

**1201934 [2012] RRTA 836 (12 September 2012)**

**DECISION RECORD**

<b>RRT CASE NUMBER:</b>	1201934
<b>DIAC REFERENCE(S):</b>	CLF2011/135787
<b>COUNTRY OF REFERENCE:</b>	Iraq
<b>TRIBUNAL MEMBER:</b>	Vanessa Moss
<b>DATE:</b>	12 September 2012
<b>PLACE OF DECISION:</b>	Perth
<b>DECISION:</b>	The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act.

## STATEMENT OF DECISION AND REASONS

### APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicant a Protection (Class XA) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant who claims to be a citizen of Iraq, applied to the Department of Immigration for the visa on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] August 2011.
3. The delegate refused to grant the visa [in] January 2012, and the applicant applied to the Tribunal for review of that decision.

### RELEVANT LAW

4. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention), or on other 'complementary protection' grounds, or is a member of the same family unit as a person in respect of whom Australia has protection obligations under s.36(2) and that person holds a protection visa.

#### Refugee criterion

5. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the Refugees Convention.
6. Australia is a party to the Refugees Convention and generally speaking, has protection obligations in respect of people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
7. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1, *Applicant S v MIMA* (2004) 217 CLR 387, *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZFDV v MIAC* (2007) 233 CLR 51.

8. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
9. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
10. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve 'serious harm' to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression 'serious harm' includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant's capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
11. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors.
12. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase 'for reasons of' serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
13. Fourth, an applicant's fear of persecution for a Convention reason must be a 'well-founded' fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a 'well-founded fear' of persecution under the Convention if they have genuine fear founded upon a 'real chance' of being persecuted for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A 'real chance' is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
14. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression 'the protection of that country' in the second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.

15. Whether an applicant is a person in respect of whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

### **Complementary protection criterion**

16. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').
17. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.
18. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

### **CLAIMS AND EVIDENCE**

19. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.

#### ***Evidence on the Department's file***

20. The applicant is [age deleted: s.431(2)] In his protection visa application form he states that he was born [in] Iraq and that he is an Arab and a Muslim. He states that he is an Iraqi citizen and that he does not have the citizenship of or the right to enter and reside in any other country. In respect of his marital status he states that he separated [in] June 2011. His most recent immigration visa was a provisional resident visa subclass 300. He travelled to Iran in late December 2007 and stayed for a month for the purpose of becoming engaged. He lived in Karbala, Iraq from [birth] until March 2010 when he left for Australia.
21. He states that he is a [tradesman] and at the time he filled out his protection visa application form was employed as a [tradesman] He lists continuous employment in Iraq from 2004 until March 2010, when he left for Australia. He was employed variously as [details of employment deleted: s.431(2)]. He states that he has [details of siblings deleted: s.431(2)] His mother is deceased and his father resides in Iraq.
22. In response to question 42 "why did you leave your country?" the applicant stated as follows:

“My father was an active member of the Baath Party. After Saddam Hussein’s regime fell in 2003, the Baathists dispersed and Karbala came under the control of various Shia political parties and their militia. The most influential and threatening was the Mahdi Army, belonging to Moqtada al Sadr.

We were threatened by the Sadr Militia, who controls Karbala at the moment. My family had to go and hide with my father's tribe in the [District 1] area which is close to Al Hilla. My father’s family couldn't support us there and we had to move between [District 1] and Karbala as my mother’s family lives there. There were also lots of problems between Shias and Sunnis around Hilla and we were under constant threat there, as well as in Karbala

We continued to get threatened by Mahdi militia. They would come to my family’s home often, looking for my father and I. I always hid because the fundamentalist Shia’s were searching for Baathist, especially Shia Baathists.

In 2006, I had the chance to get married to my cousin who lives in Australia. I was ecstatic when I found out, as was my mother, because not only could I complete the marriage in accordance with our customs, this also meant that I could go and live in Australia where I would be safe from the Sadr Militia. I wasn’t able to finalise the marriage in Iraq and so I left for Iran for a month in late 2007 while the marriage was finalised. Then I stayed between Karbala and Anman until I received my visa, which came as a great relief to me. During that time I worked as a taxi driver in Karbala and I was often stopped at roadblocks and threatened by the Mahdi army and forced to pay bribes so that they wouldn't harm me.

A while after I arrived in Australia, my mother got sick and was diagnosed with stage four cancer. She wished to see me and so I risked my life and travelled back to see my mother, who was on her deathbed. When I arrived, the Sadr militia found out and started to threaten my family and I once again, so I stayed with some relatives, in fear of the Militia. The Militia accused me of being a traitor because we supported the Baath party and of being an infidel coming from a western country who didn't practice his religion. They had also seen that I dressed differently and behaved differently in general because of habits I had picked up since I had moved to Australia. In essence, they believed I had changed and lost touch with my culture and religion, and they weren't happy with this. I left for Australia, leaving my mother on her deathbed because I was afraid for my own life and didn't want to put the rest of my family in danger of the Militia. The week after I had left Australia, my mother passed away.

After I came back to Australia my relationship broke down because my spouse was involved with other men and I was advised that I could make a valid application for protection, otherwise I would have to leave. I was fearful of returning to Iraq because I believe there is always a high possibility that the militia opposed to Baathists and other fundamentalist militia might kill me. I had the added problem that my ex wife's three maternal uncles had threatened to kill me because I had disclosed her adultery and had breached their tribal and religious customs and dishonoured their family. They went to my relative in Karbala and threatened to kill me if I come back to Iraq”.

23. In response to question 43 “what do you fear may happen to you if you go back to your country” the applicant responded that he feared he would be abducted and tortured and killed.

24. In response to question 44 “who do you think may harm/mistreat you if you go back?” the applicant responded:

Shia militia, especially the Mahdi Army, and other Shia fundamentalists who have religious and political agendas that are connected with the idea of traditional Islam. Sunni insurgents. My ex wife's family and members of their tribe.”

25. In response to question 45 “Why do you think this will happen to you if you go back?” The applicant responded:

“The Shia militia know my father was a well-known and high-ranking Baathist. He has been afraid to return to Karbala, even though my mother has passed away. They have a history of targeting Baathists, and their family members, especially their sons. They also think I support the US government and the Western coalition, because I have lived in Australia and have developed Westernised habits. In fact, I do support a secular democracy and I like, and follow, the Western lifestyle.

Karbala is a very holy Shia city and the fundamentalists do not tolerate people they think are not true followers of Islam. I have no interest in practising the religion I was born with and no interest in conforming with their extreme demands, either in practising their religion or dressing the way they want or supporting the political leaders they are loyal to.

Even though I don't practice religion, I am still at risk of being killed by the Sunni insurgents because they have a history of attacking any collection of Shias, especially in Karbala. It doesn't matter where I am in that city, I am always at risk of being the victim of such an attack because the insurgents identify me as a Shia among the other Shiites.

Members of my former mother-in-law's family and their tribe have accused me of breaching tribal, cultural and religious rules.”

26. In response to question 46 “Do you think the authorities of that country can and will protect you if you go back? If not, why not?”

“No. the militia have infiltrated all of the security forces and political parties and they act in their own interests and not in the interests of ordinary Iraqis, especially those of us who don't actively support the groups the security forces are loyal to. They are able to attack their real and supposed enemies with impunity because of their political connections, They are part of the problem, not part of the solution. In any event, they can't even protect themselves against their enemies, let alone ordinary citizens.

The Tribal system in Iraq is more powerful than the political system and the security forces have no way of preventing my former mother in law's family and tribe of attacking me because I have dishonoured the family and tribe. ”

27. Accompanying his protection visa application is, inter alia, a copy of the applicant's Iraqi passport.
28. The applicant's representative provided the delegate with written submissions addressing the applicant's claims. In summary it was submitted that the applicant fears persecution due to his father being a prominent member of the Baath party. His family home has been subjected to ongoing visits, searches and threats from the Mahdi Army. He fears that various agents of persecution in Iraq will target him because of his real and imputed political opinions, his religion and his membership of a particular social group. It is claimed that his fear is

exacerbated because he has spent significant time in Australia and he believes he will be targeted as a member of a particular social group comprising Iraqis who have spent a significant period in a western country, in this case, one of the coalition countries that has been involved in the invasion and occupation of Iraq since 2003. The submission refers to relevant country information to support his claims. The Tribunal has read the submission and taken it into account in its deliberations.

