



# OPERATIONAL GUIDANCE NOTE

## IRAQ

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### 1. Introduction

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

## Source documents

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

## 2. Country assessment

- 2.1 Following the collapse of Saddam Hussein's regime in 2003, executive, legislative, and judicial authority in Iraq was vested in the Coalition Provisional Authority (CPA). On 28 June 2004, authority was transferred from the CPA to the Iraqi Interim Government.<sup>1</sup>
- 2.2 National elections took place on 30 January 2005 to elect a 275-member Transitional National Assembly and a transitional government. The Transitional National Assembly met formally for the first time on 16 March 2005. Its first act was to elect Jalal Talabani as President of Iraq.<sup>2</sup>
- 2.3 General elections were held on 15 December 2005 to elect the first permanent government and parliament (Council of Representatives) since the overthrow of Saddam Hussein's regime. The Shi'ite-led United Alliance (UIA) won 128 seats in the 275-member parliament. The Kurdistan Coalition won 53 seats, and the Sunni-led Tawafuq Front won 44 seats. Jalal Talabani remained president and Nouri Kamel al-Maliki was sworn in as prime minister on 20 May 2006. The 37-member cabinet included representatives from all groups in society including Shi'a, Sunnis and Kurds.<sup>3</sup> Elections were held to represent internationally recognised standards.<sup>4</sup>
- 2.4 Constitutionally, the judiciary in Iraq is independent, but the justice system does lack capacity in some areas, including a shortage of trained judges and vulnerability to political and sectarian pressure.<sup>5</sup> For example, threats and killings by insurgent groups, secretarian, tribal and criminal elements caused fear of retribution in all provinces of Iraq impairing judicial independence. However, the MOI agreed in 2008 to supplement security for judges.<sup>6</sup>
- 2.5 Shari'a is the primary source of national law and the Constitution states that "No law may be enacted that contradicts the established provisions of Islam". There are a number of extra-judicial Shari'a courts in predominantly Shi'a towns and several Shi'a neighbourhoods of Baghdad. In October 2005, the United Nations High Commissioner for Refugees (UNHCR) noted that Iraqis tended increasingly to turn to extra-judicial mechanisms for conflict resolution including tribal law. However, members of religious minorities often do not have access to such mechanisms as they do not necessarily belong to a tribal grouping.<sup>7</sup>
- 2.6 According to various reports, serious human rights violations continued in Iraq during 2008. These reportedly included: torture and ill-treatment by government agents; impunity; poor conditions in pretrial detention centres and prison facilities; denial of fair public trials; arbitrary arrest and detention; limitations on freedom of speech, press and assembly; severe corruption at all levels of government; restrictions on religious freedom; constraints on international and NGO investigations into alleged human rights; and, discrimination and societal abuse against women and individuals based on sexual orientation.<sup>8</sup>

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<sup>1</sup> Home Office COI Service (COIS) Iraq Country of Origin Information Report 2009 (Background Information: History & Constitution) & Foreign and Commonwealth Office (FCO) Country Profile 2007: Iraq

<sup>2</sup> COIS Iraq Country Report 2009 (Background Information: History) & FCO Country Profile 2007: Iraq

<sup>3</sup> COIS Iraq Country Report 2009 (Background Information: History)

<sup>4</sup> USSD 2008 – released February 2009

<sup>5</sup> FCO annual report on Human Rights in Iraq 2008 – released March 2009

<sup>6</sup> USSD 2008 released February 2009

<sup>7</sup> COIS Iraq Country Report 2009 (Human Rights: Judiciary)

<sup>8</sup> USSD 2008 – released February 2009

- 2.7** In its report of July 2008, the UN Security Council (UNSC) advised that a combination of political and military efforts had contributed to continued improvements in security across Iraq. Although civilian casualties as a result of violence remained unacceptably high, both the frequency of violent incidents and casualty figures continued to decline and there was increased cooperation from local communities in preventing acts of violence.<sup>9</sup> This has been echoed by the USSD. USSD has advised that during 2008, the general security situation in Iraq substantially improved and violence decreased to its lowest level since 2004. According to the Multi National Force (MNF), civilian deaths fell by 72% to approximately 15 per day and Iraqi Security Force (ISF) deaths fell by 57% to 5 per day. The number of Iraqi units capable of conducting independent counter insurgency operations increased steadily to around 400000 Iraqi Police Service (IPS) officers nationwide and the IPS made significant progress in its capability to maintain public order, investigate crimes and arrest suspects.<sup>10</sup> In addition, Shia militia reorganised repudiating violence against Iraqis and the Sons of Iraq (SOI) neighbourhood security forces (the Sons of Iraq are many affiliated with Sunni tribal groups who reject Al Qaida's nihilism) continued to combat insurgents and terrorists. These developments undermined Al Qaida and insurgent Sunni influence contributing to even further reductions in violence.<sup>11</sup>
- 2.8** UNHCR in April 2009 reported that overall the level of violence in Iraq has significantly reduced and while violence and attacks by various extremist groups continue, this has become mostly political in nature and is often linked to ongoing power struggles between political parties, armed groups and ethnic communities. Furthermore, as compared with the situation in 2006 and the first three quarters of 2007, when Iraq saw widespread sectarian violence coupled with a violent Sunni insurgency, intra Shiite fighting, gross human rights violations and a general breakdown of law and order, parts of Southern and Central Iraq have seen significant stabilisation since late 2007 and in 2008.<sup>12</sup> With improvements in security, coalition troops have handed responsibility for security back to Iraqis. And, as at end of March 2009, 13 of Iraq's 18 provinces were transferred to the Iraqi security control. The latest to transfer was the former Al Qaida stronghold of Anbar- the first majority Sunni province to come back under Iraqi control.<sup>13</sup>
- 2.9** Although their ability to attack was weakened during 2008, insurgent elements such as Al Qaida continued to launch attacks against Shia and Sunnis, fuelling secretarian tensions and undermining the government's ability to maintain law and order. Attacks by insurgent elements against SOI and tribal leaders rose during the year and Al Qaida conducted high profile attacks near Shia markets and mosques. Shia militias and armed paramilitaries also frequently attacked civilians and government officials. However, with the increased exercise of central government authority over security forces, widespread and confirmed unauthorized government agent involvement in extrajudicial killings has ceased to reoccur. UNAMI did not report in its January-June 2008 Human Rights Report that there was involvement of ISF in extrajudicial killings in Baghdad, nor were there reports of MOI-affiliated death squads targeting Sunnis.<sup>14</sup>

### **Internal travel**

- 2.10** Article 44 (1) of the Constitution stipulates that each Iraqi has freedom of movement, travel, and residence inside and outside Iraq. Whilst there are no nationwide legal restrictions on freedom of movement; Iraqis are affected by the prevailing insecurity in the country (fighting, ambushes, highway robbery, roadside bombs, mines/UXO), closure of roads, curfews, airports and borders as well as frequent checkpoints on the roads that severely restrict freedom of movement.<sup>15</sup>

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<sup>9</sup> COIS Iraq Country Report 2009

<sup>10</sup> FCO annual report on Human Rights in Iraq 2008 – released March 2009

<sup>11</sup> USSD 2008 – released February 2009

<sup>12</sup> UNHCR Eligibility Guidelines – Iraq – April 2009

<sup>13</sup> FCO annual report on Human Rights in Iraq 2008 – released March 2009

<sup>14</sup> USSD 2008 – released in February 2009

<sup>15</sup> COIS Iraq Country Report 2009 (Human Rights: Freedom of Movement) & Home Office Iraq Country

- 2.11** In July 2004, the Iraqi Interim Government passed the Order for Safeguarding National Security allowing the Prime Minister to declare a state of emergency in any part of Iraq suffering ongoing violence, except those administered by the Kurdish Regional Government (KRG) (Erbil, Dohuk and Sulaymanyah), for up to 60 days at a time. The state of emergency allows the Prime Minister to restrict freedom of movement by imposing curfews, cordoning off certain areas, and declaring restrictions or bans on public gatherings. The emergency law was extended on 6 January 2005 for 30 days to guard against attacks in the run-up to the nation's 30 January 2005 elections. Since then, the emergency law has been renewed on a monthly basis.<sup>16</sup> In several cities and towns curfews are in place, restricting people's freedom of movement, mainly during the night. UNHCR has reported that curfews were in place in all areas of Central and Southern Iraq between 11pm until 6am, but may be lengthened at short notice. In Baghdad the curfew is from 10pm to 5am.<sup>17</sup>
- 2.12** According to the UNHCR, women's freedom of movement is further limited by the specific harassment and threats against them. This has reportedly increased the pressure on women to have a male family member to accompany them.<sup>18</sup>
- 2.13** Even though there are no legal restrictions as regards choosing one's place of residence in the country, there are a number of practical restrictions mostly based on political and security considerations. UNHCR's paper of April 2009, noted that road travel, within the Central and Southern Governorates has become fairly safe, but all roads remain potentially dangerous. Roadside bombings, robbery and carjacking remain a daily occurrence mainly in the population centres particularly on routes from Baghdad to the North, the route from Diyala to Kirkuk and in the Southern Districts of the Babel and Wassit governorates that are closest to Baghdad. According to the UNHCR, travelling is often delayed by MNF and Iraqi Security Forces (ISF) checkpoints and convoys, which also increases the risk of being targeted by insurgents or criminals or being caught in armed clashes.<sup>19</sup> Movement may also be further delayed by curfews and vehicle bans imposed at short notice.<sup>20</sup>
- 2.14** In a letter dated 28 August 2008, the FCO advised that road travel in Iraq does remain dangerous, there continue to be roadside bombings and criminal threats of car jackings, kidnapping and robbery; and, illegal road blocks and check points were common place throughout Iraq. However, the dangers of travelling by road varied according to ethnicity and tribal bias. The general security threat in terms of road travel was considered to be less for Iraqi nationals than for other nationalities, particularly those from coalition countries. And despite the criminal and security threats ordinary Iraqis had not obviously curtailed their road movements.<sup>21</sup>
- 2.15** In order to relocate within Iraq, an individual must be in possession of all the following documents: the personal identification number which is issued by the General Directorate of Citizenship in accordance with Iraqi civil law number 65 (1972); the Iraqi Nationality Certificate which shows that the holder is Iraqi; a letter of confirmation from the place of work in the intended relocation town and/or the approval of the Mukhtar (civil administrator) of the intended relocation town; a declaration from the security services that the person is not involved in criminal activities.<sup>22</sup> A person wishing to remain in, or move to, an area of

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Policy Bulletin 2/2007 (Travel within Iraq)

<sup>16</sup> COIS Iraq Country Report 2009 (Human Rights: Security Situation) & Iraq Country Policy Bulletin 2/2007 (Travel within Iraq)

<sup>17</sup> COIS Iraq Country Report 2009 (Human Rights: Freedom of Movement) & Iraq Country Policy Bulletin 2/2007 (Travel within Iraq)

<sup>18</sup> COIS Iraq Country Report 2009 (Human Rights: Freedom of Movement) & Iraq Country Policy Bulletin 2/2007 (Travel within Iraq)

<sup>19</sup> COIS Iraq Country Report 2008 (Human Rights: Freedom of Movement) & Iraq Country Policy Bulletin 1/2007 (Travel within Iraq)

<sup>20</sup> UNHCR eligibility guidelines

<sup>21</sup> FCO letter dated 28 August 2008 (Road Safety in Iraq)

<sup>22</sup> FCO Letter dated 6 November 2006 & Iraq Country Policy Bulletin 2/2007 (Availability of Documents)

Iraq other than his or her home town does not have to visit their home town to obtain the requisite documentation for a relocation application.<sup>23</sup>

- 2.16** The Iraqi Nationality Certificate and Iraqi Civil Status ID are issued by the Directorate of Travel and Nationality/Ministry of Interior. In the KRG area these documents are issued by the Directorate of Nationality and Civil Status/Ministry of Interior in Sulaymaniyah and by the Directorate of Nationality and Civil Identification in Erbil and Dohuk. These documents are obtained by applying in person as there is no reliable postal service.<sup>24</sup>

### **The KRG controlled area**

- 2.17** The KRG area of Iraq is recognised as a federal region of Iraq. Its parliament has jurisdiction on all matters except foreign policy, diplomatic representation, security, defence and fiscal matters. Elections were held on 30 January 2005 and a 111 seat Kurdish National Assembly elected. Massoud Barzani is president of the KRG (head of the Kurdish Democratic Party) and Nechirvan Barzani is prime minister. The capital and seat of the KRG is Erbil. Elections were scheduled for 19 May 2009 but have been postponed.<sup>25</sup> All political parties in the KRG are free to organise and have access to media coverage. The Kurdish Democratic Party and the Patriotic Union of Kurdistan (PUK) are the two major political parties in the region and each have 14 ministers in the unified government. According to the FCO, the KDP has the greater influence in the Dohuk and Erbil governorates and the PUK in Sulaymaniyah governorate.<sup>26</sup>
- 2.18** Law enforcement and basic police functions in the KRG area are handled by local police and the Peshmerga - the militia of the main Kurdish political parties. In a letter dated 6 December 2006, the FCO reported that the Peshmerga is disciplined, has an organised structure, and is more effective than other parts of the Iraqi armed forces. While their allegiance is to the Kurdish leadership, they are integrating into the Iraqi Army. The FCO also noted that the Kurdish police are not driven by the same ethnic tensions as in other parts of Iraq and do a reasonable job in providing security and public order. According to the FCO, the public is generally not afraid of the Kurdish police although there may be cases where individuals designated as either 'troublemakers' or in opposition to the local political/economic power are treated less than appropriately or violently.<sup>27</sup>
- 2.19** Abusive interrogation practices reportedly occurred in some detention facilities run by the internal security PUK (Asayish) forces and the KRG intelligence services but were according to the ICRC, localised. In a paper dated April 2009, Amnesty also reported that KRG security forces generally operated outside of the law and regularly abused their authority and that problems associated with the security forces also included arbitrary detention and torture and mistreatment of detainees. In addition, whilst hundreds of detainees who were held without charge or trial for several years had now been released, the authorities had failed to curb the powers of the Asayish.
- 2.20** Whilst there is no independent police complaints authority or ombudsman in the KRG, there is an internal investigations department which considers complaints against the police. In addition, NGOs and the ICRC regularly met the police and scrutinised their activities. Corruption is reportedly a feature of life in the Kurdish Region. Tribal and family dynasties underpin much of this, as well as the problem caused by poor access to a range of services. The KRG has declared its determination to address corruption and is engaged in anti-corruption work in cooperation with the UK Defence Academy.<sup>28</sup> The KRG has also reiterated its willingness to investigate allegations of torture by police/ security officials.<sup>29</sup>

