



# OPERATIONAL GUIDANCE NOTE

## IRAQ

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## 1. Introduction

- 1.1** This document provides UKBA case owners with guidance on the nature and handling of the most common types of asylum and human rights claims received from nationals/residents of Iraq, 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** Case owners must not base decisions on the country of origin information in this guidance; it is included to provide context only and does not purport to be comprehensive. The conclusions in this guidance are based on the totality of the available evidence, not just the brief extracts contained herein, and case owners must likewise take into account all available evidence. It is therefore essential that this guidance is read in conjunction with the relevant COI Service country of origin information and any other relevant information.

COI Service information is published on Horizon and on the internet at:

[www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/)

- 1.3** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. Where a claim for asylum or Humanitarian Protection is being considered, case owners must consider any elements of Article

8 of the ECHR in line with the provisions of Appendix FM (Family Life) and paragraphs 276 ADE to 276DH (Private Life) of the Immigration Rules. Case owners must also consider if the applicant qualifies for Discretionary Leave in accordance with the published policy. 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.

## 2. Country assessment

**2.1** Case owners should refer to the relevant COI Service country of origin information material. An overview of the country situation including headline facts and figures about the population, capital city, currency as well as geography, recent history and current politics can also be found in the relevant FCO country profile at:

<http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/>

**2.2** An overview of the human rights situation in certain countries including Iraq can also be found in the FCO Annual Report on Human Rights which examines developments in countries where human rights issues are of greatest concern:

<http://fcohrdreport.readandcomment.com/>

## 2.3 Actors of protection

**2.3.1** Case owners must refer to section 7 of the Asylum Instruction - [Considering the asylum claim and assessing credibility](#). To qualify for asylum, an individual must have a fear of persecution for a Convention reason and be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to seek protection in their country of origin or habitual residence. Case owners must take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Effective protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.

### Central and Southern Iraq

**2.3.2** The Iraq Security Forces (ISF) comprise security forces under the ambit of the Ministry of Interior (MOI) and military forces under the ambit of the Ministry of Defence (MOD).<sup>1</sup> The security forces under the MOI are the Iraqi Police, Iraqi Federal Police, Border Enforcement, Oil Police and Facilities Protection Service (FPS); and military forces under the MOD are the Iraqi army (IA), air force, navy

<sup>1</sup> US State Department Country Report on Human Rights Practices 2010, Iraq (USSD Report 2010), published 8 April 2011, (Section 1d, Role of the Police and Security Apparatus) <http://www.state.gov/j/drl/rls/hrrpt/2010/nea/154462.htm> COI Service Iraq Country Report August 2011 (para 10.01) [www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/)

and a training and support function.<sup>2</sup> The ISF, which as of December 2011 had around 930,000 members and are widely acknowledged as increasingly capable and united, reportedly remain vulnerable to corruption and infiltration by militants, and continue to be themselves a major target of attacks.<sup>3</sup>

- 2.3.3** Under the Status of Forces Agreement (SOFA), US forces pulled back from urban areas by the end of June 2009, beginning the transition of a national security function back to Iraq's forces. In June 2010, Iraqi security forces took over control of the security checkpoints leading to the Green Zone in Baghdad (a heavily secured area which is the political and diplomatic centre of Baghdad).<sup>4</sup>
- 2.3.4** US troops were withdrawn from Iraq at the end of 2011. It was reported on 18 December 2011 that the only US military presence left in Iraq were 157 soldiers responsible for training at the US embassy, as well as a small contingent of marines protecting the diplomatic mission.<sup>5</sup> Commenting on the security role of US forces in Iraq prior to their departure, the source added that: "US forces ended combat missions in Iraq in 2010 and had already handed over much of their security role [to the Iraqis]."<sup>6</sup> Similarly an article in the Guardian, dated 15 December 2011 noted that: "There are many here who had grown accustomed to the safety net of US forces, which despite Thursday's formal departure had rarely been seen on the streets of the country's cities since mid-2009, when a joint security pact came into effect."<sup>7</sup>
- 2.3.5** According to the October 2012 Quarterly Report to Congress by the Special Inspector General for Iraq Reconstruction (SIGIR), "The year 2012 has seen regional security deteriorate, primarily driven by the chaos in Syria. Domestic security also has declined amid regular reports of a reviving Al-Qaeda in Iraq and two very violent months: July and September. Overall in Iraq, violence this quarter was the worst in two years".<sup>8</sup> The same source further noted that "In a meeting with SIGIR this quarter, Principal Deputy Minister of Interior Adnan al-Asadi suggested that previously weakened Sunni militant groups, including Al-Qaeda in Iraq, had regained strength. He added that the government—because of weak intelligence capabilities—was unable to detect and thus prevent attacks by these organized

<sup>2</sup> Special Inspector General for Iraq Reconstruction, Quarterly Report to the United States Congress (SIGIR Quarterly Report), dated 30 April 2011 (page 85)

[http://www.sigir.mil/files/quarterlyreports/April2011/Report\\_-\\_April\\_2011.pdf#view=fit](http://www.sigir.mil/files/quarterlyreports/April2011/Report_-_April_2011.pdf#view=fit) COI Service Iraq Country Report August 2011 (para 10.02) [www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/)

<sup>3</sup> UNHCR, UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers for Iraq, 24 May 2012 b) State Actors, i Iraqi Security Forces (ISF) (page 13)

<http://www.unhcr.org/refworld/pdfid/4fc77d522.pdf>

<sup>4</sup> Amnesty International, New Order, Same Abuses: Unlawful detentions and torture in Iraq, dated September 2010 (page 10) <http://www.amnesty.org/en/library/asset/MDE14/006/2010/en/c7df062b-5d4c-4820-9f14-a4977f863666/mde140062010en.pdf> COI Service Iraq Country Report August 2011 (para 10.03)

[www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/)

<sup>5</sup> BBC News, Last US troops to leave Iraq cross Kuwait border, 18 December 2011

[http://www.bbc.co.uk/news/mobile/world-middle-east-16234723?psdata=11\\_3CS8\\_4Cc\\_9\\_10CSCD11\\_CK12\\_14\\_15](http://www.bbc.co.uk/news/mobile/world-middle-east-16234723?psdata=11_3CS8_4Cc_9_10CSCD11_CK12_14_15)

<sup>6</sup> BBC News, Last US troops to leave Iraq cross Kuwait border, 18 December 2011

[http://www.bbc.co.uk/news/mobile/world-middle-east-16234723?psdata=11\\_3CS8\\_4Cc\\_9\\_10CSCD11\\_CK12\\_14\\_15](http://www.bbc.co.uk/news/mobile/world-middle-east-16234723?psdata=11_3CS8_4Cc_9_10CSCD11_CK12_14_15)

<sup>7</sup> The Guardian, US exit from Iraq: 'this is not a withdrawal, this is an act on a stage', 15 December 2011

<http://www.guardian.co.uk/world/2011/dec/15/us-exit-iraq-withdrawal-ambivalence>

<sup>8</sup> Special Inspector General for Iraq Reconstruction (SIGIR), Quarterly Report to Congress, 30 October 2012, OSC-I and the Future of U.S. Security Cooperation and Assistance in Iraq p.6

[http://www.sigir.mil/files/quarterlyreports/October2012/Report\\_-\\_October\\_2012.pdf#view=fit](http://www.sigir.mil/files/quarterlyreports/October2012/Report_-_October_2012.pdf#view=fit)

groups”.<sup>9</sup> An October 2012 Centre for Security Studies report considers that “Iraq’s security forces have become increasingly more political and corrupt since the departure of most of their US and foreign advisors during 2011”.<sup>10</sup>

- 2.3.6** According to the US State Department report, human rights violations committed by ISF personnel were rarely investigated and perpetrators were seldom punished. The MOI disciplinary and criminal court system for internal security forces heard more than 11,100 cases with 3,800 convictions between January and September 2011; the remaining cases resulted in acquittals or were ongoing.<sup>11</sup>
- 2.3.7** Impunity for security forces continued. A significant number of abuses were reported during the year. For example, elements of the 46th and 47th Brigades used live fire against antigovernment protesters and police in Kirkuk and Hawija on 25 February 2011, killing six persons and injuring more than 10. Despite photographic evidence of the events, no action was taken against the army units. There were continued reports of torture and abuse throughout the country in many MOI police stations and MOD facilities; the incidents generally occurred during interrogation. The MOI Internal Affairs Division did not release the number of officers punished during the year, and there were no known court convictions for abuse.<sup>12</sup>
- 2.3.8** Although oversight by MOI and MOD internal affairs increased, problems persisted with the Iraqi Police regarding sectarian divisions, corruption, ties to tribes, and unwillingness to serve outside the areas in which they were recruited. The army and Federal Police recruited nationwide and deployed their soldiers and police to various areas, reducing the likelihood of corruption because of personal ties to tribes or militants.<sup>13</sup>
- 2.3.9** UNHCR’s Eligibility Guidelines of May 2012 noted that in the past decade of sectarian violence, the ISF - reportedly infiltrated by members of primarily Shi’ite armed groups - have been accused of engaging in frequent kidnappings, torture and summary executions of (mainly) Sunni Arabs. In recent years, there have been consistent reports of the ISF using repressive measures such as arbitrary arrests, incommunicado detention (including in “secret” facilities) and torture to silence political opponents, journalists, and protesters. There have also been reports of the ISF engaging in abuses of LGBTI individuals. The ISF have allegedly used excessive force against protesters, including live ammunition. Civilian deaths have occurred as a result of ISF or joint ISF/USF-I military operations aimed at combating armed groups. Some sources claim that acts of violence committed by the ISF are achieved with impunity; and that where disciplinary proceedings against perpetrators are initiated, they lack transparency.<sup>14</sup>

<sup>9</sup> Special Inspector General for Iraq Reconstruction (SIGI), Quarterly Report to Congress, 30 October 2012, Security p.10 [http://www.sigir.mil/files/quarterlyreports/October2012/Report\\_-\\_October\\_2012.pdf#view=fit](http://www.sigir.mil/files/quarterlyreports/October2012/Report_-_October_2012.pdf#view=fit)

<sup>10</sup> Centre for Security Studies, Patterns of Violence in Iraq, 24 October 2012, Iraq’s Military and Security Challenges, p.3 [http://csis.org/files/publication/121024\\_Iraq\\_Violence.pdf](http://csis.org/files/publication/121024_Iraq_Violence.pdf)

<sup>11</sup> US State Department, Country Reports on Human Rights Practices for 2011: Iraq, 24 May 2012, Role of the Police and Security Apparatus <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186428>

<sup>12</sup> US State Department, Country Reports on Human Rights Practices for 2011: Iraq, 24 May 2012, Role of the Police and Security Apparatus <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186428>

<sup>13</sup> US State Department, Country Reports on Human Rights Practices for 2011: Iraq, 24 May 2012, Role of the Police and Security Apparatus <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186428>

<sup>14</sup> UNHCR, UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers for Iraq, 24 May 2012, b) State Actors, i) Iraqi Security Forces (ISF) (page 12-13) <http://www.unhcr.org/refworld/pdfid/4fc77d522.pdf>

- 2.3.10** The Ministry of Human Rights is mandated to monitor human rights abuses and to advocate for and assist victims. It issued public reports on prisons and detention centres, minorities, and victims of terrorism. Limited resources, lack of political independence, and poor cooperation from other ministries limited the ministry's effectiveness.<sup>15</sup>
- 2.3.11** A 2008 law established an Independent High Commission on Human Rights. In 2009 a Committee of Experts was formed to select the commissioners, and it began accepting nominations. After a month, its activities were suspended and did not restart until a new government was formed in December 2010. On 29 March 2011, a new committee was formed and the nomination period was reopened. By the end of 2011 the committee was reviewing the 3,068 nominations it received. The selection process, overseen by UNAMI, was considered transparent and fair.<sup>16</sup>
- 2.3.12** UNHCR's May 2012 Eligibility Guidelines is of the opinion that "protection by national authorities is unlikely to be available in most cases, given that the national authorities have limited capacity to enforce law and order. The ISF, which now have around 930,000 members and are widely acknowledged as increasingly capable and united, reportedly remain vulnerable to corruption and infiltration by militants, and continue to be themselves a major target of attacks. In addition, political disunity has reportedly limited the effectiveness of the ISF. The judiciary, which remains understaffed, is reported to be prone to intimidation, infiltration, political interference and corruption. Judges often face death threats and attacks. Perpetrators of crimes and human rights violations are reportedly still not held accountable"<sup>17</sup> The October 2012 SIGI report notes that "the court system also struggles with human rights issues, including reported acts of torture and retaliatory prosecutions by police and military authorities. The courts have expressed frustration over a lack of legal tools available to confront abuses by security forces".<sup>18</sup>

#### Kurdistan Region of Iraq

- 2.3.13** The semi-autonomous Kurdistan Regional Government (KRG) in the Kurdish region of northern Iraq operates its own security forces composed of fighters known as Peshmerga. The militia is overseen by the KRG's Ministry of Peshmerga Affairs, in effect the KRG's ministry of defence. The forces are drawn from the Peshmerga militias operated by the Kurdistan Democratic Party (KDP) located in the provinces of Arbil and Dahuk, and the Patriotic Union of Kurdistan (PUK) located in As Sulaymaniyah province.<sup>19</sup> The Peshmerga was reported in June 2011 to comprise approximately 200,000 soldiers. It is based in the Kurdistan Region of Iraq, but, at

<sup>15</sup> US State Department, Country Reports on Human Rights Practices for 2011: Iraq, 24 May 2012, Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186428>

<sup>16</sup> US State Department, Country Reports on Human Rights Practices for 2011: Iraq, 24 May 2012, Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186428>

<sup>17</sup> UNHCR, UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers for Iraq, 24 May 2012, b) State Actors, i Iraqi Security Forces (ISF) (page 13) <http://www.unhcr.org/refworld/pdfid/4fc77d522.pdf>

<sup>18</sup> Special Inspector General for Iraq Reconstruction (SIGI), Quarterly Report to Congress, 30 October 2012, *Justice system* p.77 [http://www.sigir.mil/files/quarterlyreports/October2012/Report\\_-\\_October\\_2012.pdf#view=fit](http://www.sigir.mil/files/quarterlyreports/October2012/Report_-_October_2012.pdf#view=fit)

<sup>19</sup> Sentinel Country Risk Assessment, Iraq SCRA Iraq, Security and Foreign Forces, dated 6 September 2010 (Subscription only). COI Service Iraq Country Report August 2011 (para 10.78) [www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/)

the request of the Government of Iraq, it has deployed units to areas outside of the region, including Mosul and Baghdad, to assist the Iraqi security forces. Additionally, the Peshmerga is present in areas with contested administrative boundaries, such as Kirkuk, Diyala and Ninewa Governorates.<sup>20</sup>

- 2.3.14** According to the US State Department report, there are approximately 22 Peshmerga (Kurdish militia) brigades, all originally under the control of the two main Kurdish parties. Under the constitution, the KRG has the right to maintain Regional Guard Brigades, supported financially by the central government but under KRG control. Accordingly, the KRG established a Ministry of Peshmerga Affairs. By the end of 2011, eight of these Peshmerga brigades moved from party control to the control of the ministry, but the central government had not provided financial support for any of the Peshmerga.<sup>21</sup>
- 2.3.15** UNHCR's May 2012 Eligibility Guidelines noted that Kurdish political parties, together with their armed forces and security/intelligence services, are accused by observers of using repressive measures - including harassment, physical assaults, arbitrary arrests, incommunicado detention, torture and ill-treatment in detention – against their political opponents, journalists, and members of ethnic/religious minorities in areas under their de facto or de jure control. Unlawful killings by the Kurdish Security Forces have been reported. Kurdish Security Forces have also reportedly used excessive force, including live ammunition, to disband popular protests. In the Kurdistan Region, judicial independence is said to be hampered by political interference.<sup>22</sup>
- 2.3.16** In light of the above, the assessment of whether effective protection is available in the Kurdistan region of Iraq should be considered in relation to the particular profile of the claimant and the latest country of origin information.

## **2.4 Internal relocation.**

- 2.4.1** Case owners must refer to the Asylum Instruction on [Internal Relocation](#) and in the case of a female applicant, the AI on [Gender Issues in the Asylum Claim](#), and apply the test set out in paragraph 339O of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a part of the country of return where the person would not have a well founded fear of being persecuted and the person can reasonably be expected to stay there, then they will not be eligible for a grant of asylum. Similarly, if there is a part of the country of return where the person would not face a real risk of suffering serious harm and they can reasonably be expected to stay there, then they will not be eligible for humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account.

<sup>20</sup> United Nations Security Council. Children and Armed Conflict Report, dated 15 June 2011 (page 3-4) [http://reliefweb.int/sites/reliefweb.int/files/reliefweb\\_pdf/node-421289.pdf](http://reliefweb.int/sites/reliefweb.int/files/reliefweb_pdf/node-421289.pdf) COI Service Iraq Country Report August 2011 (para 10.79) [www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/)

<sup>21</sup> US State Department, Country Reports on Human Rights Practices for 2011: Iraq, 24 May 2012, Role of the Police and Security Apparatus <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186428>

<sup>22</sup> UNHCR, UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers for Iraq, 24 May 2012 , b) State Actors, i Iraqi Security Forces (ISF) (page 12-13) <http://www.unhcr.org/refworld/pdfid/4fc77d52.pdf>

- 2.4.2** Iraqi nationals are issued with four documents, a Iraqi Nationality Document, a ID card (Jensiya), a Residence Card and a PDS (or ration card). Iraqi nationals are required to present these documents when seeking to relocate, or for any number of other issues, such as buying a car, obtaining a passport, getting married etc.<sup>23</sup> In order to relocate from one part of Iraq to another, it is necessary to produce these documents. In addition, there is a requirement to obtain permission from the council or security office in the area someone intended to relocate to. It might also be necessary to provide proof of accommodation in a new area, for instance a rental agreement or house deeds to allow an individual to relocate furniture and belongings from one area to another.<sup>24</sup>
- 2.4.3** The Ministry of Displacement and Migration (MoDM), have processes in place to help IDPs and returnees obtain any missing documentation. In the Kurdistan Region, the MoDM equivalent, the Bureau of Displacement and Migration (BMD), also provides support with documentation issues.<sup>25</sup>
- 2.4.4** It is not necessary for an individual to return to their registered place of residence to transfer documents to a new area of Iraq. It is possible for example to apply at a registration office in Baghdad, to have documents transferred from elsewhere in Iraq. However the MoDM have said that in practice this does not happen because it is now safe enough for someone to return to their registered place of residence to arrange to transfer documents. The processes and procedures were the same throughout governorates across south and central Iraq.<sup>26</sup>
- 2.4.5** There are no laws restricting the freedom of movement for Iraqi nationals, neither are there laws which restrict Iraqi nationals from changing their permanent place of residence. In addition, there are no laws relating specifically to the freedom of movement of Internally Displaced Persons (IDPs). These rights of freedom of movement are enshrined in the Iraqi Constitution. However while there are no laws governing freedom of movement, there are certain 'regulations' which are required to be met, for instance the production of certain types of Iraqi documents and, in the presentation of personal information to the local council or police.<sup>27</sup>
- 2.4.6** The US State Department report noted that security forces can restrict movement pursuant to a warrant, impose a curfew, cordon off and search an area, and take other necessary security and military measures in response to security threats and

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<sup>23</sup> Letter from Foreign and Commonwealth Office, dated 27 July 2011 entitled Freedom of Movement and requirements to transfer personal documentation in order to relocate in Iraq, 27 July 2011 (hard copy), COI Service Iraq Country Report August 2011 (para 30.02)

[www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/)

<sup>24</sup> Letter from Foreign and Commonwealth Office, dated 27 July 2011 entitled Freedom of Movement and requirements to transfer personal documentation in order to relocate in Iraq, 27 July 2011 (hard copy), COI Service Iraq Country Report August 2011 (para 30.05)

[www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/)

<sup>25</sup> Letter from Foreign and Commonwealth Office, dated 27 July 2011 entitled Freedom of Movement and requirements to transfer personal documentation in order to relocate in Iraq, 27 July 2011 (hard copy), COI Service Iraq Country Report August 2011 (para 30.06)

[www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/)

<sup>26</sup> Letter from Foreign and Commonwealth Office, dated 27 July 2011 entitled Freedom of Movement and requirements to transfer personal documentation in order to relocate in Iraq, 27 July 2011 (hard copy), COI Service Iraq Country Report August 2011 (para 30.06)

[www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/)

<sup>27</sup> Letter from Foreign and Commonwealth Office, dated 27 July 2011 entitled Freedom of Movement and requirements to transfer personal documentation in order to relocate in Iraq, 27 July 2011 (hard copy), COI Service Iraq Country Report August 2011 (para 30.02)