29. The applicant was interviewed by the Department [in] October 2011 and an audio recording of the interview is on the Department's file. He claimed at interview that he had been harassed while working in a shop as he was considered to be a non-believer, and that he wasn't a devout enough Shi'a. He also claimed that while a taxi driver in 2008, members of the Mahdi Army called him by name, abused him and hit him and that on another occasion the windows of his taxi were broken.

#### *Evidence on the Tribunal's file*

30. The applicant provided no additional information about his claims when he lodged his application for review to the Tribunal.
31. The applicant appeared before the Tribunal [in] June 2012 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic and English languages as and when required through the hearing. The applicant was represented in relation to the review by his registered migration agent. A summary of the evidence follows.
32. Prior to the commencement of its questions the Tribunal asked the applicant if he had any additional claims to make. In respect of matters relevant to his protection claims he indicated that two months ago his ex-wife's father went to Iraq and told his relatives that he was living a western life in Australia, going to nightclubs and drinking alcohol. He indicated that his family did not like what they heard and that when he rang his brother, who is religious, he refused to talk with him. His brother now regards him as an infidel. He indicated that he was born into a Muslim family and he follows his family's religion.
33. The applicant was asked about the composition and whereabouts of his family of origin and he indicated that his father, [and siblings] live in Karbala, Iraq. He also has a sister living in Oman. He is the youngest sibling. He lived with his parents and brother in Karbala, which is a predominantly Shi'a area where there is sectarian conflict between the Shi'a and the Sunni. If there was trouble in Karbala he went to [District 1], where he has relatives.
34. When asked why he left Iraq he indicated that his family came to him with a marriage proposal and that this was a good opportunity to leave Iraq.
35. When asked whether he experienced any problems in Iraq he indicated that in June or August of 2007 whilst he was working as a taxi driver he was verbally abused and physically assaulted by two passengers. When they were hitting him they identified themselves as belonging to the Al Mahdi army and they told him that they want to clean Iraq of people like him. They knew him by name and named his brother and indicated they knew his father was in the Baath party. The applicant does not know how his passengers knew who he was or knew his brother or his father however he indicated that Karbala was a small city and that people know each other. The applicant described the attack on him which left him with a broken jaw and three broken teeth. When the perpetrators left the applicant rang his father

and his father told him that he would meet him at the [hospital], where he underwent an operation for his injuries. The applicant said that he informed the police about this incident and that the police identified the perpetrators but that he saw the perpetrators a couple of days later walking along the road. The applicant indicated that this was because the police have friends and relatives in the Al Mahdi Army.

36. When the Tribunal enquired whether he had experienced any other incidents whilst he was a taxi driver he indicated that on the same day the perpetrators broke the windows on his taxi.
37. The Tribunal put it to the applicant that in his claims before the Department he claimed that the incident when he was attacked by the Mahdi Army whilst a taxi driver had occurred in 2008 and that on a separate occasion the windows of his taxi were broken and that this evidence conflicted with the evidence he had provided to the Tribunal orally. The applicant responded that there had only been one incident (the assault and the damage to his taxi had occurred on the same day) and he was unsure about the dates as the incident was 4 to 5 years ago. Later in the hearing the applicant indicated that the attack on him occurred after he returned from Iran for his marriage (he went to Iran [in] December 2007 for approximately one month) and that the attack on him therefore occurred in early 2008.
38. The Tribunal asked him to talk about his claim to have often been stopped at roadblocks and threatened and forced to pay paid bribes when he worked as a taxi driver in Karbala. The applicant indicated that this was normal practice for the Al Mahdi Army and the police to create checkpoints and collect money. He indicated he was not being targeted and that he did not regard these activities as problematic.
39. The Tribunal asked the applicant about his religion. The applicant indicated that he was born into a Shi'a Muslim family. The applicant said he would have problems if he now returns to Iraq because of the western life he has led. He feels that he has been deserted by his family because of this and that his family no longer want to talk to him. The applicant indicated that he does not know if he'll be accepted at home and that he senses from his brother's unwillingness to talk to him that it would be difficult for his family to take him back.
40. The applicant provided details in relation to his father's involvement in the Baath party until his departure from the party following the fall of Saddam Hussein.
41. The Tribunal enquired whether his father had experienced any harm as a result of his membership of the Baath party since the fall of Saddam's regime in 2003 and the applicant responded that he doesn't know, but that he did not think so. He indicated that his father was very cautious in trying to avoid problems. The Tribunal enquired whether the applicant's brother had experienced any problems as a result of his father being a member of the Baath party and he indicated that he had not. He indicated that his brother works at [details deleted: s.431(2)] and further he is a practising Muslim who goes to prayers.
42. The Tribunal enquired whether any other family members were members of the Baath party. The applicant indicated that he had an uncle who is a member of the Baath party and was still in the army at the time the applicant left Iraq. No other members of his family are members of the Baath party.
43. The Tribunal enquired whether the applicant was a member of the Baath party. He responded that at school the teachers put pressure on all the students to join the Baath party and that he had been forced to join the party as a junior member whilst he was at school. He indicated



that his father had encouraged him to join when he was in years 11 and 12 at school. He indicated that the activities comprised information sessions and lectures. He did not continue to be a member of the party after he left school and that he was [at school] at the time of the fall of Saddam Hussein.

44. The Tribunal asked the applicant whether any of his family had experienced any problems following the fall of Saddam Hussein as a result of his father's membership of the Baath party. The applicant indicated that the Al Mahdi Army came to their house a few times asking about his father and whether he was still active in the Baath party, and they also asked about the applicant. When asked why the Mahdi Army would have been enquiring about him, he indicated that they would have thought that he was the same as his father, and not religious. He was unsure when the Al Mahdi came to their home, but somewhere between the end of 2004 and 2007. The Tribunal enquired whether his family has experienced any problems as a result of his father's membership of the Baath party since 2007. The applicant indicated that he could not say.
45. The Tribunal asked the applicant about his claims that he would leave Karbala for [District 1] whenever there was trouble. The applicant indicated that he would do this when he sensed that groups were asking about him or when there was conflict between the Al Mahdi, the police and the US forces. He indicated that during these times there was chaos and many people were killed and that this happened many times throughout 2004, 2005, 2006 and in 2007.
46. The Tribunal asked the applicant if the rest of the family stayed in Kabbalah when his father fled following the fall of Saddam Hussein. The applicant indicated that after the fall of Saddam the whole family went to Iran for a holiday including his father. The applicant indicated that after the fall of Saddam Hussein he sometimes went to Hilla with his mother and brother but mostly he would go by himself and his mother and brother would come and visit him there.
47. The Tribunal put it to the applicant that given:
  - he has not made any claims that the Mahdi Army have come to his house since 2007,
  - he has not made any claims that his family had experienced any problems since 2007 as a result of his father's membership of the Baath party,
  - he does not think that his father has come to any harm as a result of his membership of the Baath party,
  - his father resigned from the Baath party at the time of the fall of Saddam so that he and his family would not be at risk,
  - after the fall of Saddam Hussein his father fled to Syria but his mother and brother remained at the family home,

it appeared that he (the applicant) would not be of interest to the Al Mahdi army because of his father's membership of the Baath party. The Tribunal invited the applicant to respond. He indicated that it was now dangerous for him to return to Iraq because of what is now known about him, and because he is returning to Iraq having lived in Australia.

48. The applicant explained to the Tribunal the circumstances of his separation from his wife and the ensuing court proceedings and his father-in-law's anger towards him. The applicant indicated that his ex-wife's uncles are now waiting for him back in Iraq and that one of them is religious. He fears that his ex-wife's uncles will harm him or kill him due to his claim that his ex-wife was involved in another relationship.
49. The Tribunal asked the applicant about his claim that he will be harmed by Sunni insurgents. The applicant explained that the Shi'a are always being targeted by the Sunnis. The Tribunal enquired whether the applicant has experienced any problems with Sunni insurgents in the past and he indicated that he had not as he did not live in a Sunni city and that it is only if he goes to another town that he may be targeted by Sunnis. The Tribunal enquired whether any other members of his family have had any problems with Sunni insurgents and he indicated that they had not because they all lived in Kabbalah.
50. The Tribunal enquired of the applicant whether he could be protected from harm by the authorities of his country and he indicated that the authorities were not strong enough to protect him.
51. At the conclusion of the hearing the applicant submitted a character reference from his employer, for whom he has worked for the past two years, testifying to him being kind, honest, hardworking and an outstanding character.

