



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/

- 1.3 Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. In considering claims where the main applicant has dependent family members who are a part of his/her claim, account must be taken of the situation of all the dependent family members included in the claim in accordance with the Asylum Instruction on Article 8 ECHR. If, following consideration, a claim is to be refused, case owners should consider whether it can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.

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 Pakistan 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://fcohndreport.readandcomment.com/>

2.3 **Actors of protection**

- 2.3.1 Caseowners must refer to the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Case owners should also 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) comprises security forces under the ambit of the Ministry of Interior (MOI) and military forces under the ambit of the Ministry of Defence (MOD).¹ 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 and a training and support function. It was reported that as at the end of March 2011 there are in total 765,000 serving security force personnel.²
- 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). Under current plans all US troops (including the remaining 50,000 strong force in place to 'advise and assist' the Iraq security forces) will be withdrawn from Iraq by the end of 2011.³
- 2.3.4 Violence, albeit still far above what ought to be tolerable, has levelled off in the past two years. Iraqi security forces have taken the lead in several important operations. Recently, they have withstood three noteworthy tests: the departure of close to 100,000 US troops since January 2009; the March 2010 parliamentary elections; and, over the past several months, political uncertainty prompted by institutional deadlock. If insurgents remain as weak as they are and find no fresh opportunity to exploit political fractures, security forces

¹ COI Service Iraq Country Report August 2011 (para 10.01) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

² COI Service Iraq Country Report August 2011 (para 10.02) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

³ COI Service Iraq Country Report August 2011 (para 10.03) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

operating at less-than-optimal levels still should face no serious difficulty in confronting them.⁴

- 2.3.5** It has been reported that although oversight by the MOI and MOD has increased, problems continue with all security forces, arising from sectarian divisions, corruption, and unwillingness to serve outside the areas in which personnel were recruited. The effort of the head of the largely Shia Federal Police to have police serve in provinces other than their home provinces to reduce corruption have been only partially successful.⁵
- 2.3.6** Other sources however have noted that the overall balance of Shi'ites, Kurds, and Sunnis in the ISF has improved over time; and that the ISF has become less Shi'ite-dominated, at least numerically. Although there are no official or reliable estimates, the Christian Science Monitor has estimated that the ISF is now 54% Shi'ite, 31% Sunni, and 15% Kurdish which resembles the sectarian makeup of the overall population of Iraq.⁶
- 2.3.7** The political loyalty of the security apparatus also remains a source of profound anxiety to many Iraqis. Various political factions and their leaders fear it may fall under the sole control of their rivals. Mutual distrust is palpable in the Green Zone, which houses the executive and legislative branches: the area is divided among different security outfits guarding various institutions, including private security firms employing foreign workers to carry out vehicle and body searches. All political parties and leading political personalities have bodyguards, hired by them or provided by the state, who at times get into confrontations in shared spaces such as parliament.⁷
- 2.3.8** It is difficult to assess the level of infiltration of the Iraqi Government and Iraqi Security Forces by non-state armed groups. However, it has been reported that both Sunni insurgents and Shi'a militias have infiltrated ministries and the security forces. It is further claimed that ISF, especially the Iraqi Police, are largely infiltrated by Shi'a militias who are funded and directed by Iran. Infiltration is suspected to reach to senior levels in Government and security circles.⁸
- 2.3.9** In April 2009 UNHCR was of the opinion that "generally, protection by national authorities will be not available given that the national authorities have yet limited capacity to enforce law and order, the ISF may be infiltrated by radical elements and the judiciary is prone to intimidation and corruption".⁹ In July 2010 UNHCR maintained this position noting that "significant progress is still needed to ensure the rule of law and to systematically address the issue of impunity for past human rights violations".¹⁰

Kurdistan Region of Iraq

- 2.3.10** 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.¹¹ The Peshmerga is reported to comprise approximately 200,000 soldiers. It is based in the Kurdistan Region of Iraq, but, at 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

⁴ COI Service Iraq Country Report August 2011 (para 10.05) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

⁵ COI Service Iraq Country Report August 2011 (para 10.11) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

⁶ COI Service Iraq Country Report August 2011 (para 10.13) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

⁷ COI Service Iraq Country Report August 2011 (para 10.12) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

⁸ COI Service Iraq Country Report August 2011 (para 10.14) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

⁹ UNHCR guidelines for assessing the international protection needs of Iraqi asylum seekers April 2009 www.unhcr.org/refworld/docid/49f569cf2.html

¹⁰ UNHCR, Note on the Continued Applicability of the April 2009 UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers, 28/07/2010, <http://www.unhcr.org/refworld/docid/4c4fed282.html>

¹¹ COI Service Iraq Country Report August 2011 (para 10.78) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

security forces. Additionally, the Peshmerga is present in areas with contested administrative boundaries, such as Kirkuk, Diyala and Ninewa Governorates.¹²

- 2.3.11** The Report of the Representative of the Secretary-General noted that “in the Kurdistan Region of Iraq, while the security situation is considerably better than in the rest of the country, specific concerns have been raised with regard to, inter alia: serious violations of the rights of suspects and detainees by KRG authorities; sexual and gender-based violence; and the impact of anti-terrorism legislation on human rights, including specifically the practice of keeping persons in de facto unlimited administrative detention”.¹³
- 2.3.12** UNHCR also found that despite the KRG authorities' commitment to respect human rights in their areas, serious violations of human rights continue to take place with specific groups being targeted, including journalists, persons accused of being affiliated with Islamist armed groups, and women.¹⁴ Amnesty International noted that “members and supporters of political opposition groups were threatened, harassed, attacked or arrested” by the “KRG authorities”.¹⁵ In addition, the International Crisis Group reported that Kurdish army personnel stationed in the disputed areas of Iraq are “strongly influenced by Kurdish political parties” and might be less prone to protect Iraqi Arabs in those areas.¹⁶
- 2.3.13** 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** Caseowners must refer to the Asylum Policy Instructions on both internal relocation and 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.
- 2.4.2** 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.¹⁷

¹² COI Service Iraq Country Report August 2011 (para 10.79) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

¹³ Office of the United Nations High Commissioner for Human Rights (OHCHR), Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin, 16/02/2011, para 10. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/108/37/PDF/G1110837.pdf?OpenElement>

¹⁴ UNHCR guidelines for assessing the international protection needs of Iraqi asylum seekers April 2009 www.unhcr.org/refworld/docid/49f569cf2.html

¹⁵ Amnesty International, Annual Report 2011: Iraq, 13/05/2011, Kurdistan region of Iraq. <http://www.unhcr.org/refworld/docid/4dce1562c.html>

¹⁶ International Crisis Group, Loose Ends: Iraq's Security Forces Between U.S. Drawdown and Withdrawal, 26/10/2010, section 1. <http://www.crisisgroup.org/en/publication-type/media-releases/2010/mena/loose-ends-iraqs-security-forces-between-us-drawdown-and-withdrawal.aspx>

¹⁷ COI Service Iraq Country Report August 2011 (para 30.02) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

- 2.4.3** 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.¹⁸ 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.¹⁹
- 2.4.4** 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.²⁰
- 2.4.5** 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.²¹
- 2.4.6** 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.²²
- 2.4.7** Roadside terrorist attacks are a frequent occurrence, particularly on main routes. However the central provinces are not as hazardous as during 2005-2008 but caution is still required when travelling in the area. With regard to travel within the Kurdistan region, roadside violence is not a major concern but occasional security incidents can occur, such as political unrest. Such outbreaks are infrequent and generally non-violent but they can escalate.²³
- 2.4.8** In relation to the Kurdistan Region of Iraq, there are no laws that restrict movement into the area, but due to security procedures in practice movement was restricted. Citizens (of any ethnicity, including Kurds) crossing into the region from the south were obliged to stop at checkpoints, undergo personal and vehicle inspection, and receive permission to proceed. Officials prevented individuals from entering into the region if deemed a security threat. Entry for male Arabs was reportedly more difficult than for others.²⁴
- 2.4.9** 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 checkpoint.²⁵ However, UNHCR has noted that KRG entry procedures are not applied in a uniform manner and identified certain groups “who may not be able to find protection upon relocation in the three Northern Governorates. Such persons may not be admitted to the Region, may still be targeted by the perpetrators of persecutory acts, or may have difficulties accessing basic services and therefore face undue hardship”.²⁶ These groups included: persons with no family, community, political or business links to the region; Arab males; Turkmen and Arabs from

¹⁸ COI Service Iraq Country Report August 2011 (para 30.02) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