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<sup>23</sup> FCO Letter dated 6 November 2006 & Iraq Country Policy Bulletin 2/2007 (Availability of Documents)

<sup>24</sup> FCO Letter dated 6 November 2006 & Iraq Country Policy Bulletin 2/2007 (Availability of Documents)

<sup>25</sup> Iraq Operational Guidance Note – October 2008

<sup>26</sup> COIS KRG report April 2009

<sup>27</sup> COIS Iraq Country Report 2009 (Human Rights: Security Forces)

<sup>28</sup> COIS Iraq Country Report 2008 (Human Rights: Security Forces)

<sup>29</sup> UNAMI – Human Rights Report – 1 July – 31 December 2007

- 2.21** The UNHCR's paper of April 2009 noted that the availability of an internal flight or relocation alternative in the three Northern Governorates needs to be assessed individually based on the specific Governorate to be entered, as well as the circumstances, background and profile of the individual concerned, including whether the individual originates from Central and Southern Iraq or from within the three Northern Governorates. According to the UNHCR, consideration should be given to the underlying policies of the three Governorates the implications this has for determining the profile of those who may be permitted to enter and reside. For example, those who may not be unable to find protection through internal relocation to the KRG include: Arab males suspected of supporting the insurgency, Turkmen or Arabs from Kirkuk gaining entry to Sulaymaniyah for political reasons, former members of the Ba'ath Party and members of the former intelligence services and single women and female heads of household if not accompanied by a male relative or receiving financial assistance from relatives. Whether the agents of persecution could pursue their targets would also need to be assessed, for example, women fearing honour killing who may still be within the reach of families or communities. The security risks entailed in travelling to the three Northern Governorates, whether from Central and Southern Iraq or from within the three Northern Governorates are also relevant factors in assessing the relevance of the internal flight or relocation alternative.<sup>30</sup>
- 2.22** In its rapid needs assessments of the three northern governorates published in August 2008, UNHCR provided detail on entry requirements for IDPs to the governorates. It noted that entry to Sulaymaniyah was not generally restricted and did not require a sponsor. However, persons from Arabized areas claimed by the PUK, for example, Kirkuk and Khanaqeen in the Governorate of Diayala were generally denied entry for political and demographic reasons unless they went there purely to visit. Persons not originating from any of the three governorates generally required a sponsor to remain legally in the Governorate. For Dahuk, persons from any of the three governorates were able to enter without restrictions including families not originating from one of the three governorates but single men from outside the governorates required a sponsor for security reasons. For Erbil, persons not originating from any of the three governorates required a sponsor otherwise they were denied entry.<sup>31</sup>

### **Humanitarian conditions**

- 2.23** A total of 195,240 IDPs or 32,930 families returned to Iraq in 2008 compared to 36,000 individuals in 2007<sup>32</sup>. According to UNHCR, the number of returnees to Baghdad was continuing to increase, though many returned back to destroyed homes and infrastructure in disrepair. In its latest needs assessment for IDPs, the International Organization for Migration (IOM) said many lacked shelter, access to health services, water and decent standards of sanitation.<sup>33</sup>
- 2.24** UNHCR has put the figure for the number of Iraqi refugees figure at around 2 million. However, UNHCR has also said that the Government of Iraq (GoI) was encouraging returns to Iraq through monetary grants, rental subsidies, organized return convoys and restitution of property for the displaced.<sup>34</sup>

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<sup>30</sup> The UNHCR's Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers dated April 2009

<sup>31</sup> UNHCR - Rapid needs assessment of recently displaced persons in the Kurdistan region Dahuk/ Erbil/ Sulaymaniyah – August 2008

<sup>32</sup> Office for the Coordination of Humanitarian Affairs – Humanitarian Update Iraq – December 2008-January 2009

<sup>33</sup> International Organisation for Migration (IOM) – Iraq emergency needs assessment – April 2009

<sup>34</sup> The UNHCR's Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers dated April 2009

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

- 3.1** This Section sets out the main type of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in Iraq. It also contains any common claims that may raise issues covered by the Asylum Instruction on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant Asylum Instructions, but how these affect particular categories of claim are set out in the guidance below.
- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the claimant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in *Karanakaran* should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum Instruction on Considering the Asylum Claim).
- 3.3** If the claimant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the claimant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.
- 3.4** This guidance is **not** designed to cover issues of credibility. Case owners will need to consider credibility issues based on all the information available to them. (For guidance on credibility see the Asylum Instructions on 'Considering the Asylum' and 'Assessing Credibility in Asylum and Human Rights Claims'.
- 3.5** All Asylum Instructions can be accessed on the Horizon intranet site. The instructions are also published externally on the Home Office internet site at:  
<http://www.ukba.homeoffice.gov.uk/documents/asylumpolicyinstructions/>
- 3.6 Claims based on the poor security conditions in Iraq**
- 3.6.1** Many applicants will make an asylum and/or human rights claim based on the poor security situation in Iraq, stating that it is unsafe for them to return as they may be caught up and injured or killed in a violent incident.
- 3.6.2 *Treatment.*** In its report of July 2008, the UNSC advised that a combination of political and military efforts had contributed to continued improvements in security across Iraq. Although civilian casualties as a result of violence remained unacceptably high, both the frequency of violent incidents and casualty figures continued to decline and there was increased cooperation from local communities in preventing acts of violence.<sup>35</sup> This has been echoed by the USSD. USSD has advised that during 2008, the general security situation in Iraq substantially improved and violence decreased to its lowest level since 2004. According to the Multi National Force (MNF), civilian deaths fell by 72% to approximately 15 per day and Iraqi Security Force (ISF) deaths fell by 57% to 5 per day. The number of Iraqi units capable of conducting independent counter insurgency operations increased steadily to around 400000 Iraqi Police Service (IPS) officers nationwide and the IPS made significant progress in its capability to maintain public order, investigate crimes and arrest suspects.<sup>36</sup>

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<sup>35</sup> COIS Iraq Country Report 2009

<sup>36</sup> FCO annual report on Human Rights in Iraq 2008 – released March 2009

In addition, Shia militia reorganised combating violence against Iraqis and the Sons of Iraq (SOI) neighbourhood security forces (the Sons of Iraq are many affiliated with Sunni tribal groups who reject Al Qaida's nihilism) continued to combat insurgents and terrorists. These developments undermined Al Qaida and insurgent Sunni influence contributing to even further reductions in violence.<sup>37</sup>

- 3.6.3** UNHCR has reported that overall the level of violence in Iraq has significantly reduced and while violence and attacks by various extremist groups continue, this has become mostly political in nature and is often linked to ongoing power struggles between political parties, armed groups and ethnic communities. Furthermore, as compared with the situation in 2006 and the first three quarters of 2007, when Iraq saw widespread sectarian violence coupled with a violent Sunni insurgency, intra Shiite fighting, gross human rights violations and a general breakdown of law and order, parts of Southern and Central Iraq have seen significant stabilisation since late 2007 and in 2008.<sup>38</sup> With improvements in security, coalition troops have handed responsibility for security back to Iraqis. As at end of March 2009, 13 of Iraq's 18 provinces were transferred to the Iraqi security control. The latest to transfer was the former Al Qaida stronghold of Anbar- the first majority Sunni province to come back under Iraqi control.<sup>39</sup>
- 3.6.4** Although their ability to attack was weakened during 2008, insurgent elements such as Al Qaida continued to launch attacks against Shia and Sunnis, fuelling sectarian tensions and undermining the government's ability to maintain law and order. Attacks by insurgent elements against SOI and tribal leaders rose during the year and Al Qaida conducted high profile attacks near Shia markets and mosques. Shia militias and armed paramilitaries also frequently attacked civilians and government officials. However, with the increased exercise of central government authority over security forces, widespread and confirmed unauthorized government agent involvement in extrajudicial killings ceased to reoccur. UNAMI did not report in its January-June Human Rights Report that there was involvement of ISF in extrajudicial killings in Baghdad, nor were there reports of MOI-affiliated death squads targeting Sunnis.<sup>40</sup>
- 3.6.5** ***Sufficiency of protection.*** Unlike in previous years, during 2008, there were improvements in militia integration into the Iraqi Security Forces (ISF) strengthened chain of command and control and personnel and equipment shortages, the ISF being responsible for providing internal security against insurgent, terrorist attacks, and extralegal militia crimes. Total trained ISF numbers grew to at least 590,000 from 430,000 which allowed the ISF to successfully pursue military operations against extremist activity around the country and particularly in Baghdad. In addition, the authorities commitment to assume payment for 94,000 SOI neighbourhood security forces, with a commitment to integrate 20% of them into the predominantly Shia ISF was a positive development. However, some problems continued, with all security services regarding sectarian divisions, corruption and unwillingness to serve outside of areas in which they were recruited.
- 3.6.6** The nearly 500,000 strong Iraqi Police Service (IPS) is responsible for daily patrolling of cities and towns in Iraq. According to the USSD, the effectiveness of the national police section of the IPS was seriously compromised by militias, sectarianism and political party influences during 2008 though less so than in 2007. Police and army personnel frequently arrested and detained suspects without judicial approval and numerous people were arrested without a warrant or probable cause during security sweeps. There were also continuing reports of mistreatment in police stations throughout the country particularly during the interrogation phase. Employees responsible for abuses were often transferred rather than fired or arrested and investigative judges rarely referred security force officials to the central criminal court. However, unlike in 2007, there were new mechanisms to

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<sup>37</sup> USSD 2008 – released February 2009

<sup>38</sup> UNHCR Eligibility Guidelines – Iraq – April 2009

<sup>39</sup> FCO annual report on Human Rights in Iraq 2008 – released March 2009

<sup>40</sup> USSD 2008 – released in February 2009

punish abuse and corruption though effectiveness in holding high level officials for serious violations was unproven.<sup>41</sup>

- 3.6.7** The security situation in the KRG administered northern Governorates of Dahuk, Erbil and Sulaymaniyah remains largely unaffected by the fall of the Saddam regime and relatively stable in comparison to the centre and the northern cities of Kirkuk and Mosul.<sup>42</sup> Law enforcement and basic police functions in the KRG are administered by local police and the peshmerga (armed forces linked to the two main political parties) and internal security functions are dealt with by the PUK Asayish forces.<sup>43</sup> However, FCO has reported that where individuals were identified as troublemakers or in opposition to local political/economic power, they were treated less than appropriately and sometimes violently by the local police and peshmerga. USSD has also reported that abusive interrogation practices reportedly occurred in some detention facilities run by the internal security PUK Asayish forces and the KRG intelligence services.<sup>44</sup>
- 3.6.8** In Central and Southern Iraq the authorities are willing to offer protection however, due to the high level of insurgent attacks they are unable to provide sufficiency of protection. Whilst there have been some reports of mistreatment of detainees by KRG police officials, in particular, of individuals associated with Islamist extremism or opposition political activism to the two main political parties in the KRG, it can be argued that protection is at a reasonably effective level and there is generally a sufficiency of protection. Numbers of people detained in the KRG on account of extremist/ insurgent activity are relatively small and complaints against police abuses can be made to an internal investigations department within the Ministry of the Interior.
- 3.6.9 *Internal relocation.*** Please refer to section 2.9-2.15 for information on freedom of movement within Iraq. UNHCR in their paper of April 2009 advised that internal relocation for individuals in Central and Southern Iraq is on the whole not available because of the overall ability of agents of persecution to perpetrate acts of violence with impunity, widespread violence and prevalent human rights violations giving rise to new risk of persecution, risks associated with travel and undue hardship faced in areas of relocation due to lack of basic facilities (food, water, shelter).<sup>45</sup> However, asylum and human rights claims are not decided on the basis of a general approach rather the individual circumstances of a particular individual and the specific risk to that individual.
- 3.6.10** Notwithstanding some of the practical restrictions and registration requirements for Iraqis seeking to internally relocate with Iraq, freedom of movement is not generally precluded. Whilst travel by road is sometimes not without incident, FCO has advised that ordinary Iraqis travel on a daily basis using many of the major routes. Similarly whilst unaccompanied women may not be able to settle in areas where they have no family ties and therefore access to support, women with male partners or relatives are able to internally relocate within Iraq
- 3.6.11 *Case/law***  
**SM and others [2005] UKIAT 00111 CG.**The Tribunal considered that “the authorities in the KRG are able as a matter of international law to provide security and protection to the inhabitants of that region.” (para 52) They added that, “We also conclude that there is general sufficiency of protection for Kurds in the KAA subject to the exceptional case where a person has either fallen foul of the party in his own area and remains within that area or where there is a tribal dispute which unusually would not be resolved either by mediation or by tribal leaders or the intervention of one of the political parties.” (para 279) On internal relocation the Tribunal noted that there are over 1 million Kurds living outside the KAA (para 273). In addition to internal relocation not being unduly harsh

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<sup>41</sup> USSD 2008 - released in February 2009

<sup>42</sup> COIS Iraq Country Report 2009 (Human Rights: Security Forces)

<sup>43</sup> USSD 2008 released February 2009

<sup>44</sup> USSD 2008 released February 2009

<sup>45</sup> UNHCR guidelines for assessing the international protection needs of Iraqi asylum seekers April 2009

within the KAA, they also considered that relocation to the south would not be considered unduly harsh. (para 279)

**GH [2004] UKIAT 00248, promulgated 10 Sept 2004 CG.** Tribunal conclude that the generality of people in Iraqi Kurdistan do not live in conditions that could arguably engage Art 3 (para 94). In more general terms they assess the risk to life of innocent civilians from terrorist activities based on the number of estimated deaths as a percentage of the population (0.025%) and agree that *“the Secretary of State is right in his submission that the risk to the civilian population arises from [sic] the chance of being in the wrong place at the wrong time”* and that if the figures include deaths of Iraqi combatants *“..then the small percentage risk will be reduced even further”* (para 92 p35).