#### ***Post hearing submission***

52. [In] June 2012 the Tribunal received a submission from the applicant's advisor summarising the applicant's claims as follows. The applicant claims he was seriously assaulted when he was in Iraq and believes he will encounter significant harm if he returns as a consequence of his father's high profile as a member of the Ba'ath party during Saddam's regime; his own forced membership of the youth wing of the Ba'ath party when he was a student; his Shi'a religion because (i) he will be identified by Sunni insurgents as a Shi'a and (ii) he has abandoned his faith in preference for a modern western lifestyle and will be targeted by fundamentalist Shia's as an infidel. His fears of being targeted by other Shi'as are connected to his failed marriage in Australia as he claims he has been the subject of false allegations spread by his father-in-law among family, friends and tribal members in Iraq that he is an alcoholic who mistreated his wife and does not follow the way of Islam. He also fears his long stay in Australia and his adaptation to the western lifestyle will expose him to abduction and serious mistreatment if he returns to Iraq. The submission sets out why the applicant satisfies each component of the definition of a refugee. It also provides country information in respect of informer networks in Iraq in support of the submission that Iraqi society is infiltrated by informers who have multiple links with militia, religious leaders, security officials and political leaders, relevant extracts from the UNHCR Eligibility Guidelines for Iraqi Asylum seekers released on 31 May 2012, and submissions on complementary protection. The Tribunal has read the submission and taken it into account in its deliberations.

#### **COUNTRY INFORMATION**

##### ***Treatment of those imputed to be former Ba'ath Party members or associated with Saddam Hussein's regime***

53. Since the fall of Saddam Hussein's regime, and in particular since the Shi'ite rise to political power in the 2005 elections, people affiliated or associated with the former government of

Iraq, either through membership in the Ba'ath party or as a result of their functions or profession, have been subject to systematic attacks, mainly by Shi'ite militias.<sup>1</sup> While the UK Home Office believes members of the former Ba'ath Party and regime are no longer systematically targeted, "they may still fall victim in individual cases, for example as a result of personal revenge of former victims or their families against perpetrators of detention, torture or other violations of human rights".<sup>2</sup>

54. According to a 2010 article by *Stratfor* chairman and CEO George Friedman, prior to the US invasion in 2003, the Shi'ite community was anti-Ba'athist and heavily influenced by Iranian intelligence. With the fall of the Ba'athist regime, Sunnis faced a hostile American army and an equally hostile Shi'ite community backed by Iran, and accepting support from foreign *jihadists*, launched an insurgency against both the Americans and the Shi'a.<sup>3</sup> In October 2010, *Al-Jazeera* reported Iran was heavily involved in equipping and aiding militant Shi'a groups in Iraq, who targeted Sunni politicians in addition to attempting to undermine confidence in the Iraqi government.<sup>4</sup>
55. According to the *Asia Times*, Iran has traditionally played a constant role in nurturing and supporting anti-Saddam forces to catch the dictator off guard. Iran's strategy in post-Saddam Iraq has reportedly been driven in part by the desire to avoid becoming the "next victim of President George W Bush's doctrine of "regime change"...[t]his, more than anything else, would have driven Iran either to exploit the Iraqi chaos to its advantage, or to make its own contribution to worsen it".<sup>5</sup>
56. According to *IRIN*, in 2007 militants in southern areas of Iraq were reportedly targeting former members of the Ba'ath Party "in a bid to exterminate them", with at least 200 members of the party killed, and hundreds of families forced to flee their homes. A spokesperson for local NGO Iraqi Brothers Relief said that militias were conducting a campaign to exterminate over 4,000 members of the Ba'ath Party, despite the fact that many people were obliged to join the party. Shi'a group-affiliated militants said their intention was to cleanse the remnants of the previous regime in order to prevent Saddam's followers from returning to power. It is thought the increase in Shi'a violence against former Ba'ath Party members was due to a change in government policy, allowing some former Ba'ath Party members to be reinstated to their government jobs.<sup>6</sup>
57. The UK Home Office noted that since the fall of the Saddam regime, the Badr Brigade – a Shi'ite militia organisation set up by Mohammed Bakr Al-Hakim during his exile in Iran – has been accused of killing numbers of former Ba'ath Party officials, in addition to members of the former security and intelligence services. It was reported that following the Shi'ite electoral victory in January 2005, attacks against former Ba'athists increased.<sup>7</sup>

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<sup>1</sup> United Nations High Commissioner for Refugees 2009, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers*, April, Section VIII.G

<sup>2</sup> UK Home Office 2010, *Operational Guidance Note – Iraq*, 1 October, Section 3.9

<sup>3</sup> Friedman, G. 2010, 'Iran's headlock on the US over Iraq', Mercator.net, source: *Stratfor*, 17 August [http://www.mercatornet.com/articles/view/irans\\_headlock\\_on\\_the\\_us\\_over\\_iraq/](http://www.mercatornet.com/articles/view/irans_headlock_on_the_us_over_iraq/) – Accessed 20 April 2011

<sup>4</sup> 'Iran's 'involvement' – Secret Iraq Files' 2010, *Al-Jazeera*, 25 October <http://english.aljazeera.net/secretiraqfiles/2010/10/20101022163128812181.html> – Accessed 20 April 2011

<sup>5</sup> 'Saudi Arabia and Iran in Iraq fix' 2006, *Asia Times*, 20 December [http://www.atimes.com/atimes/Middle\\_East/HL20Ak01.html](http://www.atimes.com/atimes/Middle_East/HL20Ak01.html) – Accessed 20 April 2011

<sup>6</sup> 'Families in south displaced as former Baathists targeted' 2007, *IRIN*, 30 July <http://www.irinnews.org/Report.aspx?ReportId=73485> – Accessed 20 April 2011

<sup>7</sup> UK Home Office 2009, *Country of Origin Report – Iraq*, 10 December, Annex D

58. UNHCR, in its recent Guidelines, considers that individuals perceived as opposing the Iraqi authorities are, depending on the circumstances of their claim, likely to be in need of international refugee protection on account of their (imputed) political opinion. Specifically the Guidelines state that:

Persons (considered to be) in opposition to the Iraqi Government reportedly face politically motivated arrests or are arbitrarily deprived of their employment in the public sector.<sup>334</sup> Political opponents are allegedly arrested arbitrarily on vague terrorism-related charges, often coupled with accusations of Ba'ath Party ties or corruption.<sup>335</sup> Judicial or administrative actions against persons reasonably suspected of terrorism, former Ba'athists or persons accused of corruption are legitimate, if in line with relevant legislation and the due process of law. However, observers note that the alleged lack of transparency, reported legal discrepancies, and politicized public statements have raised serious doubts about the real reasons for certain arrests of or administrative sanctions against political opponents of the Iraqi Government.<sup>336</sup> Arrests of political opponents are reportedly increasing.<sup>337</sup> Given that the ISF are Shi'ite-dominated, and those arrested are often of Sunni background, some 18 commentators have expressed the view that sectarian motives may also be a relevant factor in such incidents.<sup>338</sup> 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.<sup>339</sup> From the outset, it was reported that the implementation of relevant regulations was arbitrary, sectarian<sup>340</sup> and politicized.<sup>341</sup> There have been continuous claims that the Iraqi Government has used accusations of "Ba'athism" to sideline political opponents and to settle political scores.<sup>342</sup> "De-Ba'athification" has reportedly been used to fire government and security officials and replace them with loyalists,<sup>343</sup> and to ban political rivals from running in elections.<sup>344</sup> Reported arrests of alleged Ba'ath Party members have raised concerns, given that neither the De-Ba'athification Law,<sup>345</sup> nor any other law, provides for legal prosecution for Ba'ath Party membership.<sup>346</sup> 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.<sup>347</sup> However, Iraqi Government officials repeatedly referred to a person's Ba'ath Party affiliation and rank to justify the arrest.<sup>348</sup> 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.<sup>349</sup> Most of those arrested reportedly remain in detention without charge.<sup>350</sup>

59. In a report by Amnesty International released in 2010 in relation to the treatment of civilians in Iraq it was reported that:

Civilians in Iraq are also being targeted by political militias, most of them linked to Shi'a political parties represented in the Iraqi parliament. Armed groups and militias with an extremist Islamist agenda – including al-Qa'ida and affiliated Sunni Islamist groups as well as the Mahdi Army, a Shi'a militia – have killed women and men because of their political views, their religious or other identity, and their perceived or alleged transgression of traditional gender roles or moral codes.<sup>9</sup>

60. In a report by the International Crisis Group it was stated in respect of the infiltration of the security forces that:

Developments in the national police have been somewhat different. Fewer former officers were brought into the new force, which was rebuilt from scratch after its collapse in 2003.

