Status Affairs Office for P's home Governorate, using an Iraqi passport (whether current or expired), if P has one. If P does not have such a passport, P's ability to obtain a CSID may depend on whether P knows the page and volume number of the book holding P's information (and that of P's family). P's ability to persuade the officials that P is the person named on the relevant page is likely to depend on whether P has family members or other individuals who are prepared to vouch for P.

11. P's ability to obtain a CSID is likely to be severely hampered if P is unable to go to the Civil Status Affairs Office of P's Governorate because it is in an area where Article 15(c) serious harm is occurring. As a result of the violence, alternative CSA Offices for Mosul, Anbar and Saluhaddin have been established in Baghdad and Kerbala. The evidence does not demonstrate that the "Central Archive", which exists in Baghdad, is in practice able to provide CSIDs to those in need of them. There is, however, a National Status Court in Baghdad, to which P could apply for formal recognition of identity. The precise operation of this court is, however, unclear.

### D. INTERNAL RELOCATION WITHIN IRAQ (OTHER THAN THE IKR)

14. As a general matter, it will not be unreasonable or unduly harsh for a person from a contested area to relocate to Baghdad City or (subject to paragraph 2 above) the Baghdad Belts.

15. In assessing whether it would be unreasonable/unduly harsh for P to relocate to Baghdad, the following factors are, however, likely to be relevant:

- (a) whether P has a CSID or will be able to obtain one (see Part C above);
- (b) whether P can speak Arabic (those who cannot are less likely to find employment);
- (c) whether P has family members or friends in Baghdad able to accommodate him;
- (d) whether P is a lone female (women face greater difficulties than men in finding employment);
- (e) whether P can find a sponsor to access a hotel room or rent accommodation;
- (f) whether P is from a minority community;
- (g) whether there is support available for P bearing in mind there is some evidence that returned failed asylum seekers are provided with the support generally given to IDPs.

16. There is not a real risk of an ordinary civilian travelling from Baghdad airport to the southern governorates, suffering serious harm en route to such governorates so as engage Article 15(c).

### E. IRAQI KURDISH REGION

17. *The Respondent will only return P to the IKR if P originates from the IKR and P's identity has been 'pre-cleared' with the IKR authorities. The authorities in the IKR do not require P to have an expired or current passport, or laissez passer.*

18. *The IKR is virtually violence free. There is no Article 15(c) risk to an ordinary civilian in the IKR.*

19. *A Kurd (K) who does not originate from the IKR can obtain entry for 10 days as a visitor and then renew this entry permission for a further 10 days. If K finds employment, K can remain for longer, although K will need to register with the authorities and provide details of the employer. There is no evidence that the IKR authorities pro-actively remove Kurds from the IKR whose permits have come to an end.*

20. *Whether K, if returned to Baghdad, can reasonably be expected to avoid any potential undue harshness in that city by travelling to the IKR, will be fact sensitive; and is likely to involve an assessment of (a) the practicality of travel from Baghdad to the IKR (such as to Irbil by air); (b) the likelihood of K's securing employment in the IKR; and (c) the availability of assistance from family and friends in the IKR.*

21. *As a general matter, a non-Kurd who is at real risk in a home area in Iraq is unlikely to be able to relocate to the IKR.*

### F. EXISTING COUNTRY GUIDANCE DECISIONS

22. *This decision replaces all existing country guidance on Iraq*