Para 81 *“Whilst it may be the case that personal differences still exist on the basis of what took place during the periods when the KDP and PUK were opposed to each other during the mid-1990s, so that in individual cases it may be that some from the PUK area could not live in the KDP area and vice versa, the degree of current co-operation and the common cause which the parties have does not in our view support the contention that there cannot be a general freedom of movement within the area of Iraqi Kurdistan capable of being exercised safely”*. In relation to the effectiveness of the system of government the Tribunal state at para 83 *“The general picture which emerges is one of comparative stability in a region under a common administration with a functioning security and judicial system”*.

**AR [2004] UKIAT 00273, promulgated 28<sup>th</sup> September 2004.** Tribunal assess the removals policy of individuals to Iraq and the implications for Articles 2 & 3 of the ECHR. IAT find that return in itself to Iraq would not constitute a breach of Articles 2 or 3, as there is no evidence of persons returned being subject to a consistent pattern of gross and systematic breaches of their human rights. Dismissed by Tribunal.

**KH [2008] UKAIT 00023 (Article 15(c) Qualification Directive) Iraq CG.** The Tribunal concluded that whilst Iraq was considered to be in a state of internal armed conflict, it did not consider that there were significantly high levels of indiscriminate violence throughout Iraq nor that the levels of violence meant that all civilians were at risk of serious harm. Even in the cities where the levels of violence were at their highest (including Baghdad) the evidence did not demonstrate that it was on such a scale or at such a level of frequency that it could be said that merely being there as a civilian placed an individual at real risk of suffering serious harm caused by the threat of such violence.

**ECJ Elgafaji 17 February 2009.** The ECJ in this case found that “Article 15(c) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted , in conjunction with Article 2(e) thereof must be interpreted as meaning that:

- the existence of serious and individual threat to the life or person of an applicant for subsidiary protection is not subject to the condition that that applicant adduce evidence that he is specifically targeted by reason of factors particular to his personal circumstances;
- the existence of such a threat can exceptionally be considered to be established where the degree of indiscriminate violence characterising the armed conflict taking place – assessed by the competent national authorities before which an application for subsidiary protection is made, or by the courts of a Member State to which a decision refusing such an application is referred – reaches such a high level that substantial grounds are shown for believing that a civilian returned to the relevant country or as the case may be, to the relevant region, would, solely on account of his presence on the territory of that country or region, face a real risk of being subject to that threat.” (Paragraph 45)

**3.6.12 Conclusion** A state of civil instability and/or where law and order has sometimes broken down does not of itself give rise to a well-founded fear of persecution for a Convention reason. The claimant can only demonstrate a well-founded claim for asylum where they can demonstrate they are at risk of adverse treatment on Convention grounds over and above the risk to life and liberty, which occurs during such instability / insecurity.

**3.6.13** Where those seeking protection in the United Kingdom fall outside the scope of the Refugee Convention, they may seek humanitarian protection under immigration rule 339C which implemented the provisions with respect to subsidiary protection in articles 2(e) and 15(c) of the EU Qualification Directive

- 3.6.14** On 17 February 2009 the European Court of Justice (ECJ) issued a judgment in the case of *Elgafaji v NL* (Case C-465/07) concerning Article 15(c) which clarifies the test for whether Article 15c applies in particular cases. The ECJ found that Article 15c of the Qualification Directive provides protection that is supplementary to that provided by Article 3 of ECHR if in a country or part of a country that is in a state of internal or international armed conflict, indiscriminate violence: *“reaches such a high level that substantial grounds are shown for believing that a civilian, returned to the relevant country or, as the case may be, to the relevant region, would, solely on account of his presence in the territory of that country or region, face a real risk of being subject to the serious threat referred to in Article 15(c) of the Directive”*.
- 3.6.15** The European Court of Justice emphasised that, in order for someone to qualify for protection on the basis of indiscriminate violence, the level of violence would need to be so high that **anyone**, irrespective of his or her personal circumstances, returned to the country or part of a country in question, would be at risk “solely on account of his presence in the territory of that country or region”. The ECJ recognised that such a high level of indiscriminate violence will be ‘exceptional’. The judgement whether levels of indiscriminate violence in a particular country or part of a country reach such a high level is one for the authorities and the courts of members states.
- 3.6.16** Generally the reports of tension and security breaches in Iraq do not demonstrate that there would be a consistent pattern of gross and systematic violation of rights under Article 3 ECHR. The current evidence also does not suggest that the level of violence and insecurity in Iraq amounts to a serious risk of unlawful killing. Moreover, as highlighted in the country guidance case of **KH [2008] UKAIT 00023**, in no part of Iraq are levels of indiscriminate violence such that they place all civilians at individual risk. Therefore in the absence of a heightened risk specific to the individual, an ordinary Iraqi civilian from any part of Iraq will generally not be able to show that they qualify for humanitarian protection on the basis of indiscriminate violence and so a grant of Humanitarian Protection in such cases is unlikely to be appropriate. In addition, no Government can be expected to guarantee the safety of all its citizens. Accordingly, a grant of asylum or humanitarian protection is unlikely to be appropriate in these cases.

### **3.7 Perceived collaborators**

- 3.7.1** Some claimants will make an asylum or human rights claim due to a fear of persecution at the hands of insurgents or armed groups on account of their perceived collaboration with the Iraqi transitional government.
- 3.7.2** **Treatment.** A range of people involved in the political process or perceived as supporting the democratisation of Iraq have been targeted by extremists practicing conformist ideology or armed groups intent on spreading fear and intimidation because they are considered to be collaborators or traitors. These have included: politicians; members/ employees of the Iraqi government; employees of the UN, ICRC or humanitarian aid organisations; journalists; media workers; Kurds; Shias; translators; contractors, and drivers.<sup>46</sup> Other factors such as an individual’s religion, ethnicity or gender may also constitute additional criteria for targeting specific individuals.<sup>47</sup>
- 3.7.3** The UNSC reported that national staff members continued to encounter serious security-related problems in 2008, and many were forced to relocate their families out of Baghdad to safer areas in Iraq as well as safer neighbouring countries to escape sectarian and insurgent violence. There were also numerous instances of abduction followed by ransom demands or killings, as well as assassinations of targeted individuals, among them public officials. Journalists, educators, medical doctors, judges and lawyers remained prime targets for armed militia and criminal gangs and armed opposition groups still had the

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<sup>46</sup> COIS Iraq Country Report 2009 (Perceived collaborators and “soft targets”)

<sup>47</sup> UNHCR guidelines for assessing the international protection needs of Iraqi asylum seekers August 2007

capacity to launch attacks and target the Iraqi security forces and prominent individuals. Targeted assassinations of journalists, political activists, public officials and pilgrims remained a deeply worrying feature of the security picture.

- 3.7.4** Armed groups attempting to disrupt the political process ahead of the January 2009 provincial elections targeted ministry officials and advisors to the PM and at the local level, governors, deputy governors, local mayors and members of provincial and municipal councils. According to UNHCR, there were also many attacks on government employees including by targeting their private or office vehicles and government buildings.<sup>48</sup>
- 3.7.5** *Sufficiency of protection.* Unlike in previous years, during 2008, there were improvements in militia integration into the Iraqi Security Forces (ISF) strengthened chain of command and control and personnel and equipment shortages, the ISF being responsible for providing internal security against insurgent, terrorist attacks, and extralegal militia crimes. Total trained ISF numbers grew to at least 590,000 from 430,000 which allowed the ISF to successfully pursue military operations against extremist activity around the country and particularly in Baghdad. In addition, the authorities commitment to assume payment for 94,000 SOI neighbourhood security forces, with a commitment to integrate 20% of them into the predominantly Shia ISF was a positive development. However, some problems continued, with all security services regarding sectarian divisions, corruption and unwillingness to serve outside of areas in which they were recruited.
- 3.7.6** The nearly 500, 000 strong Iraqi Police Service (IPS) is responsible for daily patrolling of cities and towns in Iraq. According to the USSD, the effectiveness of the national police section of the IPS was seriously compromised by militias, sectarianism and political party influences during 2008 though less so than in 2007. Police and army personnel frequently arrested and detained suspects without judicial approval and numerous people were arrested without a warrant or probable cause during security sweeps. There were also continuing reports of mistreatment in police stations throughout the country particularly during the interrogation phase. Employees responsible for abuses were often transferred rather than fired or arrested and investigative judges rarely referred security force officials to the central criminal court. However, unlike in 2007, there were new mechanisms to punish abuse and corruption though effectiveness in holding high level officials for serious violations was unproven.<sup>49</sup>
- 3.7.7** The security situation in the KRG administered northern Governorates of Dahuk, Erbil and Sulaymaniyah remains largely unaffected by the fall of the Saddam regime and relatively stable in comparison to the centre and the cities of Kirkuk and Mosul.<sup>50</sup> Law enforcement and basic police functions in the KRG are administered by local police and the peshmerga (armed forces linked to the two main political parties) and internal security functions are dealt with by the PUK Asayish forces.<sup>51</sup> However, FCO has reported that where individuals were identified as troublemakers or in opposition to local political/ economic power, they were treated less than appropriately and sometimes violently by the local police and peshmerga. USSD has also reported that abusive interrogation practices reportedly occurred in some detention facilities run by the internal security PUK Asayish forces and the KRG intelligence services.<sup>52</sup>
- 3.7.8** In Central and Southern Iraq the authorities are willing to offer protection however, due to the high level of insurgent attacks they are unable to provide sufficiency of protection. Whilst there have been some reports of mistreatment of detainees by KRG police officials, in particular, of individuals associated with Islamist extremism or opposition political activism to the two main political parties in the KRG, it can be argued that protection is at a reasonably effective level and there is generally a sufficiency of protection. Numbers of

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<sup>48</sup> UNHCR guidelines for assessing the international protection needs of Iraqi asylum seekers April 2009

<sup>49</sup> USSD 2008 released in February 2009

<sup>50</sup> COIS Iraq Country Report 2009 (Human Rights: Security Forces)

<sup>51</sup> USSD 2008 released February 2009

<sup>52</sup> USSD 2008 released February 2009

people detained in the KRG on account of extremist/ insurgent activity are relatively small and complaints against police abuses can be made to an internal investigations department within the Ministry of the Interior.

**3.7.9 Internal relocation.** Please refer to section 2.9-2.15 for information on freedom of movement within Iraq. UNHCR in their paper of April 2009 advised that internal relocation for individuals in Central and Southern Iraq is on the whole not available because of the overall ability of agents of persecution to perpetrate acts of violence with impunity, widespread violence and prevalent human rights violations giving rise to new risk of persecution, risks associated with travel and undue hardship faced in areas of relocation due to lack of basic facilities (food, water, shelter).<sup>53</sup> However, asylum and human rights claims are not decided on the basis of a general approach rather the individual circumstances of a particular individual and the specific risk to that individual.

**3.7.10** Notwithstanding some of the practical restrictions and registration requirements for Iraqis seeking to internally relocate with Iraq, freedom of movement is not generally precluded. Whilst travel by road is sometimes not without incident, FCO has advised that ordinary Iraqis travel on a daily basis using many of the major routes. Similarly whilst unaccompanied women may not be able to settle in areas where they have no family ties and therefore access to support, women with male partners or relatives are able to internally relocate within Iraq. In assessing whether it is possible to internally relocate, case owners should also consider whether an applicant perceived collaboration would be apparent in another part of Iraq. For example, those targeted because of their particular job may be unable to escape the perceived threat of collaboration wherever they relocate to within Iraq.

### **3.7.11 Caselaw**

**SM and others [2005] UKIAT 00111.** The Tribunal considered that “the authorities in the KRG are able as a matter of international law to provide security and protection to the inhabitants of that region.” (para 52) They added that, “We also conclude that there is general sufficiency of protection for Kurds in the KAA subject to the exceptional case where a person has either fallen foul of the party in his own area and remains within that area or where there is a tribal dispute which unusually would not be resolved either by mediation or by tribal leaders or the intervention of one of the political parties.” (para 279) On internal relocation the Tribunal noted that there are over 1 million Kurds living outside the KAA (para 273). In addition to internal relocation not being unduly harsh within the KAA, they also considered that relocation to the south would not be considered unduly harsh. (para 279)

**GH [2004] UKIAT 00248 CG Iraq.** The Tribunal concluded that in Sulaimaniyah “we are also satisfied that those representing the lawful authorities in his home area are currently providing a sufficiency of protection against the Islamic extremists and terrorists and we see no arguable reason why such protection would not be equally available to the appellant.” (para 126).