¹⁹ COI Service Iraq Country Report August 2011 (para 30.05) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

²⁰ COI Service Iraq Country Report August 2011 (para 30.06) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

²¹ COI Service Iraq Country Report August 2011 (para 30.06) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

²² COI Service Iraq Country Report August 2011 (para 30.03) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

²³ COI Service Iraq Country Report August 2011 (para 30.12) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

²⁴ COI Service Iraq Country Report August 2011 (para 30.16) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

²⁵ COI Service Iraq Country Report August 2011 (para 30.17) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

²⁶ UNHCR guidelines for assessing the international protection needs of Iraqi asylum seekers April 2009 www.unhcr.org/refworld/docid/49f569cf2.html

Kirkuk; Kurds and members of religious minorities from Kirkuk, Khanaqeen and Mosul; women fearing "honour killing"; and single women.²⁷

- 2.4.10** Women's freedom of movement is restricted. The U.S. Department of State reported that "Islamic extremists targeted women for undertaking normal activities, such as driving a car and wearing trousers, in an effort to force them to remain at home, wear veils, and adhere to a conservative interpretation of Islam".²⁸ It also noted that "the MOI Passport Office maintained a policy of requiring women to obtain the approval of a close male relative before receiving a passport. In the KRG, unlike in the rest of the country, women over the age of 18 obtained passports without such approval".²⁹
- 2.4.11** The Internal Displacement Monitoring Centre (IDMC) reported June 2011 that with the level of violence declining to levels unseen since the American-led intervention in 2003, Iraq is in 2011 moving away from an emergency situation to a development phase. However, new displacement still occurs and a large number of people have unmet humanitarian needs. The Amnesty International Report 2011, covering events in 2010 noted that "Thousands of internally displaced people returned to their homes in the belief that security conditions had improved, but they faced many problems."³⁰
- 2.4.12** The IDMC report also recorded that in early 2011, over 66,000 returnee families (or around 400,000 individuals) had been identified across the country by IOM field monitors, around half of them in Baghdad governorate. The Gol [Government of Iraq] has implemented a number of measures to encourage returns but this support has only been of benefit to landowners. The main measures only relate to property disputes involving registered IDPs; they exclude claims regarding businesses and other non-residential property, and do not provide redress for returnees who have been forced to sell property under duress or who were tenants prior to displacement. The Gol established centres in Baghdad in 2008 to help returnees register and receive assistance. Returnees could receive a grant of around \$850 (1,000,000 Iraqi Dinar) and registered IDPs residing as secondary occupants could apply for rental assistance worth around \$250 per month for six months to help them vacate returnees' properties. The government's strategy to promote and facilitate returns has had mixed results. In 2009, approximately 60 per cent of IDPs surveyed by UNHCR said they had not sought assistance from relevant institutions as they lacked required documents, did not trust state institutions, could not afford the fees required or feared retribution. By the end of 2009, only 40 per cent of surveyed returnees had registered and applied for a grant, and only 30 per cent of those who applied had actually received one. The rate of return declined from a high of 17,000 IDPs per month in July 2009 to 9,000 in June 2010. In 2010 the leading obstacles to return included the continuing insecurity, the destruction of their houses, and the limited access to livelihoods and basic services there. Most returnees have gone back to neighbourhoods under the control of members of their community; nonetheless a UNHCR survey of returning refugees found that 61 per cent regretted returning to Iraq, with 60 per cent of this group citing insecurity and personal safety concerns. Around 77 per cent of those that returned to the two Baghdad districts of Karkh and Resafa said they did not return to their original place of residence either due to the general insecurity or because they still feared direct persecution. Many returnees whose property was being occupied illegally by militias, local residents or other IDPs feared harassment should they attempt to reclaim property.³¹
- 2.4.13** The UNHCR Eligibility Guidelines (April 2009) stated that generally no internal flight alternative will be available because of (i) the ability of non-State agents of persecution to perpetrate acts of violence with impunity, (ii) the ongoing levels of violence in mainly the Central Governorates of Baghdad, Diyala, Kirkuk, Ninewa and Salah Al-Din giving rise to new persecution, (iii) access and residency restrictions, and (iv) the hardship faced in ensuring even the basic survival in areas of relocation. When, however, the availability of

²⁷ UNHCR guidelines for assessing the international protection needs of Iraqi asylum seekers April 2009

www.unhcr.org/refworld/docid/49f569cf2.html

²⁸ COI Service Iraq Country Report August 2011 (para 25.31) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

²⁹ COI Service Iraq Country Report August 2011 (para 25.32) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

³⁰ COI Service Iraq Country Report August 2011 (para 31.01) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

³¹ COI Service Iraq Country Report August 2011 (para 31.04) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

an internal flight or relocation alternative must be assessed in a national asylum procedure, it should be examined cautiously and in the context of the individual claim.³² In December 2010 UNHCR reiterated its position, stating that “asylum seekers who originate from Iraq’s governorates of Baghdad, Diyala, Ninewa and Salah-al-Din, as well as from Kirkuk province, should not be returned and should benefit from international protection, whether in the form of refugee status under the 1951 Refugee Convention or a complementary form of protection³³ such as Humanitarian Protection or Discretionary Leave.

- 2.4.14** We do 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 all the circumstances. We consider UNHCR’s position is tied in with general policy considerations (e.g. about managing the rates of return) deriving from their general and Iraq-specific remit; we do not consider that in the light of the evidence taken as a whole that mere civilian returnees are at real risk of persecution under the Refugee Convention or of serious harm under either the Qualification Directive or Article 3 ECHR currently.
- 2.4.15** Case owners must carefully consider the availability and appropriateness 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.
- 2.4.16** 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. 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

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 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 (Immigration and Asylum Chamber) found that:

- the degree of indiscriminate violence characterising the current armed conflict taking place in Iraq does not reach such a high level that substantial grounds are 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

³² UNHCR guidelines for assessing the international protection needs of Iraqi asylum seekers April 2009
www.unhcr.org/refworld/docid/49f569cf2.html

³³ UNHCR, UNHCR reports increase in flight of Iraqi Christians; reiterates advice on protection needs, 17/12/2010.
www.unhcr.org/4d0b467c6.html

- if 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.
- even if there were certain areas where the violence reached levels sufficient to engage Article 15(c), there is likely to be considerable scope for internal relocation that achieves safety and would not be unduly harsh in all the circumstances
- in the light of the evidence taken as a whole there is not for mere civilian returnees a real risk of persecution under the Refugee Convention or of serious harm under either the Qualification Directive or Article 3 ECHR
- current levels of violence in Iraq are unacceptably high but a very significant proportion of the violence is targeted against persons with specific characteristics over and above being mere civilians: such persons – persons who are at greater risk – are very likely to be eligible for either refugee protection or subsidiary (humanitarian) protection under Article 15(b), as well as under Article 15(c) of the Qualification Directive under the sliding scale set out in *Elgafaji*.

NB: On 30 November 2011 the Court of Appeal remitted the appeal in *HM and Others (Iraq)* to the Upper Tribunal for re-hearing as country guidance. In the meantime the Court of Appeal's order makes it clear that the *HM and Others (Iraq)* country guidance has been quashed and that it no longer represents authoritative country guidance

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 *Elgafaji* and the test to be applied: *"Is there in a country of 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 *Elgafaji*. 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 *Elgafaji*.

Elgafaji 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.

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 remains correct on position of male Christians. No sufficiency of protection outside Kurdistan region.

LM (Educated women, Chaldo-Assyrians, risk) Iraq CG [2006] UKAIT 00060 (26 July 2006)

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

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 we consider 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 we are of the same view as regards relocation away from the area of a tribe with which a person has experienced problems. We also consider 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." (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."