[www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/)

attacks. There are no KRG laws that restrict movement across the areas administered by the KRG, but movement was restricted due to security procedures. Citizens (of any ethnicity, including Kurds) crossing into the region from the south were obligated to stop at checkpoints and undergo personal and vehicle inspections. Officials prevented individuals from entering into the region if they were deemed a security threat. Entry for male Arabs was reportedly more difficult than for others. The officer in charge at the checkpoint was empowered to decline entry into the region.<sup>28</sup>

- 2.4.7** To accommodate increasing numbers of summer and holiday visitors, the KRG security authorities have worked out agreements with other provinces whereby tourist agencies submitted names of visitors in advance for preclearance. Visitors must show where they are lodging and how long they intend to stay.<sup>29</sup>
- 2.4.8** The government estimated that there were approximately 2.5 million IDPs and that about 40% of them were in Baghdad. Sectarian violence that began in 2006 displaced Shia, Sunni, and Christian families. According to the UNHCR, in December approximately 1.3 million people remained internally displaced due to sectarian violence that occurred from 2006 to 2008. Approximately 200,000 remained displaced due to violence that occurred between 2003 and 2005, and approximately one million remained displaced due to policies implemented by the former regime prior to 2003.<sup>30</sup>
- 2.4.9** The UNHCR reported 67,080 Iraqi refugees and 193,610 IDPs registered returns during 2011; these refugees and displaced persons returned to their places of origin or integrated into new communities in the country. While the return figures for 2011 were higher than the 26,410 refugee returns and 92,480 IDP returns recorded in 2010, the number of registered IDPs remained largely the same, likely due to the government reopening the IDP registration process. The UNHCR's August Iraq Returnee Monitoring Report noted that 64% of the estimated 37,000 registered and unregistered refugee returnee families monitored by the UNHCR between August 2010 and July 2011 permanently returned to the country because of improved security and political conditions in Baghdad. Almost all received the Ministry of Migration and Displacement's (MODM) four million dinar [approximately £2,126] returnee grant. While security gains and access to assistance attracted Iraqi refugees to return, high unemployment and an unstable political environment created significant challenges. Many displaced Iraqis reported that they remained unwilling or unable to return to their homes because they feared their religious affiliation would make them an unsafe minority in neighbourhoods segregated along lines of religious identity.<sup>31</sup>

<sup>28</sup> US State Department, Country Reports on Human Rights Practices for 2011: Iraq, 24 May 2012, Role of the Police and Security Apparatus d. Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons

<sup>29</sup> US State Department, Country Reports on Human Rights Practices for 2011: Iraq, 24 May 2012, Role of the Police and Security Apparatus d. Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Person

<sup>30</sup> US State Department, Country Reports on Human Rights Practices for 2011: Iraq, 24 May 2012, Role of the Police and Security Apparatus d. Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons

<sup>31</sup> US State Department, Country Reports on Human Rights Practices for 2011: Iraq, 24 May 2012, Role of the Police and Security Apparatus d. Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186428>



- 2.4.10** The majority of those displaced pre-2003 were moved under the prior regime's policy of Arabization. Many of them have returned to their areas of origin but were included in the displaced population because they were unable to regain their original property and residences, generally in central and southern Iraq. Both Arabs and Kurds displaced in this way have a right to compensation and a process exists, but the government has been slow to implement it.<sup>32</sup>
- 2.4.11** The Iraqi government engage in efforts to promote the safe, voluntary return or resettlement of IDPs. The government had laws and policies in place to protect IDPs in accordance with the UN Guiding Principles on Internal Displacement. In September the government appointed Dr. Farhat Na'emat Ullah Hussain as the national coordinator for displacement issues to implement the MODM's proposed comprehensive strategy, a draft national policy on displacement that recognizes local integration as a legal option for IDPs. While local integration was incorporated into government efforts, the government also continued to encourage families to return to their original homes.<sup>33</sup> The U.S. State Department reports that "Lack of registration limited IDPs' access to basic services and legal documentation to receive food rations from the public distribution system".<sup>34</sup> In September 2012, UNHCR reported that "Some 467,000 persons – comprising of IDPs, returnees and squatters - remain in more than 382 settlements throughout the country, with 191,163 of them living in 12 illegal settlements in the capital, on public land or in public buildings, facing harsh living conditions, with limited access to electricity, adequate sanitation, schools, as well as job opportunities, in addition to being at risk of eviction by the authorities".<sup>35</sup> IOM similarly reports that collective settlements "often lack access to basic services such as water, sanitation, and electricity; situations that become further strained by the arrival of new occupants".<sup>36</sup>
- 2.4.12** The main physical barriers to internal movement across central and southern Iraq are the regular security checkpoints. However provided an individual had the necessary identity documents, there was usually no problem in passing these areas.<sup>37</sup>
- 2.4.13** The Danish Immigration Service 2010 Fact Finding Mission found that any Iraqi national in possession of an Iraqi ID, a Jinsiya (Nationality card) or an Iraqi passport would be able to enter Kurdistanh Region of Iraq without any restrictions. An Iraqi not in possession of those documents would not be allowed to enter KRI at any

<sup>32</sup> US State Department, Country Reports on Human Rights Practices for 2011: Iraq, 24 May 2012, Role of the Police and Security Apparatus d. Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>

<sup>33</sup> US State Department, Country Reports on Human Rights Practices for 2011: Iraq, 24 May 2012, Role of the Police and Security Apparatus d. Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>

<sup>34</sup> US State Department, Country Reports on Human Rights Practices for 2011: Iraq, 24 May 2012, Role of the Police and Security Apparatus d. Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186428>

<sup>35</sup> UNHCR, Iraq Factsheet, September 2012

<http://www.iauiraq.org/documents/1816/September%202012%20fact%20sheet-En.pdf>

<sup>36</sup> IOM, Iraq Special Report- Shelter, July 2012

<http://www.iauiraq.org/documents/1762/IOM%20IRAQ%20SPECIAL%20REPORT%20-%20SHELTER.pdf>

<sup>37</sup> Letter from Foreign and Commonwealth Office, dated 27 July 2011 entitled Freedom of Movement and requirements to transfer personal documentation in order to relocate in Iraq, 27 July 2011 (hard copy), COI Service Iraq Country Report August 2011 (para 30.03) [www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/)

checkpoint.<sup>38</sup> Case owners should also refer to the March 2012 joint report of the Danish Immigration Service/UK Border Agency fact finding mission to Erbil and Dahuk, Kurdistan Region of Iraq (KRI), conducted 11 to 22 November 2011; (Update (2) on entry procedures at Kurdistan Regional government checkpoints (KRG); residence procedures in Kurdistan Region of Iraq (KRI) and arrival procedures at Erbil and Suleimaniyah airports (for Iraqis travelling from non-KRI areas of Iraq)).<sup>39</sup>

**2.4.15** In the May 2012 UNHCR Eligibility Guidelines, UNHCR said that they generally consider that IFA/IRA [internal flight alternative/internal relocation alternative] in the Kurdistan Region is not relevant for many Iraqis due to the accessibility issues. In addition, IFA/IRA in the Kurdistan Region is not reasonable for many Iraqis due to difficulties in accessing livelihood opportunities, affordable housing, education, and food through the Public Distribution System. Persons fleeing persecution emanating from state or non-state actors from the Kurdistan Region will generally not be able to find protection in another part of the Kurdistan Region.<sup>40</sup>

**2.4.16** In considering internal flight/movement within southern and central Iraq, the May 2012 UNHCR Eligibility Guidelines - which were taken into account by the Upper Tribunal in [HM and others \(Article 15\(c\)\) Iraq CG \[2012\] UKUT 00409\(IAC\)](#), - said that UNHCR generally consider that even in cases where an IFA/IRA could be relevant because the agents of persecution are non-state agents whose reach does not extend to a proposed IFA/IRA area in southern and central Iraq, an IFA/IRA may not be a reasonable option in most cases. Reports of insecurity, problematic living conditions and lack of documentation in southern and central Iraq militate against the availability of an IFA/IRA. Further, relocation to an area with a predominantly different ethnic or religious demographic is not reasonable due to latent or overt tensions between ethnic or religious groups. This can be particularly the case when considering relocation of Sunnis to predominantly Shi'ite areas or vice versa.<sup>41</sup>

**2.4.17** UK Border Agency does not however accept UNHCR's conclusions on internal relocation from the central governorates and consider that there is likely to be considerable scope for internal relocation that achieves both safety and reasonableness. In the country guidance case of [MK \(documents – relocation\) Iraq CG \[2012\] UKUT 00126 \(IAC\)](#) the Upper Tribunal concluded that :the lack of documentation relating to identity in the form of the Civil Status ID (CSID), Iraqi Nationality Certificate (INC) and Public Distribution System (PDS) card (food ration card) is not ordinarily an insuperable problem and it is not a factor likely to make

<sup>38</sup> Danish Immigration Service report entitled Entry Procedures and Residence in Kurdistan Region of Iraq (KRI) for Iraqi Nationals (Danish Entry Procedures Report 2010), published 15 April 2010 (page 9) <http://www.unhcr.org/refworld/category,COI,DIS,,4bd95fe52,0.html> COI Service Iraq Country Report August 2011 (para 30.17) [www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/)

<sup>39</sup> Joint report of the Danish Immigration Service/UK Border Agency fact finding mission to Erbil and Dahuk, Kurdistan Region of Iraq (KRI), conducted 11 to 22 November 2011. Update (2) on entry procedures at Kurdistan Regional government checkpoints (KRG); residence procedures in Kurdistan Region of Iraq (KRI) and arrival procedures at Erbil and Suleimaniyah airports (for Iraqis travelling from non-KRI areas of Iraq). March 2012. <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/coi/iraq/>

<sup>40</sup> UNHCR, UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers for Iraq, 24 May 2012 b) Summary for IFA/IRA in Southern and Central (page 52) <http://www.unhcr.org/refworld/pdfid/4fc77d522.pdf>

<sup>41</sup> UNHCR, UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers for Iraq, 24 May 2012 b) Summary for IFA/IRA in Southern and Central Iraq (page 56) <http://www.unhcr.org/refworld/pdfid/4fc77d522.pdf>

return to any part of Iraq unsafe or unreasonable. The Upper Tribunal went on to find:

- (2) (a) Entry into and residence in the KRG can be effected by any Iraqi national with a CSID, INC and PDS, after registration with the Asayish (local security office). An Arab may need a sponsor; a Kurd will not.
  - (b) Living conditions in the KRG for a person who has relocated there are not without difficulties, but there are jobs, and there is access to free health care facilities, education, rented accommodation and financial and other support from UNHCR.
- (3) Despite bureaucratic difficulties with registration and the difficulties faced by IDPs, it is wrong to say that there is, in general, no internal flight alternative in Iraq, bearing in mind in particular the levels of governmental and NGO support available.

Where an IDP is unregistered, and hence is unlikely to have a PDS card, and is unable to access family, governmental or NGO support, it may be that relocation would be unreasonable, in particular, of course, if they faced a real risk of significant harm in their home area and could not therefore be expected to return there to renew their PDS card. The particular circumstances of a returnee may therefore be such as to make relocation unreasonable [para 87].

**2.4.18** Furthermore in the country guidance case of [HM and others \(Article 15\(c\)\) Iraq CG \[2012\] UKUT 00409\(IAC\)](#) the Upper Tribunal found that further evidence that has become available since the Tribunal heard [MK \(documents – relocation\) Iraq CG \[2012\] UKUT 00126 \(IAC\)](#) does not warrant any departure from its conclusions on internal relocation alternatives in the KRG or in central or southern Iraq save that the evidence is now sufficient to establish the existence of a Central Archive maintained by the Iraqi authorities retaining civil identity records on microfiche, which provides a further way in which a person can identify themselves and obtain a copy of their CSID, whether from abroad or within Iraq.

**2.4.19** Case owners must carefully consider the relevance and reasonableness of internal relocation on a case by case basis taking full account of the individual circumstances of the particular claimant and the specific risk to that individual.

**2.4.20** When considering the reasonableness or otherwise of internal relocation case owners will need to consider the health, financial circumstances and support network of the claimant as well as the suitability of the proposed area and whether this would be accessible to the returnee, taking into account issues such as ethnicity, religion, gender, place of habitual residence, age. Caseowners need to consider the ability of the persecutor to pursue the claimant in the proposed area, and the protection available to the claimant in that area from State authorities. The situation in Iraq is complex and still evolving. Claims should be considered with the most up-to-date country of origin information.

## 2.5 Country guidance caselaw

[HM and others \(Article 15\(c\)\) Iraq CG \[2012\] UKUT 00409\(IAC\)](#) In this country guidance case the Upper Tribunal found that:

- (i) Whilst the focus of the present decision is the current situation in Iraq, nothing in the further evidence now available indicates that the conclusions that the Tribunal in HM1 reached about country conditions in Iraq were wrong.
- (ii) As regards the current situation, the evidence does not establish that the degree of indiscriminate violence characterising the current armed conflict taking place in the five central governorates in Iraq, namely Baghdad, Diyala, Tameen (Kirkuk), Ninewah, Salah Al-Din, is at such a high level that substantial grounds have been shown for believing that any civilian returned there would solely on account of his presence there face a real risk of being subject to that threat.
- (iii) Nor does the evidence establish that there is a real risk of serious harm under Article 15(c) for civilians who are Sunni or Shi'a or Kurds or have former Ba'ath Party connections: these characteristics do not in themselves amount to "enhanced risk categories" under Article 15(c)'s "sliding scale" (see [39] of [Elgafaji](#)).
- (iv) Further evidence that has become available since the Tribunal heard [MK \(documents – relocation\) Iraq CG \[2012\] UKUT 00126 \(IAC\)](#), does not warrant any departure from its conclusions on internal relocation alternatives in the KRG or in central or southern Iraq save that the evidence is now sufficient to establish the existence of a Central Archive maintained by the Iraqi authorities retaining civil identity records on microfiche, which provides a further way in which a person can identify themselves and obtain a copy of their CSID, whether from abroad or within Iraq.
- (v) Regarding the issue of whether there would be a risk of treatment contrary to Article 3 ECHR arising from returns from the UK to Baghdad International Airport (BIAP):
  - a. If a national of Iraq who has failed to establish that conditions inside Iraq are unsafe is compulsorily returned to Baghdad International Airport (BIAP) on either a current or expired Iraqi passport, there is no real risk of detention in the course of BIAP procedures (except possibly in respect of those who are the subject of a judicial order or arrest warrant). Nor is there such a risk if such a person chooses to make a voluntary return with a laissez passer document which can be issued by the Iraqi embassy in the UK.
  - b. If, however, such a person is compulsorily returned to BIAP without either a current or expired Iraqi passport, he may be at risk of detention in the course of BIAP procedures and it cannot be excluded that the detention conditions might give rise to a real risk of treatment contrary to Article 3 ECHR. Such a risk is however, purely academic in the UK context because under the current UK returns policy there will be no compulsory return of persons lacking such documents.

The Tribunal also made the following relevant additional findings:

Sunni/Shi'a

297 ... However, whilst for the above reasons we find the evidence as a whole insufficient to establish Sunni or Shi'a identity as in itself an "enhanced risk

category” under Article 15(c), we do accept that depending on the individual circumstances, and in particular on their facing return to an area where their Sunni or Shi’a brethren are in a minority, a person may be able to establish a real risk of Article 15(c). (They may, of course, also be able to establish a real risk of persecution under the Refugee Convention or of treatment contrary to Article 3 of the ECHR). [...]

#### Former Ba’athists

301. It was also suggested in the written reports of the two experts that being a former Ba’athist or member of his/her family would be sufficient to place one in an enhanced risk category for Article 15(c) purposes. However, the evidence as a whole does not indicate that such persons are at real risk of indiscriminate violence. Rather, it indicates that whether former Ba’athists are targeted depends very much on their individual circumstances. Family members of former Ba’athists do not appear to be of concern as a group in their own right. [...]

#### State protection

302. With reference to the evidence relating to the extent of state failure (one of the further “metrics” for assessing the level of indiscriminate violence) , it is clear that there are significant shortcomings in the ability and sometimes the willingness of the authorities in central and southern Iraq to protect their population. Iraq remains second in global indexes of failed states. At the same time, like the Tribunal in HM1 at [211], we would observe that, this “metric” must be considered in the context of the existing levels of physical violence and the related threats they pose to the civilian population. The protection concerned is principally about that which a state is able to afford its citizens in a time of war and emergency; it is not principally about whether, for example, there is a criminal justice system ensuring punishment of offenders. In this context we observe that in terms of the basic task of the Iraqi state in providing security, the evidence indicates that the ISF is widely acknowledged as increasingly capable and united notwithstanding problems of corruption and infiltration by militants and political disunity. Bearing in mind that there is still a state of armed conflict in Iraq and that the situation is not one in which the state is required by international human rights law to guarantee all human rights (derogable as well as non-derogable), we consider that despite serious shortcomings the state authorities have been able to keep the level of indiscriminate violence significantly below what it was in 2006 and 2007.

**Note:** Case owners should note that the above determination may be subject to appeal, however as stated by the Court of Appeal in [SG\(Iraq\) \[2012\] EWCA Civ 940](#), country guidance determinations of the Upper Tribunal remain authoritative unless and until they are set aside on appeal or replaced by a subsequent country guidance determination. Case owners must therefore follow the above guidance pending the outcome of any appeal. A claimant affected by, but not party to, a country guidance determination which is under appeal to the Court of Appeal is not entitled to an automatic stay of removal pending the outcome of the appeal. It is in the court’s discretion to grant a stay, but the court should not stay removal pending the decision of the Court of Appeal unless the claimant had adduced a clear and coherent body of evidence that the findings of the tribunal were in error.

**Supreme Court. RT (Zimbabwe) & others v Secretary of State for the Home Department [2012] UKSC 38 (25 July 2012)**

The Supreme Court ruled that the rationale of the decision in HJ (Iran) applies to cases concerning imputed political opinion. Under both international and European human rights law, the right to freedom of thought, opinion and expression protects non-believers as well as believers and extends to the freedom not to hold and not to express opinions. Refugee law does not require a person to express false support for an oppressive regime, any more than it requires an agnostic to pretend to be a religious believer in order to avoid persecution. Consequently an individual cannot be expected to modify their political beliefs, deny their opinion (or lack thereof) or feign support for a regime in order to avoid persecution.

**MK (documents – relocation) Iraq CG [2012] UKUT 00126 (IAC)**. In this country guidance case the Upper Tribunal concluded that:

- (1) Since the lack of documentation relating to identity in the form of the Civil Status ID (CSID), Iraqi Nationality Certificate (INC) and Public Distribution System (PDS) card (food ration card) is not ordinarily an insuperable problem, it is not a factor likely to make return to any part of Iraq unsafe or unreasonable.
  - a) The CSID is an important document, both in its own right and as a gateway to obtaining other significant documents such the INC and the PDS. An inability to replace the CSID is likely to entail inability to access the INC and PDS.
  - b) Although the general position is that a person who wishes to replace a lost CSID is required to return to their home area in order to do so, there are procedures as described in this determination available which make it possible (i) for Iraqis abroad to secure the issue of a new CSID to them through the offices of the local Iraqi Embassy; (ii) for Iraqis returned to Iraq without a CSID to obtain one without necessarily having to travel to their home area. Such procedures permit family members to obtain such documentation from their home areas on an applicant's behalf or allow for a person to be given a power of attorney to obtain the same. Those who are unable immediately to establish their identity can ordinarily obtain documentation by being presented before a judge from the Civil Status Court, so as to facilitate return to their place of origin.
- (2) (a) Entry into and residence in the KRG can be effected by any Iraqi national with a CSID, INC and PDS, after registration with the Asayish (local security office). An Arab may need a sponsor; a Kurd will not.
  - b) Living conditions in the KRG for a person who has relocated there are not without difficulties, but there are jobs, and there is access to free health care facilities, education, rented accommodation and financial and other support from UNHCR.
- (3) Despite bureaucratic difficulties with registration and the difficulties faced by IDPs, it is wrong to say that there is, in general, no internal flight alternative in Iraq, bearing in mind in particular the levels of governmental and NGO support available.

- (4) Whilst the situation for women in Iraq is, in general, not such as to give rise to a real risk of persecution or serious harm, there may be particular problems affecting female headed households where family support is lacking and jobs and other means of support may be harder to come by. Careful examination of the particular circumstances of the individual's case will be especially important.

**[EA \(Sunni/Shi'a mixed marriages\) Iraq CG \[2011\] UKUT 00342 \(IAC\). 26 September 2011](#)**

In this country guidance case the Upper Tribunal concluded that:

- (i) In general there is not a real risk of persecution or other significant harm to parties to a Sunni/Shi'a marriage in Iraq.
- (ii) It may, however, be shown that there are enhanced risks, crossing the relevant risk thresholds, in rural and tribal areas, and in areas where though a Sunni man may marry a Shi'a woman without risk, the converse may not pertain.
- (iii) Even if an appellant is able to demonstrate risk in his/her home area, in general it will be feasible for relocation to be effected, either to an area in a city such as Baghdad, where mixed Sunni and Shi'a families live together, or to the Kurdistan region.