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<sup>8</sup> United Nations High Commissioner for Refugees 2012, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq*, 31 May 2012, p17, 18

<sup>9</sup> Amnesty International April 2010, *Iraq: Civilians Under Fire*, p5-6

However, politicisation of the interior ministry's security forces has raised similar concerns. From 2003 onward, militias infiltrated their men into these forces; after Shiite Islamist parties gained government control in May 2005, their fighters were more formally incorporated.

.....

After the January 2005 parliamentary elections, the interior ministry was given to the Islamic Supreme Council of Iraq (then still known as the Supreme Council for the Islamic Revolution in Iraq), which appointed Bayan Jaber Solagh as its head. During his one-year tenure, security forces, reporting to different factional leaders, engaged in a vicious sectarian war, acting as death squads at the service of one or another faction.<sup>135</sup>

.....

Nonetheless, the police have far to go before fully overcoming their chaotic start and division into political fiefdoms. Lower ranks remain filled with officers who are little trained, underpaid and of suspect loyalty. This has serious security implications. The wave of spectacular attacks in Baghdad that began in August 2009 raised the question whether insurgents had infiltrated the security apparatus either directly or through bribes.

....

Lower ranks in Baghdad and Basra also reportedly are staffed with sympathisers of the movement led by Muqtada al-Sadr, including current or former members of its militia, the Mahdi Army. Mahdi Army commanders boast that their supporters are present in the heart of the security apparatus: They supply us with information on decisions taken at the highest level. At the entrance of Al-Hurriya neighbourhood, police officers and soldiers often ask us what they should do in the event of a problem. They listen to us. On several occasions, we have told them to go inspect cars that looked suspicious. Iraq is not one state but several that are waging war on each other. I don't mean foreign actors but Iraqi factions themselves.<sup>139</sup><sup>10</sup>

***On whether the Mahdi Army are killing, kidnapping or otherwise harming those who refuse to support them, in Karbala or elsewhere***

61. No information could be found on whether the Mahdi Army is killing, kidnapping or otherwise harming individuals in Karbala who refuse to support them. Elsewhere in Iraq, although not specifically stating that Mahdi Army splinter groups have targeted people for not supporting them, reports indicate that Shi'a militia groups carry out killings, kidnapping and other human rights abuses.<sup>11</sup> One 2008 Human Rights Watch report detailed a case in which an individual was allegedly kidnapped because he refused to be an informant for the Mahdi Army.<sup>12</sup> In addition, the 2011 Amnesty International Annual Report states that 'Shi'a militia, in particular members of 'Asa'ib Ahl al-Haq (the League of the Righteous), a Mahdi Army splinter group, committed gross human rights abuses, including kidnapping and murder'.<sup>13</sup>

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<sup>10</sup> International Crisis Group, Loose Ends: Iraq's Security Forces Between U.S Drawdown and Withdrawal Middle East Report N°99 – 26 October 2010

<sup>11</sup> Cordesman, Anthony. & Mausner, Adam 2009, 'How Soon Is Safe? Iraqi Force Development and "Conditions-Based" Us Withdrawals', Center for Strategic and International Studies (CSIS) website, 20 April, p.46 <http://csis.org/publication/how-soon-safe> – Accessed 31 August 2011; Amnesty International 2011, *Annual Report 2011 – Iraq*, May <http://www.amnesty.org/en/region/iraq/report-2011> – Accessed 29 August 2011; Al-Salhy, Suadad 2011, 'Iraq Shi'ite militia splinters into hit squads, gangs', *Reuters*, 21 July <http://news.yahoo.com/iraq-shiite-militia-splinters-hit-squads-gangs-101743902.html> – Accessed 31 August 2011.

<sup>12</sup> Human Rights Watch 2008, 'Section 6. Iraqi Refugees and Migrants' in *Stuck in a Revolving Door: Iraqis and Other Asylum Seekers and Migrants at the Greece/Turkey Entrance to the European Union*, 26 November, p.30 <http://www.hrw.org/node/76211/section/1> – Accessed 31 August 2011.

<sup>13</sup> Amnesty International 2011, *Annual Report 2011 – Iraq*, May <http://www.amnesty.org/en/region/iraq/report-2011> – Accessed 29 August 2011.

62. Shi'a militia groups are also reportedly engaged in organised crime, which involves 'contract killings, kidnapping and extortion from homeowners, businessmen and government agencies, particularly in Baghdad', and will target individuals who do not support their criminal activities'<sup>14</sup> For example, individuals who 'support' the militia by paying for protection are 'immune to violence or kidnapping'<sup>15</sup> More broadly, Iranian-backed Shi'a militia groups and breakaway Mahdi Army factions 'continue to confront the Iraqi Security Forces and Multi-National Force-Iraq and seek to destabilize the security environment'<sup>16</sup>

### ***On the Mahdi Army in Karbala***

63. The Mahdi Army is not strong in Karbala and the Iraqi Security Forces (ISF) control the city. Karbala is a holy Shi'a city, and has been a site of attacks on Shi'a pilgrims, and also a site of Shi'a militancy.<sup>17</sup> The Mahdi Army has been present in Karbala since at least 2004, when Jaysh al-Mahdi (JAM) forces launched a major assault against coalition forces.<sup>18</sup> Sources report that although the 'presence' of Sadr's supporters is still felt in Karbala, the Mahdi Army is not strong in the city.<sup>19</sup> Despite the ongoing challenges facing the ISF, the 2009 UNHCR *Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers* state that Karbala is 'tightly controlled by the ISF, and, therefore, outbreaks of violence are relatively rare'.<sup>20</sup> The UNHCR guidelines also state that 'although serious concerns remain regarding the sustainability of the improvements, the security situation in the Southern Governorates of Babel, Basrah, Diwaniyah, Kerbala, Missan, Muthanna, Najef, Thi-Qar and Wassit has significantly stabilized since late 2007'.<sup>21</sup>
64. The 2009 UNHCR guidelines explain the evolution of the security situation in Karbala since 2007:

Kerbala saw intense fighting between the Badr-dominated ISF and JAM in August 2007 that resulted in the deaths of at least 50 people and led to the temporary "freeze" of JAM activities. Although not all JAM fighters adhere to Al-Sadr's order, the

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<sup>14</sup> Al-Salhy, Suadad 2011, 'Iraq Shi'ite militia splinters into hit squads, gangs', *Reuters*, 21 July <http://news.yahoo.com/iraq-shiite-militia-splinters-hit-squads-gangs-101743902.html> – Accessed 31 August 2011; Williams, Phil 2009, 'Criminals, Militias, and Insurgents: Organised Crime in Iraq', Strategic Studies Institute website, June, p.236 <http://www.strategicstudiesinstitute.army.mil/pubs/display.cfm?pubID=930> – Accessed 30 August 2011.

<sup>15</sup> Williams, Phil 2009, 'Criminals, Militias, and Insurgents: Organised Crime in Iraq', Strategic Studies Institute website, June, p.236 <http://www.strategicstudiesinstitute.army.mil/pubs/display.cfm?pubID=930> – Accessed 30 August 2011.