3. Main categories of claims

- 3.1** This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in Iraq. It also contains any common claims that may raise issues covered by the Asylum Instructions on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant Asylum Instructions, but how these affect particular categories of claim are set out in the instructions below.
- 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 Instructions on Considering the Asylum Claim).
- 3.3** 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.
- 3.4** All Asylum Instructions can be accessed via the on the Horizon intranet site. The instructions are also published externally on the Home Office internet site at:

www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/

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 para 11 of the Asylum Instructions on 'Considering the Asylum Claim' and

'Assessing Credibility in Asylum and Human Rights claims'. 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 Home Office 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 matched 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.³⁴
- 3.6.3** Since the US launched its 'surge' strategy in mid-2007, bringing an additional 20,000 troops into Baghdad and Al-Anbar province, violence has been at a less intensive level than in 2006 and 2007. In June 2009, the Multi-National Force (MNF) withdrew from Iraqi cities and in August 2010, Washington announced the end of combat operations as troop levels dropped below 50,000. In December 2010, the United Nations removed Iraq from Chapter VII of the UN charter, officially ending its foreign occupation and restoring the country's sovereignty. In January 2011, the MNF was deactivated and the US Forces Iraq (USF-I) became the only foreign power in the country per an agreement with the Iraqi government that is scheduled to expire by the end of 2011. Meanwhile, Iraqi forces, with support from USF-I, took control of security as the level of violence continued to decline.³⁵
- 3.6.4** Steady progress is being made and security incidents are remaining near the lowest levels in more than five years despite a spike in attacks during the March 2010 election. In 2010 the overall level of violence in Iraq was about 90% lower than the peak seen in 2007 with the average number of daily security incidents nationwide less than 25 — making 2010 the least violent year since U.S. operations began in 2003.³⁶
- 3.6.5** Al Qa'ida in Iraq (AQI), other Sunni Islamist factions, and various neo-Ba'athist groups still carry out bombings and targeted attacks in parts of the country and continue to try to trigger a new round of Sunni-Shi'ite fighting. Since April 2009, these attacks have included a series of large-scale bombings, seeking to exploit divisions between Shi'ite and Sunni and between Arab and Kurd, and to provoke a new round of civil conflict and sectarian and ethnic reprisal.³⁷
- 3.6.6** Security remains a key challenge even though Iraq has made real progress in defeating the insurgency and moving toward political accommodation. The level of violence in Iraq is sharply lower than the levels that peaked in 2007. It is now dropping below the average levels that peaked in 2007. Most of the violence related to the Sunni insurgency is now concentrated in Baghdad and in Diyala, Ninewa, and Salah ad Din provinces in central and

³⁴ COI Service Iraq Country Report August 2011 (para 8.02) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

³⁵ COI Service Iraq Country Report August 2011 (para 8.01) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

³⁶ COI Service Iraq Country Report August 2011 (para 8.17) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

³⁷ COI Service Iraq Country Report August 2011 (para 8.03) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

northern Iraq. The threat posed by the militia of Moqtada-al-Sadr, by various Shi'ite factions like the Special Gripsis, and by other of the Shi'ite political alliance.³⁸

Overview of security situation in Central and Southern Iraq

- 3.6.7** In 2011, the Representative of the Secretary-General on the human rights of internally displaced persons noted that “despite improvements in the overall security situation since 2006, the situation in Iraq is still characterized by continued indiscriminate attacks against civilians, including religious and ethnic minorities”.³⁹ The March 2011 UN Secretary General report, described the security situation in Iraq as “volatile” and highlighted that the civilian population faces “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.”⁴⁰
- 3.6.8** Human Rights Watch reported that during 2010 “Violence killed and injured hundreds of civilians each month, in one of the worst periods, more than 500 people died in August alone. Assailants targeted government buildings and officials, checkpoints, embassies, hotels, factories, markets, and mosques, as well as people gathered for religious pilgrimages, weddings, and funerals, mainly in Shia areas.”⁴¹ The 2010 U.S. State Department report also concluded that violent attacks against the civilian population “were regular occurrences throughout all regions and sectors of society”.⁴²
- 3.6.9** While the Iraq Body Count recorded that civilian deaths from violence in 2010 had fallen to 3,976 compared to 4,680 in 2009,⁴³ the UN still recorded over 3,000 security incidents between 26 November 2010 and 31 March 2011, which resulted in at least 950 civilian deaths”.⁴⁴
- 3.6.10** Reports indicate that the targeting of Government of Iraq officials, members of the Iraqi security forces, Awakening Council members and prominent citizens continue unabated. Among the frequently targeted are Shiite civilians and pilgrims as well as religious sites in different areas, religious and ethnic minority groups ... Profiles targeted include, in particular, government officials and employees, party officials, members of the *Awakening Councils or Sons of Iraq* (Sol), members of the ISF [Iraq Security Forces] (including off-duty members), religious and ethnic minorities, Sunni and Shi'ite clerics, journalists, academics, doctors, judges and lawyers, human rights activists and Iraqis working for NGOs [Non-governmental Organisation] or the USF-I [United States Forces-Iraq] and foreign companies, alcohol vendors (which are commonly Christians or Yazidis), women and LGBT [lesbian, gay, bisexual and transgender] individuals.⁴⁵

Overview of security situation in Kurdistan Region of Iraq

- 3.6.11** UNHCR reported that “the Kurdistan Region remains relatively stable, though there have been reported assaults on journalists and political opponents”.⁴⁶ The March 2011 Report of the Representative of the Secretary-General on the human rights of internally displaced

³⁸ COI Service Iraq Country Report August 2011 (para 8.03) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

³⁹ Office of the United Nations High Commissioner for Human Rights (OHCHR), Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin, 16/02/2011 paras 9 and 10. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/108/37/PDF/G1110837.pdf?OpenElement>

⁴⁰ United Nations, Second report of the Secretary-General pursuant to paragraph 6 of resolution 1936 (2010), 31/03/2011, section E, para 43 and section F para 53. <http://www.unhcr.org/refworld/docid/4db69cb32.html>

⁴¹ Human Rights Watch, Word Report 2011: Iraq, 24/01/2011, Attacks on Civilians and Displacement. <http://www.hrw.org/en/world-report-2011/iraq>

⁴² U.S. Department of State, 2010 Country Reports on Human Rights Practices: Iraq <http://www.state.gov/g/drl/rls/hrrpt/2010/nea/154462.htm>

⁴³ Iraq Body Count, Iraqi deaths from violence in 2010: Analysis of the year's civilian death toll from Iraq Body Count, 30/12/2010. <http://www.iraqbodycount.org/analysis/numbers/2010/>

⁴⁴ United Nations, Second report of the Secretary-General pursuant to paragraph 6 of resolution 1936 (2010), 31/03/2011, section E, para 53. <http://www.unhcr.org/refworld/docid/4db69cb32.html>

⁴⁵ COI Service Iraq Country Report August 2011 (para 8.41) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

⁴⁶ UNHCR, Note on the Continued Applicability of the April 2009 UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers, 28/07/2010, Security developments <http://www.unhcr.org/refworld/docid/4c4fed282.html>

persons noted that “in the Kurdistan Region of Iraq, the security situation is considerably better than in the rest of the country”.⁴⁷ According to the 2010 U.S. Department of State report “in Erbil, Sulaymaniyah, and Dohuk, the three provinces under the authority of the Kurdistan Regional Government (KRG), there were significantly fewer reports of extremist violence than elsewhere in the country. [...] Although violence levels were lower in the KRG as compared with the rest of the country, there were incidents of terrorist attacks”.⁴⁸

See also: [Actors of protection \(section 2.3 above\)](#)
[Internal relocation \(section 2.4 above\)](#)
[Caselaw \(section 2.5 above\)](#)

- 3.6.12 Conclusion** A state of civil instability and/or where law and order has sometimes broken down does not of itself give rise to a well-founded fear of persecution for a 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
- 3.6.13** 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.
- 3.6.14** 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. The current evidence is that the level of indiscriminate violence in Iraq is not at such a high level that substantial grounds exist for believing that an applicant, solely by being present there, faces a real risk which threatens his life or person. However, this conclusion must be considered in the light of the up to date country of origin information. 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. It has not yet been established in caselaw what if any characteristics may place an individual in such an enhanced risk category in Iraq, so each case must be considered on its individual merits.
- 3.7 Perceived political opponents, including collaborators and those considered as “un-Islamic journalists and those in fear of kidnapping”**
- 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 insurgents/armed groups or Islamic 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,

⁴⁷ Office of the United Nations High Commissioner for Human Rights (OHCHR), Report of the Representative of the Secretary-General on the human rights of internally displaced persons, Walter Kälin, 16/02/2011, para 10. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/108/37/PDF/G1110837.pdf?OpenElement>

⁴⁸ U.S. Department of State, 2010 Country Reports on Human Rights Practices: Iraq <http://www.state.gov/g/drl/rls/hrrpt/2010/nea/154462.htm>

and insurgents to victimise people with impunity affects persons of all ethnicities and religious groups.⁴⁹