**NS [2007] UKAIT 00046 CG Iraq.** “ 1) An Iraqi who is perceived as a collaborator as a consequence of his work for the UN, an NGO, the Multi-National Force, the Coalition Provisional Authority or a foreign contractor, and who has attracted the hostility of an armed group, faces a real risk of persecution on return to his home area.

2) Ability to relocate in Iraq to an area other than the KRG for such a person would depend on the circumstances of the case, including such matters as the reach of the group which has targeted him.

3) Relocation to the KRG for any Iraqi is in general only feasible if the person concerned would be allowed to enter and legally reside in the area of relocation, and has family, community and/or political links there enabling them to survive.

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<sup>53</sup> UNHCR guidelines for assessing the international protection needs of Iraqi asylum seekers – April 2009

4) LM [2006] UKAIT Iraq CG 00060 “guidance on Christian women perceived as collaborators and internal relocation to KRG is here considered and extended. The guidance in RA (Christians) Iraq CG [2005] UKIAT 00091 remains for the time being valid in cases concerning Christians with no other distinguishing profile. “

**3.7.12 Conclusion** A claimant who has a localised threat on the basis that they are perceived to be a collaborator and is unable to acquire protection in their local area may be able to relocate to an area where that localised threat does not exist. The case owner will need to take into consideration the nature of the threat and how far it would extend, and whether it would be unduly harsh to expect the claimant to relocate. A claim made on these grounds may be well founded and a grant of refugee status due to political opinion or imputed political opinion may be appropriate depending on the facts of the case.

### **3.8 Claims based on fear of kidnapping**

**3.8.1** Some claimants will make an asylum or human rights claim due to a fear of ill treatment amounting to persecution because of increased numbers of kidnappings in Iraq.

**3.8.2 Treatment.** Kidnappings continue to be a serious problem in Iraq and have become a tool for armed groups to finance their activities and to intimidate and eliminate their opponents. Abductions have been used by both Sunni insurgents and Shiite militias as well as other criminal gangs.<sup>54</sup> Much of the Shiite militia activity has been attributed to two rival Shiite militias, the Badr Organization and the Mehdi Army. Sunni insurgent activity appears to consist of a number of groups, including former Baathists, former army and intelligence officers, indigenous and foreign Islamists, and nationalists fighting foreign occupation.<sup>55</sup>

**3.8.3** In addition, there have been accusations that rogue police elements have conducted kidnappings. For example, many Baghdad residents have complained that rogue neighbourhood police officers often arrested family members without an arrest warrant and would then later call for a ransom. Shiite militia members have increasingly entered the ISF, such as the Facilities Protection Services (FPS) and the Special Commando Units / Iraqi National Police, and reportedly conducted kidnappings, torture and summary executions of mainly Sunni Arabs. On the Sunni side, insurgents are reported to have infiltrated parts of the ISF and carried out attacks in this capacity. The Sunni groups are mainly active in the “Sunni triangle”, as well as in mixed areas of the Governorates of Diyala, Babel and Kirkuk.<sup>56</sup> However, there were fewer reports in 2008 that the police arrested civilians without an arrest warrant and then held them for ransom. In addition, UNAMI did not report any kidnappings by police personnel in its January to June 2008 human rights report.<sup>57</sup>

**3.8.4** There are no collated statistics on the number of kidnappings conducted within Iraq and it is the case that kidnappings that have taken place are not reported to the authorities. Victims are often targeted because of their sect (e.g, kidnappings for sale to sectarian groups), (perceived) role in public life and/or perceived lack of State or tribal protection and un-Islamic behaviour (women/ gay men/ lesbians/ Roma). Targeted kidnappings, attacks and assassinations against certain professionals have increased throughout Central and Southern Iraq. Those targeted have included, academics, journalists and media workers, artists, doctors and other medical personnel, judges and lawyers and athletes and sports officials. Individuals in these professions have been singled out for a variety of reasons, including their public status, (perceived) political views, sectarian identity, engagement in “Western” activities or other alleged “un-Islamic” behaviour, and perceived wealth.<sup>58</sup> Whilst many victims of kidnappings are released, many also disappear or in some cases are killed

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<sup>54</sup> COIS Iraq Country Report 2009 (Kidnapping/hostage taking)

<sup>55</sup> UNHCR guidelines for assessing the international protection needs of Iraqi asylum seekers – August 2007

<sup>56</sup> UNHCR guidelines for assessing the international protection needs of Iraqi asylum seekers – August 2007

<sup>57</sup> USSD 2008 released February 2009

<sup>58</sup> UNHCR guidelines for assessing the international protection needs of Iraqi asylum seekers

or sold as hostages to other gangs. Some victims are also not released even if their families expressed their willingness to pay a ransom.<sup>59</sup>

- 3.8.5** USSD has reported that unlike the previous year, the majority of kidnappings in 2008 were not sectarian related. Almost all kidnappings during 2008 were motivated by money reasons and the great majority of cases were unreported.<sup>60</sup> Police, military personnel were prime targets for kidnappings by armed gangs in 2008 as were government officials, parliamentarians, civil servants, religious figures and activists, judges and lawyers, medical workers and doctors, academics and other professionals.<sup>61</sup>
- 3.8.6 *Sufficiency of protection.*** The Iraqi Security Forces (ISF) are responsible for providing internal security against insurgent, terrorist attacks. Unlike previous years, during 2008, there were improvements in militia integration into the (ISF) strengthened chain of command and control and personnel and equipment shortages, and extralegal militia crimes. Total trained ISF numbers grew to at least 590,000 from 430,000 which allowed it to successfully pursue military operations against extremist activity around the country and particularly in Baghdad. In addition, the authorities commitment to assume payment for 94,000 SOI neighbourhood security forces, with a commitment to integrate 20% of them into the predominantly Shia ISF was a positive development. However, some problems continued, with all security services regarding sectarian divisions, corruption and unwillingness to serve outside of areas in which they were recruited.
- 3.8.7** The nearly 500, 000 strong Iraqi Police Service (IPS) is responsible for daily patrolling of cities and towns in Iraq. According to the USSD, the effectiveness of the national police section of the IPS was seriously compromised by militias, sectarianism and political party influences during 2008 though less so than in 2007. Police and army personnel frequently arrested and detained suspects without judicial approval and numerous people were arrested without a warrant or probable cause during security sweeps. There were also continuing reports of mistreatment in police stations throughout the country particularly during the interrogation phase. Employees responsible for abuses were often transferred rather than fired or arrested and investigative judges rarely referred security force officials to the central criminal court. However, unlike in 2007, there were new mechanisms to punish abuse and corruption though effectiveness in holding high level officials for serious violations was unproven.<sup>62</sup>
- 3.8.8** The security situation in the KRG administered northern Governorates of Dahuk, Erbil and Sulaymaniyah remains largely unaffected by the fall of the Saddam regime and relatively stable in comparison to the centre and the northern cities of Kirkuk and Mosul.<sup>63</sup> Law enforcement and basic police functions in the KRG are administered by local police and the peshmerga (armed forces linked to the two main political parties) and internal security functions are dealt with by the PUK Asayish forces.<sup>64</sup> However, FCO has reported that where individuals were identified as troublemakers or in opposition to local political/economic power, they were treated less than appropriately and sometimes violently by the local police and peshmerga. USSD has also reported that abusive interrogation practices reportedly occurred in some detention facilities run by the internal security PUK Asayish forces and the KRG intelligence services.<sup>65</sup>
- 3.8.9** In Central and Southern Iraq the authorities are willing to offer protection however, due to the high level of insurgent attacks they are unable to provide sufficiency of protection. Whilst there have been some reports of mistreatment of detainees by KRG police officials, in particular, of individuals associated with Islamist extremism or opposition political

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<sup>59</sup> COIS Iraq Country Report 2009 (Kidnapping/hostage taking)

<sup>60</sup> USSD 2008 released February 2009

<sup>61</sup> UNAMI Human Rights Report –1 January to 30 June 2008

<sup>62</sup> USSD 2008 released in February 2009

<sup>63</sup> COIS Iraq Country Report 2009 (Human Rights: Security Forces)

<sup>64</sup> USSD 2008 released February 2009

<sup>65</sup> USSD 2008 released February 2009

activism to the two main political parties in the KRG, it can be argued that protection is at a reasonably effective level and there is generally a sufficiency of protection. Numbers of people detained in the KRG on account of extremist/ insurgent activity and political opposition are relatively small and complaints against police abuses can be made to an internal investigations department within the Ministry of the Interior.

**3.8.10 Internal relocation.** Please refer to section 2.9-2.15 for information on freedom of movement within Iraq. UNHCR in their paper of April 2009 advised that internal relocation for individuals in Central and Southern Iraq is on the whole not available because of the overall ability of agents of persecution to perpetrate acts of violence with impunity, widespread violence and prevalent human rights violations giving rise to new risk of persecution, risks associated with travel and undue hardship faced in areas of relocation due to lack of basic facilities (food, water, shelter).<sup>66</sup> However, asylum and human rights claims are not decided on the basis of a general approach rather the individual circumstances of a particular individual and the specific risk to that individual.

**3.8.11** Notwithstanding some of the practical restrictions and registration requirements for Iraqis seeking to internally relocate with Iraq, freedom of movement is not generally precluded. Whilst travel by road is sometimes not without incident, FCO has advised that ordinary Iraqis travel on a daily basis using many of the major routes. Similarly whilst unaccompanied women may not be able to settle in areas where they have no family ties and therefore access to support, women with male partners or relatives are able to internally relocate within Iraq. In assessing whether it is possible to internally relocate, case owners should also consider whether an applicant's perceived fear of kidnap would be apparent in another part of Iraq. For example, those targeted because of their particular job or religion may be unable to escape the perceived threat of kidnapping wherever they relocate to within Iraq.

#### **3.8.12 Caselaw**

**SM and others [2005] UKIAT 00111.** The Tribunal considered that "the authorities in the KRG are able as a matter of international law to provide security and protection to the inhabitants of that region." (para 52) They added that, "We also conclude that there is general sufficiency of protection for Kurds in the KAA subject to the exceptional case where a person has either fallen foul of the party in his own area and remains within that area or where there is a tribal dispute which unusually would not be resolved either by mediation or by tribal leaders or the intervention of one of the political parties." (para 279) On internal relocation the Tribunal noted that there are over 1 million Kurds living outside the KAA (para 273). In addition to internal relocation not being unduly harsh within the KAA, they also considered that relocation to the south would not be considered unduly harsh. (para 279)

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**3.8.13 Conclusion** A claimant who has a localised threat on the basis that they be a target for kidnap and who is unable to acquire protection in their local area may be able to relocate to an area where that localised threat does not exist. However, for claimants who can demonstrate a well-founded fear of persecution due to a Convention reason, and are unable to acquire protection or relocate internally a grant of asylum will be appropriate. Kidnapping motivated by economic reasons does not engage the UK's obligations under the 1951 UN Convention and therefore a grant of asylum would not be appropriate, however, in some circumstances it may be that grounds for fear of kidnapping due to economic reasons may be well founded and a grant of Humanitarian Protection appropriate

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<sup>66</sup> UNHCR guidelines for assessing the international protection needs of Iraqi asylum seekers – August 2007

depending on the facts of the case.

### **3.9 Former members of the Ba'ath Party**

- 3.9.1** Some claimants will make an asylum or human rights claim due to their fear of ill treatment amounting to persecution at the hands of state and non state agents on account of their past membership of the Baath Party.
- 3.9.2 *Treatment*** Although the total is unknown, it is estimated that between one and 2.5 million Iraqis were members of the former Baath Party, many of whom joined the party out of necessity than ideological conviction. In May 2003, an order was signed which dissolved the Baath Party and removed senior party members from their positions and future employment in the public sector. In addition, all individuals in the top three layers of management in every government ministry, corporation or institution (including universities and hospitals) were investigated for criminal conduct and removed from employment if found to be full party members. In February 2008, BBC news reported that a measure had been passed to allow former Baath party members to return to public life.<sup>67</sup> However, according to the UNHCR, the new law had not yet been implemented.<sup>68</sup>
- 3.9.3** UNHCR has reported that persons associated with the former Government of Iraq through membership of the Baath Party have been the subject of attacks since the early days of the regime change and continue to face serious human rights violations. The degree to which persons are at risk is, according to UNHCR, dependent on the extent of association with Baath ideology, the human rights violations committed during the Saddam era, the rank or position previously held and whether or not the person is known to have been involved in political activities. Both high level and low level members of the party have been targeted as well as a number of low level bureaucrats including teachers and journalists.
- 3.9.4** Despite fatwas issued by Shiite clerics not to carry out revenge attacks against former Baath party members, a wave of killings did take place at the end of the former regime. Attacks increased following the elections in 2005 when Shiite parties came to power and when reportedly Shiite militants issued death threats listing former Baathists including Sunnis and Shiites. These attacks have, according to UNHCR lessened to a large extent in recent years.<sup>69</sup> According to UNHCR one reason could be that Shiite militias were weakened after military operations in 2008. However, while former Baath party members are no longer systematically targeted, they may still fall victim in individual cases. And, while some cases of killings of former Baathists were reported in the media in 2008 and 2009, mainly in the central governorates, others did go unreported.<sup>70</sup>

#### **The KRG controlled area**

- 3.9.5** Arabs in the areas of Mosul and Kirkuk under de facto control of the KRG and the Region of Kurdistan have also become victims of threats, harassment and arbitrary detention, often in facilities of the Kurdish security and intelligence services in the region because of their perceived association with the former regime. Arab IDPs in the three Northern Governorates reportedly suffer discrimination and are given little assistance by the Kurdish authorities due to security fears,<sup>71</sup>
- 3.9.6 *Sufficiency of protection.*** The Iraqi Security Forces (ISF) are responsible for providing internal security against insurgent, terrorist attacks. Unlike previous years, during 2008, there were improvements in militia integration into the (ISF) strengthened chain of command and control and personnel and equipment shortages, and extralegal militia

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<sup>67</sup> COIS Iraq Country Report 2009 (Former Members Associates of the Baath Party/ Former Regime)

<sup>68</sup> UNHCR guidelines for assessing the international protection needs of Iraqi asylum seekers April 2009

<sup>69</sup> UNHCR guidelines for assessing the international protection needs of Iraqi asylum seekers August 2007

<sup>70</sup> UNHCR guidelines for assessing the international protection needs of Iraqi asylum seekers April 2009

<sup>71</sup> COIS Iraq Country Report 2009 (Opposition in the KRG)

crimes. Total trained ISF numbers grew to at least 590,000 from 430,000 which allowed it to successfully pursue military operations against extremist activity around the country and particularly in Baghdad. In addition, the authorities commitment to assume payment for 94,000 SOI neighbourhood security forces, with a commitment to integrate 20% of them into the predominantly Shia ISF was a positive development. However, some problems continued, with all security services regarding sectarian divisions, corruption and unwillingness to serve outside of areas in which they were recruited.

