



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les Réfugiés

UNHCR the Netherlands

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Dear Right Honorable Justice [REDACTED]

Subject: [REDACTED]
(Sinjar District), Iraq

UNHCR has been made aware of the case of D [REDACTED], an Iraqi citizen adhering to the Yazidi faith, born [REDACTED] in [REDACTED], Sinjar District (Ninewa Governorate), Iraq.

The Director of the Division of International Protection of UNHCR, by letter dated 17 May 2019, communicated to the Ministry of Foreign Affairs, the Ministry of Justice and Security and the Immigration and Naturalization Services, UNHCR's position in relation to Iraqi nationals from the Sinjar District adhering to the Yazidi faith and whose asylum applications have been rejected on the basis that a camp for internally displaced persons in the Kurdistan Region of Iraq was determined to be their last place of residence. In this letter, UNHCR set out the following position:

"UNHCR does not consider internally displaced persons' camps in the Kurdistan Region of Iraq (KR-I), as places of permanent settlement/habitual (place of) residence ("normale woon- of verblijfplaats") or places which represent internal flight alternatives.

This analysis is not unique to the KR-I. It applies to IDP camps in all countries affected by conflict. In UNHCR's *Guidelines on International Protection No. 12*: we state the following:

The presence of internally displaced persons, including those who are receiving international assistance, in one part of the country, is not necessarily evidence of the reasonableness of a proposed internal flight or relocation alternative in that part of the country. Internally displaced persons often do not enjoy basic rights and may face economic destitution or existence below an adequate level of subsistence, which would be evidence of the unreasonableness of the proposed internal flight or relocation alternative. It is also necessary to consider the capacity of local authorities to provide protection against harm, as well as whether human rights, particularly non-derogable rights, are respected. Further, in some situations, internal displacement may be the result of ethnic cleansing policies, or similar, in violation of the prohibitions on forcible transfer and arbitrary displacement under IHL in the context of an armed conflict. In such circumstances, an internal flight or relocation alternative should not be presumed to exist.¹ [emphasis added]

¹ UNHCR, *Guidelines on International Protection No. 12: Claims for Refugee Status Related to Situations of Armed Conflict and Violence under Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of*

We underline also in this context the serious and ongoing trauma experienced by many Yazidis in Iraq as a result of their persecution,² including many children. UNHCR recalls the requirement that in any dealing with children, the best interests of the child must be given primary consideration. Furthermore, UNHCR underlines the importance of assessing personal circumstances, including the existence of psychological trauma, which may militate against any consideration of relocation in their country of origin.³

Such trauma and past experiences are crucial elements which must be taken into account in examining any claim for international protection from any member of this group.”

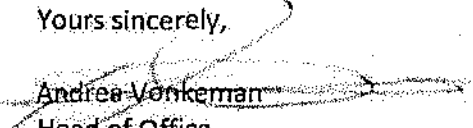
UNHCR is therefore seeking permission to present its expertise as an amicus curiae in this case.

Should the Court grant UNHCR permission to appear as an expert, UNHCR would seek to:

- Set out the standard approach to assessing claims for international refugee protection, which must be assessed against the place of origin/place of former habitual residence prior to displacement;
- Indicate the criteria to be considered in applying an ‘Internal Flight Alternative’ in light of the relevant international refugee law standards and EU/ECtHR jurisprudence;
- Iterate the need for a child-sensitive application of the refugee definition, in accordance with relevant international standards and the need to ensure that primary consideration is given to the best interests of the child.

Should the Council of State allow UNHCR to share its expertise as an amicus curiae, UNHCR kindly requests, if possible, to be allowed a minimum of four weeks to prepare its written submission. UNHCR stands ready to make an oral statement before the Council of State, if a hearing is to be held and should the Council request it.

Yours sincerely,


Andrea Vonkeman
Head of Office
UNHCR the Netherlands

Refugees and the Regional Refugee Definitions, 2 December 2016, HCR/GIP/16/12, www.refworld.org/docid/583595ff4.html, para. 42. See also, UNHCR, *Guidelines on International Protection No. 4: "Internal Flight or Relocation Alternative" Within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, 23 July 2003, HCR/GIP/03/04, www.refworld.org/docid/3f2791a44.html, para. 31.

² See also, UNHCR, *COI Note on the Situation of Yazidi IDPs in the Kurdistan Region of Iraq*, May 2019, <https://www.refworld.org/pdfid/5cd156657.pdf>, p. 8

³ See UNHCR, *Guidelines on International Protection No. 4*, paras 24, 26.