- 3.7.3** In March 2011, UN Secretary General of March 2011 noted that “Assassinations also persist across the country, targeting, inter alia, Government employees, tribal and community leaders, members of the judiciary and associated persons”.⁵⁰ The U.S. State Department also noted that “extremist and AQI attacks continued against ISF and government officials. [...] Terrorists also targeted government institutions and leaders. [...] There was an increase in AQI attacks against Sunnis cooperating with the government--the SOI and Sunni tribal leaders”.⁵¹
- 3.7.4** In its April 2009 paper, UNHCR reported that various armed groups are held responsible for targeting persons involved in the Iraqi Government and Administration at the federal and local levels, members of their families and bodyguards. The perpetrators and their motives are multi-layered. While certain acts may be motivated to delegitimise the Iraqi Government and spread fear, other attacks seem to clearly target government officials, be it for their belonging to a certain political party or their involvement in certain political affairs.⁵² The same paper also went on to say that professionals such as academics, judges and lawyers, doctors and other medical personnel as well as athletes have been a prime target for various extremist groups. Motives for these attacks are multilayered. Professionals have been targeted for their (perceived) political opinion, their religion or ethnic background, their social status as well as for criminal motives. Many attacks appear to be motivated by extremist groups' aim to destroy Iraq's cultural, intellectual and political diversity, frustrate economic recovery and, ultimately, de-legitimise the Iraqi Government by spreading fear and terror. Another reason may be 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.⁵³
- 3.7.5** In July 2010, UNHCR noted that “the targeting of Government of Iraq officials, members of the Iraqi security forces, Awakening Council members and prominent citizens continue unabated”.⁵⁴ Individuals particularly at risk included “government officials and employees, party officials, members of the Awakening Councils or Sons of Iraq (SoI), members of the ISF (including off-duty members), religious and ethnic minorities, Sunni and Shi'ite clerics, journalists, academics, doctors, judges and lawyers, human rights activists and Iraqis working for NGOs or the USF-I and foreign companies, alcohol vendors (which are commonly Christians or Yazidis), women and LGBT individuals.”⁵⁵
- 3.7.6** 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”.⁵⁶
- 3.7.7** In his July 2011 report to the UN Security Council, the Secretary-General reported that during the reporting period concerned [31 March 2011 to July 2011] there had been a

⁴⁹ COI Service Iraq Country Report August 2011 (para 8.37) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

⁵⁰ United Nations, Second report of the Secretary-General pursuant to paragraph 6 of resolution 1936 (2010), 31/03/2011, section E. <http://www.unhcr.org/refworld/docid/4db69cb32.html>

⁵¹ U.S. Department of State, 2010 Country Reports on Human Rights Practices: Iraq <http://www.state.gov/g/drl/rls/hrrpt/2010/nea/154462.htm>

⁵² COI Service Iraq Country Report August 2011 (para 17.38) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

⁵³ UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers, 27/04/2009, section VIII, I, para 311. www.unhcr.org/refworld/docid/49f569cf2.html

⁵⁴ UNHCR, Note on the Continued Applicability of the April 2009 UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers, 28/07/2010, Security developments. <http://www.unhcr.org/refworld/docid/4c4fed282.html>

⁵⁵ UNHCR, Note on the Continued Applicability of the April 2009 UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers, 28 July 2010 (p.4) www.unhcr.org/refworld/docid/4c4fed282.html

⁵⁶ COI Service Iraq Country Report August 2011 (para 17.43) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

significant rise in assassinations of political leaders, government officials and security personnel.⁵⁷

- 3.7.8** As regards kidnapping and disappearances, the majority of reported cases appeared to be financially motivated. Religious minorities and children were often the target of such kidnappings. Kidnappers who did not receive a ransom often killed their victims. Police believe that the majority of these cases went unreported.⁵⁸ 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.⁵⁹

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 regular reports of journalists being subjected to harassment by the ISF and the MNF-I for alleged links with armed groups, including unlawful searches, confiscation of computers and other personal belongings, arbitrary arrest and prolonged detention without being charged. [...] Some journalists have also been killed by MNF-I.⁶⁰
- 3.7.10** The U.S. State Department reported that “journalists were subject to violence and harassment. Eight journalists and media workers were killed during the year in Mosul, Baghdad, East Fallujah, and Ramadi. At least 12 others were targets of attacks, nine of whom suffered injuries from bombings of cars or offices. Journalists were targets of government security forces, corrupt officials, terrorists, religious groups that were unwilling to accept media independence...Despite multiple killings of journalists during the year, there were no convictions for these or previous killings of journalists”.⁶¹ Human Rights Watch reported that “Iraq still remains one of the most hazardous places in the world to work as a journalist. Extremists and unknown assailants continue to kill media workers and bomb their bureaus”⁶²

Treatment of journalists in the Kurdistan Region of Iraq

- 3.7.11** According to the U.S. State Department, “in the Kurdistan region, a 2008 law provides for media freedom and imprisonment is no longer a penalty for publication-related offenses. However, journalists continued to be tried, convicted, and imprisoned under the 1969 penal code. [...] Journalists in the Kurdistan region asserted that they routinely encountered personal intimidation by KRG officials, security services, tribal elements, and business leaders. The Kurdistan Journalists Syndicate (KJS) documented more than 300 incidents (threats, suits, and attacks) in 2009.”⁶³
- 3.7.12** The Committee to Protect Journalists reported that during 2010, “the overall situation deteriorated in the northern provinces under the administration of the KRG”⁶⁴ and in October 2010 Human Rights Watch stated that “journalists in Iraqi Kurdistan who criticize the regional government have faced substantial violence, threats, and lawsuits in recent months, and some have fled the country”.⁶⁵ Similarly, Reporters Without Borders noted in November 2010 that “Numerous journalists have complained about being assaulted,

⁵⁷ COI Service Iraq Country Report August 2011 (para 17.39) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

⁵⁸ COI Service Iraq Country Report August 2011 (para 9.02) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

⁵⁹ 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

⁶⁰ United Nations High Commissioner for Refugees (UNHCR), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers, 27/04/2009, section VIII, J, para 321 <http://www.unhcr.org/refworld/docid/49f569cf2.html>

⁶¹ U.S. Department of State, 2010 Country Reports on Human Rights Practices: Iraq, 08/04/2011, section 2,a. <http://www.state.gov/g/drl/rls/hrrpt/2010/nea/154462.htm>

⁶² COI Service Iraq Country Report August 2011 (para 18.14) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/.

⁶³ U.S. Department of State, 2010 Country Reports on Human Rights Practices: Iraq, 08/04/2011, section 2,a. <http://www.state.gov/g/drl/rls/hrrpt/2010/nea/154462.htm>

⁶⁴ Committee to Protect Journalists, Attacks on the Press in 2010: A Worldwide Survey by the Committee to Protect Journalists, 15/02/2011. <http://www.cpj.org/2011/02/attacks-on-the-press-2010-iraq.php>

⁶⁵ Human Rights Watch, Iraqi Kurdistan: Journalists Under Threat, 29/10/2010 <http://www.hrw.org/en/news/2010/10/28/iraqi-kurdistan-journalists-under-threat>

primarily by uniformed police officers, government security forces (Asayesh), or even the PUK or KDP security forces”.⁶⁶

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

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

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

- 3.7.13 Conclusion.** Persons openly criticising or perceived to be opposing armed groups or political 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.
- 3.7.14** Persons perceived to collaborate with the current Iraqi Government and its institutions, the 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.
- 3.7.15** 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.⁶⁷

⁶⁶ Reporters Sans Frontieres (Reporters Without Borders), Between Freedom and Abuses: The Media Paradox in Iraqi Kurdistan, 03/11/2010 <http://www.unhcr.org/refworld/country,,RSF,,IRQ,,4cd3ca821e,0.html>

⁶⁷ COI Service Iraq Country Report August 2011 (para 3.22) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/.