<sup>16</sup> UNHCR 2009, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers*, April, p.91, <http://www.unhcr.org/4a2640852.pdf> – Accessed 20 August 2011.

<sup>17</sup> UNHCR 2009, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers*, April, pp.125-126, <http://www.unhcr.org/4a2640852.pdf> – Accessed 20 August 2011.

<sup>18</sup> Cochrane, Marisa 2009, *The Fragmentation of the Sadrist Movement*, Institute for the Study of War, source: Understanding War website, January, p.14 <http://www.understandingwar.org/files/Iraq%20Report%2012.pdf> – Accessed 28 August 2011.

<sup>19</sup> Simcox-Heath, Ian 2011, 'Iraq: The return of Muqtada Al-Sadr', The UK Defence Forum website, 9 February (CX260310); UNHCR 2009, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers*, April, pp.125-126, <http://www.unhcr.org/4a2640852.pdf> – Accessed 20 August 2011.

<sup>20</sup> US Department of Defense 2010, *Measuring Stability and Security in Iraq*, June, p.48 [http://www.defense.gov/pubs/pdfs/June\\_9204\\_Sec\\_Def\\_signed\\_20\\_Aug\\_2010.pdf](http://www.defense.gov/pubs/pdfs/June_9204_Sec_Def_signed_20_Aug_2010.pdf) – Accessed 31 August 2011; UNHCR 2009, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers*, April, p.19, <http://www.unhcr.org/4a2640852.pdf> – Accessed 31 August 2011.

<sup>21</sup> UNHCR 2009, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers*, April, p.19, <http://www.unhcr.org/4a2640852.pdf> – Accessed 31 August 2011.

repeated ceasefires have been instrumental in reducing overall levels of violence in Kerbala and Najef. The ISF have also become more capable in providing security to pilgrims during Shi'ite festivities and security measures are tight during these events. Yet, some insurgent groups still succeed in launching mass-casualty attacks against crowds of religious pilgrims...Furthermore, Kerbala sees occasional targeted assassinations of security, government/party officials and religious figures.<sup>22</sup>

65. Additionally, in 2008, the International Crisis Group reported that 'Sadrists are largely excluded from these cities [Karbala and Najaf] and must keep a low profile' so 'the Sadrist movement is barely visible in Karbala'.<sup>23</sup> The International Crisis Group also reports that during the August 2007 conflict in Karbala between the Mahdi Army and the Badr Organisation, 'the confrontation divided the Shi'ite population along class lines, with residents of poorer neighbourhoods generally siding with the Sadrists and better-off businesspeople supporting the Shi'ite Islamic Supreme Council of Iraq (ISCI) and the religious establishment'.<sup>24</sup>

### ***Whether Shi'ite civilians are targeted by Sunni armed groups***

66. The recent UNHCR Guidelines had this to say about the targeting of Shi'a civilians by Sunni armed groups:

Shi'ite civilians - in particular, Shi'ites performing their religious duties at the mosque, during funerals or mournings, or when on pilgrimage - are a key target for Sunni armed groups.<sup>568</sup> The main aim of these attacks appears to be to divide Iraqis along sectarian lines in order to reignite tensions and violence.<sup>569</sup> Attacks are most frequent on religious holidays, when thousands of pilgrims, including from Iran, march to and gather at Shi'ite holy sites in Baghdad,<sup>570</sup> Kerbala and Najef,<sup>571</sup> but also in other areas of southern Iraq.<sup>572</sup> Attacks on Shi'ite pilgrims and civilians have also taken place in the mixed governorates of Diyala,<sup>573</sup> Ninewa,<sup>574</sup> Salah Al-Din<sup>575</sup> and Kirkuk,<sup>576</sup> where Shi'ite Turkmen,<sup>577</sup> Shabak<sup>578</sup> or Kurds (Faili Kurds)<sup>579</sup> may also be targeted, and in the mainly Sunni Al-Anbar Governorate.<sup>580</sup> Shi'ite civilians have also frequently been attacked in their homes, in restaurants or other public places in predominantly Shi'ite governorates,<sup>581</sup> towns<sup>582</sup> or neighbourhoods.<sup>583</sup><sup>25</sup>

### ***Whether secular Shi'ites are targeted by Shi'ite fundamentalist militias***

67. In 2011 there is no compelling evidence indicating that Shi'ite militants target "ordinary citizens" for harm on the basis of their secular ideals or imputed support for the Iraqi coalition government. Rather, Shi'ite militant groups such as the Mahdi Army, Liwa al-Youm al-Mawud (The Promised Day Brigades), and Asa'ib Ahl al-Haq have historically targeted Sunnis and international forces. The Mahdi Army has been officially disbanded,

<sup>22</sup> UNHCR 2009, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers*, April, pp.125-126, <http://www.unhcr.org/4a2640852.pdf> – Accessed 31 August 2011.

<sup>23</sup> International Crisis Group 2008, *Iraq's civil war, the Sadrists and the Surge*, Middle East Report No.72, 7 February, p.11/footnote 67

[http://www.crisisgroup.org/~media/Files/Middle%20East%20North%20Africa/Iraq%20Syria%20Lebanon/Iraq/72\\_iraq\\_s\\_civil\\_war\\_the\\_sadrists\\_and\\_the\\_surgeashx](http://www.crisisgroup.org/~media/Files/Middle%20East%20North%20Africa/Iraq%20Syria%20Lebanon/Iraq/72_iraq_s_civil_war_the_sadrists_and_the_surgeashx) – Accessed 30 August 2011.

<sup>24</sup> International Crisis Group 2008, *Iraq's civil war, the Sadrists and the Surge*, Middle East Report No.72, 7 February, p.12

[http://www.crisisgroup.org/~media/Files/Middle%20East%20North%20Africa/Iraq%20Syria%20Lebanon/Iraq/72\\_iraq\\_s\\_civil\\_war\\_the\\_sadrists\\_and\\_the\\_surgeashx](http://www.crisisgroup.org/~media/Files/Middle%20East%20North%20Africa/Iraq%20Syria%20Lebanon/Iraq/72_iraq_s_civil_war_the_sadrists_and_the_surgeashx) – Accessed 30 August 2011.

<sup>25</sup> United Nations High Commissioner for Refugees 2012, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq*, 31 May 2012, p25

while its successor, Liwa al-Youm al-Mawud, appears to be preoccupied with preventing Asa'ib Ahl al-Haq from dominating Sadr City.

68. In 2007, Muqtada al-Sadr, the leader of the Mahdi Army, the largest and most organised radical Shi'ite group in Iraq, announced a ceasefire, apparently urging militants to desist from violence and intimidation, and concentrate on providing social services to poor Shi'ites.<sup>26 27</sup> Soon after, Sadr left Iraq for Iran, where he remained until early 2011. Prior to this ceasefire, Sadr's political proclamations were largely nationalist, calling for an armed rebellion against foreign "invaders" and the Iraqi police.<sup>28</sup> Secular Shi'ites that did not support his vision for an Iranian-style theocratic state were not targeted for serious harm.
69. Since 2007, Muqtada al-Sadr has made an effort to become a serious political figure and power-broker. In late 2010, al-Sadr's support was vital in allowing the Nouri al-Maliki bloc to form government, several months after the March 2010 elections. *The New York Times* reported that the post-election deadlock to form a new government "was broken when Mr. Sadr, who had appeared deeply opposed to Mr. Maliki – to the point of meeting in Syria with Mr. Allawi over the summer – decided to back the prime minister, putting him in position to assemble a majority once he negotiates an arrangement with the Kurds".<sup>29</sup>
70. In 2011, al-Sadr continues to present himself as a serious political leader, holding the government to account. In March 2011 both Sadr and secular 'Iraqqayi' leader Iyad Allawi held a joint press conference in Najaf, during which they declared "broad and profound areas of common ground" between the two movements. Sadr's Mahdi Army once mounted a violent campaign against Allawi when he served as interim Prime Minister following the American-led invasion of Iraq. In Najaf both men declared that they were concerned with the amount of power Prime Minister Nouri al-Maliki had accumulated and the degree to which the government has undermined the independence of important institutions, "including the central bank and the human rights committee".<sup>30</sup>
71. It is also worth reporting that a recent sign of al-Sadr's lack of hostility to the government of Iran was his February 2011 pronouncement that Iraqi Shi'ites should not participate in planned anti-government demonstrations. Rather, al-Sadr reportedly stated that the Iraqi people should give the government six months to improve state services.<sup>31</sup>