- 3.9.7** The nearly 500, 000 strong Iraqi Police Service (IPS) is responsible for daily patrolling of cities and towns in Iraq. According to the USSD, the effectiveness of the national police section of the IPS was seriously compromised by militias, sectarianism and political party influences during 2008 though less so than in 2007. Police and army personnel frequently arrested and detained suspects without judicial approval and numerous people were arrested without a warrant or probable cause during security sweeps. There were also continuing reports of mistreatment in police stations throughout the country particularly during the interrogation phase. Employees responsible for abuses were often transferred rather than fired or arrested and investigative judges rarely referred security force officials to the central criminal court. However, unlike in 2007, there were new mechanisms to punish abuse and corruption though effectiveness in holding high level officials for serious violations was unproven.<sup>72</sup>
- 3.9.8** The security situation in the KRG administered northern Governorates of Dahuk, Erbil and Sulaymaniyah remains largely unaffected by the fall of the Saddam regime and relatively stable in comparison to the centre and the cities of Kirkuk and Mosul.<sup>73</sup> Law enforcement and basic police functions in the KRG are administered by local police and the peshmerga (armed forces linked to the two main political parties) and internal security functions are dealt with by the PUK Asayish forces.<sup>74</sup> However, FCO has reported that where individuals were identified as troublemakers or in opposition to local political/ economic power, they were treated less than appropriately and sometimes violently by the local police and peshmerga. USSD has also reported that abusive interrogation practices reportedly occurred in some detention facilities run by the internal security PUK Asayish forces and the KRG intelligence services.<sup>75</sup>
- 3.9.9** The authorities in Central and Southern Iraq the authorities are willing to offer protection however, due to the high level of insurgent attacks they are unable to provide sufficiency of protection. Whilst there have been some reports of mistreatment of detainees by KRG police officials, in particular, of individuals associated with Islamist extremism or opposition political activism to the two main political parties in the KRG, it can be argued that protection is at a reasonably effective level and there is generally a sufficiency of protection. Numbers of people detained in the KRG on account of extremist/ insurgent activity and political opposition are relatively small and complaints against police abuses can be made to an internal investigations department within the Ministry of the Interior.
- 3.9.10 Internal relocation** Please refer to section 2.9-2.15 for information on freedom of movement within Iraq. UNHCR in their April 2009 paper have advised that internal relocation for individuals in Central and Southern Iraq is on the whole not available because of the overall ability of agents of persecution to perpetrate acts of violence with impunity, widespread violence and prevalent human rights violations giving rise to new risk of persecution, risks associated with travel and undue hardship faced in areas of relocation due to lack of basic facilities (food, water, shelter).<sup>76</sup> However, asylum and human rights claims are not decided on the basis of a general approach rather the individual circumstances of a particular

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<sup>72</sup> USSD 2008 released in February 2009

<sup>73</sup> COIS Iraq Country Report 2009 (Human Rights: Security Forces)

<sup>74</sup> USSD 2008 released February 2009

<sup>75</sup> USSD 2008 released February 2009

<sup>76</sup> UNHCR guidelines for assessing the international protection needs of Iraqi asylum seekers – April 2009

individual and the specific risk to that individual.

**3.9.11** Notwithstanding some of the practical restrictions and registration requirements for Iraqis seeking to internally relocate within Iraq, freedom of movement is not generally precluded. Whilst travel by road is sometimes not without incident, FCO has advised that ordinary Iraqis travel on a daily basis using many of the major routes. Similarly whilst unaccompanied women may not be able to settle in areas where they have no family ties and therefore access to support, women with male partners or relatives are able to internally relocate within Iraq. Case owners will also need to consider whether the applicant's Ba'ath party involvement would be apparent in another part of Iraq. For example those targeted because of their job may be unable to escape the threat of repercussions wherever they relocate in southern or central Iraq.

**3.9.12** Internal relocation would not be a reasonable option for former Ba'athists who are nationally known through exposure in the media.

### **3.9.13 Caselaw**

**OH [2004] UKIAT 00254, promulgated 15<sup>th</sup> September 2004.** The appellant claimed that his father was a Ba'ath party member who had been murdered in 1999 (his father's activities resulted in arrests, executions and deportations). The appellant was a simple member of the Ba'ath party and attended meetings. When he was asked to join the Fidayi Saddam group and go to Palestine and fight against Israel he fled from Iraq as he feared refusing would mean execution. IAT find that there would be no risk to the appellant on return.

**3.9.14 Conclusion** In establishing whether a claimant has a well founded fear of persecution on account of membership of the former Baath Party, a claimant will need to show that their activities for the Baath party have brought them to the adverse attention of those they fear, whether locally through their direct actions or on a wider stage because they are inextricably associated with the abuses of the former regime. In the event that a local threat from non-State agents is established, it would not be unduly harsh for the claimant to relocate elsewhere in Iraq and neither asylum nor Humanitarian Protection would be appropriate.

**3.9.15** Internal relocation would not be an option for nationally known figures. Where a claimant is able to establish a well-founded fear on the grounds that they are nationally known and associated with the activities of the former regime, the activities that brought them to national attention would generally mean they would be of interest to the authorities in Iraq. Therefore a grant of asylum might be appropriate in these cases, if one of the exclusion clauses is not applicable (see section 3.9.15 below).

**3.9.16** Case owners should note that some high ranking members of the Ba'ath party have been responsible for serious human rights abuses and crimes against humanity. If it is accepted that a claimant was an active operational high ranking member for the Ba'ath party and the evidence suggests he/she has been involved in such actions, then case owners should consider whether one of the Exclusion clauses is applicable. Case owners should refer such cases to a Senior Caseworker in the first instance.

### **3.10 Honour killings**

**3.10.1** Some claimants will make an asylum or human rights claim due to ill treatment amounting to persecution at the hands of non state agents on the basis of allegedly bringing the honour of the family into disrepute.

**3.10.2 Treatment.** Honour killing is the term used to describe a murder committed by a family member to protect the family's honour. Many women and girls are at risk of death if they are accused of behaviour believed to have brought shame on the family such as a loss of virginity (even by rape), infidelity, demand for a divorce or a refusal of marriage. Many women are killed on the basis of suspicion of a family member and are not given the

chance to defend themselves. Honour killings have generally been on the rise in Iraq including in the KRG area and crimes are infrequently reported.<sup>77</sup>

### ***Honour killings in the KRG controlled area***

- 3.10.3** USSD has reported that honour killings are widespread in the KRG. The FCO, following its fact finding mission to the KRG in March 2009, also reported that the number of honour killings in the KRG had risen and that there was a low incidence of honour killings being reported to the authorities because of a sense of family shame. The tradition of early marriages could push people into unhappy marriages and adulterous relationships which if discovered could lead to violent retribution.<sup>78</sup>
- 3.10.4** FCO has reported that 75 women were murdered, killed in suspicious accidents or committed suicide in 2008 in Dohuk and Erbil Governorates. In Sulaymaniyah Governorate and the Garmian district of Diyala Governorate, the figure was 66 for deaths in similar circumstances. Furthermore, in 2008 there were 221 cases of women burned intentionally and in suspicious accidents in Erbil and Dohuk; and, in Sulaymaniyah, 118 such cases.
- 3.10.5 *Sufficiency of Protection.*** The Iraqi Penal Code as is applicable in Central and Southern Iraq contains provisions that allow lenient punishments for honour killings on the grounds of provocation or if the accused had honourable motives. The punishment is between 6-12 months. The law does not provide any guidance about what honourable motives are and therefore leaves the door open for wide interpretation and abuse.
- 3.10.6** In the KRG, law 101 of the Iraqi penal code (allowing the death penalty for punishment of prostitution) was often used as a justification by males for violence against females and efforts to change current laws in the KRG were resisted by the PUK and the KDP. In 1999, the Kurdish National Authority passed an Act to make honour killings punishable in line with other murders but was prevented by the Central Iraqi government from implementing it on the basis that it was contrary to the Iraqi penal code. Consequently, a man found guilty of killing a woman for family honour often only received three months imprisonment. However, the KRG human rights minister has said that honour killings are now investigated as normal killings under section 406 of Iraqi law. This means that the death penalty can be imposed for honour killings and husbands guilty of murdering their wives no longer have legal impunity from prosecution.<sup>79</sup>
- 3.10.7** Private shelters for women suffering from domestic violence exist in Central and Southern Iraq and the KRG, however, space is limited and information regarding their locations closely held.<sup>80</sup> The centres provide food and accommodation, psychological treatment, social assistance, legal aid as well as a mediation programme. Six shelters operated in northern Iraq: one each in Dohuk, Erbil and Kirkuk and three in Sulaymaniyah.<sup>81</sup> Asuda, the first protection centre for women endangered by 'honour killings', was opened in a hidden place in Sulaymaniyah in 2000. Since women seeking protection often have to stay for long periods of time, Asuda offers a 'home' which includes education, leisure and daily activities. Mediation between the women and their families aims at enabling the women's return, but this may not always be possible and there have been cases of fathers assuring their daughters that they have forgiven them, only to murder them once they are back in the family home. Sometimes, Asuda sends women to far away villages and places in other regions of Northern Iraq, where they are not known and can find protection. However, in some cases there are no alternatives other than remaining in the protection centre or finding solutions outside Iraq.
- 3.10.8** The nearly 500, 000 strong Iraqi Police Service (IPS) is responsible for daily patrolling of

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<sup>77</sup> COIS Iraq Country Report 2009 (honour killings)

<sup>78</sup> USSD 2008 released February 2009

<sup>79</sup> COIS KRG report May 2009

<sup>80</sup> USSD 2007

<sup>81</sup> COIS KRG report May 2009

cities and towns in Iraq. In relation to honour killings in particular, UNAMI has reported that much work remains to be done to ensure that the IPS considers honour crimes as serious crimes and investigates them accordingly. FCO has also said that where honour killings are concerned, the police may turn a blind eye to what are considered locally acceptable cultural practices espoused by traditional community leaders. The IPS can therefore not be said to provide a sufficiency of protection for women who are subject to violence or honour killings.

**3.10.9** Law enforcement and basic police functions in the KRG are administered by local police and the peshmerga (armed forces linked to the two main political parties).<sup>82</sup> According to Amnesty, since the creation of KRG police directorates specialising in violence against women, the number of complaints of violence against women has increased, apparently because the establishment of the directorates has facilitated reporting of such crimes, particularly in the urban areas of the KR where the directorates are located. However, some police officers in the KR are reported to be unwilling or unable to respond effectively when confronted with cases of violence against women. That said, it has also been reported that compared with other parts of Iraq, mechanisms for women in the KR are more advanced.<sup>83</sup> Furthermore, the KRG has been a leading voice in denouncing honour killings and has amended its penal code to consider honour killings as ordinary crimes. It has also made significant progress in acknowledging the occurrence of honour killings and raising public awareness about the matter.<sup>84</sup>

**3.10.10** *Internal relocation* Please refer to section 2.9-2.15 for information on freedom of movement within Iraq. UNHCR in their paper of April 2009 advised that internal relocation for individuals in Central and Southern Iraq is on the whole not available because of the overall ability of agents of persecution to perpetrate acts of violence with impunity, widespread violence and prevalent human rights violations giving rise to new risk of persecution, risks associated with travel and undue hardship faced in areas of relocation due to lack of basic facilities (food, water, shelter).<sup>85</sup> However, asylum and human rights claims are not decided on the basis of a general approach rather the individual circumstances of a particular individual and the specific risk to that individual.

**3.10.11** Notwithstanding some of the practical restrictions and registration requirements for Iraqis seeking to internally relocate within Iraq, freedom of movement is not generally precluded. Whilst travel by road is sometimes not without incident, FCO has advised that ordinary Iraqis travel on a daily basis using many of the major routes. Similarly whilst unaccompanied women may not be able to settle in areas where they have no family ties and therefore access to support, women with relatives/ a support network are able to internally relocate within Iraq, for example, Asuda sends women to far away villages and places in other regions of Northern Iraq, where they are not known and can find protection. In assessing whether women can avoid the threat of honour crimes through settling elsewhere in Iraq, case owners will need to take all the relevant factors into account including financial circumstances, health and whether the claimant has a support network. Dependent on the facts of the case some women may not be able to relocate.