In its determination the Upper Tribunal also stated (at Para 21): "It is in our view reasonable to conclude the situation has not changed materially since the publication of the country guidance in [HM and Others \(Article 15\(c\)\) Iraq CG \[2010\] UKUT 331 \(IAC\) 22 September 2010](#) as regards the general levels of violence in Iraq. Clearly there has been an improvement since 2006/2007, but equally significant problems remain and there are particularly categories of people... who are at especial risk."

**[HM and Others \(Article 15\(c\)\) Iraq CG \[2010\] UKUT 331 \(IAC\) 22 September 2010](#)**. This country guidance case primarily concerned whether, under Article 15(c) of the Qualification Directive, there is in Iraq such a high level of indiscriminate violence that any civilian returned there would be at risk of serious harm. The Upper Tribunal found that:

- i. Rule 9(5) of the Tribunal Procedure (Upper Tribunal) Rules 2008, which provides for UNHCR participation in Upper Tribunal proceedings as an intervener in an "asylum case", is to be construed purposively to include subsidiary (humanitarian) protection.
- ii. In deciding whether to accept an application by an appellant to withdraw an appeal in an asylum-related case which the parties have previously agreed was suitable for fresh Tribunal country guidance, particularly relevant will be the importance to the public interest of the Tribunal assisting immigration judges, primary decision-makers and litigants in giving such guidance wherever it is possible and reasonably practical to do so.
- iii. The Tribunal may decide that permission to adduce an expert report on a country guidance case shall be given on the basis that the report is disclosed to the Upper Tribunal irrespective of whether the commissioning party intends to call the witness.
- iv. Following [Elgafaji](#), Case C-465/07, [2009] EUECJ C-465/07 and [QD \(Iraq\) \[2009\] EWCA Civ 620](#), in situations of armed conflict in which civilians are affected by the fighting, the approach to assessment of the level of risk of indiscriminate violence must be an inclusive one, subject only to the need for there to be a sufficient causal nexus between the violence and the conflict.

- v. The degree of indiscriminate violence characterising the current armed conflict taking place in Iraq is not at such a high level that substantial grounds have been shown for believing that any civilian returned there, would, solely on account of his presence there face a real risk of being subject to that threat.
- vi. If the figures relating to indices such as the number of attacks or deaths affecting the civilian population in a region or city rise to unacceptably high levels, then, depending on the population involved, Article 15(c) might well be engaged, at least in respect of the issue of risk in that area, although it is emphasised that any assessment of real risk to the appellant should be one that is both quantitative and qualitative and takes into account a wide range of variables, not just numbers of deaths or attacks.
- vii. If there were certain areas where the violence in Iraq reached levels sufficient to engage Article 15(c) the Tribunal considers it is likely that internal relocation would achieve safety and would not be unduly harsh in all the circumstances.
- viii. The evidence relating to UK returns of failed asylum seekers to Iraq in June 2010 does not demonstrate that the returns process will involve serious harm. Further, it is significant that UKBA is already taking steps to improve procedures in the light of concerns expressed by UNHCR and others over the two charter flights in that month.
- ix. So far as concerns UK enforced returns to Iraq, the Tribunal is not satisfied that recent problems demonstrate that the process results in serious harm.

NB: On 30 November 2011 the Court of Appeal quashed and remitted [HM and Others \(Article 15\(c\)\) Iraq CG \[2010\] UKUT 331 \(IAC\)](#) to the Upper Tribunal for re-hearing as country guidance.. The country guidance case has since been re-heard and the determination in [HM and others \(Article 15\(c\)\) Iraq CG \[2012\] UKUT 00409\(IAC\)](#) was handed down on 13 November 2012.

**[QD \(Iraq\) v Secretary of State for the Home Department \[2009\] EWCA Civ620 \(24 June 2009\)](#)** The Court of Appeal provided further domestic guidance on [Elqafaji](#) and that the test to be applied “Is there in a country or a material part of it such a high level of indiscriminate violence that substantial grounds exist for believing that an applicant, solely by being present there, faces a real risk which threatens his life or person?” The Court of Appeal also clarified that the word “exceptional” is used by the ECJ to stress that not every armed conflict or violent situation will attract the protection of Article 15c. The reference to ‘threat’ does not dilute the need for there to be a real risk. The phrase “situations of international or internal armed conflict” is broad enough to include any situation of indiscriminate violence which reaches the level described in [Elqafaji](#). There is no requirement that the armed conflict itself must be “exceptional” but there must be an intensity of indiscriminate violence sufficient to meet the test in [Elqafaji](#).

**[Elqafaji v. Staatssecretaris van Justitie, C-465/07, European Union: European Court of Justice, 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)

**[FH v Sweden. 32621/06 \[2009\] ECHR 99 \(29 January 2009\)](#)** The ECtHR concluded that whilst the general situation in Iraq, and in Baghdad, is insecure and problematic, it is not so serious as to cause, by itself, a violation of Article 3 ECHR.

**[ZQ \(serving soldier\) Iraq CG \[2009\] UKAIT 00048 \(2 December 2009\)](#)**. The Tribunal concluded that NH (Iraq-Yazidis) Iraq CG [2004] UKIAT 00306 is no longer to be followed. Whilst being a Yazidi does not as such place a person at risk on return to central and southern Iraq, it is a significant risk factor and special reasons would need to exist for not finding that such a person faces a real risk of persecution or treatment contrary to Article 3 ECHR.

**[SR \(Iraqi Arab Christian: relocation to KRG\) Iraq CG \[2009\] UKAIT 00038 \(29 July 2009\)](#)** The Tribunal found that an Iraqi Arab Christian at risk in his home area and throughout central and southern Iraq is likely to be able to obtain the documentation needed by a person wishing to relocate within Iraq, and is likely to be able to relocate to the KRG with the assistance of a sponsor, in particular, on the basis of the latest statistics available, in Erbil or Dohuk. It also found that once in the KRG, the appellant would be able to manage, particularly with the support of the church. This existence may be difficult without family or clan support, but would not be unduly harsh. (para 98)

**[NS \(Iraq: perceived collaborator: relocation\) Iraq CG \[2007\] UKAIT 00046](#)** The Tribunal concluded that:

- (i) 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
- (ii) 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.
- (iii) 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.

**[LM \(Educated women – Chaldo-Assyrians – risk\) Iraq CG \[2006\] UKAIT 00060](#)** The Tribunal concluded that female Christians 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 connections in the Kurdistan region, no family support, English speaking or non-Kurdish speaking) may increase risk to level engaging both

Conventions. [RA \(Christians\) Iraq CG \[2005\] UKIAT 00091 \(22 April 2005\)](#) remains correct on position of male Christians. No sufficiency of protection outside Kurdistan region.

[SM and Others \(Kurds - Protection - Relocation\) Iraq v. Secretary of State for the Home Department, CG \[2005\] 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 found that “relocation from the KDP area to the PUK area or vice versa in the north would not be without its difficulties, but in general considered that it would not be unduly harsh nor would it lead to treatment giving rise to a breach of a person’s human rights. Mutandis mutandis the Tribunal were of the same view as regards relocation away from the area of a tribe with which a person has experienced problems. The Tribunal also considered that relocation to the south for a Kurd can in general be effected without this being unduly harsh and without giving rise to a real risk in all but the most exceptional high profile cases of their relocation being brought to the attention of one of the two political parties i.e. the KDP or the PUK of whom they had a fear.”

[RA \(Christians\) Iraq CG \[2005\] UKIAT 00091 \(22 April 2005\)](#) 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)

The Tribunal also noted that “Iraq is a country where change occurs at a faster rate than most other countries of the world. Country Guidance cases on Iraq at present are unlikely to have a very long shelf life. Nevertheless we can only deal with the evidence as it is before us at the time of the hearing, and we have concluded with regard to the evidence on risk to Christians in Iraq that at present though the position has, as we say, deteriorated since it was examined by the Tribunal in AK, that it does not in the case of a Christian such as the appellant who has no particular distinguishing features to his Christianity, give rise to a real risk. Again the categories identified by the Tribunal in AK at paragraph 10 would appear to be at particular risk, especially clerics of some eminence and prominence. The comment made at paragraph 11 in that determination concerning alcohol sellers or owners of cinemas showing films offence to Muslims is a comment which we would endorse and repeat.”(para 74).

[OH \(risk – Ba'athist father\) Iraq \[2004\] UKIAT 00254](#). The appellant's claim was that he was a Kurd and that his father had been involved with the Ba'ath party and was murdered in January 1999 because his activities had resulted in many people being arrested, executed or deported.

The appellant was a simple member of the Ba'ath party. He did not undertake any duties, but attended meetings when asked. In March 2002, he was told that he would have to join the Fidayi Saddam group and go to Palestine to fight against Israel and to change his ethnicity from Kurdish to Arab. In April 2002, the authorities

came to his shop and detained him, and told him he had a month to decide what to do. As he feared execution, he decided to leave Iraq in May 2002 and came to the United Kingdom via Turkey.

The Adjudicator found the appellant to be credible, but concluded that, neither separately, as a consequence of his own limited involvement in the Ba'ath party or as a family member of a Ba'ath party member, or cumulatively, was there any real risk on return of persecution or breach of his human rights.

**[AK \(Iraq, Christians, risk\) Iraq CG \[2004\] UKIAT 00298 \(08 November 2004\).](#)**

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. It concluded that "the Appellant had shown a real risk of persecution on account of his Christianity on return to Iraq. There is risk, but it is not a real risk as it is required to be."

**[SI \(expert evidence - Kurd - SM confirmed\) Iraq CG \[2008\] UKAIT 00094.](#)** The Tribunal found:

1. Failure by the respondent to adduce her own expert evidence cannot imbue expert evidence submitted by an appellant with any greater value than it merits when considered alongside the rest of the evidence.
2. The evidence relating to the official justice system in the KRG falls short of demonstrating that all persons who are tried in that part of Iraq will face a process that would amount to a flagrant denial of the notion of a fair trial: [SM and Others \(Kurds-Protection-Relocation\) Iraq CG \[2005\] UKAIT 00111](#) followed.
3. The guidance given in [SM](#) regarding relocation of a Kurd from the KRG to central or southern Iraq, which was that it can in general be effected without this being unduly harsh and without giving rise to a real risk "in all but the most exceptional high profile cases" of their relocation being brought to the attention of [any of the KRG authorities], also remains valid.
4. "Honour killings" and "blood feuds" are distinct phenomena, albeit they may sometimes overlap in practice.

**[NA \(Palestinians - risk\) Iraq CG \[2008\] UKAIT 00046.](#)** In the light of recent evidence highlighting that the position of ethnic Palestinians in Iraq has worsened. [JA \(Ethnic Palestinian-Iraq-Objective Evidence\) Iraq CG \[2005\] UKIAT 00045](#) is no longer to be considered as authoritative on this issue. Currently ethnic Palestinians in Iraq in general face a real risk of persecution and treatment contrary to Article 3 ECHR. Whilst each case is to be considered on its merits, it would only be in exceptional cases that an ethnic Palestinian would not be at real risk.

**[HA \(WCPI – IMIK – KRG\) Iraq CG \[2007\] UKAIT 00087.](#)** In this country guidance case the Tribunal found that:

- (i) There is no satisfactory evidence that Workers Communist Party of Iraq (WCPI) members in the Kurdish Regional Governorates are at risk from IMIK

(the Islamic Movement of Kurdistan) or anyone else. There is some evidence that the WCPI has a presence both in the KRG and the rest of Iraq.

- (ii) There is no satisfactory evidence that IMIK now enforces its views by violent means in the KRG. It has six seats in the KRG parliament.
- (iii) This determination does not consider issues relating to the WCPI or IMIK in the parts of Iraq that are not in the KRG. This determination supersedes [DH \(Risk – IMIK – KAA\) Iraq CG \[2002\] UKIAT 05099](#) but does not consider issues relating to the WCPI or IMIK outside the KRG.

**[SM \(Entry clearance application in Jordan – proportionality\) 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.

**[SA \(Entry clearance application in Jordan – proportionality\) 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. There is significant further evidence to show that the guidance in [KJ \(Entry Clearance – Proportionality\) Iraq CG \[2005\] UKIAT 00066](#) no longer applies.

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

- 3.1** This Section sets out the main types of asylum claim, humanitarian protection claim and discretionary leave claim on human rights grounds (whether explicit or implied) made by those entitled to reside in Iraq. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant Asylum Instructions, but how these affect particular categories of claim are set out in the instructions below. All Asylum Instructions can be accessed via the Horizon intranet site. The instructions are also published externally on the Home Office internet site at:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/>

- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the applicant 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 '[Considering the asylum claim and assessing credibility](#)').

- 3.3** For any asylum cases which involve children either as dependents or as the main applicants, case owners must have due regard to Section 55 of the Borders, Citizenship and Immigration Act 2009. The UK Border Agency instruction '[Every Child Matters; Change for Children](#)' sets out the key principles to take into account in all Agency activities.
- 3.4** If the applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the applicant 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.
- 3.5 Credibility**
- 3.5.1** 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 'Section 4 – Making the Decision in the Asylum Instruction '[Considering the asylum claim and assessing credibility](#)'. Case owners must also ensure that each asylum application has been checked against previous UK visa applications. Where an asylum application has been biometrically matched to a previous visa application, details should already be in the UK Border Agency file. In all other cases, the case owner should satisfy themselves through CRS database checks that there is no match to a non-biometric visa. Asylum applications matches to visas should be investigated prior to the asylum interview, including obtaining the Visa Application Form (VAF) from the visa post that processed the application.
- 3.6 General security situation**
- 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.** The security situation in Iraq continues to affect the civilian population, who face ongoing acts of violence perpetrated by armed opposition groups and criminal gangs. In particular, armed groups continue to employ tactics that deliberately target crowded public areas and kill and maim civilians indiscriminately. While some attacks appear to be sectarian in nature, frequently targeting religious gatherings or residential areas, others seem random, aimed at creating fear and terror in the population at large and casting doubt over the ability of the Government and Iraqi security forces to stem the violence. Assassinations also persist across the country, targeting, inter alia, Government employees, tribal and community leaders, members of the judiciary and associated persons.<sup>42</sup>
- 3.6.3** Apparently making use of the political wrangling which has followed the elections for Iraq's Council of Representatives (CoR) held on 7 March 2010, armed Sunni groups (such as Al-Qaeda in Iraq) have stepped up attacks since December 2011. These attacks have been carried out primarily against Shi'ite civilians in what appears to be an effort to stir sectarian tensions and undermine confidence in the ISF and, ultimately, the Iraqi Government. The political stalemate also comes at an uncertain

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<sup>42</sup> UN Security Council. Second report of the Secretary-General pursuant to paragraph 6 of the resolution 1936 (2010), dated 31 March 2011 (Page 10) <http://www.unhcr.org/refworld/docid/4db69cb32.html>  
COI Service Iraq Country Report August 2011 (para 8.02)  
[www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/)

period in the wider region: the repercussions of ongoing unrest and tensions in Syria and Iran, with which Iraq shares porous borders and political and economic ties, are not yet known. Iraq's political difficulties have also reportedly increased tensions with neighbouring Turkey.<sup>43</sup>

- 3.6.4** The US State Department Report covering 2011 stated that violence against the government and civilian population perpetrated by terrorists and extremist groups, including religiously affiliated militias, remained a problem during the year, and bombings, executions, and killings were regular occurrences throughout all regions and sectors of society. Casualty estimates varied. For example, Agence France-Press (AFP) reported figures compiled by the ministries of health, interior, and defence that indicated that 1,578 civilians, 609 police officers, and 458 soldiers were killed during the year in comparison to 2,505 civilians, 671 police officers, and 429 soldiers in 2010. Direct monitoring by the UN Assistance Mission for Iraq (UNAMI) indicated that a minimum of 2,771 civilians were killed in 2011. In 2010 UNAMI recorded 2,953 civilian deaths.<sup>44</sup>
- 3.6.5** In the recent country guidance case of [HM and others \(Article 15\(c\)\) Iraq CG \[2012\] UKUT 00409\(IAC\)](#) the Tribunal found (at para 128) that “..the thrust of the background evidence is that overall there is no clear trend demonstrating either an increase or decrease in the level and intensity of violence assessed on a year by year basis. So far as concerns the figures for civilian casualties for 2011, they are similar to those for 2010. It was agreed ...that overall there was no evidence to show any increase in that level in 2012. The Brookings Institute figures for the first 6 months of 2012 suggest that 2012 may see an increase over the figure for 2011 but only a very small one.”
- 3.6.6** UNHCR reports that Iraq continues to experience significant civilian casualties. In 2010 and 2011, media reports recorded more than 4,000 Iraqi civilians killed, on average, each year, bringing the total number of Iraqi civilians killed since 2003 to over 114,000. From these figures, it appears that there is no noticeable downward trend in civilian casualty figures since mid 2009. “A persistent low-level conflict” is said to have taken root in the country, which will continue to kill civilians at a similar rate for years to come (“an impassable minimum”). Iraqi Government sources provide consistently lower casualty figures than media reports by international observers<sup>45</sup> While violence has fallen significantly since the worst period of sectarian conflict in 2006 and 2007, bombings, shootings and assassinations by armed groups continue to occur on a daily basis, taking a serious toll mainly on the civilian population, and mostly in central Iraq. Baghdad and Ninewa, especially Mosul, remain the most violent areas in Iraq, followed by Kirkuk, Al-Anbar, Babel, Diyala and Salah Al-Din Governorates.<sup>46</sup>
- 3.6.7** The British Embassy in Bagdad reported in April 2012 that the level of violence across Iraq has dropped significantly since mid 2007. The increased multinational

<sup>43</sup> UNHCR, UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers for Iraq, 24 May 2012 (page 7) <http://www.unhcr.org/refworld/pdfid/4fc77d522.pdf>

<sup>44</sup> US State Department, Country Reports on Human Rights Practices for 2011: Iraq, 24 May 2012, Section 1a Arbitrary or Unlawful Deprivation of Life <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>

<sup>45</sup> UNHCR, UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers for Iraq, 24 May 2012 Civilian casualties (page 44) <http://www.unhcr.org/refworld/pdfid/4fc77d522.pdf>

<sup>46</sup> UNHCR, UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers for Iraq, 24 May 2012 Civilian casualties (page 44) <http://www.unhcr.org/refworld/pdfid/4fc77d522.pdf>

troop levels, allied with increased capability in Iraqi Security Forces (ISF) succeeded in separating Sunni extremists from their support base and marginalising their influence. Once these factors began to take effect the level of attacks began to reduce significantly year on year; though the trend of comparatively busier summers and quieter winters is still evident. By the time US Forces withdrew in December 2011 the average number of weekly incidents had fallen to below 50, in contrast with 300 seen in early 2009.<sup>47</sup>

- 3.6.8** The same source noted that following the departure of US Forces, the incident levels have been more difficult to quantify, as the withdrawal has meant a lack of entirely accurate data from a single source. Rather than working from corroborated reporting, security companies now use a 'best estimate' system based on open sources, limited Iraqi Security Force reporting, limited US reporting and an unofficial network among western security companies. That said, despite occasional peaks and troughs the level has remained broadly consistent since US Forces withdrawal in late 2011. The only exception to this is the occasional large scale coordinated attacks mounted by Sunni extremists, which can significantly distort small data samples, but still fall far short of activity pre-2009.<sup>48</sup>
- 3.6.9** In October 2012, the Centre for Security Studies reported that "The data on trends in attacks and casualties are inconsistent and must be interpreted in terms of the larger context of violence in Iraq, but most sources show that recent levels of violence in Iraq continue to show alarming trends".<sup>49</sup> The report of the UN Secretary General covering the period between 29 March 2012 and 11 July 2012 notes that "the overall security situation in Iraq remained unpredictable, with a significant number of deadly attacks, especially during religious celebrations".<sup>50</sup>
- 3.6.10** According to the October 2012 Quarterly Report to Congress by the Special Inspector General for Iraq Reconstruction (SIGI), "Violence spiked this quarter, hitting its highest level in two years. According to the MOI, 854 civilians died and another 1,640 were wounded in violent attacks this quarter."<sup>51</sup> [...] Reportedly more than 100 senior government officials were targeted for assassination this quarter, with 58 of them killed. Another 120 bystanders - including family members, bodyguards, and other citizens - perished in the attacks. Targets included judges, members of the CoR, and senior members of the ISF.<sup>52</sup> The same source noted that "Principal Deputy Minister of Interior Adnan al-Asadi suggested that previously weakened Sunni militant groups, including al-Qaeda in Iraq, had regained strength. He added that the government - because of weak intelligence capabilities - was unable to detect and thus prevent attacks by these organized groups".<sup>53</sup>
- 3.6.11** Almost all attacks are currently attributable to Sunni extremists and target current Iraqi Security Forces, Government of Iraq (GoI) employees, or very occasionally