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<sup>26</sup> 'Gunmen try to shoot Iraqi cleric Sadr's spokesman' 2009, *Radio Free Europe/Radio Liberty*, 14 May <http://www.unhcr.org/refworld/docid/4a1d3e09c.html> – Accessed 1 April 2011

<sup>27</sup> Jamestown Foundation 2011, 'Muqtada al-Sadr and Iran Use 'Soft Power' to Pursue Objectives in Iraq' , *Terrorism Monitor*, Volume: 9 Issue: 5, 7 February <http://www.unhcr.org/refworld/docid/4d4f99c92.html> – Accessed 1 April 2011

<sup>28</sup> 'Profile: Muqtada Sadr' 2008, 'Profile: Muqtada Sadr', *BBC News*, 22 February [http://news.bbc.co.uk/2/hi/middle\\_east/3131330.stm](http://news.bbc.co.uk/2/hi/middle_east/3131330.stm) – Accessed 29 February 2008 – Attachment 14

<sup>29</sup> 'Iraq Elections' 2010, *The New York Times*, 21 December <http://topics.nytimes.com/top/news/international/countriesandterritories/iraq/elections/index.html> – Accessed 23 March 2011 – Attachment 15

<sup>30</sup> Fordham, A. 2011, 'Allawi backing away from Iraqi government deal', *The Los Angeles Times*, 4 March <http://articles.latimes.com/2011/mar/04/world/la-fg-iraq-allawi-20110304> – Accessed 4 April 2011 – Attachment 16

<sup>31</sup> Institute for War and Peace Reporting 2011, 'Shia Clerics Oppose Baghdad Rally', UNHCR Refworld, 24 February <http://www.unhcr.org/refworld/docid/4d679ec75.html> – Accessed 1 April 2011 – Attachment 17



72. Although the Mahdi Army has officially disbanded, al-Sadr is believed to have formed a militia known as Liwa al-Youm al-Mawud, or the Promised Day Brigades.<sup>32</sup> However, there is no evidence that this new militia targets secular Shi'ites. Liwa al-Youm al-Mawud is one of several radical Shi'a militias declared 'Special Groups' by the US military, groups that are purportedly trained, financed and resourced by Iran. The Special Groups also include Asa'ib Ahl al-Haq, Kata'ib Hezbollah, the Sheibani Network, the Hasnawi Network., and the Ahel al-Beit Brigades.<sup>33</sup>
73. One of the most active of these militias is Asa'ib Ahl al-Haq (League of the Righteous), an offshoot of the Mahdi Army led by Ismail al-Lami, better known as Abu Deraa. Asa'ib Ahl al-Haq is also known as the Khazali Network and Ahl al-Kahf. Abu Deraa has been referred to by a number of media organisations as the "Shiite Zarqawi"<sup>34</sup>, after the late Jordanian leader of al-Qaeda in Iraq. Abu Deraa fled to Iran in 2008 during a US-led hunt for him after he had conducted a large number of "terrorist operations targeting Sunnis in Iraq since 2004" It is reported that Abu Deraa returned to Iraq in 2010, after receiving military training in the Iranian city of Qom.<sup>35</sup> There are no reports that Asa'ib Ahl al-Haq targets secular Iraqis. Rather, the militia seems more concerned with targeting Iraqi Security Forces (ISF) and members of rival militias; in late 2009, it was reported that Liwa al-Youm al-Mawud and Asa'ib Ahl al-Haq violently clashed with one another for the control of Sadr City, the Shi'ite stronghold of Baghdad.<sup>36</sup>
74. Other Mahdist splinter groups continue to operate in Iraq, including the "Guardians of Religion" and "Men of the Sword" The Jamestown Foundation states that these groups mostly operate outside of Baghdad, particularly in cities such as Nasriya, where they have imposed their own codes of morality/conduct on the local populations.<sup>37</sup> Individuals who fail to comply with their codes of conduct in areas under militia control would likely endure punishment, including possible serious harm.

### *Returnees*

75. In February 2011, a UNHCR representative in Iraq, who said that UNHCR would review its returnee policies after all government ministers were in place and trends in the security situation had developed, indicated that "UNHCR made an effort to track returnees, including failed asylum seekers returned from countries such as Sweden. There were initial interviews, but many were not willing to participate in follow-up processes." UNHCR had a policy of not

<sup>32</sup> Al Juburi, S. 2010, 'Can Iraq's Sadrist prove their nationalist credentials?', Open Democracy, 4 January <http://www.opendemocracy.net/opensecurity/shatha-al-juburi/can-iraqs-sadrists-prove-their-nationalist-credentials#> – Accessed 4 April 2011 – Attachment 18

<sup>33</sup> 'MNF-I spokesman details secret cell involvement in Iraq' 2007, Operation New Dawn website, 2 July [http://www.usf-iraq.com/?option=com\\_content&task=view&id=12653&Itemid=128](http://www.usf-iraq.com/?option=com_content&task=view&id=12653&Itemid=128) – Accessed 4 April 2011 – Attachment 19

<sup>34</sup> 'EXCLUSIVE-Baghdad Shi'ite militant says fighting for all Iraqis' 2006, *Reuters*, 17 November <http://uk.reuters.com/article/2006/11/17/us-iraq-warlord-idUKMAC52974120061117> – Accessed 1 April 2011

<sup>35</sup> Fayad, M. 2010, 'Notorious Shiite Warlord Returns to Baghdad', *Asharq Alawsat*, 18 August <http://www.aawsat.com/english/news.asp?section=1&id=22008> – Accessed 4 April 2011

<sup>36</sup> Al Juburi, S. 2010, 'Can Iraq's Sadrist prove their nationalist credentials?', Open Democracy, 4 January <http://www.opendemocracy.net/opensecurity/shatha-al-juburi/can-iraqs-sadrists-prove-their-nationalist-credentials#> – Accessed 4 April 2011

<sup>37</sup> Jamestown Foundation 2011, 'Muqtada al-Sadr and Iran Use 'Soft Power' to Pursue Objectives in Iraq', *Terrorism Monitor*, Volume: 9 Issue: 5, 7 February <http://www.unhcr.org/refworld/docid/4d4f99c92.html> – Accessed 1 April 2011

returning people to the five provinces of Ninewa, Diyala, Kirkuk, Salah Al-Din and Baghdad, in which there were disproportionately high numbers of security incidents.<sup>38</sup>

76. In November 2010, Amnesty International called on European governments to immediately stop forcible returns to the provinces of Ninewa (Mosul), Diyala, Kirkuk, Salah al-Din, Baghdad, and to other particularly dangerous areas in Iraq such as parts of Al Anbar province, where there were serious risks arising from violence or events seriously disturbing public order. Amnesty considered that when European countries were envisaging removing Iraqis to other areas of Iraq, an individual assessment should be carried out indicating that it would be safe to return the individual in question. Amnesty and the UNHCR had spoken to a number of Iraqis after they had been forcibly returned from European states to Iraq and who feared for their safety.<sup>39</sup>
77. In March 2011, *The Guardian* newspaper in the United Kingdom reported that deportations of asylum seekers to Iraq had been resumed after being temporarily suspended in October 2010, when the European court of human rights ruled that a surge in sectarian violence and suicide bombings had made Baghdad and the surrounding area too dangerous<sup>40</sup> An earlier article from June 2010 indicates that a solicitor for a deported failed asylum-seeker who claimed his Ba’ath Party membership made him vulnerable to attack, had said that “[t]he high profile of someone returning from the West could make him an easy target.”<sup>41</sup>
78. The US Department of State 2010 report on human rights practices in Iraq indicates that the UNHCR reported that 61% of refugees surveyed who had returned to Baghdad in the previous four years had “regretted their return because of terrorism and insecurity”. Of those returning, 77% of refugees “did not return to their original residences because of insecurity or a fear of being targeted.”<sup>42</sup>
79. The International Organisation for Migration (IOM) reported in April 2010 that there were “limited reports of targeting of returnees, mostly in urban areas where families return individually.”<sup>43</sup> IOM also informed a Danish Immigration Service fact-finding mission in 2010 that it “had received ‘limited and anecdotal reports’ of returnees being targeted”. It “did not have any information on why such targeting had occurred or who the perpetrators were.” An international NGO in Amman told the Danish Immigration Service that it was hard to verify if returnees were at risk of being especially targeted, but it had “heard of returnees from Europe and Canada being considered well-off and therefore perhaps prone to attacks