**3.10.12** *Caselaw. SM and others [2005] UKIAT 00111.* The Tribunal considered that “the authorities in the KRG are able as a matter of international law to provide security and protection to the inhabitants of that region.” (para 52) They added that, “We also conclude that there is general sufficiency of protection for Kurds in the KAA subject to the exceptional case where a person has either fallen foul of the party in his own area and remains within that area or where there is a tribal dispute which unusually would not be resolved either by mediation or by tribal leaders or the intervention of one of the political parties.” (para 279) On internal relocation the Tribunal noted that there are over 1 million Kurds living outside the KAA (para 273). In addition to internal relocation not being unduly harsh

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<sup>82</sup> USSD 2008 released February 2009

<sup>83</sup> Amnesty – Hope and Fear – Human Rights in the Kurdistan Region of Iraq

<sup>84</sup> COIS Iraq Country Report 2009 (honour killings)

<sup>85</sup> UNHCR guidelines for assessing the international protection needs of Iraqi asylum seekers – April 2009

within the KAA, they also considered that relocation to the south would not be considered unduly harsh. (para 279)

**GH [2004] UKIAT 00248 promulgated 10 Sept 2004 CG Iraq.** The Tribunal concluded that in Sulaimaniyah “we are also satisfied that those representing the lawful authorities in his home area are currently providing a sufficiency of protection against the Islamic extremists and terrorists and we see no arguable reason why such protection would not be equally available to the appellant.” (para 126).

In relation to the effectiveness of the system of government the Tribunal state at para 83 “*The general picture which emerges is one of comparative stability in a region under a common administration with a functioning security and judicial system*”.

**3.10.13 Conclusion.** If a woman can show the threat of honour killing (or other forms of serious harm); that protection is denied; and, internal relocation is not available, they could qualify for asylum on grounds of a particular social group. This is likely to be most relevant when women come from male-dominated tribes or religious groups that impose strict rules on the conduct of women. Honour killings might not always be gender-related and there might be cases where men are as likely as women to be killed for committing certain indiscretions which have brought shame on their family. If in such a case sufficient protection is not available and internal relocation is considered unduly harsh then Humanitarian Protection might be appropriate.

**3.10.14** The situation for women in the KRG is significantly different to the rest of Iraq, with amendments to the penal code and women’s shelters improving conditions for women in the region. It can be argued that sufficiency of protection is available to women, against the threat of honour killing, in the KRG and therefore, in the majority of cases, a grant of asylum or humanitarian protection would not be appropriate.

### **3.11 De-Arabisation**

**3.11.1** Some Arab claimants will make an asylum or human rights claim due to a fear of ill treatment amounting to persecution due to being forcibly evicted from the Kurdish properties given to them under the Arabisation programmes instituted by Saddam Hussein. These forcible evictions have been undertaken by the Kurdish authorities and sometimes the Peshmerga.

**3.11.2 Treatment** In the 1990s the regime of Sadaam Hussein initiated an aggressive anti Kurdish Arabisation campaign that relocated, often forcibly, tens of thousands of Arabs both Sunni and Shia to Kurdish areas in Northern and North Eastern Iraq. After the fall of the regime, many of these settlers were reported to have fled back to the Centre and the South of Iraq, or were forced out by the Kurdish authorities or the Peshmerga who exerted pressure and intimidation on them to leave. However, some still occupy deserted governmental buildings or military compounds and others have built houses on land that is not theirs.<sup>86</sup>

**3.11.3** The Iraq Property Claims Commission (IPCC), now the Commission for the Resolution of Real Property Disputes (CRRPD), was set up to reinstate people’s property rights that were taken away by widespread property confiscations by the former Iraqi government between 1968 and 2003. Claims can also be made by people who lost real property or an interest in real property between 18 March 2003 and 30 June 2005 as a result of ethnicity, religion or sect or for purposes of ethnic cleansing or by individuals previously dispossessed of their property as a result of the former regime’s policy of property confiscation. The deadline to file claims was extended to 30 June 2007 and remained open at the end of 2008.

**3.11.4 Sufficiency of Protection.** The nearly 500, 000 strong Iraqi Police Service (IPS) is responsible for daily patrolling of cities and towns in Iraq. According to the USSD, the

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<sup>86</sup> COIS Iraq Country Report 2009 (Arabisation and De-Arabisation)

effectiveness of the national police section of the IPS was seriously compromised by militias, sectarianism and political party influences during 2008 though less so than in 2007. Police and army personnel frequently arrested and detained suspects without judicial approval and numerous people were arrested without a warrant or probable cause during security sweeps. There were also continuing reports of mistreatment in police stations throughout the country particularly during the interrogation phase. Employees responsible for abuses were often transferred rather than fired or arrested and investigative judges rarely referred security force officials to the central criminal court. However, unlike in 2007, there were new mechanisms to punish abuse and corruption though effectiveness in holding high level officials for serious violations was unproven.<sup>87</sup>

- 3.11.5** The security situation in the KRG administered northern Governorates of Dahuk, Erbil and Sulaymaniyah remains largely unaffected by the fall of the Saddam regime and relatively stable in comparison to the centre and the northern cities of Kirkuk and Mosul.<sup>88</sup> Law enforcement and basic police functions in the KRG are administered by local police and the peshmerga (armed forces linked to the two main political parties) and internal security functions are dealt with by the PUK Asayish forces.<sup>89</sup> However, FCO has reported that where individuals were identified as troublemakers or in opposition to local political/economic power, they were treated less than appropriately and sometimes violently by the local police and peshmerga. USSD has also reported that abusive interrogation practices reportedly occurred in some detention facilities run by the internal security PUK Asayish forces and the KRG intelligence services.<sup>90</sup>
- 3.11.6** Article 140 of the new Iraqi constitution provides for the reversal of the Arabisation policy and the IPCC provides the formal avenue of redress for property disputes. As at the end of 2008, the CRRPD had resolved 67000 claims nationwide of which 10000 related to Kirkuk. And, since 2003, some Arabs previously settled in the Kirkuk region by Saadam Hussein's anti Kurdish policies had returned to their prior homes in the centre and south of the country and applied for compensation. At the end of 2008, 16500 people had received compensation.<sup>91</sup>
- 3.11.7 *Internal relocation*** Please refer to section 2.9-2.15 for information on freedom of movement within Iraq. UNHCR in their paper of April 2009 advised that internal relocation for individuals in Central and Southern Iraq is on the whole not available because of the overall ability of agents of persecution to perpetrate acts of violence with impunity, widespread violence and prevalent human rights violations giving rise to new risk of persecution, risks associated with travel and undue hardship faced in areas of relocation due to lack of basic facilities (food, water, shelter).<sup>92</sup> However, asylum and human rights claims are not decided on the basis of a general approach rather the individual circumstances of a particular individual and the specific risk to that individual.
- 3.11.8** Notwithstanding some of the practical restrictions and registration requirements for Iraqis seeking to internally relocate with Iraq, freedom of movement is not generally precluded. Whilst travel by road is sometimes not without incident, FCO has advised that ordinary Iraqis travel on a daily basis using many of the major routes. Similarly whilst unaccompanied women may not be able to settle in areas where they have no family ties and therefore access to support, women with male partners or relatives are able to internally relocate within Iraq. Case owners will need to consider all of the relevant factors into account including the applicant's financial circumstances and health and whether the applicant has a support network.

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<sup>87</sup> USSD 2008 released in February 2009

<sup>88</sup> COIS Iraq Country Report 2009 (Human Rights: Security Forces)

<sup>89</sup> USSD 2008 released February 2009

<sup>90</sup> USSD 2008 released February 2009

<sup>91</sup> USSD 2008 released February 2009

<sup>92</sup> UNHCR guidelines for assessing the international protection needs of Iraqi asylum seekers – April 2009

**3.11.9 Conclusion.** Article 140 of the new Iraqi constitution provides for the reversal of the Arabisation policy and the creation of the IPCC, a formal avenue of redress for property disputes. Whilst forced eviction by state agents in the KRG has been evident, it is unlikely that once evicted an applicant will suffer ill treatment amounting to persecution. A grant of asylum or humanitarian protection is therefore unlikely to be appropriate for this category of claim.

### 3.12 Christians

**3.12.1** Some claimants will make an asylum or human rights claim due to a fear of ill treatment amounting to persecution at the hands of Islamic Fundamentalists because they are Christian.

**3.12.2 Treatment.** A number of Christian groups live in Iraq, namely, Chaldean, Assyrian, Syriac, Armenian and Protestant Christians. Figures indicate that the size of the pre war Christian population in Iraq was between 800,000 and 1.2 million.<sup>93</sup> An estimated 30% of Iraq's Christians reside in the Northern Governorates of Dahuk, Erbil and Sulaymaniyah (the KRG). The remainder is principally located in Baghdad, Mosul, Basrah and Kirkuk.<sup>94</sup>

**3.12.3** While the constitution of Iraq proclaims Islam to be the official religion of the state, it also provides full religious rights for religious minorities including Christians. The Iraqi government generally respects the right of individuals to individual thought, conscience and belief, however, private conservative and radical Islamic elements continue to exert tremendous pressure on other groups to conform to extremist interpretations of Islam's precepts.<sup>95</sup> According to the UNHCR, since the fall of the Bathist regime, a number of religious edicts (fatwas) and letters have been issued by Muslim clerics in Iraq calling Christians "infidels" (kuffur).<sup>96</sup>

**3.12.4** In recent years, there have been a number of targeted attacks on Christian places of worship and religious figures which have reportedly intensified since September 2006.<sup>97</sup> Acts of violence against Christians have included harassment and intimidation, killings, kidnappings, armed robbery, forced closure, destruction or confiscation of property, forced conversion to Islam, and rape and forced marriage of Christian women.<sup>98</sup> Christian women have also faced increasing pressure to adhere to strict Islamic dress codes and to cover their hair with a veil.<sup>99</sup> Further, Christians perceived to be engaging in professions proscribed under Islam such as hairdressing, public entertainment and the sale of alcohol or music have been subject to threats and attacks including killings due to their vocations and their businesses looted, burned or forcibly closed down.<sup>100</sup> Christians are also usually considered to be better educated and therefore to have a better income than others which has put them at a higher risk or added to other factors for which they are targeted.<sup>101</sup>

**3.12.5** In its' April 2009 paper, UNHCR advised that targeted attacks on members of various Christian denominations continued in 2008 and included in particular a series of attacks on churches in Mosul and Kirkuk in January 2008. UNHCR also reported that in a current climate of religious intolerance in Iraq, the conversion of a Muslim to Christianity would result in ostracism as leaving Islam would be considered to be unacceptable in many communities and families. According to Sharia law, a Muslim who converts from Islam to Christianity is considered to be an apostate and the punishment can be execution.

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<sup>93</sup> COIS Iraq Country Report 2009 (Christians)

<sup>94</sup> UNHCR guidelines for assessing the international protection needs of Iraqi asylum seekers August 2007

<sup>95</sup> USSD 2007

<sup>96</sup> UNHCR guidelines for assessing the international protection needs of Iraqi asylum seekers August 2007

<sup>97</sup> UNAMI – Human Rights Report 1 July to 31 December 2007

<sup>98</sup> UNHCR guidelines for assessing the international protection needs of Iraqi asylum seekers August 2007

<sup>99</sup> USSD 2007 – Freedom of Religion

<sup>100</sup> UNHCR guidelines for assessing the international protection needs of Iraqi asylum seekers August 2007

<sup>101</sup> COIS Iraq Country Report 2009 (Christians)

Although not forbidden by law, Iraq does not recognise conversions from Islam to Christianity and converts have no legal means to change their religious status. Converts were reportedly often harassed by government officials and the police and it was highly likely that a crime committed against a convert be it by his/ her family or by Islamist groups would be properly investigated and prosecuted in the central/ southern governorates of Iraq.<sup>102</sup>

### ***Situation for Christians in the KRG controlled area***

**3.12.6** In their Fact Finding Mission Report of 2007, the Finnish Government reported that the KRG had become a safe haven for internally displaced persons including Christians. Christians were welcomed by the local population in the northern governorates and respected by their moderate Muslim neighbours.<sup>103</sup> UNHCR has corroborated this position. According to the UNHCR, the rights of Christians in the KRG are generally respected and a significant number of Christians have sought refuge in the region.<sup>104</sup> In addition, in an interview for Newsmax in Erbil in April 2008, the Deputy Prime Minister Omar Fattah, said that Christians who were suffering in other areas of Central and Southern Iraq were welcome in the Kurdistan area of Iraq and unlike other groups, were not subject to the practical restrictions on travel within/ entry into the KRG area. The same article reported that the KRG provided a safe haven for Iraqi Christians who had fled other parts of the country<sup>105</sup>

**3.12.7 Sufficiency of protection.** The nearly 500,000 strong Iraqi Police Service (IPS) is responsible for daily patrolling of cities and towns in Iraq. According to the USSD, the effectiveness of the national police section of the IPS was seriously compromised by militias, sectarianism and political party influences during 2008 though less so than in 2007. Police and army personnel frequently arrested and detained suspects without judicial approval and numerous people were arrested without a warrant or probable cause during security sweeps. There were also continuing reports of mistreatment in police stations throughout the country particularly during the interrogation phase. Employees responsible for abuses were often transferred rather than fired or arrested and investigative judges rarely referred security force officials to the central criminal court. However, unlike in 2007, there were new mechanisms to punish abuse and corruption though effectiveness in holding high level officials for serious violations was unproven.<sup>106</sup>

**3.12.8** The security situation in the KRG administered northern Governorates of Dahuk, Erbil and Sulaymaniyah remains largely unaffected by the fall of the Saddam regime and relatively stable in comparison to the centre and the northern cities of Kirkuk and Mosul.<sup>107</sup> Law enforcement and basic police functions in the KRG are administered by local police and the peshmerga (armed forces linked to the two main political parties) and internal security functions are dealt with by the PUK Asayish forces.<sup>108</sup> However, FCO has reported that where individuals were identified as troublemakers or in opposition to local political/ economic power, they were treated less than appropriately and sometimes violently by the local police and peshmerga. USSD has also reported that abusive interrogation practices reportedly occurred in some detention facilities run by the internal security PUK Asayish forces and the KRG intelligence services.<sup>109</sup>

**3.12.9** In Central and Southern Iraq the authorities are willing to offer protection however, due to the high level of insurgent attacks they are unable to provide sufficiency of protection.