<sup>47</sup> Letter from British Embassy Baghdad entitled, 'Indiscriminate Violence in Iraq' 7 April 2012

<sup>48</sup> Letter from British Embassy Baghdad entitled, 'Indiscriminate Violence in Iraq' 07 April 2012

<sup>49</sup> Centre for Security Studies, Patterns of Violence in Iraq, 24 October 2012, Iraq's Continuing levels of internal violence [http://csis.org/files/publication/121024\\_Iraq\\_Violence.pdf](http://csis.org/files/publication/121024_Iraq_Violence.pdf)

<sup>50</sup> United Nations, Third report of the Secretary-General pursuant to resolution 2001 (2011) [S/2012/535], 11/07/2012, para 62 <http://unami.unmissions.org/LinkClick.aspx?fileticket=iGp4a6e-BZE%3d&tabid=2837&language=en-US>

<sup>51</sup> Special Inspector General for Iraq Reconstruction (SIGI), Quarterly Report to Congress, 30 October 2012, Security p.9 [http://www.sigir.mil/files/quarterlyreports/October2012/Report\\_-\\_October\\_2012.pdf#view=fit](http://www.sigir.mil/files/quarterlyreports/October2012/Report_-_October_2012.pdf#view=fit)

<sup>52</sup> Special Inspector General for Iraq Reconstruction (SIGI), Quarterly Report to Congress, 30 October 2012, Security p.9 [http://www.sigir.mil/files/quarterlyreports/October2012/Report\\_-\\_October\\_2012.pdf#view=fit](http://www.sigir.mil/files/quarterlyreports/October2012/Report_-_October_2012.pdf#view=fit)

<sup>53</sup> Special Inspector General for Iraq Reconstruction (SIGI), Quarterly Report to Congress, 30 October 2012, Security p.10 [http://www.sigir.mil/files/quarterlyreports/October2012/Report\\_-\\_October\\_2012.pdf#view=fit](http://www.sigir.mil/files/quarterlyreports/October2012/Report_-_October_2012.pdf#view=fit)

Shia gathering areas. Most incidents are targeted attacks against specific individuals, with only a small number of indiscriminate attacks.<sup>54</sup> UNHCR reports that “While most attacks by armed groups are targeted against specific groups and individuals, due to the nature of the tactics employed, including large-scale bombings and attacks in public places, they inevitably have an indiscriminate effect, causing significant casualties among bystanders”.<sup>55</sup> UNAMI notes that during 2011 “armed opposition groups continued to deliberately target civilians. Many attacks targeting Iraqi security forces also employed asymmetric and indiscriminate tactics, such as the use of Improvised Explosive Devices (IEDs) or Vehicle Borne Improvised Explosive Devices (VBIEDs) on roadsides or near police checkpoints, government buildings and installations. Such attacks were often carried out in crowded public areas such as markets, cafes or mosques and churches, revealing an intent to kill and injure a maximum number of civilians, or with indifference to the number and type of casualties”.<sup>56</sup>

**3.6.12** Broadly speaking the threat of terrorist incident can be broken down along ethnic lines between Sunni extremists (Al Qaeda Iraq (AQI), Islamic State of Iraq) and Shia militias (Jaysh Al Mahdi (JAM), Asa’ib Ahl Al Maq (AAH), Kita’ib Hizballah (KH) (Hizballah Brigade). FCO’s interlocutors reported that at least 90% of incidents are attributable to Sunni extremists; - Sunni extremists presently have high intent to carry out attacks, but moderate capability; whereas Shia militia have low intent but high capability.<sup>57</sup>

#### Sunni extremists

**3.6.13** Sunni extremists have their greatest influence in much of northern and western Iraq, though they also retain a presence in areas of Baghdad (most notably Mansour). Broadly speaking, their agenda is to promote sectarian violence and to undermine the Shia-led government. On a tactical level this is played out in two different ways:

- (i) The vast majority of Sunni extremist activity is targeted attacks against government officials and Iraqi Security Forces. These attacks are clearly planned and are against specific targets. The attacks are generally carried out using small Under Vehicle (UV) Improvised Explosive Devices (IEDs) or close quarter shootings. Both of these forms of attack are targeted (and not indiscriminate), and the security company who advised this commented that they “have little practical risk of causing collateral damage”. The targets for these attacks are usually not following basic security advice - driving clearly marked government vehicles or wearing uniform off duty.
- (ii) According to an April 2012 British Embassy of Bagdad letter, AQI and their affiliates do retain the capability for large scale coordinated attacks. These are usually in the form of Vehicle Borne (VB) IEDs or roadside IEDs. The devices are capable of causing numerous casualties; however, their lethality is far reduced from the type of devices seen between 2004 – 2007. Typical casualty figures for a VBIED in that period could be as high as 40 – 50 killed

<sup>54</sup> Letter from British Embassy Baghdad entitled, ‘Indiscriminate Violence in Iraq’ 07 April 2012

<sup>55</sup> UNHCR, UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers for Iraq, 24 May 2012, Civilian Casualties (page 44)  
<http://www.unhcr.org/refworld/pdfid/4fc77d522.pdf>

<sup>56</sup> UNAMI, Report on Human Rights in Iraq: 2011, May 2012, Executive Summary  
<http://unami.unmissions.org/LinkClick.aspx?fileticket=uGUYVCu7UBs%3d&tabid=3174&language=en-US>

2. Armed Conflict and Civilians

<sup>57</sup> Letter from British Embassy Baghdad entitled, ‘Indiscriminate Violence in Iraq’ 07 April 2012



in a single incident; whereas presently “we would expect” five to ten. This is probably due to smaller explosive payloads and reduced professionalism of manufacture, which in turn reflects AQI’s comparatively reduced capability.<sup>58</sup> In contrast, the Centre for Security Studies noted that “While overall levels of violence have decreased since 2007, large-scale coordinated attacks such as those carried out on July 23, 2012 mark the worst violence in years, and could lead to a return to significant ethnic and sectarian violence in the aftermath of the US troop withdrawal, ongoing Shia-Sunni tensions, and hostility among opposing political factions”.<sup>59</sup> Similarly the Congressional Research Service reported in October 2012 that “As the conflict in Syria and the political disputes in Iraq have continued, large scale attacks have<sup>60</sup> been increasing in Iraq” and that “The summer of 2012 saw numerous major attacks”.<sup>61</sup> UNAMI reported that during 2011, “Despite a decline in the overall number of incidents compared with 2010, those that did occur were often more deadly, with a few such attacks claiming scores of victims”.<sup>62</sup> The targets for these attacks are generally either government ministries or Shia gathering areas (market places, restaurants etc) in eastern Baghdad. Due to the reduction in their capacity, AQI are now only capable of mounting this type of attack once a month .... This cyclic pattern of attack - resupply and reorganise – plan – attack is likely to continue for the foreseeable future. Sunni extremists are capable of using indirect fire (IDF), though this is a rare occurrence. If it were to be used, it would typically be in the form of small calibre mortars, though due to their short range and limited payload they are not a particularly favoured weapon.<sup>63</sup>

## Shia militia

**3.6.14** Shia militias have predominantly been seen to operate in most areas of eastern Baghdad, generally emanating from the Sadr City area. They do also have a presence in the more ethnically mixed areas of central and western Baghdad. Shia militia tend to have a far higher capability to carry out lethal acts, though their intent is presently very low. Their agenda is far more linked to the political situation and as their leadership attempt to move into power-brokering they have far less of an inclination to use violence openly. Previously most of their attacks specifically targeted US Forces, though these started to tail off mid 2011 with the understanding that US Forces would withdraw entirely by the end of the year. In 2012 thus far it would be difficult to attribute more than a handful of incidents to Shia militia, and most of these would be down to in-fighting between different factions, or criminal disputes.<sup>64</sup>

**3.6.15** Shia militia have tended to use more technologically advanced methods of attack, though this was developed over time in order to defeat the defensive measures of US Forces. It is highly unlikely that they would seek to deploy advanced IEDs

<sup>58</sup> Letter from British Embassy Baghdad entitled, ‘Indiscriminate Violence in Iraq’ 07 April 2012

<sup>59</sup> Centre for Security Studies, Patterns of Violence in Iraq, 24 October 2012, Iraq’s Continuing levels of internal violence [http://csis.org/files/publication/121024\\_Iraq\\_Violence.pdf](http://csis.org/files/publication/121024_Iraq_Violence.pdf)

<sup>60</sup> Congressional Research Service, Iraq: Politics, Governance, and Human Rights, 2 Octobers 2012 , *Significant Increase in Violence in 2012* <http://fpc.state.gov/documents/organization/198820.pdf>

<sup>61</sup> Congressional Research Service, Iraq: Politics, Governance, and Human Rights, 2 Octobers 2012 , *Significant Increase in Violence in 2012* <http://fpc.state.gov/documents/organization/198820.pdf>

<sup>62</sup> UNAMI, Report on Human Rights in Iraq: 2011, May 2012, Executive Summary <http://unami.unmissions.org/LinkClick.aspx?fileticket=uGUYVCu7UBs%3d&tabid=3174&language=en-US>  
Executive Summary

<sup>63</sup> Letter from British Embassy Baghdad entitled, ‘Indiscriminate Violence in Iraq’ 07 April 2012

<sup>64</sup> Letter from British Embassy Baghdad entitled, ‘Indiscriminate Violence in Iraq’ 07 April 2012

against civilians, as there would be little or no motive behind such an attack and no need to make use of advanced IEDs. Shia militias are capable of assassination-type attacks also, though these are generally against specific targets and certainly not indiscriminate. Shia militias do also have an IDF capability, though this tends to be from rockets rather than mortars. They have a longer range, though are very inaccurate and could cause collateral or indiscriminate damage if off target. Rocket attacks are very infrequent however.<sup>65</sup>

### Kurdistan Region of Iraq

**3.6.16** Although, the security situation in the KRG is considerably better than in the rest of Iraq, there are concerns about other human rights violations. UNHCR report that although the security situation in the three northern governorates is relatively more stable, it remains a potential target for terrorist operations e.g. by Ansar Al-Islam, or the Al-Qa'eda Kurdish Battalions, which reportedly remain active in the region.<sup>66</sup> The March 2012 joint Danish Immigration Service/UK Border Agency Fact Finding Mission recorded that an international organisation had explained that no major security incidents had occurred in the Kurdistan Region of Iraq since 2007. This was partly due to the security precautions at the KRG external checkpoints which bordered the disputed areas and south and central Iraq. The international organisation however explained that terrorist insurgents continued to represent a risk to the security of KRI. For example in November 2010 a major incident was averted when Asayish at the Kirkuk-Erbil checkpoint stopped a vehicle carrying explosives.<sup>67</sup> Public Aid Organisation (PAO), the UNHCR Protection Assistance Centre partner in Erbil, reported that between April and July 2011 there had been a series of attempts made by terrorist groups to enter KRI and that in one notable incident, six cars were found by security staff, i.e. Asayish at the checkpoint with explosives. In this regard PAO stated that security measures adopted by the Asayish at the KRG checkpoints were effective in protecting the people of KRI.<sup>68</sup>

**3.6.17** The May 2012 UNHCR Eligibility Guidelines do however record other human rights concerns in Kurdistan Region of Iraq. In early December 2011, the relative stability was disrupted for several days when attacks were launched against mainly Christian and Yazidi-run businesses in Dahuk Governorate, followed by retaliatory attacks on party offices and media outlets. Areas bordering the neighbouring central governorates of Diyala, Kirkuk, Ninewa and Salah Al-Din as well as those neighbouring Turkey and Iran, are tense and unstable. The general human rights situation in the Kurdistan Region has improved in recent years, but continued abuses, including arbitrary arrests, incommunicado detention and the use of torture and ill-treatment continue to be reported by observers. Persons (perceived to be) opposing or openly criticizing the KRG or the ruling parties, including members of opposition parties, journalists, and protestors have been targeted. Kurdish security

<sup>65</sup> Letter from British Embassy Baghdad entitled, 'Indiscriminate Violence in Iraq' 07 April 2012

<sup>66</sup> UNHCR, UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers for Iraq, 24 May 2012 Security incidents (page 46-47) <http://www.unhcr.org/refworld/pdfid/4fc77d522.pdf>

<sup>67</sup> Joint report of the Danish Immigration Service/UK Border Agency fact finding mission to Erbil and Dahuk, Kurdistan Region of Iraq (KRI), conducted 11 to 22 November 2011. Update (2) on entry procedures at Kurdistan Regional government checkpoints (KRG); residence procedures in Kurdistan Region of Iraq (KRI) and arrival procedures at Erbil and Suleimaniyah airports (for Iraqis travelling from non-KRI areas of Iraq). March 2012. Para 2.02 <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/coi/iraq/>

<sup>68</sup> Joint report of the Danish Immigration Service/UK Border Agency fact finding mission to Erbil and Dahuk, Kurdistan Region of Iraq (KRI), conducted 11 to 22 November 2011. Update (2) on entry procedures at Kurdistan Regional government checkpoints (KRG); residence procedures in Kurdistan Region of Iraq (KRI) and arrival procedures at Erbil and Suleimaniyah airports (for Iraqis travelling from non-KRI areas of Iraq). March 2012. Para 2.03 <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/coi/iraq/>

forces are reported to have repeatedly used excessive force to clamp down on mostly peaceful pro-reform protests in spring 2011, resulting in casualties.<sup>69</sup>

**See also:** [Actors of protection \(section 2.3 above\)](#)

[Internal relocation \(section 2.4 above\)](#)

[Caselaw \(section 2.5 above\)](#)

- 3.6.18 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 Refugee Convention reason. The claimant must demonstrate a well-founded claim for asylum where he or she is at risk of persecution on Convention grounds
- 3.6.19** Further, the European Court of Human Rights concluded in January 2009 that whilst the general situation in Iraq, and in Baghdad, is insecure and problematic, it is not so serious as to cause, by itself, a violation of Article 3 ECHR. However, this conclusion must be considered in the light of the up to date country of origin information. Moreover each case must be considered on its individual merits and caseowners must consider whether the personal circumstances of the individual are such that his or her return to Iraq would contravene Article 3 ECHR, in the light of up to date country of origin information.
- 3.6.20** In addition, each case must also be considered under Article 15 (c) of the EU Qualification Directive/Immigration Rule 339C to ascertain whether the individual claimant would be at real risk of indiscriminate violence. As confirmed in the recent country guidance case of [HM and others \(Article 15\(c\)\) Iraq CG \[2012\] UKUT 00409\(IAC\)](#) the current evidence does not establish that the degree of indiscriminate violence characterising the current armed conflict taking place in the five central governorates in Iraq, namely Baghdad, Diyala, Tameen (Kirkuk), Ninewah, Salah Al-Din, is at such a high level that substantial grounds have been shown for believing that any civilian returned there would solely on account of his presence there face a real risk of being subject to that threat.
- 3.6.21** For a claim to succeed under Article 15(c) of the Qualification Directive, an individual would need to show that their personal circumstances are such that they would be at real risk and that there was no internal relocation option open to them. A claim under Article 15(c) of the Qualification Directive should succeed if a claimant establishes that particular factors place him or her at additional risk above that which applies to the civilian population generally, such that he or she is at real risk of serious harm from the levels of indiscriminate violence that do exist and that internal relocation to a place where there is not a real risk of serious harm is not reasonable. In that regard the Tribunal in [HM and others \(Article 15\(c\)\) Iraq CG \[2012\] UKUT 00409\(IAC\)](#) found that the current evidence does not establish that there is a real risk of serious harm under Article 15(c) for civilians who are Sunni or Shi'a or Kurds or have former Ba'ath Party connections: these characteristics do not in themselves amount to "enhanced risk categories" under Article 15(c)'s "sliding scale" (see paragraph 39 of [Elqafaji v. Staatssecretaris van Justitie, C-465/07, European Union: European Court of Justice, 17 February 2009](#)

<sup>69</sup> UNHCR, UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers for Iraq, 24 May 2012 (page 46-47) <http://www.unhcr.org/refworld/pdfid/4fc77d522.pdf>

**3.6.22** Caseowners must consider each case on its individual merits against the background of the latest available country information and the personal circumstances of the individual claimant.

**3.7 Individuals associated (or perceived to be associated) with the Iraqi government or former multi-national forces, and journalists.**

**3.7.1** Some claimants will make an asylum or human rights claim due to a fear of persecution/ ill treatment or kidnapping at the hands of armed groups or militants on account of their association (or perceived association) with the Iraqi government or because of their “un-Islamic” behaviour.

**3.7.2 Treatment.** Although the overall magnitude of sectarian violence has declined, many individuals from various religious groups are targeted because of their religious identity or secular leanings. Acts committed against them included harassment, intimidation, kidnapping, and murder. The general lawlessness that permits criminal gangs, terrorists, and insurgents to victimise people with impunity affects persons of all ethnicities and religious groups.<sup>70</sup>

**3.7.3** The UNHCR Eligibility Guidelines of May 2012 record that according to the UN Secretary General’s 28 November 2011 report, there was a marked increase in assassinations of government officials, professionals and security personnel. Attacks include instances of intimidation, abductions and assassinations, including by the use of improvised explosive devices (IEDs), (suicide) car bombs and targeted killings with firearms equipped with silencers or “sticky bombs” attached to vehicles. Many reports of intimidations and threats are made. Incidents of targeted attacks have been reported in almost all of central and southern Iraq, but particularly in Al-Anbar, Baghdad, Babel, Diyala, Kirkuk, Ninewa and Salah Al-Din Governorates.<sup>71</sup>

**3.7.4** UNHCR considers that individuals associated with, or perceived to be supporting the Iraqi authorities, the ISF or the (former) MNF-I/USF-I are, depending on the circumstances of their claim, likely to be in need of international refugee protection on account of their (imputed) political opinion. UNHCR sets out that the specific groups that may be associated with or perceived to be supporting the Iraqi authorities include the following:

- (a) Government Officials and Employees
- (b) Former Members of the Iraqi Security Forces (ISF)
- (c) Sahwa Members, Traditional Tribal, Religious and Community Leaders
- (d) Members of Political Parties
- (e) Individuals Affiliated with the USF-I, Foreign Governments, NGOs or International Companies<sup>72</sup>

<sup>70</sup> US State Department International Religious Freedom Report 2010 (Section I, Abuses by Rebel or Foreign Forces or Terrorist Organizations) <http://www.state.gov/j/drl/rls/hrrpt/2010/nea/154462.htm> COI Service Iraq Country Report August 2011 (para 8.37) [www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/)

<sup>71</sup> UNHCR, UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers for Iraq, 24 May 2012 A. Risk Profiles, 1. Individuals Associated with (or Perceived to be Supporting) the Iraqi Authorities and the (former) MNF-I/USF-I (page 14) <http://www.unhcr.org/refworld/pdfid/4fc77d522.pdf>

<sup>72</sup> UNHCR, UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers for Iraq, 24 May 2012 A. Risk Profiles, 1. Individuals Associated with (or Perceived to be Supporting) the Iraqi Authorities and the (former) MNF-I/USF-I (page 14 - 17) <http://www.unhcr.org/refworld/pdfid/4fc77d522.pdf>

- 3.7.5** UNHCR also reports that professionals such as judges or academics, have reportedly also been targeted for their (perceived) support of the Iraqi authorities, the political process or the USF-I.
- 3.7.6** According to the October 2012 Quarterly Report to Congress by the Special Inspector General for Iraq Reconstruction (SIGI), “Lethal attacks on Iraqi Police (IP) and Iraqi Army (IA) soldiers rose this quarter—and most sharply in September, when more than 180 IP and IA personnel were killed and 230 wounded. Assassinations of government officials and tribal leaders in Iraq continued unabated this quarter. More than 100 senior government officials were targeted for assassination, with 58 killed. These attacks also killed or wounded more than 120 family members, bodyguards, or other citizens who were in the vicinity of the apparently targeted individuals. Ministry officials, judges, members of parliament, tribal sheiks, and senior ISF officials were targeted by bombs and armed attacks (including home invasion). The largest number of attacks on officials and other leaders occurred in Baghdad, with the second-largest number of attacks around Kirkuk”.<sup>73</sup>
- 3.7.7** The Danish Immigration Service’s February and April 2010 Fact Finding Mission to Iraq report noted that “that individuals who had cooperated with the Iraqi security force or US/multi-national forces; or those persons working for foreign companies... including relatives to all the above-mentioned categories of persons could also be at risk of being targeted”.<sup>74</sup>
- 3.7.8** As regards kidnapping and disappearances, the 2011 U.S. State Department report notes that the majority of reported cases appeared to be financially motivated. Kidnappers who did not receive a ransom often killed their victims. Police believe that the majority of these cases went unreported.<sup>75</sup> The ICRC noted in February 2010 that professionals remain at risk of being targeted in Iraq, with persons perceived to be wealthy, and their children, at risk of being kidnapped and held for ransom.<sup>76</sup>