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<sup>38</sup> Department of Foreign Affairs and Trade 2011, *UNHCR views on security and returnees*, 3 February

<sup>39</sup> Amnesty International 2010, *European states must stop forced returns to Iraq*, 10 November, EUR 01/028/2010 <http://www.amnesty.org/en/library/asset/EUR01/028/2010/en/6044e775-b35e-4572-adfc-7a1835fbbac4/eur010282010en.pdf> - Accessed 6 July 2011

<sup>40</sup> Bowcott, O. 2011, ‘Deportation flights to Iraq resume despite UN warning’, *Guardian (Unlimited) (UK)*, 9 March

<sup>41</sup> Morris, N. 2010, ‘Anger as asylum seekers forcibly returned to Iraq’, *The Independent*, 9 June <http://www.independent.co.uk/news/uk/politics/anger-as-asylum-seekers-forcibly-returned-to-iraq-1995018.html> - Accessed 6 July 2011

<sup>42</sup> US Department of State 2011, *Country Reports on Human Rights Practices for 2010 – Iraq*, April, Section 2(d)

<sup>43</sup> International Organisation for Migration (IOM) 2010, ‘IOM Emergency Needs Assessments: Four Years of Post-Samarra Displacement in Iraq’, 13 April, p. 8 [http://www.iomiraq.net/library/IOM\\_displacement\\_monitoring\\_reports/yearly\\_and\\_mid\\_year\\_reviews/2010/IO\\_M\\_Displacement\\_Reports\\_Four\\_Years\\_of\\_Post-Samarra\\_Displacement.pdf](http://www.iomiraq.net/library/IOM_displacement_monitoring_reports/yearly_and_mid_year_reviews/2010/IO_M_Displacement_Reports_Four_Years_of_Post-Samarra_Displacement.pdf) – Accessed 25 May 2010

from criminal gangs. However, there are no confirmed reports of this being the case.”<sup>44</sup> In April 2009, UNHCR reported that “returns of Sunnis to Shi’ite-dominated areas and Shi’ites to Sunni-dominated areas are very limited and there have been reports of targeted attacks on returnees belonging to the opposite sect.”<sup>45</sup>

80. UNHCR also refers to groups within Iraq who have been targeted in part for their perceived support for ‘Western’ or ‘infidel’ ideas in general. In April 2009, UNHCR indicated that since 2003, professionals such as academics, doctors and other medical personnel, judges and lawyers, and athletes had “been a prime target for various extremist groups.” The motives for these attacks were multilayered, including “their (perceived) support for the Iraqi Government, the US military intervention or ‘Western’ or ‘infidel’ ideas in general, or their open criticism of extremist groups or groups in power.” Aid and human rights workers and their families had also “been targeted by extremist groups for their (perceived) collaboration with the MNF-I [Multi-National Forces in Iraq], the Iraqi Government or the ‘West’ and ‘Western ideas’ in general.”<sup>46</sup>
81. Further information provided by UNHCR in July 2010 indicates that those targeted in Iraq continued to include academics, judges and lawyers, doctors, human rights activists and Iraqis working for non-governmental organisations, the USF-I (United States Forces – Iraq) or foreign companies.<sup>47</sup>

### ***State Protection***

82. In the US Department of State Country Reports on Human Rights Practices for 2011 it is reported that “continuing violence, corruption, and organizational dysfunction undermined the government’s protection of human rights... The three most important human rights problems in the country were governmental and societal violence reflecting a precarious security situation, a fractionalized population mirroring deep divisions exacerbated by Saddam Hussein’s legacy, and rampant corruption at all levels of government and society. During the year the following significant human rights problems were also reported: arbitrary or unlawful deprivation of life; extremist and terrorist bombings and executions; disappearances; torture and other cruel, inhuman, or degrading treatment or punishment; poor conditions in pretrial detention and prison facilities; arbitrary arrest and detention; denial of fair public trials; delays in resolving property restitution claims; insufficient judicial institutional capacity; arbitrary interference with privacy and home; limits on freedoms of speech, press, and assembly; extremist threats and violence; limits on religious freedom due to extremist threats and violence; restrictions on freedom of movement; large numbers of internally displaced persons (IDPs) and refugees; lack of transparency and significant constraints on international organizations and nongovernmental organizations’ (NGOs) investigations of alleged violations of human rights; discrimination against and societal

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<sup>44</sup> Danish Immigration Service 2010, *Security and Human Rights in South/Central Iraq: Report from Danish Immigration Service’s fact-finding mission to Amman, Jordan and Baghdad, Iraq 25 February to 9 March and 6 to 16 April 2010*, September, p. 18 [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) - Accessed 22 December 2010

<sup>45</sup> United Nations High Commissioner for Refugees 2009, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers*, April, p. 92

<sup>46</sup> United Nations High Commissioner for Refugees 2009, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers*, April, pp. 179-180 & 190

<sup>47</sup> United Nations High Commissioner for Refugees 2010, *Note on the Continued Applicability of the April 2009 UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers*, July, p. 4

abuses of women and ethnic, religious, and racial minorities; trafficking in persons; societal discrimination and violence against individuals based on sexual orientation and gender identity; and limited exercise of labor rights.”

83. According to the UNHCR’s most recent report, “In Iraq, the main perpetrators of persecution are non-state actors. However, 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>48</sup>

## **FINDINGS AND REASONS**

### ***Country of reference***

84. The applicant travelled to Australia on what appears to be an Iraqi passport and claims to be a national of Iraq and not to have the citizenship of, or a right to enter or reside in, any other country. A copy of his passport issued by the Republic of Iraq is on the Department’s file. On the basis of this evidence the Tribunal accepts that the applicant is a national of the Republic of Iraq and has assessed his claims against the Republic of Iraq as his country of nationality. Further, on the basis of this evidence the Tribunal finds that the applicant does not have a legally enforceable right to enter and reside in any country other than his country of nationality, the Republic of Iraq. Therefore the Tribunal finds that the applicant is not excluded from Australia’s protection by subsection 36(3) of the Act (see *Applicant C v Minister for Immigration and Multicultural Affairs* [2001] FCA 229; upheld on appeal, *Minister for Immigration and Multicultural Affairs v Applicant C* (2001) 116 FCR 154).

### ***Applicant’s credibility***

85. Overall, the Tribunal found the applicant to be a credible witness. However one important aspect of the applicant’s evidence troubled the Tribunal. The applicant claimed, during his Departmental interview, that while a taxi driver in 2008, he was assaulted by members of the Mahdi Army who knew him by name. He claimed that on another occasion the windows of his taxi were broken. At the Tribunal hearing the applicant claimed that the assault and the property damage occurred on the same occasion and that it occurred in June or August 2007. The Tribunal put this inconsistency in respect of the timing of the incident and whether the assault and the property damage occurred on the same day or were separate incidents, to the applicant. The applicant responded that the assault and the property damage occurred on the same occasion, but that he was unsure about the date as the incident occurred 4-5 years ago. Later in the hearing he added that the attack on him had occurred after his return from his marriage in Iran, in early 2008.
86. Nevertheless, and in spite of this aspect of the applicant’s evidence, the Tribunal considers that overall the applicant was a reliable witness. The Tribunal had the opportunity to

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<sup>48</sup> United Nations High Commissioner for Refugees 2012, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq*, 31 May 2012, p13

question the applicant over a lengthy hearing and found that in all other respects his evidence was consistent, detailed and credible, and the applicant did not seek to embellish his claims. For example when the Tribunal enquired whether his father had experienced any harm as a result of his membership of the Baath party since the fall of Saddam's regime in 2003 the applicant responded that he doesn't know, but that he did not think so. And when asked about his claims to have been stopped by the Mahdi army at roadblocks, threatened and forced to pay bribes he volunteered that this was normal practice and that he was not being targeted and did not regard these activities as problematic. The Tribunal considers that its concerns regarding this one aspect of the applicant's evidence is not sufficient to impeach the applicant's credibility entirely, especially in circumstances where his evidence has remained otherwise consistent throughout the Department and Tribunal process.