- 3.8.3** 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.⁶⁸
- 3.8.4** Other sources have 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.⁶⁹
- 3.8.5** The process of De-baathification disproportionately effected Sunni Arabs.⁷⁰ This sectarian divide had a significant adverse impact on the security situation in Iraq and also resulted in Sunni Arabs boycotted the 2005 elections for a Transitional National Assembly (TNA) and provincial governments, resulting in a landslide victory for Shiite and Kurdish parties.⁷¹
- 3.8.6** Sunni Arabs participated in the December 2005 elections increasing their political representation. However, further political progress remained elusive; the main Sunni Arab bloc in parliament and a Shiite faction loyal to populist cleric and militia leader Moqtada al-Sadr both began a boycott of the legislature in 2007.⁷²
- 3.8.7** In January 2008 parliament adopted a package of measures to bring Sunni Arabs back into the political process. Many former Ba'athists were permitted to return to jobs they lost, and in February 2008 the government granted amnesty to thousands of mainly Sunni Arab prisoners. The largest Sunni bloc, the Iraqi Accordance Front, returned to government in April 2008.⁷³
- 3.8.8** In its April 2009 paper, UNHCR said that while 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. While some killings of former Ba'athists or members of the former regime have been documented in the media in 2008 and 2009, mainly in the Central Governorates, other cases may go unreported, not least because the exact motivation behind an attack may not always be known. Today, many former Ba'athists have found a new identity in the Iraqi society as politicians, professionals or tribal leaders. Attacks on professionals, tribal leaders or members of the current ISF may, therefore, still be motivated by the victim's role under the former regime, but in most cases it will not be possible to establish for what reason someone was targeted.⁷⁴
- 3.8.9** In September 2010, the Danish Immigration Service published the results of its Fact Finding Mission to Iraq between 25 February to 9 March and 6 to 16 April 2010. It noted that "former Ba'athists who have been involved in human rights violations and where this is known could be at risk (of being targeted)".⁷⁵

⁶⁸ COI Service Iraq Country Report August 2011 (para 17.32) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/.

⁶⁹ COI Service Iraq Country Report August 2011 (para 17.32) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/.

⁷⁰ COI Service Iraq Country Report August 2011 (para 3.23) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/.

⁷¹ COI Service Iraq Country Report August 2011 (para 3.24) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/.

⁷² COI Service Iraq Country Report August 2011 (para 3.25) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/.

⁷³ COI Service Iraq Country Report August 2011 (para 3.27) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/.

⁷⁴ UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers, 27/04/2009, para 296 <http://www.unhcr.org/refworld/pdfid/49f569cf2.pdf>

⁷⁵ Danish Immigration Service, 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, 10/09/2010, section 3.3. http://www.nyidanmark.dk/NR/rdonlyres/7F24EA1B-1DC7-48AE-81C4-C097ADAB34FD/0/Rapport_Security_and_HR_in_South_Central_Iraq.pdf

3.8.10 UNHCR has included “former Ba’athists, unless their background has been cleared and no involvement in crimes has been established” and members of former security/intelligence services” as one of the groups which “may not be able to find protection upon relocation in the three Northern Governorates” and they may be denied entry to the Kurdistan Region of Iraq owing to their particular profile owing to their particular profile.⁷⁶

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

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

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

3.8.11 Conclusion While members of the former Ba’ath Party and regime are no longer systematically targeted, some individuals may still be at risk, 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. Each case must be carefully considered with regard to the particular profile of the claimant.

3.8.12 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.

3.8.13 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. Case owners should refer such cases to a Senior Caseworker in the first instance.

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. In UNHCR’s 2009 Eligibility Guidelines, they reported that so-called ‘honour killings’, i.e. murders committed by a family member to protect the family’s honour, are reportedly also on the rise. Many women and girls, and, to a lesser extent, men and boys, are at risk of death if they are accused of behaviour believed to have brought shame on the family, such as loss of virginity (even by rape), infidelity, a demand for divorce or a refusal of marriage. Women can be killed based solely on suspicions or rumours without the opportunity to defend themselves.⁷⁷

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

⁷⁶ United Nations High Commissioner for Refugees (UNHCR), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers, 27/04/2009, section 2, b. <http://www.unhcr.org/refworld/pdfid/49f569cf2.pdf>

⁷⁷ COI Service Iraq Country Report August 2011 (para 25.77) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/.

against her family's wishes, engaging in an extramarital affair, and refusing an arranged marriage."⁷⁸

- 3.9.4** The US State Department Report 2010 provided some statistical evidence on the issue, as noted: "According to a 2009 UNHCR report, honour killings were prevalent in all parts of the country. For the first nine months of 2009, the domestic NGO Human Rights Data Bank recorded 314 burn victims (125 instances of self-immolation and 189 cases of burning), compared with 234 burn victim during the same period in 2008." The Amnesty International Report 2011 further highlighted that in October 2010 "... the Human Rights Ministry reported at least 84 women had been killed in 'honour killings' in 2009 – not including the Kurdistan region."⁷⁹
- 3.9.5** Iraq's Ministry of Women's Affairs has unsuccessfully attempted to repeal discriminatory provisions of the penal code that give husbands legal authority to 'discipline' their wives (article 41) Acting in response to a legislative reform initiative spearheaded by a consortium of women legal practitioners, the Ministry recommended in December 2009 that the Ministry of Justice to repeal some of the contentious provisions.⁸⁰

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 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.⁸¹
- 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.⁸²
- 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.⁸³
- 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.⁸⁴

Honour crimes in the Kurdistan Region of Iraq

- 3.9.10** The legal position in the Kurdistan Region of Iraq is different to south and central Iraq. In 2002, Kurdish Region government passed a law to abolish reduced penalties for the murder of a female family member by a male relative on grounds of family shame and

⁷⁸ Human Rights Watch, At a Crossroads: Human Rights in Iraq Eight Years after the US-Led Invasion, 21/02/2011, Family Violence. <http://www.hrw.org/node/95606>

⁷⁹ COI Service Iraq Country Report August 2011 (para 25.83) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/.

⁸⁰ COI Service Iraq Country Report August 2011 (para 25.57) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/.

⁸¹ COI Service Iraq Country Report August 2011 (para 25.77) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/.

⁸² COI Service Iraq Country Report August 2011 (para 25.85) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/.

⁸³ COI Service Iraq Country Report August 2011 (para 25.84) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/.

⁸⁴ COI Service Iraq Country Report August 2011 (para 25.94) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/.

dishonour. This law sets the Kurdish region apart from many other countries in the Middle East and North Africa, where penal laws still permit mitigated sentences and exemptions for men who murder in the name of 'honour'. In the Kurdish region honour killings are now punished as harshly as other murders and are not viewed differently under the law.⁸⁵

- 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.⁸⁶
- 3.9.12** Human Rights Watch 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".⁸⁷
- 3.9.13** 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.⁸⁸
- 3.9.14** 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.⁸⁹

See also: [Actors of protection \(section 2.3 above\)](#)
[Internal relocation \(section 2.4 above\)](#)
[Caselaw \(section 2.5 above\)](#)

- 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** Honour crimes might not always be gender-related and there might be cases where men are as likely as women to be victims for committing certain acts which have brought shame on their family. If in such a case internal relocation is considered unduly harsh then Humanitarian Protection might 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

⁸⁵ COI Service Iraq Country Report August 2011 (para 25.79) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/.

⁸⁶ Amnesty International Hope and Fear: Human Rights in the Kurdistan Region of Iraq www.amnesty.org/en/library/asset/MDE14/006/2009/en/c2e5ae23-b204-4b46-b7f5-06dc1501f62f/mde140062009en.pdf

⁸⁷ 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>

⁸⁸ COI Service Iraq Country Report August 2011 (para 25.94) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/.

⁸⁹ COI Service Iraq Country Report August 2011 (para 25.95) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/.

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

- 3.10.2 *Treatment.*** In 2011, the U.S. Commission on International Religious Freedom reported that in recent years Iraq has “seen alarming numbers of religiously-motivated killings, abductions, beatings, rapes, threats, intimidation, forced displacements and conversions, and attacks on religious leaders and holy sites. Many Iraqis – Muslim and non-Muslim alike – have been victimised, but those from the country’s smallest, non-Muslim religious minorities have been particularly vulnerable. Members of these small groups continue to experience targeted violence and intimidation, lack militia or tribal structures to defend themselves, and do not receive adequate official protection or justice.”⁹⁰ It further noted that “the 2010-2011 reporting period saw continued terrorist attacks against the smallest religious minorities and their religious sites. The highest-profile attacks during this period targeted Christians”.⁹¹
- 3.10.3** 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 now only an estimated 500,000 are reported to remain.⁹²
- 3.10.4** 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.⁹³

Situation for Christians in central and southern Iraq

- 3.10.5** 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.⁹⁴
- 3.10.6** 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 States. the United Nations Assistance Mission for Iraq (UNAMI) coordinated humanitarian assistance to the Christians and others displaced. Previously, some human rights groups alleged Kurdish abuses

⁹⁰ US Commission on International Religious Freedom, United States Commission on International Religious Freedom Annual Report 2011: Iraq, 28/04/2011. <http://www.unhcr.org/refworld/country,,,IRQ,,4dbe90c22b,0.html>

⁹¹ US Commission on International Religious Freedom, United States Commission on International Religious Freedom Annual Report 2011: Iraq, 28/04/2011 <http://www.unhcr.org/refworld/country,,,IRQ,,4dbe90c22b,0.html>

⁹² COI Service Iraq Country Report August 2011 (para 21.29) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/.