#### Treatment of journalists in Central and Southern Iraq

- 3.7.9** Iraqi journalists and media workers in central and southern Iraq continue to be threatened, kidnapped, killed or otherwise intimidated with impunity, mostly by non-state actors. UNHCR noted that while some have been killed in crossfire or other acts of general violence, the majority of those who have lost their lives have been victims of specific attacks based on their ethnicity or religion and/or their (imputed) political opinion. Given that most Iraqi news and television stations are owned by either political parties, religious groups or by the Iraqi Government, journalists and other media workers are often considered to represent a particular political or

<sup>73</sup> Special Inspector General for Iraq Reconstruction (SIGI), Quarterly Report to Congress, 30 October 2012, Trends in Attacks and Casualties p.73

[http://www.sigir.mil/files/quarterlyreports/October2012/Report\\_-\\_October\\_2012.pdf#view=fit](http://www.sigir.mil/files/quarterlyreports/October2012/Report_-_October_2012.pdf#view=fit)

<sup>74</sup> Security and Human Rights in South/Central Iraq, 10 September 2010 (page 25)

[http://www.nyidanmark.dk/NR/rdonlyres/7F24EA1B-1DC7-48AE-81C4-C097ADAB34FD/0/Rapport\\_Security\\_and\\_HR\\_in\\_South\\_Central\\_Iraq.pdf](http://www.nyidanmark.dk/NR/rdonlyres/7F24EA1B-1DC7-48AE-81C4-C097ADAB34FD/0/Rapport_Security_and_HR_in_South_Central_Iraq.pdf)

COI Service Iraq Country Report August 2011 (para 17.43) [www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/)

<sup>75</sup> US State Department Country Report on Human Rights Practices 2011 (Section 1b, Disappearance)

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>

COI Service Iraq Country Report August 2011 (para 9.02)

[www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/)

<sup>76</sup> International Rescue Committee, A Tough Road Home, Uprooted Iraqis in Jordan, Syria and Iraq, February 2010, Continuing Violence. [http://www.iauiraq.org/reports/IRC\\_Report\\_02\\_18\\_ToughRoad.pdf](http://www.iauiraq.org/reports/IRC_Report_02_18_ToughRoad.pdf)

sectarian party or opinion. As a result, armed groups have repeatedly targeted media outlets and employees for their perceived “Western” or pro-American views, their affiliation with the Iraqi Government, or their sectarian or ethnic association. Others have been targeted for investigating controversial political or other sensitive issues, including corruption or activities of armed groups. In many cases, the exact motives for an attack remain unknown as no responsibility is claimed and/or serious investigations do not appear to be undertaken.<sup>77</sup> Iraq ranked worst on the Committee to Protect Journalists’ Impunity Index for the fifth consecutive year and, with more than 90 unsolved murders, its impunity rating dwarfs that of every other nation. Most of the murders occurred as Iraq was immersed in war, but even now, as authorities claim stability, they have failed to bring justice in a single case.<sup>78</sup>

- 3.7.10** The U.S. State Department report covering events in 2011 recorded that eight journalists and media workers were killed during 2011.. Journalists were targets of government security forces, corrupt officials, terrorists, religious groups that were unwilling to accept media independence, and unknown actors who wished to affect the flow of news. For example, on 17 February 2011, Hilal al-Ahmadi, a journalist who wrote about corruption and lack of government services, was shot and killed in front of his home on the outskirts of Mosul.<sup>79</sup>
- 3.7.11** The NGO Journalistic Freedoms Observatory recorded more than 160 attacks on journalists during the two-week period ending on 9 March 2011, when anti-government demonstrations stimulated by the Arab Spring were at their peak.<sup>80</sup> The same source reported that in 2011, it had registered 31 cases of journalists being beaten by security forces, 65 arrests and detentions and 84 additional cases where the security forces had banned media coverage and filming.<sup>81</sup>
- 3.7.12** Human Rights Watch’s World Report 2012 also noted that Iraq remains one of the most dangerous countries in the world to work as a journalist saying that armed groups and unknown assailants killed at least five journalists and one media worker during 2011, according to the New York-based Committee to Protect Journalists.<sup>82</sup>

#### Treatment of journalists in the Kurdistan Region of Iraq

- 3.7.13** Since 2003, numerous newspapers, television and radio stations have been established in the Kurdistan Region: many of them are affiliated with political parties, while a few are independent and non-partisan. Officially, there is no censorship in the Kurdistan Region. However, independent journalists and media organizations have repeatedly claimed that press freedom is restricted and that

<sup>77</sup> UNHCR, UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers for Iraq, 24 May 2012 , a) Journalists and Other Media Professionals, i. Central and Southern Iraq (page 21) <http://www.unhcr.org/refworld/pdfid/4fc77d522.pdf>

<sup>78</sup> Committee to Protect Journalists, Getting Away With Murder, 17 April 2012 <http://www.cpj.org/reports/2012/04/impunity-index-2012.php#more>

<sup>79</sup> US State Department, Country Reports on Human Rights Practices for 2011: Iraq, 24 May 2012, Section a. Freedom of Speech and Press <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>

<sup>80</sup> US State Department, Country Reports on Human Rights Practices for 2011: Iraq, 24 May 2012, Section a. Freedom of Speech and Press <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>

<sup>81</sup> The Institute for War and Peace Reporting, Iraqi Journalists Face Restrictions, Violence, 11 May 2012 <http://iwpr.net/report-news/iraqi-journalists-face-restrictions-violence>

<sup>82</sup> Human Rights Watch. Human Rights Watch World Report 2012. Iraq. 22 January 2012 <http://www.hrw.org/world-report-2012/world-report-2012-iraq>

criticism of the ruling parties can lead to physical harassment, seizure of equipment, arbitrary arrest and legal prosecution on charges of defamation.<sup>83</sup>

- 3.7.14** The 2011 US State Department report noted that throughout the Kurdish region there were numerous credible reports of attempted murder, beatings, imprisonment, and property destruction carried out against media. The Kurdistan Journalists Syndicate documented more than 100 acts of harassment, including threats, lawsuits, and attacks, from January to October 2011 in the region. In many of these reports, the aggressors wore military or police uniforms. With one exception, these attacks were directed at the independent and opposition media, mainly Goran (Change) and the KIU, rather than at media controlled by the ruling parties.<sup>84</sup>
- 3.7.15** In 2007, the KRG promulgated a Press Law, which, inter alia, bans censorship, prohibits the closure of news outlets by the authorities, abolishes prison terms and places a ceiling on damages for media-related offenses. However, reports suggest that the KRG authorities do not implement the law systematically and continue to use the more restrictive 1969 Iraqi Penal Code and the 1951 Iraqi Civil Code provisions to prosecute journalists. The ruling parties, the Kurdistan Democratic Party and the Patriotic Union of Kurdistan, as well as influential party members and government officials, have filed numerous lawsuits, mostly against independent journalists and news organizations that published articles they reportedly considered to be critical. Such libel suits appear to be attempts to prevent criticism of the KRG or the ruling parties. As a result, many media outlets self-censor with respect to key issues, in particular corruption and nepotism involving the ruling parties.<sup>85</sup>
- 3.7.16** In addition to libel and defamation lawsuits, critical journalists and media employees in the Kurdistan Region are reportedly subject to frequent intimidation and threats, arbitrary arrest and detention, beatings and confiscation or destruction of equipment, allegedly at the hands of KRG officials and Kurdish Security Forces. Media offices have frequently been targeted for raids or arson attacks. Attacks against journalists, media professionals and media outlets are most frequently reported during political events or security crises such as elections, popular protests, Iranian/Turkish bombing of border areas, or the “Dahuk riots” in early December 2011. Journalists and news outlets affiliated with opposition parties are at risk of being forcibly prevented from covering such events. Reports suggest that journalists have also been targeted for physical assaults, abduction and assassination. The perpetrators of attacks against journalists are usually not known and most attacks are allegedly not promptly and transparently investigated. Journalists often express little trust in the independence of the judicial authorities and claim that persons affiliated with political parties are involved in attacks.<sup>86</sup>

<sup>83</sup> UNHCR, UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers for Iraq, 24 May 2012 a) Journalists and Other Media Professionals, i. Central and Southern Iraq (page 22) <http://www.unhcr.org/refworld/pdfid/4fc77d522.pdf>

<sup>84</sup> US State Department, Country Reports on Human Rights Practices for 2011: Iraq, 24 May 2012, Section a. Freedom of Speech and Press <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>

<sup>85</sup> UNHCR, UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers for Iraq, 24 May 2012 a) Journalists and Other Media Professionals, i. Central and Southern Iraq (page 22) <http://www.unhcr.org/refworld/pdfid/4fc77d522.pdf>

<sup>86</sup> UNHCR, UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers for Iraq, 24 May 2012 a) Journalists and Other Media Professionals, i. Central and Southern Iraq (page 22) <http://www.unhcr.org/refworld/pdfid/4fc77d522.pdf>

**See also:** [Actors of protection \(section 2.3 above\)](#)

[Internal relocation \(section 2.4 above\)](#)

[Caselaw \(section 2.5 above\)](#)

**3.7.17 Conclusion.** Persons openly criticising or perceived to be opposing armed groups or militant factions are at risk of persecution in Iraq. This includes persons accused of ‘un-Islamic behaviour’ and journalists in both central and southern Iraq and the Kurdistan Region of Iraq. Case owners will need to take into consideration the particular profile of the claimant in order to assess whether effective protection would be available and whether it would be possible for the claimant to relocate to escape the risk of persecution. Journalists are also at risk of persecution from state actors in both regions of Iraq.

**3.7.18** Persons perceived to collaborate or have collaborated with the current Iraqi Government and its institutions, the former US/multi-national forces or foreign companies are at risk of persecution in Iraq. A claimant who has a localised threat on the basis that they are perceived to be a collaborator 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 particular profile of the claimant, 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.

**3.7.19** In general 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 depending on the facts of the case and the particular profile of the claimant. If an individual being targeted for kidnapping on account of being the relative of another individual, he or she may have a well-founded fear of persecution on account of their membership of a particular social group (family) regardless of why or whether the individual themselves is at risk. A grant of asylum would be appropriate in such cases.

### **3.8 Former members of the Ba’ath Party**

**3.8.1** 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 Ba’ath party.

**3.8.2 Treatment.** De-ba’athification is the name given to a number of processes initiated by the Coalition Provisional Authority (CPA) shortly after the fall of Iraq’s Ba’athist regime. One was the complete dissolution of the Iraqi army as well as certain organisations (mostly security-related) that were either notorious for their role in enforcing Ba’ath party rule, or whose resources might offer the party a means to return to power. These organisations included the Iraqi army, the intelligence services, the Olympic committee and others, dissolved by CPA order in May 2003. The other process was the dismissal of many thousands of civil service employees from their positions. This process was initiated by the Coalition Provisional Authority, but later continued and was controlled by Iraq’s Higher National De-ba’athification Commission (HNDBC). The assumption underpinning De-



ba'athification procedures was that the elite of the Ba'ath party could not have achieved their level without committing acts that seriously violated human rights standards or were deeply corrupt.<sup>87</sup>

- 3.8.3** A report of a Danish Immigration Service fact finding mission published in September 2010 noted that previous affiliation to the Ba'ath party could add to a person's insecurity. However, being targeted solely with reference to former Ba'athist association is not likely as everyone employed by the previous regime had to be a member of the Ba'ath party. Senior members who were genuinely at risk have either fled abroad, for example to Syria, or have already been dealt with harshly by the government. However, as of today former membership of the Ba'ath party is not a determining factor when it comes to the question of whether or not a person would be targeted.<sup>88</sup>
- 3.8.4** The same report also recorded that other sources stated that senior Ba'ath party members are targeted especially in south Iraq and some central parts. However, such a person would need to be well-known to others and other factors such as having occupied a particular exposed position are likely to have influence the risks as well. It was added that most senior Baath members left Iraq. On the other hand, accusing a person of being a former Baath member remains a favourite accusation. This can be problematic as a person wrongly accused may not be able to rectify such claims before action is taken against him.<sup>89</sup>
- 3.8.5** The 2011 US State Department Report recorded that the constitution broadly provides for the right of free expression, provided it does not violate public order and morality or express support for the banned Ba'ath Party or for altering the borders by violent means.<sup>90</sup> Intimidation and political influence were factors in some allegations of corruption, and officials sometimes used the "de-Ba'athification" process to pursue political and personal agendas.<sup>91</sup> The same source reported that on 24 October 2011, the army began arresting alleged former members of the Ba'ath Party said to be involved in a coup plot. More than 900 people were arrested in the following weeks. Formal charges were often made only after the arrests and many were held without access to family members or legal representation. Media reported that at least one detainee, Kadhim Munshed Rashed, died from torture, but the MOI claimed that he committed suicide. The government did not present

<sup>87</sup>International Center for Transitional Justice, entitled *Iraq's New 'Accountability and Justice' Law*, <http://www.ictj.org/en/index.html> Iraq's New 'Accountability and Justice Law', COI Service Iraq Country Report August 2011 (para 3.22) [www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/).

<sup>88</sup> Danish Immigration Service, Security and Human Rights in South/Central Iraq, 10 September 2010 (page 29-30) [http://www.nyidanmark.dk/NR/ronlyres/7F24EA1B-1DC7-48AE-81C4-C097ADAB34FD/0/Rapport\\_Security\\_and\\_HR\\_in\\_South\\_Central\\_Iraq.pdf](http://www.nyidanmark.dk/NR/ronlyres/7F24EA1B-1DC7-48AE-81C4-C097ADAB34FD/0/Rapport_Security_and_HR_in_South_Central_Iraq.pdf) COI Service Iraq Country Report August 2011 (para 17.32) [www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/).

<sup>89</sup> Danish Immigration Service, Security and Human Rights in South/Central Iraq, 10 September 2010 (page 29-30) [http://www.nyidanmark.dk/NR/ronlyres/7F24EA1B-1DC7-48AE-81C4-C097ADAB34FD/0/Rapport\\_Security\\_and\\_HR\\_in\\_South\\_Central\\_Iraq.pdf](http://www.nyidanmark.dk/NR/ronlyres/7F24EA1B-1DC7-48AE-81C4-C097ADAB34FD/0/Rapport_Security_and_HR_in_South_Central_Iraq.pdf) COI Service Iraq Country Report August 2011 (para 17.32) [www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/).

<sup>90</sup> US State Department, Country Reports on Human Rights Practices for 2011: Iraq, 24 May 2012, Section 2a Freedom of Speech and Press <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186428>

<sup>91</sup> US State Department, Country Reports on Human Rights Practices for 2011: Iraq, 24 May 2012, Section 4. Official Corruption and Government Transparency <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186428>

evidence to support the existence of a plot at year's end. Many Sunnis contended that the arrests were intended to weaken the government's political opponents.<sup>92</sup>

**3.8.6** In its May 2012 Eligibility Guidelines, UNHCR said that after the fall of the former regime, the Coalition Provisional Authority and, subsequently, the Iraqi Government introduced a number of measures to "de-Ba'athify" the Iraqi administration and security forces. From the outset, it was reported that the implementation of relevant regulations was arbitrary, sectarian and politicized. There have been continuous claims that the Iraqi Government has used accusations of "Ba'athism" to sideline political opponents and to settle political scores. "De-Ba'athification" has reportedly been used to fire government and security officials and replace them with loyalists, and to ban political rivals from running in elections. Reported arrests of alleged Ba'ath Party members have raised concerns, given that neither the De-Ba'athification Law, nor any other law, provides for legal prosecution for Ba'ath Party membership. During an "arrest campaign" in October/November 2011, when more than 600 individuals were arrested on charges of terrorism and alleged Ba'ath Party ties, Deputy Minister of Interior Adnan Al-Asadi stated that all arrests were undertaken on the basis of the Counterterrorism Law of 2005. However, Iraqi Government officials repeatedly referred to a person's Ba'ath Party affiliation and rank to justify the arrest. The timing and circumstances, the questionable legal basis and the lack of transparency of these arrests raised serious doubts among some observers over their real motivation. Most of those arrested reportedly remain in detention without charge.<sup>93</sup>

**3.8.7** The May 2012 UNHCR Eligibility Guidelines also went on to note that after the fall of the previous regime in 2003, persons affiliated or associated with the former regime, through membership in the Ba'ath Party or as a result of their functions or profession, were subjected to systematic attacks mainly by armed Shi'ite groups. Today, members of the former Ba'ath Party or the former regime's armed forces or security and intelligence services are reportedly no longer systematically singled out for attack by armed groups. They may still be targeted in individual cases, although the exact motivation behind an attack may not always be known. Many former Ba'athists have found new identities as politicians, academics, tribal leaders, or members of the current ISF. It is difficult to determine if attacks against them are motivated by their role under the former regime or by the person's present profile. Palestinian refugees, who are widely considered to have received preferential treatment under the former regime and were suspected of supporting the Sunni insurgency, have also been singled out for attacks and arrests since 2003.<sup>94</sup>

**3.8.8** In August 2012 IRIN News published a report which identified a number of drivers of conflict in Iraq including 'local power brokering/score-settling'.<sup>95</sup> IRIN also reported that according to UNHCR in July 2012, Iraqis with old vendettas have taken advantage of the chaos and instability in Syria to pursue Iraqi refugees there, with a string of kidnappings in recent months. UNHCR further reported that most

<sup>92</sup> US State Department, Country Reports on Human Rights Practices for 2011: Iraq, 24 May 2012, Section 1e Political Prisoners and Detainees

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186428>

<sup>93</sup> UNHCR, UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers for Iraq, 24 May 2012 a) (Perceived) Political Opponents (page 18)

<http://www.unhcr.org/refworld/pdfid/4fc77d522.pdf>

<sup>94</sup> UNHCR, UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers for Iraq, 24 May 2012 a) (Perceived) Political Opponents (page 18)

<http://www.unhcr.org/refworld/pdfid/4fc77d522.pdf>

<sup>95</sup> IRIN News, Briefing: Why is Iraq still so dangerous? 1 August 2012

<http://www.irinnews.org/Report/95999/Briefing-Why-is-Iraq-still-so-dangerous>

cases are resolved, but the worst case involved the father of one refugee family who had worked for former Iraqi ruler Saddam Hussein's intelligence service. The family had already lost a family member in Iraq before fleeing to Syria. In recent months, their son was kidnapped, tortured and killed - despite a ransom paid.<sup>96</sup>

**See also:** [Actors of protection \(section 2.3 above\)](#)

[Internal relocation \(section 2.4 above\)](#)

[Caselaw \(section 2.5 above\)](#)

- 3.8.9 Conclusion** The Supreme Court held in [RT \(Zimbabwe\)](#) that the rationale of the decision in [HJ \(Iran\)](#) extends to the holding of political opinions. An individual should not be expected to modify or deny their political belief, or the lack of one, in order to avoid persecution.
- 3.8.10** While persons affiliated or associated with the former Ba'ath Party and regime are no longer systematically targeted, some individuals may still be at risk of detention, torture or other violations of human rights, for example as a result of personal revenge of former victims or their families against perpetrators. Each case must be carefully considered with regard to the particular profile of the claimant to assess whether internal relocation would not be unduly harsh.
- 3.8.11** In establishing whether a claimant has a well founded fear of persecution on account of membership of the former Ba'ath party, a claimant will need to show that their activities for the Ba'ath 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.
- 3.8.12** Case owners should note that some mid to high ranking members of the Ba'ath party may 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.
- 3.9 Honour crimes**
- 3.9.1** 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.
- 3.9.2 Treatment** UNHCR's Eligibility Guidelines of May 2012 noted that so-called "honour crimes" - that is, violence committed by family members to protect the family's honour - reportedly remain of particular concern. Most frequently, women and girls and, to a lesser extent, men and boys, are killed or subjected to other types of violence such as mutilations, because they are judged to have transgressed cultural, social or religious norms bringing shame to their family. "Honour crimes" are said to occur for a variety of reasons, including adultery, loss of virginity (even by rape), refusal of an arranged marriage, attempt to marry someone against the wishes of the family or making a demand for a divorce. Even the suspicion or rumour that any of these acts have been committed can reportedly

<sup>96</sup> IRIN News, Iraqis use Syrian conflict to settle old scores, 13 July 2012  
<http://www.irinnews.org/Report/95856/SYRIA-Iraqis-use-Syrian-conflict-to-settle-old-scores>

result in “honour crimes”. With the emergence of mobile phones and internet, allowing young couples to communicate in secret, cases have been reported in which girls, or boys, were killed on the basis of suspicious or incriminating messages or phone calls.<sup>97</sup>