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<sup>102</sup> UNHCR guidelines for assessing the international protection needs of Iraqi asylum seekers April 2009

<sup>103</sup> COIS Iraq Country Report 2009 (Christians)

<sup>104</sup> COIS Iraq Country Report 2009 (Christians)

<sup>105</sup> Newsmax – 30 April 2008 –Kurds provide a safe haven for Christians

<sup>106</sup> USSD 2008 released in February 2009

<sup>107</sup> COIS Iraq Country Report 2009 (Human Rights: Security Forces)

<sup>108</sup> USSD 2008 released February 2009

<sup>109</sup> USSD 2008 released February 2009

Whilst there have been some reports of mistreatment of detainees by KRG police officials, in particular, of individuals associated with Islamist extremism or opposition political activism to the two main political parties in the KRG, it can be argued that protection is at a reasonably effective level and there is generally a sufficiency of protection. Numbers of people detained in the KRG on account of extremist/ insurgent activity are relatively small and complaints against police abuses can be made to an internal investigations department within the Ministry of the Interior.

**3.12.10 Internal relocation.** Please refer to section 2.9-2.16 for information on freedom of movement within Iraq. UNHCR in their paper of April 2009 advised that internal relocation for individuals in Central and Southern Iraq is on the whole not available because of the overall ability of agents of persecution to perpetrate acts of violence with impunity, widespread violence and prevalent human rights violations giving rise to new risk of persecution, risks associated with travel and undue hardship faced in areas of relocation due to lack of basic facilities (food, water, shelter).<sup>110</sup> However, asylum and human rights claims are not decided on the basis of a general approach rather the individual circumstances of a particular individual and the specific risk to that individual.

**3.12.11** Notwithstanding some of the practical restrictions and registration requirements for Iraqis seeking to internally relocate with Iraq, freedom of movement is not generally precluded. Whilst travel by road is sometimes not without incident, FCO has advised that ordinary Iraqis travel on a daily basis using many of the major routes. Similarly whilst unaccompanied women may not be able to settle in areas where they have no family ties and therefore access to support, women with male partners or relatives are able to internally relocate within Iraq. Moreover, it is clear that Christians are able to relocate to the KRG area of Iraq where they are well respected, where there are numerous other Christians and where they can generally peacefully coexist alongside the Kurds.

### **3.12.12 Caselaw**

**LM [2006] UKAIT 00060 CG** The Tribunal find that female Christians are not at risk of persecution or Article 3 ECHR breach but additional factors (prominent position in companies associated with Multi-National Force, westernised, women's rights activities or refusal to wear hijab, lack of KRG connections, no family support, English speaking or non-Kurdish speaking) may increase the risk to a level engaging both Conventions. The Tribunal find that the case of **RA [2005] UKIAT 00091** remains correct on the position of male Christians and that there is no sufficiency of protection outside KRG.

**RA [2005] UKIAT 00091 CG.** The Tribunal concluded that "The evidence is not such at this stage as to indicate problems for a person relocating to the north such as to render this unduly harsh or, in the case of Article 3 of the Human Rights Convention to indicate a real risk of breach of their human rights in effecting such relocation and living in the north." (para 73)

**AK [2004] UKIAT 00298 CG.** The Tribunal accepted that "sellers of alcohol, owners of cinemas where sexually explicit films are shown, and perhaps people who speak English on account of their Christianity are at particular risk." Moreover clerics of some eminence and prominence would be at risk. (para 10) The IAT further considered that the appellant was not a businessman of any kind who might be perceived as being wealthy. (para 11) The IAT saw no evidence that there would be a consistent pattern of gross and systematic violation of rights under Article 3 given the particular circumstances of the Appellant and the risk as a consequence in the light of that which he faces.

**SM and others [2005] UKIAT 00111.** The Tribunal considered that "the authorities in the KRG are able as a matter of international law to provide security and protection to the inhabitants of that region." (para 52) They added that, "We also conclude that there is general sufficiency of protection for Kurds in the KAA subject to the exceptional case where a person has either fallen foul of the party in his own area and remains within that area or where there is a tribal dispute which unusually would not be resolved either by mediation or by tribal leaders or the intervention of one of the

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<sup>110</sup> UNHCR guidelines for assessing the international protection needs of Iraqi asylum seekers – April 2009

political parties.” (para 279) On internal relocation the Tribunal noted that there are over 1 million Kurds living outside the KAA (para 273). In addition to internal relocation not being unduly harsh within the KAA, they also considered that relocation to the south would not be considered unduly harsh. (para 279)

**GH [2004] UKIAT 00248 CG Iraq.** The Tribunal concluded that in Sulaimaniyah “we are also satisfied that those representing the lawful authorities in his home area are currently providing a sufficiency of protection against the Islamic extremists and terrorists and we see no arguable reason why such protection would not be equally available to the appellant.” (para 126).

**3.12.13 Conclusion** A claimant who has a localised threat on the basis that they are a Christian and is unable to acquire protection in their local area, may be able to relocate to an area where that localised threat does not exist. Case owners should take into consideration the nature of the threat and how far it would extend to, and whether it would be unduly harsh to expect the claimant to relocate. The KRG area of Iraq has and continues to provide a safe haven to Iraqi Christians fleeing other parts of the country and most Christian Iraqis from the KRG area would be able to seek protection from the KRG security forces who are generally willing and able to offer protection. However, if on the circumstances of an individual case from central or southern Iraq it is found that internal relocation is unduly harsh, it may be appropriate to grant refugee status in those circumstances.

### **3.13 Fear of Islamic Militants**

**3.13.1** Some claimants will make an asylum or human rights claim based on ill treatment amounting to persecution at the hands of Islamic militants because of “un-Islamic behaviour”.

**3.13.2 Treatment.** Whilst the Iraqi government generally respects the rights of freedom of thought and religion, the rise of Islamic fundamentalism has had a serious impact on these rights in practice. Many reports suggest that Iraqis have been targeted by extremists because of their religious identity (members of other religions as well as liberal Muslims) or secular leanings and have become regular victims of discrimination, harassment and at times persecution with incidents ranging from intimidation and threats to the destruction of property, kidnapping and murder.<sup>111</sup>

**3.13.3** Members of non Muslim religious groups were targeted for not adhering to strict Islamic law. Women and girls were threatened, attacked and sometimes killed for not wearing the hijab, dressing in western style clothing or for showing too much skin for not wearing socks. The same applied to men whose clothes or even haircuts were deemed too western.<sup>112</sup> Women driving cars, working outside of the house or playing sports were also targeted and violent campaigns were launched against gay men, those deemed to have had sex outside of marriage and engaged in drug abuse.<sup>113</sup>

**3.13.4** There were also continued reports of targeting of members of certain professions including doctors and medical personnel, professors and academics, judges and lawyers and journalists and media workers as well as many others. Male doctors were killed for treating female patients and stores that sold un-Islamic goods such as alcohol were bombed, looted and defaced. Deliberate attacks against journalists took place on the basis of their ethnic/religious belonging and/or their (imputed) political opinion, given that most Iraqi news and TV stations are partisan and owned by political parties or religious groups. Barbers were threatened, forced to close their businesses or even killed for giving men western style haircuts or shaving off their beards. Iraqi artists, actors and singers were targeted on the basis that music, theatre and television encouraged immoral behaviour as were shops

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<sup>111</sup> COIS Iraq Country Report 2009(Non-Muslim Religious Groups)

<sup>112</sup> COIS Iraq Country Report 2009 (Non-Muslim Religious Groups)

<sup>113</sup> UNHCR guidelines for assessing the international protection needs of Iraqi asylum seekers August 2007

selling DVDs/ CDs or musical instruments.<sup>114</sup>

**3.13.5** In its' April 2009 paper, UNHCR reported continuing sectarian violence in 2008 (though less so since mid 2007) and that a culture of impunity prevails in relation to prosecution and investigation of cases involving sectarian abuses. As a consequence, it was impossible to know the perpetrators and establish their motives. However statistics showed that since 2003, several thousand doctors and medical personnel and several hundred professors and academics had been killed and that 136 journalists and 51 media workers had been killed on duty by 14 December 2008. Most killings took place in Iraq's three major cities: Baghdad, Mosul and Basra, the majority of victims were shot by gunmen, sometimes after having been kidnapped or tortured.<sup>115</sup>

**3.13.6 Sufficiency of protection.** Unlike in previous years, during 2008, there were improvements in militia integration into the Iraqi Security Forces (ISF) strengthened chain of command and control and personnel and equipment shortages, the ISF being responsible for providing internal security against insurgent, terrorist attacks, and extralegal militia crimes. Total trained ISF numbers grew to at least 590,000 from 430,000 which allowed the ISF to successfully pursue military operations against extremist activity around the country and particularly in Baghdad. In addition, the authorities commitment to assume payment for 94,000 SOI neighbourhood security forces, with a commitment to integrate 20% of them into the predominantly Shia ISF was a positive development. However, some problems continued, with all security services regarding sectarian divisions, corruption and unwillingness to serve outside of areas in which they were recruited.

**3.13.7** The nearly 500, 000 strong Iraqi Police Service (IPS) is responsible for daily patrolling of cities and towns in Iraq. According to the USSD, the effectiveness of the national police section of the IPS was seriously compromised by militias, sectarianism and political party influences during 2008 though less so than in 2007. Police and army personnel frequently arrested and detained suspects without judicial approval and numerous people were arrested without a warrant or probable cause during security sweeps. There were also continuing reports of mistreatment in police stations throughout the country particularly during the interrogation phase. Employees responsible for abuses were often transferred rather than fired or arrested and investigative judges rarely referred security force officials to the central criminal court. However, unlike in 2007, there were new mechanisms to punish abuse and corruption though effectiveness in holding high level officials for serious violations was unproven.<sup>116</sup>

**3.13.8** The security situation in the KRG administered northern Governorates of Dahuk, Erbil and Sulaymaniyah remains largely unaffected by the fall of the Saddam regime and relatively stable in comparison to the centre and the northern cities of Kirkuk and Mosul.<sup>117</sup> Law enforcement and basic police functions in the KRG are administered by local police and the peshmerga (armed forces linked to the two main political parties) and internal security functions are dealt with by the PUK Asayish forces.<sup>118</sup> However, FCO has reported that where individuals were identified as troublemakers or in opposition to local political/economic power, they were treated less than appropriately and sometimes violently by the local police and peshmerga. USSD has also reported that abusive interrogation practices reportedly occurred in some detention facilities run by the internal security PUK Asayish forces and the KRG intelligence services.<sup>119</sup>

**3.13.9** In Central and Southern Iraq the authorities are willing to offer protection however, due to the high level of insurgent attacks they are unable to provide sufficiency of protection.

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<sup>114</sup> UNHCR guidelines for assessing the international protection needs of Iraqi asylum seekers August 2007

<sup>115</sup> UNHCR guidelines for assessing the international protection needs of Iraqi asylum seekers August 2007 and April 2009

<sup>116</sup> USSD 2008 released in February 2009

<sup>117</sup> COIS Iraq Country Report 2009 (Human Rights: Security Forces)

<sup>118</sup> USSD 2008 released February 2009

<sup>119</sup> USSD 2008 released February 2009

Whilst there have been some reports of mistreatment of detainees by KRG police officials, in particular, of individuals associated with Islamist extremism or opposition political activism to the two main political parties in the KRG, it can be argued that protection is at a reasonably effective level and there is generally a sufficiency of protection. Numbers of people detained in the KRG on account of extremist/ insurgent activity are relatively small and complaints against police abuses can be made to an internal investigations department within the Ministry of the Interior.

**3.13.10 Internal relocation.** Please refer to section 2.9-2.15 for information on freedom of movement within Iraq. UNHCR in their paper of April 2009 advised that internal relocation for individuals in Central and Southern Iraq is on the whole not available because of the overall ability of agents of persecution to perpetrate acts of violence with impunity, widespread violence and prevalent human rights violations giving rise to new risk of persecution, risks associated with travel and undue hardship faced in areas of relocation due to lack of basic facilities (food, water, shelter).<sup>120</sup> However, asylum and human rights claims are not decided on the basis of a general approach rather the individual circumstances of a particular individual and the specific risk to that individual.

**3.13.11** Notwithstanding some of the practical restrictions and registration requirements for Iraqis seeking to internally relocate within Iraq, freedom of movement is not generally precluded. Whilst travel by road is sometimes not without incident, FCO has advised that ordinary Iraqis travel on a daily basis using many of the major routes. Similarly whilst unaccompanied women may not be able to settle in areas where they have no family ties and therefore access to support, women with male partners or relatives are able to internally relocate within Iraq.

**3.13.12 Caselaw**

**SM and others [2005] UKIAT 00111.** The Tribunal considered that “the authorities in the KRG are able as a matter of international law to provide security and protection to the inhabitants of that region.” (para 52) They added that, “We also conclude that there is general sufficiency of protection for Kurds in the KAA subject to the exceptional case where a person has either fallen foul of the party in his own area and remains within that area or where there is a tribal dispute which unusually would not be resolved either by mediation or by tribal leaders or the intervention of one of the political parties.” (para 279) On internal relocation the Tribunal noted that there are over 1 million Kurds living outside the KAA (para 273). In addition to internal relocation not being unduly harsh within the KAA, they also considered that relocation to the south would not be considered unduly harsh. (para 279)

**GH [2004] UKIAT 00248 CG Iraq.** The Tribunal concluded that in Sulaimaniyah “we are also satisfied that those representing the lawful authorities in his home area are currently providing a sufficiency of protection against the Islamic extremists and terrorists and we see no arguable reason why such protection would not be equally available to the appellant.” (para 126).