⁹³ COI Service Iraq Country Report August 2011 (para 21.21) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/.

⁹⁴ COI Service Iraq Country Report August 2011 (para 21.30) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/.

against Christians and other minorities in the Nineveh Plain, close to the KRG-controlled region. Kurdish leaders deny the allegations.⁹⁵

- 3.10.7** 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.⁹⁶
- 3.10.8** 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."⁹⁷
- 3.10.9** Although not forbidden by law, Iraq does not recognise conversions from Islam to Christianity or to other religions. Converts have no legal means to register their change in religious status. Iraq's Personal Status Law (Law No. 188 of 1959) denies converts any inheritance rights. In addition they are reportedly often harassed by government officials and police. It is highly unlikely that a crime committed against a convert, be it by his/her family or by Islamist groups, would be properly investigated and prosecuted in the central and southern Governorates.⁹⁸

Situation for other religious minorities in central and southern Iraq

Sabaaen-Mandaeans

- 3.10.10** Sabaaen-Mandaeans are currently estimated to number 3,500 to 7,000 - reduced from an estimated 50,000 to 60,000 in 2003. The Sabian Mandaean religion is one of the oldest surviving Gnostic religions in the world. John the Baptist became its central prophet, and access to naturally flowing water remains essential for the practice of the faith. It is thought that there are around 60,000–70,000 Sabian Mandaeans worldwide, many of whom lived in Iraq prior to 2003. Sectarian violence and political strife have placed Sabian Mandaeans in Iraq in jeopardy, forcing many of them to flee to Jordan, Syria and elsewhere. According to the Mandaean Human Rights Group (MHRG), it investigated 22 murders, 13 kidnappings and 29 attacks from March 2008 until September 2009. It was also noted that some killings were not for money or ransom but to terrorise the families. A substantial number of the victims were women and children. In many cases, the families were forced to sell everything to pay off the ransom. Many received threats to leave the country or else be killed. Despite the ransom being paid, in some cases the killings were nevertheless carried out. Many became displaced when it was too dangerous for them to flee the country.⁹⁹

Yazidis

⁹⁵ COI Service Iraq Country Report August 2011 (para 21.30) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/.

⁹⁶ COI Service Iraq Country Report August 2011 (para 21.31) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/.

⁹⁷ COI Service Iraq Country Report August 2011 (para 21.32) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/.

⁹⁸ COI Service Iraq Country Report August 2011 (para 21.10) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/.

⁹⁹ COI Service Iraq Country Report August 2011 (para 21.36) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/.

3.10.11 Yazidis reportedly number approximately 500,000, down from some 700,000 in 2005 - are an ancient religious and ethnic group concentrated in Jabal Sinjar, 115 km west of Mosul, with a smaller community in Shaikhan, in Nineveh governorate east of Mosul, where their holiest shrine of Shaykh Adi is located. The 4,000-year-old Yazidi religion is a synthesis of pre-Islamic, Zoroastrian, Manichaeism, Jewish, Nestorian Christian and Muslim elements. Yazidis are dualists, believing in a Creator God, now passive, and Malak Ta'us (Peacock Angel), executive organ of divine will.¹⁰⁰ Ethnically and linguistically Yazidis typically have been considered Kurdish.¹⁰¹

Baha'i

3.10.12 The Baha'i leadership reported that there were less than 2,000 Baha'i in Iraq. They live scattered in small groups in various parts of the country. In April 2007, Decision No. 358 of 1975, which provided that civil status records can not indicate "Baha'i" as a religion, was cancelled. Since then, reportedly a small number of Baha'i were issued national ID cards indicating their faith; however, it is reportedly not possible to change the declaration of faith in already existing ID cards, e.g. from "Muslim" to "Baha'i". Despite this improvement as regards the legal situation of the Baha'i in Iraq, members of this small religious community continue to face administrative discrimination due to their not yet fully clarified legal situation and bureaucratic ignorance or idleness. In addition, they are potentially at risk of persecution at the hands of extremist groups, who may consider them "infidels" and/or supporters of Israel.¹⁰²

Shabaks

3.10.13 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 people have been recognised as a distinct ethnic group in Iraq since 1952.¹⁰³ 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.¹⁰⁴

Kaka'i

3.10.14 Kaka'i, known also as Ahl-e Haqq, are generally considered a Kurdish subgroup, speaking a different language called Macho. It is estimated that around 200,000 Kaka'i live in Iraq, the most important Kaka'i area being a group of villages in the south-east of Kirkuk. It is believed that most of them have been displaced since the fall of the former regime. Their faith, 'Kakaism', stems from the word for 'brotherhood'. As a belief, it is a combination of Zoroastrianism and Shi'ism, similar to Yazidism, although their religious beliefs and practices do not seem to have been considered as heterodox as those of the Yazidis. Kakaism arose as the result of a conflict between the Umayyad rulers of Islam and the Zoroastrianism priesthood. Since Kaka'i are forbidden from cursing Satan on religious grounds, many Muslims refer to them as devil-worshippers, hence the Muslim antagonism toward their beliefs resulting in their repression. In addition, they may be targeted on the basis of their Kurdish ethnicity. They have been subjected to threats, kidnapping and assassinations, mainly in the Kirkuk area. Muslim religious leaders in Kirkuk have asked

¹⁰⁰ COI Service Iraq Country Report August 2011 (para 21.41) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

¹⁰¹ COI Service Iraq Country Report August 2011 (para 21.42) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

¹⁰² UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers, 27/04/2009, para 308 <http://www.unhcr.org/refworld/pdfid/49f569cf2.pdf>

¹⁰³ COI Service Iraq Country Report August 2011 (para 22.37) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

¹⁰⁴ COI Service Iraq Country Report August 2011 (para 22.38) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

people not to purchase anything from 'infidel' Kaka'i shop owners.¹⁰⁵ The April 2009 UNHCR Guidelines also reported the Kaka'i were still targeted by Islamic extremists for being un-Islamic and were perceived as supporters of foreign occupying forces or the Iraqi administration.¹⁰⁶

Faili Kurds

3.10.15 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.¹⁰⁷ Under the Ba'ath regime, they were specifically targeted and stripped of their Iraqi citizenship, and many were expelled 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.¹⁰⁸ However the UNHCR Guidelines of April 2009 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.¹⁰⁹

Jews

3.10.16 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, now possibly numbering no more than 10 people in Baghdad and some families in the Kurdistan Region.¹¹⁰

Religious freedom in the Kurdistan Regional Government area

3.10.17 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.¹¹¹

3.10.18 The U.S. Department of State reported in its 2010 annual human rights report that the "KRG allowed Christian families displaced from Baghdad to Erbil to enter without restriction. Approximately 1,400 Christian families moved from Baghdad to Erbil and from Mosul to the Ninewa Plains seeking better security in the months following the bombing of a church in Baghdad on October 31 [2010]".¹¹²

3.10.19 However, the UN Secretary-General noted in March 2011 that "although internally displaced persons have been welcomed by the Kurdish authorities, integration is difficult

¹⁰⁵ COI Service Iraq Country Report August 2011 (para 21.46) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

¹⁰⁶ COI Service Iraq Country Report August 2011 (para 21.47) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

¹⁰⁷ COI Service Iraq Country Report August 2011 (para 22.25) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

¹⁰⁸ COI Service Iraq Country Report August 2011 (para 22.26) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

¹⁰⁹ COI Service Iraq Country Report August 2011 (para 22.27) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

¹¹⁰ COI Service Iraq Country Report August 2011 (para 21.49) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

¹¹¹ COI Service Iraq Country Report August 2011 (para 21.50) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

¹¹² US Department of State, 2010 Country Reports on Human Rights Practices: Iraq, 08/04/2011, section 2, d.

<http://www.state.gov/g/drl/rls/hrrpt/2010/nea/154462.htm>

owing to limited availability of resources, language barriers and difficulties in finding employment".¹¹³ 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".¹¹⁴

3.10.20 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 displaced families were located in Dohuk, Erbil, and Sulaymania provinces, while 8,798 displaced families were in Kirkuk provinces.¹¹⁵

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

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

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

3.10.13 Conclusion 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 from Central and Southern Iraq can 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, financial circumstances, health and gender.

3.10.13 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

3.13.1 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.