- 3.9.3** Human Rights Watch reported that “Violence at home against girls and women happens mainly at the hands of their husbands, fathers, brothers, sons, and male extended family members. The men sometimes act on the orders of tribal elders who decide on punishments for women deemed to have infringed traditional codes of honour. Such infringements can include a woman or girl dating, marrying against her family's wishes, being the victim of sexual violence, losing virginity before marriage, seeking a divorce against her family's wishes, engaging in an extramarital affair, and refusing an arranged marriage.”<sup>98</sup>
- 3.9.4** The US State Department Report 2011 supplied some statistical evidence on the issue and stated that honour killings remained a serious problem throughout all parts of the country. Statistics published by the KRG Ministry of Interior in 2010 stated that there were 102 incidents of women burned in and around Erbil Province alone. Sixty-five percent of these cases were still under investigation during 2011. Women who committed self-immolation had been previously victimised, but police investigated only a small number of women’s burn cases. The KRG reported that during 2011 76 women were killed or committed suicide, while 330 were burned or self-immolated, but a number of NGOs, including the Organisation for Women’s Freedom in Iraq, stated that such estimates were low.<sup>99</sup>
- 3.9.5** According to the Human Rights Watch World Report 2012, violence against women and girls continued to be a serious problem across Iraq. “Honour” crimes and domestic abuse remained a threat to women and girls, who were also vulnerable to trafficking for sexual exploitation and forced prostitution due to insecurity, displacement, financial hardship, social disintegration and the dissolution of rule of law and state authority.<sup>100</sup> The 2012 UNHCR Eligibility Guidelines state that “Women at risk of “honour killing” are said to be unlikely to report to the police with a view to initiating prosecution of the family members involved as they fear retribution and want to avoid bringing further shame to the family. Women at risk of “honour crimes” at the hands of their family are extremely vulnerable, as they have lost “the primary source of protection and support””.<sup>101</sup>

#### Honour Crimes in Central and Southern Iraq

- 3.9.6** The Iraqi Penal Code (Law No. 111 of 1969) 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 to 12 months imprisonment. Article 409 further provides that if a person surprises his wife or a

<sup>97</sup> UNHCR, UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers for Iraq, 24 May 2012 c) “Honour-based” Violence ( (page 37) <http://www.unhcr.org/refworld/pdfid/4fc77d522.pdf>

<sup>98</sup> Human Rights Watch, At a Crossroads: Human Rights in Iraq Eight Years after the US-Led Invasion, 22 January 2012, Family Violence. <http://www.hrw.org/node/95606>

<sup>99</sup> US State Department Human Rights Report 2011: Iraq 24 May 2012, Section 5 Women <http://www.state.gov/documents/organization/186638.pdf>

<sup>100</sup> Human Rights Watch World Report 2012 Iraq 22 January 2012 Women’s and Girls’ Rights and Gender-Based Violence <http://www.hrw.org/world-report-2012/world-report-2012-iraq>

<sup>101</sup> UNHCR, UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers for Iraq, 24 May 2012 c) “Honour-based” Violence (page 37) <http://www.unhcr.org/refworld/pdfid/4fc77d522.pdf>

female relative committing adultery and kills/injures one or both immediately, the punishment will not exceed three years. The law does not provide any guidance as to what 'honourable motives' are and therefore leaves the door open for wide interpretation and abuse.<sup>102</sup>

- 3.9.7** Amnesty International reports that there remains a culture of impunity, with regard to honour crimes, based on the de facto legal mandate for such crimes provided under the Penal Code; women continue to be killed with impunity by their relatives because their behaviour is perceived to have infringed traditional codes. In 2008 the Iraqi authorities recorded 56 so-called honour killings of women in the nine southern governorates. Most men get away with these murders because the authorities are unwilling to carry out proper investigations and punish the perpetrators. Iraqi legislators have failed to amend laws that effectively condone, even facilitate, such violence against women and girls.<sup>103</sup>
- 3.9.8** The police forces are tribally-based, however when it comes to issues related to honour crimes especially, there are efforts to try and break with how such cases are typically dealt with. On the other hand, there is a lot of tolerance towards the concept of honour and a widespread understanding in society of the male responsibility in preserving a family's honour.<sup>104</sup>
- 3.9.9** The authorities in central and southern Iraq do not provide shelters for women escaping violence and those that do exist are run by NGOs and often have to function more or less clandestinely.<sup>105</sup>

#### Honour Crimes in the Kurdistan Region of Iraq

- 3.9.10** The UNHCR's May 2012 Eligibility Guidelines noted that there is generally more information available about honour crimes in the Kurdistan Region, where the KRG has taken steps to combat the practice. Importantly, the KRG has introduced legal amendments to the Iraq Penal Code, effectively treating "honour killings" on the same level as other homicides. Despite these measures violence against women, including "honour crimes", is reported to remain at alarmingly high levels in the Kurdistan Region. Given that "honour killings" are prohibited by law, they are allegedly often concealed as accidents or suicides in order to avoid prosecution. In other cases, women are reported to commit suicide, including by self-immolation, because they fear being killed by their families.<sup>106</sup>

<sup>102</sup> UNHCR, UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers for Iraq, 24 May 2012 c) "Honour-based" Violence (page 37) (<http://www.unhcr.org/refworld/pdfid/4fc77d522.pdf>)

<sup>103</sup> Amnesty International. Civilians Under Fire, 26 April 2010 (page 19) (<http://www.amnesty.org/en/library/asset/MDE14/002/2010/en/c9dc5d8d-95fa-46e4-8671-cd9b99d0378c/mde140022010en.pdf>) COI Service Iraq Country Report August 2011 (Para 25.85) ([www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/)).

<sup>104</sup> Danish Immigration Service, Security and Human Rights in South/Central Iraq, 10 September 2010 (Page 34) ([http://www.nyidanmark.dk/NR/rdonlyres/7F24EA1B-1DC7-48AE-81C4-C097ADAB34FD/0/Rapport\\_Security\\_and\\_HR\\_in\\_South\\_Central\\_Iraq.pdf](http://www.nyidanmark.dk/NR/rdonlyres/7F24EA1B-1DC7-48AE-81C4-C097ADAB34FD/0/Rapport_Security_and_HR_in_South_Central_Iraq.pdf)) COI Service Iraq Country Report August 2011 (Para 25.84) ([www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/)).

<sup>105</sup> Amnesty International Civilians Under Fire, 26 April 2010 (page 20) (<http://www.amnesty.org/en/library/asset/MDE14/002/2010/en/c9dc5d8d-95fa-46e4-8671-cd9b99d0378c/mde140022010en.pdf>) COI Service Iraq Country Report August 2011 (Para 25.94) ([www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/)).

<sup>106</sup> UNHCR, UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers for Iraq, 24 May 2012 c) "Honour-based" Violence (page 37) (<http://www.unhcr.org/refworld/pdfid/4fc77d522.pdf>)

- 3.9.11** 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 this 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.<sup>107</sup>
- 3.9.12** The Heartland Alliance for Human Needs and Human Rights acknowledges that the Kurdistan Regional Government has “taken significant steps to acknowledge the importance of confronting gender-based violence” and “supports women’s shelters throughout the three northern governorates”, but states that “much work remains to be done”.<sup>108</sup>
- 3.9.13** An April 2010 Amnesty International report notes that some NGOs in the Kurdistan region of Iraq offer shelters for women escaping violence. However, such shelters operate in an undefined legal framework and the NGOs who run them, especially in central or southern Iraq, are cautious about publicising their services. Some women do escape violence and seek refuge in special shelters, but there are far too few of these. In the Kurdistan Region, several shelters have been established by the authorities and NGOs.<sup>109</sup>
- 3.9.14** The same source reports that even women and girls who have obtained emergency protection remain at risk as refuge locations, including private houses, have been attacked by their male relatives. All shelters in Iraq can be seen as no more than short-or-medium-term ‘solutions’ and cannot provide a durable resolution for women at risk.<sup>110</sup> According to sources interviewed by the Finnish Immigration Service/Swiss Immigration Service as part of their May 2011 Fact Finding Mission, there are generally no exit and rehabilitation strategies or psychosocial and economic support for the victims of violence. In some cases, women are taken to detention facilities for protection.<sup>111</sup>

**See also:** [Actors of protection \(section 2.3 above\)](#)

[Internal relocation \(section 2.4 above\)](#)

[Caselaw \(section 2.5 above\)](#)

<sup>107</sup> Amnesty International Hope and Fear: Human Rights in the Kurdistan Region of Iraq 14 April 2009 Reporting Violence, p.34 [www.amnesty.org/en/library/asset/MDE14/006/2009/en/c2e5ae23-b204-4b46-b7f5-06dc1501f62f/mde140062009en.pdf](http://www.amnesty.org/en/library/asset/MDE14/006/2009/en/c2e5ae23-b204-4b46-b7f5-06dc1501f62f/mde140062009en.pdf)

<sup>108</sup> Heartland Alliance for Human Needs & Human Rights (USA), Institutionalized Violence Against Women and Girls: Laws and Practices in Iraq, 27/01/2011, Iraqi and Kurdish governmental response. <http://www.scribd.com/doc/49420024/Institutionalized-Violence-Against-Women-and-Girls-in-Iraq>

<sup>109</sup> Amnesty International Civilians Under Fire, 26 April 2010 (page 20) <http://www.amnesty.org/en/library/asset/MDE14/002/2010/en/c9dc5d8d-95fa-46e4-8671-cd9b99d0378c/mde140022010en.pdf> COI Service Iraq Country Report August 2011 (Para 25.94) [www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/).

<sup>110</sup> Amnesty International Civilians Under Fire, 26 April 2010 (page 20) <http://www.amnesty.org/en/library/asset/MDE14/002/2010/en/c9dc5d8d-95fa-46e4-8671-cd9b99d0378c/mde140022010en.pdf> COI Service Iraq Country Report August 2011 (Para 25.95) [www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/).

<sup>111</sup> Finnish Immigration Service/Swiss Immigration Service, Report on Joint Finnish-Swiss Fact-Finding Mission to Amman and the Kurdish Regional Government (KRG) Area, May 10-22, 2011, 01/02/2012, 7.5.1. Shelters [http://www.ecoi.net/file\\_upload/90\\_1329398573\\_2012-02-01-iraq-report-on-joint-finnish-swiss-fact-finding-mission.pdf](http://www.ecoi.net/file_upload/90_1329398573_2012-02-01-iraq-report-on-joint-finnish-swiss-fact-finding-mission.pdf)

**3.9.15 Conclusion** Women fearing ‘honour killing’ or ‘honour crimes’ in either central or southern Iraq or in the Kurdistan Region of Iraq are unlikely to be able to access effective protection. Each case must be considered on its own merits to assess whether internal relocation would be possible for the particular profile of claimant, but in general an internal relocation alternative is unlikely to be available for lone women.

**3.9.16** There might be cases where men are at risk of honour crimes for committing certain acts which have brought shame on their family. Effective protection is unlikely to be available and, if in such a case internal relocation is considered unduly harsh, then Humanitarian Protection will be appropriate.

### **3.10 Christians, including Converts and other religious minorities**

**3.10.1** 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 or because they come from other religious minorities (e.g. Sabaaen-Mandaeans, Yazidis, Kaka'i, Shabaks and Ba'hais).

**3.10.2 Treatment** The U.S Department of State Report on International Religious Freedom reported that during 2011 there were reports of societal abuses and discrimination based on religious affiliation, belief or practice. Sectarian violence in some parts of the country had a negative impact on the ability of all religious believers to practice their religion, although to a lesser extent in the IKR region. No reliable statistics on religiously motivated violence were available. The overwhelming majority of mass casualty terrorist attacks targeted Muslims. A combination of sectarian hiring practices, corruption, targeted attacks and the uneven application of rule of law had a detrimental economic effect on minority non-Muslim communities and also contributed to the departure of significant numbers of non-Muslims from the country, including Christians and Sabean-Mandaeans. However, the government continued to call for tolerance and acceptance of all religious minorities. In the aftermath of attacks on Christian religious sites, the government supplied funds for repairs and increased the level of protection for churches and places of worship for religious minorities.<sup>112</sup> Terrorists and insurgents continued to victimize citizens of all ethnicities and religious groups. Terrorists committed acts of harassment, intimidation, robbery, kidnapping, and murder. According to the 2012 U.S Commission on International Religious Freedom report, “While the Iraqi government has made welcome efforts to increase security, it continues to fall short in investigating attacks and bringing perpetrators to justice”.<sup>113</sup>

**3.10.3** There were no reports of government abuses of religious freedom, but there were reports of restrictions and discrimination based on religion. The government continued to respect the right of the vast majority of citizens to practice their religion. Sectarian misuse of official authority continued to be a concern. Regional governments, particularly the KRG, also restricted religious freedom during 2011. There were allegations that the KRG engaged in discriminatory behaviour against religious minorities. Many Christians have claimed that the KRG has unreasonably delayed the return of church land and land confiscated from members of their community. There were reports that Yezidis had to obtain KRG

<sup>112</sup> US Commission on International Religious Freedom, United States Commission on International Religious Freedom Annual Report 2012: Iraq, <http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm>

<sup>113</sup> U.S Commission on International Religious Freedom, 2012 Annual Report, Iraq, March 2012 <http://www.uscirf.gov/images/Annual%20Report%20of%20USCIRF%202012%282%29.pdf>

approval to find jobs in areas within the KRG-administered Ninewa Province, or under the security protection of the Peshmerga (Kurdish armed forces).<sup>114</sup>

- 3.10.4** Iraqi Christians include Armenians and Chaldo-Assyrians, who belong to one of four churches: Chaldean (Uniate), Jacobite or Syrian Orthodox, Nestorian and Syrian Catholic. Christians are at particular risk because of their religious ties with the West and thus, by association, with the multinational forces (MNF-I) in Iraq. The fact that Christians, along with Yazidis, were allowed to trade in alcohol in Iraq under Saddam Hussein has also made them a target in an increasingly strict Islamic environment. According to the US-based research facility the Brookings Institution, Christians in Iraq numbered between 1 million and 1.4 million in 2003, but according to a 2010 Minority Rights Group report now only an estimated 500,000 are reported to remain.<sup>115</sup>
- 3.10.5** According to a February 2011 Human Rights Watch report, armed groups have attacked members of the Christian (also known as Chaldo-Assyrian), Yazidi, and Shabak communities, labelling them ‘crusaders,’ ‘devil-worshippers,’ and ‘infidels,’ respectively. Attacks against minorities have had a profound effect by targeting their communities’ social infrastructure, leaving victims and others fearful to carry on with their everyday lives. Lacking militias and tribal structures to defend themselves, a disproportionate number have fled the country. Although the government publicly condemns violence against minority groups, it has not taken sufficient measures to bolster security in areas where minorities are particularly vulnerable to attacks, and community leaders say that attacks are almost never thoroughly investigated. Iraqi security forces rarely apprehend, prosecute, and punish perpetrators of such attacks, which has created a climate of impunity.<sup>116</sup>

#### Situation for Christians in Central and Southern Iraq

- 3.10.6** The 2011 U.S. Commission on International Freedom Report notes that a major concern is the safety and security of Iraq’s Christian population is concentrated in northern Iraq as well as in Baghdad. In the run-up to the January 2009 provincial elections, about 1,000 Christian families reportedly fled their homes, although Iraqi officials report that most families returned by December 2008. The issue faded in 2009 but then resurfaced late in the year when about 10,000 Christians in northern Iraq, fearing bombings and intimidation, fled the areas near Kirkuk during October-December 2009. On 31 October 2010, a major attack on Christians occurred when a church in Baghdad was besieged by militants and about 51 worshippers were killed. The siege shook the faith of the Christian community in their security. Other attacks appearing to target Iraqi Christians have taken place since.<sup>117</sup>
- 3.10.7** Some Iraqi Christians blame the attacks on Al Qaeda in Iraq, which is still somewhat strong in Nineveh Province and associates Christians with the United

<sup>114</sup> US Commission on International Religious Freedom, United States Commission on International Religious Freedom Annual Report 2012: Iraq Introduction  
<http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm>

<sup>115</sup> Refugees International Uprooted and Unstable: Meeting Urgent Humanitarian Needs in Iraq, 15 April 2008 (Page 5) <http://www.unhcr.org/refworld/country,,RI,,IRQ,4562d8cf2,4806fb5d2,0.html>  
COI Service Iraq Country Report August 2011 (Para 21.29)  
[www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/).

<sup>116</sup> Human Rights Watch. Human Rights in Iraq Eight Years after the US-Led Invasion, published February 2011 <http://www.hrw.org/en/node/95605/section/2> COI Service Iraq Country Report, 26 August 2011 (Para 21.21) [www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/).

<sup>117</sup> Congressional Research Service. Iraq: Politics, Elections, and Benchmarks, 22 December 2010 (page 18-19) <http://www.fas.org/sqp/crs/mideast/RS21968.pdf> COI Service Iraq Country Report August 2011 (Para 21.30) [www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/).



States. The United Nations Assistance Mission for Iraq (UNAMI) co-ordinated humanitarian assistance to the Christians and others displaced. Previously, some human rights groups alleged Kurdish abuses against Christians and other minorities in the Nineveh Plain, close to the KRG-controlled region. Kurdish leaders deny the allegations.<sup>118</sup>

- 3.10.8** In February 2011 the International Organisation for Migration (IOM) stated that Christians in Iraq are still living under the threat of violence and in its latest update on Christian displacement in the country, IOM monitors in Baghdad reported that Christians are facing grave threats to their lives despite the increased presence of security checkpoints near their homes. Persistent insecurity is driving more Christians from their homes, with IOM monitors now counting over 1,300 Christian families seeking refuge in the northern governorates of Erbil, Dahuk, Sulaymaniyah, and Ninewa. Erbil has witnessed the greatest influx with over 830 Christian families being displaced to the governorate since November 2010. Some of the families had originally fled to Ninewa before again being displaced.<sup>119</sup>
- 3.10.9** In the Secretary General's March 2011 report to the UN Security Council it was further reported that members of the Christian minority continue to be targeted by armed and extremist groups, compelling them to seek refuge in the Kurdistan region. From December 2010 until February 2011, UNAMI recorded at least five attacks targeting Christians, four in Mosul and one in Kirkuk, in which at least two Christians were killed. These attacks created unease among members of the Christian community in Mosul, who began fleeing the area. Currently 803 Christian families have been displaced to Erbil alone, including 466 from Baghdad and 294 from Mosul. Furthermore, HRW Human Rights in Iraq Report 2011, observed that "In the weeks leading up to the March 7, 2010 national elections, assailants killed 10 Christians in Mosul in attacks that appeared politically motivated. The violence prompted 4,300 Christians to flee the city to the Ninevah Plains."<sup>120</sup>
- 3.10.10** The 2012 UNHCR Eligibility Guidelines report that "In 2011 and early 2012, Christians reportedly continued to be subjected to threats, kidnappings, attacks on their homes and assassination. Christians have also been kidnapped against ransom; however, even in criminal cases, consideration should be given to the victim's presumed vulnerability as a member of a religious minority or his/her (perceived) social status. In 2011, churches were repeatedly subject to (attempted) bombings, often coordinated, including in Baghdad, Mosul and Kirkuk. Extremist groups have also targeted Christians for being associated with the sale of alcohol".<sup>121</sup> A July 2012 Minority Rights Group report notes that "There is credible evidence that KRG security forces use intimidation and commit human rights violations in order to pressure minorities' political representatives to ally with KRG parties in a bid to establish control over the disputed areas of the North"<sup>122</sup>

<sup>118</sup> Congressional Research Service. Iraq: Politics, Elections, and Benchmarks, 22 December 2010 (page 18-19) <http://www.fas.org/sgp/crs/mideast/RS21968.pdf> COI Service Iraq Country Report August 2011 (Para 21.30) [www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/).

<sup>119</sup> International Organisation for Migration (IOM), Press Briefing notes – Iraqi Christians Continue to Face Threats and Economic Insecurity, posted 1 February 2011, <http://www.iom.int/jahia/Jahia/media/press-briefing-notes/pbnAF/cache/offonce/lang/en?entryId=29136> COI Service Iraq Country Report August 2011 (Para 21.31) [www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/).