**3.13.13 Conclusion** A general fear of Islamic militants does not of itself give rise to a well-founded fear of persecution, and no Government can be expected to guarantee the safety of all its citizens. However, there will be individuals whose fear is over and above the common population because of aspects of their nature that they cannot or should not be expected to change. This assessment will need to be based on the merits of the individual case. Moreover the case owner will need to take into consideration the nature of the threat and how far it would extend, and whether it would be unduly harsh to expect the claimant to relocate. For claimants who can demonstrate a well-founded fear of persecution for reason of one of the five Refugee Convention grounds (e.g. their religion or their political opinion, imputed or otherwise), are unable to acquire protection or relocate internally, a grant of asylum will be appropriate. Where the treatment is not for reason of one of the five Refugee Convention grounds a grant of Humanitarian Protection may be appropriate.

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<sup>120</sup> UNHCR guidelines for assessing the international protection needs of Iraqi asylum seekers

### 3.14 Member/ Supporter of the PKK/ KADEK

**3.14.1** The Kurdistan Workers' Party (PKK), now known as KADEK or KongraGel, is listed as a proscribed organisation in the UK Terrorism Act 2000 (Amendment) Order 2001. Case owners should refer claims based on membership to a Senior Caseworker.

### 3.15 Gay men and lesbians

**[This section is currently under review. Case owners should consult a Senior Caseworker as necessary.]**

### 3.16 Prison conditions

**3.16.1 *Treatment.*** Applicants may claim that they cannot return to Iraq due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in Iraq are so poor as to amount to torture or inhuman treatment or punishment.

**3.16.2** Despite a law mandating that detention facilities under the sole control of the Ministry of Justice (MOJ) detention facilities in Iraq were operated by four separate ministries: Justice; Interior; Defence and the Ministry of Labour and Social Affairs. Additionally, the KRG Ministry of Labour and Social Affairs operated its own detention facilities. The KRG internal security (Asayish) forces and the KRG intelligence services operated separate detention facilities outside the control of the KRG MOI.<sup>121</sup>

**3.16.3** As at end of 2008, there were reported to be 10 MOJ prisons, more than 1200 MOI detention locations, 51 MOD detention facilities as well unofficial detention centres throughout the country.<sup>122</sup> The Kurdish authorities operated 8 detention facilities and an additional 8 Asayish detention facilities.<sup>123</sup>

**3.16.4** Treatment of detainees was reported to be poor in many cases. MOJ prison and detention facilities generally attempted to meet internationally accepted standards for basic prisoner needs. However, most detention facilities under the MOI and MOD did not meet international standards. There was continued overcrowding and many detainees lacked adequate food, exercise facilities, medical care and family visitation and access to water and electricity. Medical care in MOI and MOD detention facilities was also not consistently provided and rape, torture and abuse sometimes leading to death reportedly occurred in some facilities.<sup>124</sup>

**3.16.5** The law mandates that women and juveniles be held separately from men. Generally women were housed separately from men but there were reported instances where they were not. Juveniles were also sometimes held with adults and a number of juveniles were reported to have alleged sexual abuse at the hands of the MOI and MOD personnel and adult prisoners. Additionally, pre-trial detainees and convicted prisoners were often held in the same facilities due to lack of space.<sup>125</sup>

**3.16.6** The Ministry of Human Rights in central and southern Iraq and in the KRG following its inspection of national detention facilities in 2008 reported that there were 112 confirmed cases of torture and abuse in MOI facilities, 69 within MOD facilities, 107 in KRG facilities

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<sup>121</sup> USSD 2008 released February 2009

<sup>122</sup> USSD 2008 released February 2009

<sup>123</sup> USSD 2007

<sup>124</sup> USSD 2008 released February 2009

<sup>125</sup> USSD 2007

and no cases in MOJ facilities.

**3.16.7** The Iraqi Correctional Service (ICS) internal affairs department monitored abuses or violations of international standards for human rights in prisons. Increased allegations of harassment and abuse had resulted in the disciplining of ICS in some cases. Visits to inspect prison facilities by both the national and the KRG Ministries of Human Rights (MOHR) and UNAMI were also permitted. However, reports of the visits were not publicly available. Domestic and international human rights groups did not generally have access to prisons/ detention facilities. However, the ICRC inspected several detention facilities and prisons around Iraq and had access to KRG detainees some of whom were held in Asayish facilities. The ICRC reported that these facilities were in accordance with standard modalities. There were no reports available about KRG intelligence service detention facilities.<sup>126</sup>

**3.16.8 Conclusion.** Whilst prison conditions in Iraq are reportedly poor (hygiene conditions and overcrowding being a particular problem) and despite reports that officials sometimes mistreat inmates, conditions are not generally severe enough to meet the high Article 3 threshold and there is no information to suggest that particular groups of inmates are more at risk of such mistreatment than others. Therefore, even where claimants can demonstrate a real risk of imprisonment on return to Iraq a grant of Humanitarian Protection will not generally be appropriate. However, the individual factors of each case should be considered to determine whether detention will cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3, relevant factors being the likely length of detention the likely type of detention facility and the individual's age and state of health. Where in an individual case treatment does reach the Article 3 threshold a grant of Humanitarian Protection will be appropriate.

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

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

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

#### **4.3 Claims based on the poor humanitarian conditions in Iraq**

**4.3.1** Whilst humanitarian conditions in Iraq are difficult they are not sufficiently harsh in any part of the country that they would amount to torture or inhuman or degrading treatment or unlawful killing such as to breach the UK's obligations under Article 3 of ECHR. Therefore a grant of DL is unlikely to be appropriate. However case owners will of course need to consider whether the individual circumstances of a particular case might dictate a different outcome.

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

**4.4.1** Minors claiming in their own right who have not been granted asylum or HP can only be

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<sup>126</sup> USSD 2007

returned where they have family to return to or there are adequate reception, care and support arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, care and support arrangements in place for minors with no family in Iraq.

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

#### **4.5 Medical treatment**

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

**4.5.2** The Iraqi constitution stipulates that every citizen has the right to healthcare and that the State shall maintain public health and provide the means of prevention and treatment by building different types of hospitals and health institutions. As at August 2006, some 240 hospitals and 1200 primary health centres were functioning under substantial international funds in Iraq. Nevertheless, there was a shortage of medical supplies and providers had to deal with limited water and electricity in Iraqi hospitals making it difficult to carry out their work. The ICRC in its March 2008 report said that there was a general shortage of hospital beds and that medical facilities everywhere needed repairing and upgrading except in the Northern part of the country. There was also a general shortage of medical staff, doctors in Iraq having faced targeted harassment, violent attacks, abductions and pressure to emigrate at the hands of insurgents.<sup>127</sup> However in November 2008, BBC News reported that improved security in Iraq had led to 800 doctors returning to the country since the start of the year.<sup>128</sup>

**4.5.3** Anti retroviral treatment was freely available at the AIDs centre in Baghdad where most AIDs cases were diagnosed. Patients under anti retroviral treatment also received supplies from the Ministry of Health which was supported by the World Health Organisation and \$50 for extra expenses.<sup>129</sup>

**4.5.4** There were 23 hospital based mental health facilities in Baghdad and three other cities. Services in psychiatric clinics were often basic and involved only physical treatment and there was a lack of drugs to treat the most severe cases of mental health. The stigma often associated with mental health problems in Iraq often meant that families kept their ill relatives hidden or sought treatment from traditional sources. However, according to a BBC report of August 2005, a national commission for mental health services had been appointed within Iraq and was working with the British Royal College of Psychiatrists. Training programmes were being organised and a small number of mental health practitioners were being trained in Jordan and the UK.<sup>130</sup>

#### **The KRG**

**4.5.5** According to the FCO there are 3 major hospitals in Erbil, 4 in Sulimaniyah and 3 in Dohuk province as well as numerous health care centres and privately run clinics across the Kurdish region. However, health care in the KRG was poor by Western standards. The health care structure was inadequate (hospitals, equipment, drug supply, electricity) and most doctors moonlighted in order to top up their meagre salaries. Although some improvements had been made to health services in the KRG, the population still had no access to free, safe, high quality health services. Hospitals were overcrowded, there was

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<sup>127</sup> COIS Iraq Country Report 2009 (Medical issues)

<sup>128</sup> COIS Iraq Country Report 2009 (Medical treatment)

<sup>129</sup> COIS Iraq Country Report 2009 (Medical issues)

<sup>130</sup> COIS Iraq Country Report 2009 (Medical issues)

no working referral system from local practitioner to specialist and new technology was not maintained. Some hospitals had been renovated but others had not and there was no policy for health care development. HIV/ AIDs treatment was not available and problems of identifying and treating HIV/ AIDs in the KRG were compounded by a lack of coordination between health authorities in the region and Baghdad clinics dealing with people living with HIV/ AIDs.<sup>131</sup>

- 4.5.6** Where a case owner considers that the circumstances of the individual applicant and the situation in Iraq reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

## **5. Returns**

- 5.1** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.
- 5.2** Iraqi nationals may return voluntarily to any region of Iraq at any time by way of the Voluntary Assisted Return and Reintegration Programme (VARRP) implemented on behalf of the Border and Immigration Agency by the International Organization for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining travel documents and booking flights, as well as organising reintegration assistance in Iraq. The programme was established in 1999, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Iraqi nationals wishing to avail themselves of this opportunity for assisted return to Iraq should be put in contact with the IOM offices in London on 0800 783 2332 or [www.iomlondon.org](http://www.iomlondon.org).

## **6 Entry Clearance**

- 6.1** The designated posts for applications for visa applications for Iraqis are Amman in Jordan and Beirut in Lebanon. Iraqis are free to enter Jordan and Lebanon to make such applications on GV3's in conjunction with Iraqi passports. G-series passports are available for issue to Iraqi citizens who qualify for them in Baghdad. Iraqis who do not have travel documents to return to Iraq have the option to register with the International Organization for Migration's Voluntary Assisted Return and Reintegration Programme.
- 6.2** The main Baghdad Western South route leading out of Baghdad to Jordan and the Syrian borders (Highway No 10) passing through Fallujah and Ramadi has seen armed conflict and crime occurring on a daily basis. According to UNHCR security incidents also occurred on this route after sunset and increased during Shiite religious festivities when Sunni insurgents target Shiite pilgrims on their way to the holy cities of Najaf and Kerbala. Car jackings and car accidents have also been reported to occur on the route.<sup>132</sup> However, FCO has advised that ordinary Iraqis generally use roads in Iraq on a daily basis.<sup>133</sup>
- 6.3** Road travel between Baghdad and Amman, and Beirut remains uninterrupted and the most common way of travel for Iraqi nationals. Royal Jordanian and Syrian Airways fly regular services into Baghdad, and Gulf Airways also operates regularly into Dubai. Those

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<sup>131</sup> COIS Iraq Country Report 2009 (Medical issues)

<sup>132</sup> UNHCR guidelines for assessing the international protection needs of Iraqi asylum seekers

<sup>133</sup> FCO Letter dated 8 September 2006 and 28 August 2008

travelling from northern Iraq would usually travel across into Syria as the fastest and most convenient route down to Amman. It is also easier for Iraqi nationals holding UK travel documents to enter Syria than Jordan.<sup>134</sup>

#### 6.4 Caselaw

**SA Iraq CG [2006] UKAIT 00011.** “In the light of evidence now available the Tribunal is satisfied that generally it is not disproportionate to a legitimate aim within article 8 (2) to require an Iraqi national to return to Iraq and travel to Jordan to make an application for entry clearance”.

**SM Iraq CG [2007] UKAIT 00077.** “Further evidence since the Tribunal’s decision in SA (Entry clearance application in Jordan – proportionality) Iraq CG [2006] UKAIT 00011 concerning the procedures and general difficulties facing an Iraqi in returning to Iraq and travelling to Jordan to make an application for entry clearance does not lead to a conclusion different from that in SA that generally it is not disproportionate to a legitimate aim within Article 8(2) to require an Iraqi to return and apply in that way”.

**6.5** Iraqis regularly make visa applications at the consular section in Amman, and it is possible to travel to Amman to seek entry clearance. The route to Amman and Beirut could be via Highway 10, or alternatively it is open to a claimant to travel a different route to Amman or Beirut.

**6.6** Three recent judgments handed down from the House of Lords, most notably *Chikwamba v The Secretary of State for the Home Department [2008]*, have had an impact on the way the UK Border Agency must consider human rights claims under Article 8 of the European Convention on Human Rights (ECHR). All cases should be considered on their own merits taking full account of the Article 8 Casework Instructions, the current absence of entry clearance facilities in Iraq, and the difficulties involved for Iraqis in travelling to the designated entry clearance posts in neighbouring countries. In most cases it is likely to be disproportionate to expect Iraqis who have established family ties in the UK, and for whom there are insurmountable obstacles’ to family life in its entirety being exercised abroad, to return to Iraq and apply for entry clearance.

#### 7. List of source documents

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<sup>134</sup> CIPU Country Bulletin 2005 para 4.2

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<http://www.unhcr.org/refworld/country,COI,UNHCR,,IRQ,4562d8cf2,,0.html>
- UN Country Report on Human Rights Practices in Iraq 2008 dated 25 February 2009  
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