3.13.2 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 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.

¹¹³ 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>

¹¹⁴ 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>

¹¹⁵ COI Service Iraq Country Report August 2011 (para 21.50) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

- 3.13.3 Consideration.** By law the MOJ has full control and authority over all detention facilities, except for those administered by the MOD for military justice purposes. This law was not fully implemented, however, and four separate ministries--the MOJ, MOI, MOD, and MOLSA--continued to operate detention facilities. KRG social welfare authorities operated prisons in the KRG, and KRG security authorities operated pretrial detention facilities. KRG internal security forces and KRG intelligence services operated separate detention facilities as well. Kurdish authorities operated eight detention facilities that combined pretrial and post-conviction housing and eight additional internal security pretrial detention facilities.¹¹⁶
- 3.13.4** Although the government had not yet provided adequate resources (personnel, supplies, equipment, and facilities) to the MOJ for it to assume complete control over all detention operations throughout the country, there was progress in transferring MOD detainees to MOJ detention facilities. The country's fractured penal structure, in which the MOJ held convicts and the MOJ, MOI, and to a lesser extent the MOD, hold detainees complicated detention and prison operations. At year's end, there were 12 MOJ prisons and 11 MOJ pretrial detention facilities.¹¹⁷
- 3.13.5** MOI detention facilities comprise an estimated six Federal Police facilities and 294 Iraqi Police facilities. There are an estimated 1,200 smaller MOI police holding stations throughout the country managed, staffed, and operated by the Federal Police, Iraqi Police Services, Criminal Investigations Division, and the National Investigative and Information Agency. Although there were no independently verified statistics, it was estimated that the MOI facilities held as many as 8,000 pretrial detainees. The MOD operated 27 Iraqi army pretrial detention centres for detainees captured during military raids and operations. There were reports of unofficial detention centres throughout the country. The MOD lacked the legal authority to detain civilians and was required to transfer detainees to MOI or MOJ facilities within 24 hours. In May 2009 the MOD began transferring its civilian detainees to MOJ custody. Approximately 325 civilian detainees remained in MOD custody at the end of 2010 (650 at the end of 2009), the majority located in a detention facility in the International Zone in Baghdad. After reports of systematic abuse in this facility, the government closed it and transferred the detainees to MOJ facilities.¹¹⁸
- 3.13.6** The majority of individuals in MOI and MOD facilities were pretrial detainees. Overcrowding of pretrial detainees remained a problem in all detention facilities throughout the country due to slow case processing and lack of information sharing among relevant agencies. The MOJ is the only government entity with the legal authority to hold, care for, and guard post-trial detainees. The total capacity of MOJ's Iraqi Corrections Service (ICS) facilities was 26,469 beds for men (not including emergency capacity) and 553 beds for women. The total number of prisoners in the ICS was 25,020, 43 percent of whom were pretrial detainees.¹¹⁹
- 3.13.7** In MOI and MOD detention facilities, conditions and treatment of detainees were generally reported as poor. The MOI Human Rights Directorate reported conducting 1,020 inspections during 2010 and noted that overcrowding remained widespread. Many detention facilities "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 water and electricity, and poor quality food. Medical care in MOI and MOD detention facilities was not provided consistently, and there continued to be allegations of abuse and torture in some facilities".¹²⁰ The FCO noted that "Overcrowding and poor sanitation are commonplace" in prison facilities¹²¹ and Amnesty

¹¹⁶ US State Department Human Rights Report 2010; Iraq <http://www.state.gov/g/drl/rls/hrrpt/2010/nea/154462.htm>

¹¹⁷ US State Department Human Rights Report 2010; Iraq <http://www.state.gov/g/drl/rls/hrrpt/2010/nea/154462.htm>

¹¹⁸ US State Department Human Rights Report 2010; Iraq <http://www.state.gov/g/drl/rls/hrrpt/2010/nea/154462.htm>

¹¹⁹ US State Department Human Rights Report 2010; Iraq <http://www.state.gov/g/drl/rls/hrrpt/2010/nea/154462.htm>

¹²⁰ US Department of State Human Rights Report 2010; Iraq <http://www.state.gov/g/drl/rls/hrrpt/2010/nea/154462.htm>

¹²¹ UK Foreign and Commonwealth Office (FCO), Human Rights and Democracy: The 2010 Foreign & Commonwealth Office Report (Iraq excerpt), 31/03/2011, section IV, Prison and detention issues. <http://s3-eu-west-1.amazonaws.com/htcdn/Human-Rights-and-Democracy-The-2010-Foreign-Commonwealth-Report.pdf>

International also highlighted overcrowding ill-health and inadequate medical care as serious problems.¹²²

- 3.13.8** In 2011, Amnesty International stated that “Torture and other ill-treatment of detainees were rife in Iraqi prisons, especially those controlled by the Ministries of Defence and Interior. Detainees were beaten with cables and hosepipes, suspended by their limbs for long periods, given electric shocks, had their limbs broken, were asphyxiated with plastic bags, and raped or threatened with rape. Torture was used to extract information from detainees and "confessions" that could be used as evidence against them in court”.¹²³
- 3.13.9** Freedom House also reported that detainees made “credible allegations of systematic sexual, physical, and psychological abuse”.¹²⁴ Human Rights Watch¹²⁵ 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.¹²⁶
- 3.13.10** A 2009 MOHR report on prison conditions in the Kurdistan region noted that inspectors had observed signs of "systemic torture" in Asayish detention facilities, although cases in prisons run by KRG Ministry of Labor and Social Affairs were limited to isolated instances”.¹²⁷ In the KRI too, recent allegations of torture and ill-treatment have been reported by those who protested in February 2011 and who were subsequently detained by the Kurdish security forces.¹²⁸
- 3.13.11** Despite limited resources and funds, MOJ detention facilities provided detainees with better treatment and living conditions than MOI and MOD detention facilities. Medical care in MOJ's ICS prisons in some locations exceeded the community standard. ICS personnel made significant progress in meeting internationally accepted standards for prisoner needs. The MOJ is responsible for training ICS guards and correctional executive management staff, providing the facilities with necessary supplies and equipment, addressing overcrowding, facilitating case processing, and providing prison rehabilitation programs.¹²⁹
- 3.13.12** The ICS internal affairs department monitored abuse or violations of prisoners' human rights. Allegations of abuse resulted in the disciplining of ICS officers in some cases. During the year there were seven allegations that ICS staff abused detainees.¹³⁰
- 3.13.10** The law mandates that women and juveniles be held separately from male adults. Although this law was generally observed, in some cases women were held in the same detention facility as men but in segregated quarters and cellblocks. A MOD inspection of a facility in Baghdad's International Zone found women at the facility, albeit in separate cells. Juveniles were also occasionally held with adults. MOD inspections of its International Zone facility and Old Muthanna detention facilities found juveniles living in the same cells as adult

¹²² 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>

¹²³ Amnesty International, Annual Report 2011: Iraq, 13/05/2011, Torture and other ill-treatment. <http://www.unhcr.org/refworld/docid/4dce1562c.html>

¹²⁴ Freedom House, Freedom in the World 2011: Iraq, 12/05/2011. <http://www.unhcr.org/refworld/docid/4dcbf51ac.html>

¹²⁵ Human Rights Watch, At a Crossroads: Human Rights in Iraq Eight Years after the US-Led Invasion, 21/02/2011, section III. <http://www.hrw.org/node/95606>

¹²⁶ OHCHR, Joint study on global practices in relation to secret detention in the context of countering terrorism (Iraq excerpt), 20/05/2010, paras. 226 and 228. http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.13.42_re-iss.pdf

¹²⁷ US State Department Human Rights Report 2010; Iraq <http://www.state.gov/g/drl/rls/hrrpt/2010/nea/154462.htm>

¹²⁸ Amnesty International, Days of rage: Protests and repression in Iraq, 12/04/2011, section 3, Torture and other ill-treatment. <http://www.amnesty.org/en/news-and-updates/120411-%E2%80%98days-rage-protests-and-repression-iraq%E2%80%99-testimonies-case-studies-2011-04-11>

¹²⁹ US State Department Human Rights Report 2010; Iraq <http://www.state.gov/g/drl/rls/hrrpt/2010/nea/154462.htm>

¹³⁰ US State Department Human Rights Report 2010; Iraq <http://www.state.gov/g/drl/rls/hrrpt/2010/nea/154462.htm>

detainees. Additionally pretrial detainees and convicted prisoners were sometimes held in the same facility due to space limitations.¹³¹