<sup>120</sup> Human Rights Watch Report Human Rights in Iraq Eight Years after the US-Led Invasion, published February 2011 <http://www.hrw.org/en/node/95605/section/2> COI Service Iraq Country Report August 2011 (Para 21.32) [www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/)

<sup>121</sup> UNHCR, UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers for Iraq, 24 May 2012, iv. Christians, including converts <http://www.unhcr.org/refworld/pdfid/4fc77d522.pdf>

<sup>122</sup> Minority Rights Group, Improving security for minorities in Iraq, 19 July 2012

**3.10.11** The Constitution of Iraq requires the Iraqi State to uphold both freedom of religion and the principles of Islam, which, according to many Islamic scholars, includes capital punishment for leaving Islam. Iraqi Penal Law does not prohibit conversion from Islam to Christianity (or any other religion); however, Iraq's Personal Status Law does not provide for the legal recognition of a change in one's religious status. These apparent contradictions have not yet been tested in court and, as a result, the legal situation of converts remains unclear. A convert would not be able to have his/her conversion recognized by law, meaning that he/she has no legal means to register the change in religious status and his/her identity card will still identify its holder as "Muslim". As a result, children of converts may be without an identification card, unless their parents register them as Muslims. Children of converts cannot be enrolled in Christian schools and are obliged to participate in mandatory Islamic religion classes in public schools. A female convert cannot marry a Christian man, as she would still be considered Muslim by law. A convert may also have his/her marriage voided as under Shari'a Law, as an "apostate" cannot marry or remain married to a Muslim and will be excluded from inheritance rights.<sup>123</sup> According to the 2011 U.S. State Department report on International Religious Freedom, "Persons who leave Islam often faced severe social persecution, including death, often by assailants known to the victims".<sup>124</sup>

#### Situation for other Religious Minorities in Central and Southern Iraq

##### Sabaaen-Mandaeans

**3.10.12** According to the 2010 U.S. State Department report on International Religious Freedom, Mandaean religion is a gnostic religion with John the Baptist as a central figure and considered a prophet. Its adherents cannot marry outside the faith and they do not accept converts. Before 2003, there were an estimated 50,000 to 70,000 Mandaeans living in Iraq many of whom were well educated and worked as doctors, engineers, dentists and jewellers. After the fall of the former regime, Sunni and Shi'ite armed groups, as well as criminals, have singled out Sabaaen-Mandaeans on the basis of their religion, profession and (perceived) wealth. Some Sabaaen-Mandaeans elders, who traditionally wear long beards, have reportedly been attacked by Shi'ite militants who have mistaken them for strictly observant Sunni Arabs or Wahhabists. Sabaaen-Mandaeans are particularly vulnerable to attacks for several reasons. Unlike other groups in Iraq, the pacifist Mandaeans did not form militias to defend themselves. Further, the already small community lives mainly in scattered groups. Their disputed status as "people of the book", which under the Qur'an would provide them with a level of protection, failed to dissuade extremist groups from targeting them.<sup>125</sup>

**3.10.13** The 2012 UNHCR Eligibility Guidelines report that "Since 2003, Sabaaen-Mandaeans have been subjected to threats, abductions and killings. In addition to targeted violence perpetrated against Sabaaen-Mandaeans, the community has

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<http://www.minorityrights.org/download.php?id=1139>

<sup>123</sup> UNHCR, UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers for Iraq, 24 May 2012 (page 28) <http://www.unhcr.org/refworld/pdfid/4fc77d522.pdf>

<sup>124</sup> US Department of State, 2011 International Religious Freedom Report - Iraq, 30 July 2012, <http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?dliid=192885>

<sup>125</sup> UNHCR, UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers for Iraq, 24 May 2012 (page 29) <http://www.unhcr.org/refworld/pdfid/4fc77d522.pdf>

also suffered from social marginalization and religious discrimination.”<sup>126</sup> The 2011 U.S. State Department report on International Religious Freedom notes that Sabean-Mandaeans, who are few in number and live in small groups spread across the country, continued to report that they were targeted by Islamic militias.<sup>127</sup>

## Yazidis

**3.10.14** According to Yazidi leaders, the number of Yazidis in Iraq is estimated at 550,000 to 800,000. Yazidis reside mostly in the Governorate of Ninewa (primarily in the Sinjar mountain range, the Sheikhan area and the villages of Bahzani and Bashiqah near Mosul), while a minority of around 15% live in the Kurdistan Region (Dahuk Governorate). Since 2003, Yazidis have been targeted, including by threats, public defamation campaigns and 30 assassinations. Armed Sunni groups targeted Yazidis as “infidels”, as (perceived) supporters of the US intervention and on the basis of their (perceived) Kurdish ethnicity. On 14 August 2007, they were targeted in the deadliest attack since the fall of the former regime, in which over 400 people died. In 2009 and 2010, three major attacks against Yazidis were recorded. And in 2011 and 2012, media reported several incidents in which members of the Yazidi community were kidnapped and/or killed. In addition, Yazidis are associated with the sale of alcohol, making them a likely target for Islamist groups.<sup>128</sup>

## Baha’i

**3.10.15** Iraq’s Baha’is, estimated to number only 2,000 individuals spread across the country, continue to suffer from legal discrimination as their faith remains banned under Iraqi law despite constitutional provisions guaranteeing religious freedom. The relevant legislation, Law No. 105 of 1970, has neither been repealed nor invalidated, as no court challenges have been brought against it. Regulation 358 of 1975, which prohibited the issuance of the Iraq national identity card to members of Baha’i faith, was cancelled in April 2007 by the Ministry of Interior. As a result, a small number of Baha’is were issued identity cards. However, the Ministry of the Interior/Nationality and Passport Section stopped issuance of identity cards after only a short period, claiming that Baha’is had been registered as “Muslims” since 1975 and citing a government regulation preventing the conversion of Muslims to another faith. Without identity cards, Baha’is experience difficulties registering their children for school, accessing services and rights, and applying for passports.<sup>129</sup>

## Shabaks

**3.10.16** According to a 2010 Minority Rights Group report, Shabaks have lived mainly in the Nineveh plains, on a strip of land between the Tigris and Khazir, since 1502. A small population of Shabak people also lives in Mosul. They number between 200,000 and 500,000. They are culturally distinct from Kurds and Arabs, have their own traditions, and speak a language that is a mix of Arabic, Farsi, Kurdish and Turkish. About 70 per cent are Shi’a Muslim; the rest are Sunni. The Shabak

<sup>126</sup> UNHCR, UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers for Iraq, 24 May 2012, v. Sabaeen-Mandaeans (p.29)

<sup>127</sup> US Department of State, 2011 International Religious Freedom Report - Iraq, 30 July 2012, <http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?dliid=192885>

<sup>128</sup> UNHCR, UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers for Iraq, 24 May 2012 (page 29-30) <http://www.unhcr.org/refworld/pdfid/4fc77d522.pdf>

<sup>129</sup> UNHCR, UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers for Iraq, 24 May 2012 (page 30) <http://www.unhcr.org/refworld/pdfid/4fc77d522.pdf>

people have been recognised as a distinct ethnic group in Iraq since 1952.<sup>130</sup> Kurdish authorities have refused to recognize them as an ethnic minority, and consider them as a community of Kurdish ethnicity, an issue over which Shabak themselves are divided. Their status and lands are disputed by both Kurds and Arabs wishing to extend land claims into the Nineveh governorate. Like other minorities in this position, Shabaks are suffering targeted persecution and assimilation. Since 2004, Shabak groups have reported to the UN that more than 750 of their community members have perished in armed attacks.<sup>131</sup>

## Kaka'i

**3.10.17** According to a 2010 Minority Rights Group report, Kaka'i, also known as Yarsan and Ahl-e Haqq ("People of the Truth"), are followers of a monotheistic religion founded in the 14th century in western Iran. Most followers live in Iran while an estimated 200,000 Kaka'i live in Iraq, mostly in a group of villages around the town of Daquq, southeast of Kirkuk city. In Iraq, Kaka'i are mostly ethnic Kurds who speak Macho, a Gorani dialect, but also Sorani Kurdish, Turkmen and Arabic. In the towns of Mandali, Ba'quba and Khanaqeen in Diyala Governorate, they speak only Arabic. They do not observe Muslim rites and rituals. Kaka'i are secretive about their faith, which reportedly contains elements of Zoroastrianism and Shi'ism. Reportedly, Kaka'i religious and community leaders increasingly maintain that it is a form of Shi'ism. Since 2003, armed groups have subjected Kaka'i to threats, kidnapping and assassinations. Further, Muslim religious leaders in Kirkuk have allegedly told their followers not to purchase anything from "infidel" Kaka'i shop owners. For fear of persecution, Kaka'i reportedly hide their identity in public.<sup>132</sup>

**3.10.18** The 2011 U.S State Department report on International Religious Freedom notes that between February 2 and July 9 2011, eight Kaka'is were murdered in Kirkuk Province.<sup>133</sup>

## Faili Kurds

**3.10.19** According to a 2010 Minority Rights Group report, Faili Kurds are Shi'a Muslims by religion (Kurds are predominantly Sunni) and have lived in Iraq since the days of the Ottoman Empire. They inhabit the land along the Iran/Iraq border in the Zagros Mountains, as well as parts of Baghdad. Faili Kurds were previously merchants and businesspeople active in politics and civil society, and founded the Baghdad Chamber of Commerce in the 1960s.<sup>134</sup> Under the Ba'ath regime, they were specifically targeted and stripped of their Iraqi citizenship, and many were expelled

<sup>130</sup> Human Rights Watch. On Vulnerable Ground: Violence against Minority Communities in Nineveh Province's Disputed Territories, (page 18) <http://www.hrw.org/en/reports/2009/11/10/vulnerable-ground-0>  
COI Service Iraq Country Report August 2011 (Para 22.37)

[www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/)

<sup>131</sup> Minority Rights Group Still Targeted: Continued Persecution of Iraq's Minorities, published June 2010 (page 7) <http://www.minorityrights.org/10042/reports/still-targeted-continued-persecution-of-iraqs-minorities.html> COI Service Iraq Country Report August 2011 (Para 22.38)

[www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/)

<sup>132</sup> UNHCR, UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers for Iraq, 24 May 2012 (page 30) <http://www.unhcr.org/refworld/pdfid/4fc77d522.pdf>

<sup>133</sup> US Department of State, 2011 International Religious Freedom Report - Iraq, 30 July 2012, <http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?dliid=192885>

<sup>134</sup> Minority Rights Group Still Targeted: Continued Persecution of Iraq's Minorities, published June 2010 (page 6) <http://www.minorityrights.org/10042/reports/still-targeted-continued-persecution-of-iraqs-minorities.html> COI Service Iraq Country Report August 2011 (Para 22.25)

[www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/)

to Iran on the charge that their Shi'a faith made them 'Iranian'. According to UNHCR, at the beginning of 2003, Iraqi refugees in Iran numbered more than 200,000; of 1,300 living in the city of Azna in western Iran, 65 per cent were Faili Kurds. Many of those under 20 years of age were born in the camps and have known no other home. Now, their ethnicity and religion once again make their community the target of violent human rights violations in Iraq. Due to the ethnic cleansing and dispersal they have suffered, and to their lack of citizenship rights under the Ba'ath regime, it is very difficult to gather evidence regarding how many remain and the specific ongoing violations they face.<sup>135</sup> However the 2012 UNHCR Guidelines stated that Faili Kurds, who primarily adhere to the Shi'ite branch of Islam, may be targeted by Sunni Islamists on the basis of their sectarian identity.<sup>136</sup>

**3.10.20** While a number of Faili Kurds have been represented in the Iraqi Government since 2003, many others, who have not yet been able to recover their Iraqi citizenship of which they were arbitrarily deprived by the former regime, continue to be stateless. Many have not been able to recover their properties confiscated by the former regime and lack documentation required to access services and basic rights.<sup>137</sup>

#### Jews

**3.10.21** UNHCR reports that since the fall of the regime in 2003, the situation for Jews in Iraq has worsened dramatically with the ongoing climate of religious intolerance and extremism. Jews in Iraq continue to be at risk of harassment, discrimination, and persecution for mainly religious reasons. The community no longer has a rabbi in Iraq and lives in isolation, due to fear of targeted attacks. Since 2003, the population has been reduced considerably.<sup>138</sup> Eight Jews reside in Baghdad and none were known to live in other parts of the country.<sup>139</sup> A 2006 citizenship law prevented Jews who emigrated to other countries from reclaiming citizenship.<sup>140</sup>

**3.10.22** The 2012 UNHCR Eligibility Guidelines report that "After the names and biographies of the nine remaining Jews in Baghdad appeared in cables published by WikiLeaks in September 2011, the small community has faced a heightened risk of being targeted by extremist groups. Since then, one person reportedly emigrated and one died, bringing the total Jewish population to seven individuals. The US Embassy in Baghdad is reportedly working to protect or relocate those that wish to leave Iraq".<sup>141</sup>

<sup>135</sup> Minority Rights Group Still Targeted: Continued Persecution of Iraq's Minorities, published June 2010 (page 6) <http://www.minorityrights.org/10042/reports/still-targeted-continued-persecution-of-iraqs-minorities.html> COI Service Iraq Country Report August 2011 (Para 22.26)

[www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/)

<sup>136</sup> UNHCR, UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers for Iraq, 24 May 2012 (page 25) <http://www.unhcr.org/refworld/pdfid/4fc77d522.pdf> COI Service Iraq Country Report August 2011 (Para 22.27)

[www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/)

<sup>137</sup> UNHCR, UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers for Iraq, 24 May 2012 (page 32) <http://www.unhcr.org/refworld/pdfid/4fc77d522.pdf>

<sup>138</sup> COI Service Iraq Country Report, 26 August 2011 (Para 21.49)

[www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/)

<sup>139</sup> US Department of State, 2011 International Religious Freedom Report Iraq 30 July 2012 Section 1 <http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?dliid=192885>

<sup>140</sup> US State Department Human Rights Report 2011: Iraq, 24 May 2012, Section 5

<http://www.state.gov/documents/organization/186638.pdf>

<sup>141</sup> UNHCR, UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers for Iraq, 24 May 2012 ix. *Jews* (p.30) <http://www.unhcr.org/refworld/pdfid/4fc77d522.pdf>

## Religious Freedom in the Kurdistan Regional Government Area

**3.10.23** The 2009 UNHCR Eligibility Guidelines set out that the rights of religious minorities are generally respected in the Kurdish Region of Iraq and they can worship freely without interference by the Kurdish authorities. A significant number of members of religious minorities, in particular Christians, have sought refuge in the region. The general population does not tolerate a Muslim's conversion to Christianity and, accordingly, law enforcement organs may be unwilling to interfere and provide protection to a convert at risk.<sup>142</sup> According to the 2012 UNHCR Eligibility Guidelines, Christians are able to enter the Kurdistan region without a sponsor.<sup>143</sup>

**3.10.24** The 2012 UNHCR Eligibility Guidelines note that in the Kurdistan Region, the rights of religious minorities are generally respected and groups can worship freely without interference. The KRG Ministry of Education funds public schools at the elementary and high school level in the Aramaic language. The curriculum in the Kurdistan Region does not contain religion or Qur'an studies. A significant number of religious minorities, in particular Christians, have sought refuge in the region.<sup>144</sup>

**3.10.25** However, the UN Secretary-General noted in March 2011 that "although internally displaced persons have been welcomed by the Kurdish authorities, integration is difficult owing to limited availability of resources, language barriers and difficulties in finding employment".<sup>145</sup> A spokesperson for a delegation of MEPs that visited Iraq in April 2011 also stated that twelve thousand Christians have sought shelter in the KRI, but "they have no housing, no schooling, no sanitation, healthcare".<sup>146</sup>

**3.10.26** The 2010 U.S. State Department report on International Religious Freedom noted that there have been allegations that the authorities in the Kurdistan Region of Iraq have engaged in discriminatory behaviour against religious minorities. Christians and Yezidis living north of Mosul claimed that the Kurdistan Region authorities confiscated their property without compensation and that it began building settlements on their land. There were reports that Yezidis faced restrictions when entering the Kurdistan Region and had to obtain approval from the authorities to find employment. The Kurdistan Region authorities denied allegations that it was behind violent incidents directed at Christians and other minorities. Moreover, despite such allegations, many non-Muslims reside in the north and the Kurdistan Region of Iraq, and there were reports that some sought refuge there from other parts of the country where pressures to conform publicly to narrow interpretations of Islamic tenets were greater. In February 2010 the IOM estimated there were 19,040 internally displaced families in the Ninewa Plain and that 36,000 internally

<sup>142</sup> UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers, April 2009, (page 179) <http://www.unhcr.org/refworld/docid/49f569cf2.html> COI Service Iraq Country Report August 2011 (Para 21.50) [www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/)

<sup>143</sup> UNHCR, UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers for Iraq, 24 May 2012 *Practical, Safe and Legal Access to the Kurdistan Region* (p.49) <http://www.unhcr.org/refworld/pdfid/4fc77d522.pdf>

<sup>144</sup> UNHCR, UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers for Iraq, 24 May 2012 (page 27) <http://www.unhcr.org/refworld/pdfid/4fc77d522.pdf>

<sup>145</sup> United Nations, Second report of the Secretary-General pursuant to paragraph 6 of resolution 1936 (2010), 31/03/2011, section E, para. 46. <http://daccess-ods.un.org/access.nsf/Get?Open&DS=S/2011/213&Lang=E&Area=UNDOC>

<sup>146</sup> European Parliament, Security situation in Iraq remains "extremely sensitive" - Struan Stevenson, 03/05/2011. <http://www.europarl.europa.eu/en/headlines/content/20110429STO18375/html/Security-situation-in-Iraq-remains-extremely-sensitive-Struan-Stevenson>

displaced families were located in Dohuk, Erbil, and Sulaymania provinces, while 8,798 displaced families were in Kirkuk provinces.<sup>147</sup>

**3.10.27** The 2012 UNHCR Eligibility Guidelines report that “In the three northern governorates of Sulaymaniyah, Erbil and Dahuk, the rights of Christians are generally respected and a significant number have sought refuge in the region, however in early December 2011, a mob allegedly shouting anti-Christian slogans reportedly attacked mainly Christian and Yazidi-owned liquor shops and businesses in and near the town of Zakho (Dahuk). The attacks were allegedly triggered by an inflammatory Friday prayer sermon condemning “un-Islamic” businesses. Reportedly, up to 30 liquor shops, hotels and a massage parlour were vandalized or burned down. An attempt to attack the Christian quarter in Zakho was reportedly prevented by the security forces. Affected shop owners reportedly found leaflets on the shop walls, threatening them if they were to reopen the shops. Motives for the violence remain unclear. In 2011 several kidnappings of Christians were reported in Ainkawa, spreading fear among the community and resulting in internally displaced Christian families fleeing abroad.<sup>148</sup>

**See also:** [Actors of protection \(section 2.3 above\)](#)

[Internal relocation \(section 2.4 above\)](#)

[Caselaw \(section 2.5 above\)](#)

**3.10.28 Conclusion** Religious minorities are at risk of persecution in Iraq. The authorities in central and southern Iraq are generally unable to provide effective protection to Christians or other religious minorities. The Kurdistan Regional government currently allows Iraqi Christians from central and southern Iraq to settle into its three governorates. In assessing whether an Iraqi Christian or other religious minorities from Central and Southern Iraq can reasonably internally relocate to the KRI, case owners should consider all the relevant personal circumstances of the claimant in order to assess whether internal relocation would not be unduly harsh, including their age, ethnicity, financial circumstances and support network, health and gender.

**3.10.29** Christian converts are unlikely to be provided with effective protection by the central and southern Iraqi authorities or by the authorities of the Kurdistan Region of Iraq. A grant of asylum is therefore likely to be appropriate.

### **3.11 Prison conditions**

**3.11.1** 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 the Iraq are so poor as to amount to torture or inhuman or degrading treatment or punishment.

**3.11.2** The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of ECHR and warrant a grant of Humanitarian

<sup>147</sup> UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers, April 2009, (page 179) <http://www.unhcr.org/refworld/docid/49f569cf2.html> COI Service Iraq Country Report August 2011 (Para 21.50) [www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/)

<sup>148</sup> UNHCR, UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers for Iraq, 24 May 2012, iv. Christians, including converts <http://www.unhcr.org/refworld/pdfid/4fc77d522.pdf>

Protection. If imprisonment would be for a Refugee Convention reason or in cases where for a Convention reason a prison sentence is extended above the norm, the asylum claim should be considered first before going on to consider whether prison conditions breach Article 3 if the asylum claim is refused.