### *Assessment of the applicant's claims*

87. The applicant claimed that whilst he was at school he had been forced to become a junior member of the Baath party and that his father had encouraged him to join. He indicated that he did not continue to be a member of the party after he left school and that he was [at school] at the time of the fall of Saddam Hussein. The Tribunal found the applicant's claims to be credible and finds that the applicant was a member of the Baath party as claimed.
88. The applicant claims his father was a well-known and high ranking member of the Baath party. The applicant made this claim in his written application to the Department and he elaborated upon it at the Tribunal hearing, demonstrating a thorough understanding of his father's role within the party. The applicant's claims were consistent through the processing of his application and the Tribunal accepts the applicant's claims in respect of his father's membership of the party. Further, on the basis of his credible evidence it accepts his claim that his father left the party after the fall of Saddam Hussein, for fear that he and his family's lives would be at risk.
89. The applicant claims that between the end of 2004 and 2007 the Mahdi Army would often come to the family home, looking for the applicant and his father, and that they were searching for Ba'athists, particularly Shi'a Ba'athists. He claims that they have a history of targeting Ba'athists and their family members, especially their sons. When the Tribunal enquired whether his father had experienced any harm as a result of his membership of the Baath party since the fall of Saddam's regime in 2003 the applicant responded that he doesn't know, but that he did not think so. The Tribunal accepts the country information that supports the applicant's claims that people affiliated or associated with the Ba'ath party have been subject to systematic attacks by Shi'ite militias, and finds that between the end of 2004 and 2007 the Mahdi Army came to the applicant's family home, looking for the applicant and his father.
90. The applicant claimed, during his Departmental interview, that he had been harassed while working in a shop as he was considered to be a non-believer, and that he wasn't a devout enough Shi'a. He has claimed that he has no interest in practising his Shi'a faith. The Tribunal accepts that the applicant's claims regarding his Shi'a faith and his lack of interest in practising it, and on the basis of his consistent evidence accepts that this could have made him the target of fundamentalists.
91. In respect of the applicant's claim regarding the attack on him in early 2008 by the Mahdi army, in which his taxi was also damaged, the applicant claimed at the Tribunal hearing that his attackers had indicated they knew that his father was in the Baath party. The applicant

claimed that he informed the police about the incident and that the police identified the perpetrators but that he saw the perpetrators a couple of days later walking along the road. The applicant indicated that this was because the police have friends and relatives in the Mahdi Army. As stated above the Tribunal was troubled by the inconsistencies in the applicant's recounting of this incident, but accepts the applicant's claims that the incident occurred as claimed by the applicant. He provided more detailed evidence at the hearing regarding the circumstances of the attack and of the nature and extent of the injuries he suffered and the Tribunal accepts the applicant's claims. The applicant's claims regarding the failure of the police to provide protection is consistent with the country information, which is accepted by the Tribunal, that the police have been infiltrated by the militias, and are of suspect loyalty.

92. The applicant claims that after he moved to Australia he returned to Iraq to visit his mother who was dying of cancer. Whilst he was in Iraq he claims that he and his family were threatened again by the Sadr militia. He claims he was accused of being a traitor because of his Ba'ath Party support, of being an infidel in coming from a western country and not practicing his religion. He claims that he left his mother on her deathbed and that she passed away a week after he returned to Australia. His claims to have returned to Iraq following his arrival in Australia are supported by his passport which shows that he departed Australia in December 2010, entering Iraq on [a date in] December 2010 and returned to Australia in January 2011. The Tribunal finds the applicant's claims to be credible and it finds that the applicant was threatened by the militia on his return to Iraq as claimed.
93. The applicant claims that even though he does not practise his religion he will be harmed by the Sunni insurgents because he is identified by them as Shi'a and they have a history of attacking Shi'a. Whilst he did not claim to have experienced any problems with Sunni insurgents in the past, his claims to fear harm in the future is supported by the country information referred to above and which is accepted by the Tribunal which indicates that Shi'a civilians are targeted by Sunni armed groups, particularly on religious holidays when thousands of pilgrims gather in the applicant's city of Karbala.
94. The applicant fears that if he returns to Iraq he will be abducted and maybe killed by the Mahdi Army, other Shi'a fundamentalists, or Sunni insurgents. The Tribunal finds that the persecution feared by the applicant (that he will be abducted, tortured and killed) amounts to "serious harm" as required by paragraph 91R (1) (b) of the Act in that it involves threats to his life or liberty.
95. The Tribunal finds that the persecution which the applicant fears involves systematic and discriminatory conduct as required by s.91R(1)(c) of the Act in that it is deliberate or intentional and involves his selective harassment or persecution for a Convention reason, namely his membership of a particular social group and imputed political opinion (arising from his father's membership of the Baath party).
96. In respect of the Convention ground of a particular social group comprising "Westernized Iraqis" the Tribunal has had regard to what constitutes a "particular social group" within the meaning of the Refugees Convention. In order to constitute a particular social group the group must firstly be identifiable by a characteristic or attribute common to all members of the group. Secondly the characteristic or attribute common to all members of the group cannot be the shared fear of persecution and thirdly the possession of that characteristic or

attribute must distinguish the group from society at large.<sup>49</sup> In these circumstances the particular social group of “Westernized Iraqis” is identifiable by this characteristic which distinguishes them from society at large. The characteristic common to all members of the group is not a shared fear of persecution. They are a distinct and recognisable group within Iraq. The Tribunal finds that the applicant is a member of this group, having lived in Australia for well over 2 years.

97. The Tribunal finds that the essential and significant reason for this fear of harm is because of his membership of a particular social group comprising Westernised Iraqis. The country information referred to above supports the applicant’s claims to fear harm should he return to Iraq. It indicates that persons perceived to have Western ideas are reported to have been targeted in the past by extremists. The Tribunal is satisfied on the basis of the country information cited above that there is more than a real chance of the applicant being targeted by extremists if he returns to Iraq, and hence that his fears of persecution are well founded.
98. The Tribunal finds on the available information that the State does not have a reasonably effective police force and a reasonably impartial system of justice and therefore the appropriate level of protection determined by international standards is not available to the applicant. The Tribunal gives weight to the country information in relation to Iraq generally in the US Department of State 2011 report on human rights practices in Iraq which indicates that continuing violence, organisational dysfunction, and corruption “undermined the government’s protection of human rights.” Having regard to this, the Tribunal is satisfied the State cannot meet the level of protection which citizens are entitled to expect according to international standards as discussed in *MIMA v Respondents S152/2003* (2004) 222 CLR 1.
99. The Tribunal finds that there is a real chance that the applicant will be persecuted throughout Iraq and therefore that the applicant has a well-founded fear of persecution now or in the reasonably foreseeable future for a Convention reason in Iraq.

#### ***Claims arising from the breakdown of his relationship with his ex wife***

100. In so far as the applicant has claimed that his failed marriage has led to the spreading of rumours by his ex wife’s family regarding his Western lifestyle the Tribunal accepts that this would add to the risk of him being targeted by fundamentalist Shi’as. In respect of the remaining claims arising from the breakdown of his relationship with his ex wife, given the Tribunal’s finding that the applicant has a well-founded fear of persecution arising from his membership of a particular social group and his imputed political opinion the Tribunal has not gone on to consider these claims.

#### **CONCLUSIONS**

101. The Tribunal is satisfied that the applicant is a person in respect of whom Australia has protection obligations under the Refugees Convention. Therefore the applicant satisfies the criterion set out in s.36(2)(a).

#### **DECISION**

102. The Tribunal remits the matter for reconsideration with the direction that the applicant satisfies s.36(2)(a) of the Migration Act.

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<sup>49</sup> *Applicant S v MIMA* (2004) 217 CLR 387 at [36] (Gleeson CJ, Gummow and Kirby JJ)