- 3.11.3 Consideration.** Four separate ministries - Justice, Interior, Defence and Labour and Social Affairs - operate prisons, detention centres and holding facilities. The country's fractured penal structure, in which the Ministry of Justice (MOJ) holds sentenced and un-sentenced prisoners and the other ministries hold detainees, complicated detention and prison operations. By law the MOJ has full authority over all detention facilities, including two prisons in the IKR, except for MOD military justice facilities and those facilities in the IKR run by the KRG's Ministry of Labour and Social Affairs (KMOLSA). The law has not been fully implemented, although there was progress in transferring MOD detainees to MOJ detention facilities.<sup>149</sup>
- 3.11.4** In the IKR, KMOLSA authorities operated prisons and pre-trial detention facilities, security authorities operated prisons and pre-trial detention facilities and internal security forces and intelligence services operated separate detention facilities as well. Each of the three provinces has two prisons, one for men and another for women and juveniles. The KRG's Ministry of Interior, and not KMOLSA, supervises all pre-trial male adults in the IKR.<sup>150</sup>
- 3.11.5** The total capacity of MOJ's Iraqi Corrections Service (ICS) facilities, the only government entity with the legal authority to hold persons after conviction, was 34,124 beds for men and 553 beds for women. As of December 2011 the total number of prisoners in and detainees held by the ICS was 25,926. In the IKR there were approximately 2,200 post-trial prisoners, including 70 women, held in KRG facilities. There was no available information on those in Asayish and KRG intelligence service facilities.<sup>151</sup>
- 3.11.6** Authorities at MOI and MOD detention facilities reported that conditions and treatment of detainees were generally poor. Many inmates lacked adequate food, exercise facilities, medical care and family visitation. Limited infrastructure or aging physical plants in some facilities resulted in marginal sanitation, limited access to potable water and electricity and poor quality food. Medical care in MOI and MOD detention facilities was inconsistent and there were allegations of abuse and torture in some facilities. However, the Ministry of Justice's detention facilities supplied detainees with better treatment and living conditions. Medical care in the MOJ's ICS prisons in some locations exceeded the care generally available in the surrounding area.<sup>152</sup>
- 3.11.7** The conditions in MOI facilities were much poorer. For example, UNAMI received reports of a counterterrorism facility in Diyala that held 500 detainees in three rooms measuring 6 by 4 metres each; the detainees shared two bathrooms without running water. Ministry officials rarely granted prison access to outside

<sup>149</sup> US State Department Human Rights Report 2011: Iraq Section 1 Prison and Detention Centre Conditions <http://www.state.gov/documents/organization/186638.pdf>

<sup>150</sup> US State Department Human Rights Report 2011: Iraq Section 1 Prison and Detention Centre Conditions <http://www.state.gov/documents/organization/186638.pdf>

<sup>151</sup> US State Department Human Rights Report 2011: Iraq Section 1 Prison and Detention Centre Conditions <http://www.state.gov/documents/organization/186638.pdf>

<sup>152</sup> US State Department Human Rights Report 2011: Iraq 24 May 2012 Section 1 Prison and Detention Centre Conditions <http://www.state.gov/documents/organization/186638.pdf>



monitoring groups, which made it difficult to assess the prison conditions in the facilities.

- 3.11.8** According to the May 2012 UNHCR Eligibility Guidelines, “Detention conditions are said to be harsh and torture and ill-treatment are reportedly widespread and systematic, both during arrest and while in detention - including allegedly in secret detention facilities. Torture is reportedly used to extract information from detainees and to obtain “confessions” to be used in court against them. Dozens of detainees have reportedly died as a result of torture or other ill-treatment in recent years. It is suggested that these incidents often go unpunished”.<sup>153</sup> Amnesty International World Report 2012 stated that “torture and other ill-treatment were widespread in prisons and detention centres, in particular those controlled by the Ministries of Interior and Defence. Commonly reported methods were suspension by the limbs for long periods, beatings with cables and hosepipes, electric shocks, breaking of limbs, partial asphyxiation with plastic bags, and rape or threats of rape. Torture was used to extract information from detainees and “confessions” that could be used as evidence against them in courts”.<sup>154</sup> Amnesty International also reported that rape or threat of rape of detainees or their loved ones has been widely alleged and that dozens of detainees have died as a result of torture or other ill-treatment since 2004 including a denial of healthcare. It also highlighted overcrowding ill-health and inadequate medical care as serious problems.<sup>155</sup>
- 3.11.9** Freedom House also reported that detainees made “credible allegations of systematic sexual, physical, and psychological abuse”.<sup>156</sup> Human Rights Watch<sup>157</sup> documented the long history of abuse and torture in detention facilities in Iraq, including at secret facilities and the Office of the United Nations High Commissioner for Human Rights also documented cases of “severe ill-treatment” in unofficial detention facilities.<sup>158</sup>
- 3.11.10** The ICS Internal Affairs department monitored abuse or violations of prisoners’ human rights. In past years allegations of abuse have resulted in the disciplining of ICS officers in some cases. The ICS stated the there were no allegations that their staff abused detainees during 2011. ICS prisons maintained visitation programs that allowed for regular visits by family members and others. Facility administrators dealt with prisoner complaints. An internal audit program ensured that detention conditions were compatible with international standards, such as separate housing for men, women, juveniles and pre-trial detainees; access to potable water; access to medical care; appropriate living space; and available programming, such as recreation, religious observation and vocational rehabilitation.<sup>159</sup>

<sup>153</sup> UNHCR, UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers for Iraq, 24 May 2012 II. Background Information (page 9)

<http://www.unhcr.org/refworld/pdfid/4fc77d522.pdf>

<sup>154</sup> Amnesty International, Annual Report 2012 Iraq, 13/05/2011, Torture and other ill-treatment.

[http://files.amnesty.org/air12/air\\_2012\\_full\\_en.pdf](http://files.amnesty.org/air12/air_2012_full_en.pdf)

<sup>155</sup> Amnesty International, Iraq: Broken bodies, tortured minds: Abuse and neglect of detainees in Iraq, 08/02/2011 <http://www.amnesty.org/en/library/asset/MDE14/001/2011/en/48c3c6e6-9607-4926-abd7-d1da1c51a976/mde140012011en.pdf>

<sup>156</sup> Freedom House, Freedom in the World 2011: Iraq, 12 May 2011.

<http://www.unhcr.org/refworld/docid/4dcbf51ac.html>

<sup>157</sup> Human Rights Watch, At a Crossroads: Human Rights in Iraq Eight Years after the US-Led Invasion, 21 february 2011, section III. <http://www.hrw.org/node/95606>

<sup>158</sup> OHCHR, Joint study on global practices in relation to secret detention in the context of countering terrorism (Iraq excerpt), 20 May 2010, paras. 226 and 228.

[http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.13.42\\_re-iss.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.13.42_re-iss.pdf)

<sup>159</sup> US State Department Human Rights Report 2011: Iraq 24 May 2012 Section 1 Prison and Detention Centre Conditions <http://www.state.gov/documents/organization/186638.pdf>

- 3.11.11** The ICRC had access in accordance with its standard modalities to MOJ prisons and detention facilities, together with access to places of detention under other ministries, although at times with difficulty. During 2011 the ICRC carried out 105 visits to 50 central government detention facilities. In the last quarter of 2011, however, the ICRC was suddenly denied access to a MOJ prison after the government transferred several hundred alleged Ba'athists there. The ICRC had a separate agreement with the KRG for access with some restrictions to its detention facilities. The ICRC conducted 36 visits to 25 places of detention under the authority of the KRG.<sup>160</sup>
- 3.11.12** The end-of-year total juvenile population in holding facilities and detention centres outside the IKR was approximately 1,345. Most juvenile pre-trial detainees and post-trial prisoners were held in facilities run by the Ministry of Labour and Social Affairs, as required by law. Small numbers of juveniles were also held at some MOJ prisons and police stations; for example, 146 juveniles were held at MOJ facilities at the end of 2011. In the IKR the juvenile prisons held 235 pre-trial detainees and post-trial prisoners. Juveniles were sometimes held in the same cells as adults and rarely afforded access to education or vocational training. Access to medical care was limited. Often the detention facilities did not have an on-site pharmacy or infirmary.<sup>161</sup>
- 3.11.13** In the IKR, domestic and international human rights NGOs and intergovernmental organisations generally had access to pre-trial and post-trial facilities. Access by independent organisations to the facilities of the KRG internal security and intelligence services was limited to the International Committee of the Red Cross (ICRC) and the UN.<sup>162</sup>
- 3.11.14** Until April 2010, when media reports of an extrajudicial detention facility were released, the national detention facilities occasionally permitted visits by MOHR representatives of the MOHR and COR members. After the press coverage, ministry officials and COR members reported encountering resistance at some detention facilities to the visits. KRG detention facilities permitted visits by the national Ministry of Human Rights (MOHR) and KRG human rights authorities.<sup>163</sup>
- 3.11.14** According to the 2012 Freedom in the World report from Freedom House, "While KRG laws also prohibit inhumane treatment, it is widely acknowledged that Kurdish security forces practice illegal detention and questionable interrogation tactics".<sup>164</sup> The May 2012 UNHCR Eligibility Guidelines set out that "In the Kurdistan Region, overall human rights conditions are reported to have improved; however, abuses continue to be alleged. Reports of arbitrary arrests, incommunicado detention and the use of torture and ill-treatment have been made, in particular, with regard to facilities run by the Kurdish Security Forces (Asayish). Detainees held on terrorism charges under the 2006 Anti-Terrorism Law may be held without charge or trial for prolonged periods of time, although reports

<sup>160</sup> US State Department Human Rights Report 2011: Iraq 24 May 2012 Section 1 Prison and Detention Centre Conditions <http://www.state.gov/documents/organization/186638.pdf>

<sup>161</sup> US State Department Human Rights Report 2011: Iraq 24 May 2012 Section 1 Prison and Detention Centre Conditions <http://www.state.gov/documents/organization/186638.pdf>

<sup>162</sup> US State Department Human Rights Report 2011: Iraq 24 May 2012 Section 1 Prison and Detention Centre Conditions <http://www.state.gov/documents/organization/186638.pdf>

<sup>163</sup> US State Department Human Rights Report 2011: Iraq 24 May 2012 Section 1 Prison and Detention Centre Conditions <http://www.state.gov/documents/organization/186638.pdf>

<sup>164</sup> Freedom in the World 2012, Iraq, May 2012

<http://www.freedomhouse.org/report/freedom-world/2012/iraq>

suggest that this practice is not as common as it was in the past. The KRG authorities have reportedly also lessened the previously widespread use of torture and ill-treatment of detainees and prisoners. However, it is still occasionally reported that detainees are subjected to torture and ill-treatment, in particular when interrogated and investigated by the Asayish”<sup>165</sup>.

**3.11.15** Domestic and international human rights NGOs and intergovernmental organisations generally did not have access to national MOI detention and pre-trial facilities. UNAMI suspended inspections of several MOI and MOD facilities in December 2010 after finding evidence that authorities beat or mistreated prisoners and detainees because they raised concerns to UNAMI staff or in order to compel inmates to reveal to prison authorities what they reported to UNAMI inspectors. UNAMI did not plan to resume prison inspections until it received credible assurances that prisoners and detainees would not be compelled to reveal the nature of their conversations with inspectors. Credible assurances were not received by the end of 2011<sup>166</sup>

**3.11.16 Conclusion** Conditions in MOI and MOD prisons and detention facilities in Central and Southern Iraq are very poor and taking into account the widespread use of torture, the serious overcrowding and the extremely poor health facilities and sanitary conditions, MOI and MOD prisons and detention facilities in Iraq are likely to breach the Article 3 threshold. Due to the prevalence of torture and incommunicado torture in the Kurdistan Region, detention facilities may breach the Article 3 threshold in individual cases. Case owners should give due consideration to the individual factors of each case, including the likely length of detention, the likely type of detention facility, the individual’s age, gender and state of health. However, where an applicant is able to demonstrate a real risk of detention or imprisonment on return to Iraq, and the exclusion criteria do not apply, a grant of Humanitarian Protection is likely to be appropriate. Where an applicant is able to demonstrate a real risk of detention or imprisonment on return to Iraq and the applicant falls within the exclusion criteria, the applicant will not be eligible for a grant of Humanitarian Protection. If the decision maker considers that although an applicant is excluded from a grant of Humanitarian Protection s/he does face a real risk of imprisonment on return and prison conditions reach the threshold of Article 3, they should propose to grant Discretionary Leave in accordance with the provisions in the Asylum Instruction on Discretionary Leave. The proposal to grant should be referred to a Senior Caseworker.

## 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 Instruction on Discretionary Leave](#)).

**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.

<sup>165</sup> UNHCR, UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum Seekers for Iraq, 24 May 2012 II. Background Information (page 9) <http://www.unhcr.org/refworld/pdfid/4fc77d522.pdf>

<sup>166</sup> US State Department Human Rights Report 2011: Iraq 24 May 2012nSection 1 Prison and Detention Centre Conditions <http://www.state.gov/documents/organization/186638.pdf>

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 Instruction on Discretionary Leave.

### 4.3 Minors Claiming in their Own Right

- 4.3.1** Minors claiming in their own right who have not been granted asylum or HP can only be returned where (a) they have family to return to; or (b) there are adequate reception and care arrangements. Case owners should refer to the Agency's guidance on Family Tracing following the Court of Appeal's conclusions in the case of [KA \(Afghanistan\) & Others \[2012\] EWCA civ1014](#). In this case the Court found that Regulation 6 of the Asylum Seekers (Reception Conditions) Regulations 2005 imposes a duty on the Secretary of State to endeavour to trace the families of Unaccompanied Asylum Seeking Children (UASCs).
- 4.3.2** At present there is insufficient information to be satisfied that in general there are adequate reception, support and care arrangements in place for minors with no family in Iraq. Those who cannot be returned should, if they do not qualify for leave on any more favourable grounds, be granted Discretionary Leave for a period as set out in the relevant [Asylum Instructions](#).

### 4.4 Medical treatment

- 4.4.1** Individuals whose asylum claims have been refused and who seek to remain on the grounds that they require medical treatment which is either unavailable or difficult to access in their countries of origin, will not be removed to those countries if this would be inconsistent with our obligations under the ECHR. Case owners should give due consideration to the individual factors of each case and refer to the latest available country of origin information concerning the availability of medical treatment in the country concerned. If the information is not readily available, an information request should be submitted to the COI Service (COIS).
- 4.4.2** The threshold set by Article 3 ECHR is a high one. It is not simply a question of whether the treatment required is unavailable or not easily accessible in the country of origin. According to the House of Lords' judgment in the case of [N \(FC\) v SSHD \[2005\] UKHL31](#), it is "whether the applicant's illness has reached such a critical stage (i.e. he is dying) that it would be inhuman treatment to deprive him of the care which he is currently receiving and send him home to an early death unless there is care available there to enable him to meet that fate with dignity". That judgment was upheld in May 2008 by the European Court of Human Rights.
- 4.4.3** That standard continues to be followed in the Upper Tribunal (UT) where, in the case of [GS and EO \(Article 3 – health cases\) India \[2012\] UKUT 00397\(IAC\)](#), the UT held that a dramatic shortening of life expectancy by the withdrawal of medical treatment as a result of removal cannot amount to the highly exceptional case that engages the Article 3 duty. But the UT also accepted that there are recognised departures from the high threshold approach in cases concerning children, discriminatory denial of treatment, the absence of resources through civil war or similar human agency.
- 4.4.4** The improvement or stabilisation in an applicant's medical condition resulting from treatment in the UK and the prospect of serious or fatal relapse on expulsion will therefore not in itself render expulsion inhuman treatment contrary to Article 3 ECHR. All cases must be considered individually, in the light of the conditions in the

country of origin, but an applicant will normally need to show exceptional circumstances that prevent return, namely that there are compelling humanitarian considerations, such as the applicant being in the final stages of a terminal illness without prospect of medical care or family support on return.

- 4.4.5** Where a case owner considers that the circumstances of the individual applicant and the situation in the country would make 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. Case owners must refer to the [Asylum Instruction on Discretionary Leave](#) for the appropriate period of leave to grant.

## **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.
- 5.2** Any medical conditions put forward by the person as a reason not to remove them which have not previously been considered must be fully investigated against the background of the latest available country of origin information and the specific facts of the case; and a decision made as to whether removal remains the correct course of action, in accordance with [chapter 53.8 of the Enforcement Instructions and Guidance](#).
- 5.3** There is no policy which precludes the enforced return to Iraq of failed asylum seekers who have no legal basis of stay in the United Kingdom. Case owners must however note that in the case of [HH \(Somalia\) & Others \[2010\] EWCA Civ 426](#) the Court of Appeal found that in any case in which it can be shown either directly or by implication what route and method of return is envisaged, the First Tier Tribunal is required by law to consider and determine any challenge to the safety of that route or method. Where internal relocation is suggested, case owners should consider accessibility of the intended place of relocation. Where return is to a home area, case owners should carefully consider any concerns expressed by the applicant regarding safety of the onward route of return but if this is not raised by the applicant at the decision stage, case owners and/or presenting officers should be prepared to deal with any challenge on this issue made by the applicant in the courts.
- 5.4** EU letters are currently not acceptable for enforced or voluntary returns to Baghdad. A valid passport, expired passport or laissez passer travel document is required. This requirement was introduced by the Iraqi Government in October 2011.<sup>167</sup> In the country guidance case of [HM and others \(Article 15\(c\)\) Iraq CG \[2012\] UKUT 00409\(IAC\)](#) the Upper Tribunal considered the issue of whether there would be a risk of treatment contrary to Article 3 ECHR arising from returns from the UK to Baghdad International Airport (BIAP) and found that:
- a. If a national of Iraq who has failed to establish that conditions inside Iraq are unsafe is compulsorily returned to Baghdad International Airport (BIAP) on either

<sup>167</sup> Letter from the British Embassy Baghdad, Renewal Or Reissuance Of A Civil Status ID card And Provisions To Change Place Of Residence In Iraq, dated 22 January 2012

a current or expired Iraqi passport, there is no real risk of detention in the course of BIAP procedures (except possibly in respect of those who are the subject of a judicial order or arrest warrant). Nor is there such a risk if such a person chooses to make a voluntary return with a laissez passer document which can be issued by the Iraqi embassy in the UK.

- b. If, however, such a person is compulsorily returned to BIAP without either a current or expired Iraqi passport, he may be at risk of detention in the course of BIAP procedures and it cannot be excluded that the detention conditions might give rise to a real risk of treatment contrary to Article 3 ECHR. Such a risk is however, purely academic in the UK context because under the current UK returns policy there will be no compulsory return of persons lacking such documents.

The Tribunal then went on to say (at para 324 of the determination) that "... it seems to us that if the Secretary of State were to revert to her earlier returns policy (which we have found may possibly have led to some returnees in 2010 being detained in adverse conditions), then it would be incumbent on her to demonstrate that Iraqi BIAP procedures making use of detention would not result in adverse treatment contrary to Article 3."

**5.5** In the country guidance case of [MK \(documents – relocation\) Iraq CG \[2012\] UKUT 00126 \(IAC\)](#) the Upper Tribunal concluded that the lack of documentation relating to identity in the form of the Civil Status ID (CSID), Iraqi Nationality Certificate (INC) and Public Distribution System (PDS) card (food ration card) is not ordinarily an insuperable problem and it is not a factor likely to make return to any part of Iraq unsafe or unreasonable. The Upper Tribunal went on to find:

- (2) (a) Entry into and residence in the KRG can be effected by any Iraqi national with a CSID, INC and PDS, after registration with the Asayish (local security office). An Arab may need a sponsor; a Kurd will not.

(b) Living conditions in the KRG for a person who has relocated there are not without difficulties, but there are jobs, and there is access to free health care facilities, education, rented accommodation and financial and other support from UNHCR.

- (3) Despite bureaucratic difficulties with registration and the difficulties faced by IDPs, it is wrong to say that there is, in general, no internal flight alternative in Iraq, bearing in mind in particular the levels of governmental and NGO support available.

**5.6** Furthermore in the country guidance case of [HM and others \(Article 15\(c\)\) Iraq CG \[2012\] UKUT 00409\(IAC\)](#) the Upper Tribunal found that further evidence that has become available since the Tribunal heard [MK \(documents – relocation\) Iraq CG \[2012\] UKUT 00126 \(IAC\)](#) does not warrant any departure from its conclusions on internal relocation alternatives in the KRG or in central or southern Iraq save that the evidence is now sufficient to establish the existence of a Central Archive maintained by the Iraqi authorities retaining civil identity records on microfiche, which provides a further way in which a person can identify themselves and obtain a copy of their CSID, whether from abroad or within Iraq.

**5.7** Iraqi nationals may return voluntarily to Iraq at any time in one of three ways: (a) leaving the UK by themselves, where the applicant makes their own arrangements

to leave the UK, (b) leaving the UK through the voluntary departure procedure, arranged through the UK Border Force, or (c) leaving the UK under one of the Assisted Voluntary Return (AVR) schemes. The AVR scheme is implemented on behalf of the UK Border Agency by Refugee Action and co-funded by the European Refugee Fund. Refugee Action will provide advice and help with obtaining any 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. Details can be found on Refugee Action's web site at: [www.choices-avr.org.uk](http://www.choices-avr.org.uk).

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