- 3.13.11** During 2010 MOLSA's juvenile facilities improved. The end-of-year population of the Tobschi juvenile facility in Baghdad was 297 pretrial juveniles, while the facility's capacity was 327. Legal, medical, educational, and social services were available on site. The Karada female juvenile facility, which had a population within its capacity, had medical services on site. The Shalchiya facility also had a population within its capacity. The Kharq juvenile facility remained overcrowded, with a capacity of 245 and a total population of 490 post-trial juveniles. There were no reported instances of abuse or mistreatment in MOLSA facilities. Small numbers of juveniles were also held at some MOJ and police stations; for example, 167 juveniles were at MOJ facilities at year's end.¹³²
- 3.13.12** KRG security authorities operated male pretrial detention facilities, and KRG social welfare authorities operated male post-trial and female and juvenile pretrial and post-trial detention facilities in the Kurdistan region. The KRG internal security forces and the KRG intelligence services operated separate detention facilities. Domestic and international human rights NGOs and intergovernmental organizations generally had access to pretrial and posttrial facilities. Access by independent organizations to the facilities of the KRG internal security and intelligence services was limited to the MOHR, the International Committee of the Red Cross (ICRC), and the UN.¹³³
- 3.13.13** Until the April media reports of an extrajudicial detention facility appeared, the national detention facilities occasionally permitted visits by representatives of the national MOHR and members of parliament. After the press coverage, MOHR officials reported encountering resistance at some detention facilities to MOHR visits. KRG detention facilities permitted visits by the national MOHR and KRG human rights authorities. The MOHR's annual report covering 2009 was generally critical of prison standards across the country and addressed general conditions and populations of detention facilities, judicial processes, and torture allegations.¹³⁴
- 3.13.14** Domestic and international human rights NGOs and intergovernmental organisations generally did not have access to national MOI detention and pretrial facilities, although the MOHR initiated a program in 2009 to train NGOs in how to conduct prison inspections. Some inter-governmental organisations had access to similar facilities of the KRG internal security and intelligence forces, which were separate from the national facilities. The ICRC had access in accordance with its standard modalities to MOJ detention facilities, together with access to places of detention under other ministries, although at times with difficulties. The ICRC did not have access to the Counterterrorism Center detention facility. During the year the ICRC carried out 118 visits to 39 central government detention facilities. The ICRC also regularly visited 40 KRG detention facilities.¹³⁵
- 3.13.15 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. 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 and state of health. However, where an applicant is able to demonstrate a real risk of detention or imprisonment on return to Iraq, and exclusion under Article 1F is not justified, a grant of Humanitarian Protection is likely to be appropriate.

¹³¹ US State Department Human Rights Report 2010; Iraq <http://www.state.gov/g/drl/rls/hrrpt/2010/nea/154462.htm>

¹³² US State Department Human Rights Report 2010; Iraq <http://www.state.gov/g/drl/rls/hrrpt/2010/nea/154462.htm>

¹³³ US State Department Human Rights Report 2010; Iraq <http://www.state.gov/g/drl/rls/hrrpt/2010/nea/154462.htm>

¹³⁴ US State Department Human Rights Report 2010; Iraq <http://www.state.gov/g/drl/rls/hrrpt/2010/nea/154462.htm>

¹³⁵ US State Department Human Rights Report 2010; Iraq <http://www.state.gov/g/drl/rls/hrrpt/2010/nea/154462.htm>

4. Discretionary Leave

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

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

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, support and care arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, care and support arrangements in place for minors with no family in Iraq. 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 Applicants may claim they cannot return to Iraq due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 and/or 8 to be engaged.

4.4.2 The Constitution of Iraq stipulates that every citizen has the right to health care.¹³⁶ The Ministry of Health (MoH) is the main provider of health care – both curative and preventive. The emerging private sector provides curative services to a limited portion of the population on a fee-for-service basis. Naturally enough, access to care has been affected by emergencies as a consequence of military operations in recent years, as well as the level of ongoing violence. The resulting drop in GDP and consequent public expenditure on health has led to deterioration in the quality of services and a corresponding shortage of essential supplies. Despite these constraints, steady progress has been made in key components of the health system in Iraq during the past few years.¹³⁷

4.4.3 In 2009 UNHCR stated that “Iraq’s health care system has greatly deteriorated and IDPs, many of whom live in substandard conditions and lack basic services, are particularly affected. In areas where health clinics are operational, they are often under-staffed, under-equipped or lack specialist health care professionals. Lack of access to health services is especially problematic in the Governorate of Kirkuk, where 69% of the IDPs were found not to have access to healthcare.”¹³⁸

4.4.3 Most kinds of medication are available in Iraq, but not necessarily in public hospitals. Public hospitals have medications bought by the government and the patients cannot have chosen medicines from different manufacturers, as is the case in private hospitals and pharmacies. Medicines prescribed by doctors in private clinics or private hospitals can be bought from

¹³⁶ COIS Iraq Country Report August 2011 (para 28.01) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

¹³⁷ COIS Iraq Country Report August 2011 (para 28.03) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

¹³⁸ UNHCR, UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers, 27/04/2009, para 106. <http://www.unhcr.org/refworld/docid/49f569cf2.html>

private pharmacies only. A wide range of medicines made by different manufacturers are available, ranging from Swiss, Indian and those manufactured in Iraq.¹³⁹

- 4.4.4** There is a shortage of cancer medicines in Iraq. These can be received from specialised cancer hospitals which are government-run. Waiting times for medication are known to be months, and in some cases even years. As a solution, patients usually buy those medicines from other countries, mainly Jordan, where those drugs are available in private pharmacies.
- 4.4.5** On 14 January 2009, IRIN News stated: “To be HIV-positive in Iraq means social isolation - and even death at the hands of religious extremists who believe the virus is proof that an HIV-positive person must have engaged in indecent acts. Iraq has a very low HIV prevalence rate: only 44 people are HIV-positive, according to Ihsan Jaafar, who heads the Health Ministry’s public health directorate, responsible for combating HIV/AIDS. The virus first came to Iraq in 1985 via contaminated blood imported from a French company. It was detected the following year in scores of people suffering from haemophilia, a hereditary blood disorder.”¹⁴⁰
- 4.4.6** Patients who are HIV-positive get the equivalent of about US\$85 per month from the government, as well as a clothing allowance. Those infected in 1985 are paid an extra \$200 monthly. They get free monthly check-ups; their partners are examined every three months, and other family members are checked every six months. Baghdad has at least 11 medical centres for this purpose and there is also one such centre in each province. In cooperation with the World Health Organisation (WHO), the ministry prescribes combination therapy involving three antiretroviral drugs free of charge.¹⁴¹
- 4.4.7** For patients with mental health issues, psycho-social support is available in public hospitals (departments in some hospitals in the main cities) and in private clinics where the same psychiatrists in public hospitals are working.¹⁴² Actual treatment of severe mental disorders is available at the primary level. Drugs are supplied to needy patients at the primary care level after confirmation of the diagnosis by specialists. Regular training of primary care professionals is carried out in the field of mental health. Post-graduation in psychology and training for paramedical staff is also present. Training is also provided to teachers, social workers employed in special schools, primary care physicians and nurses. General practitioners in the primary health centres are being trained in psychiatry in order to deliver better psychiatric services at the primary level. Short training courses for orientation are provided. There are community care facilities for patients with mental disorders. Care is provided through the facilities of the Ministry of Social Welfare.¹⁴³

The KRG

- 4.4.9** The Kurdish region has a large number of medical facilities, in both the public and private sectors in major cities and towns. Smaller towns have community clinics, which can cover minor illnesses and offer a range of basic medical services including infant vaccinations.¹⁴⁴
- 4.4.10** Frontier Medical stated that general and emergency hospitals in the Kurdish region are equipped, run and deliver services to a reasonable standard and, while not to Western standards, are adequate for people's needs. Hospital administration varies in quality and can often appear chaotic. Demand for all services was high and medical facilities can be overcrowded.¹⁴⁵

¹³⁹ COIS Iraq Country Report August 2011 (para 28:07) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

¹⁴⁰ COIS Iraq Country Report August 2011 (para 28:13) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

¹⁴¹ COIS Iraq Country Report August 2011 (para 28:14) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

¹⁴² COIS Iraq Country Report August 2011 (para 28:20) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

¹⁴³ COIS Iraq Country Report August 2011 (para 28:21) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

¹⁴⁴ COIS Iraq Country Report August 2011 (para 28:23) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

¹⁴⁵ COIS Iraq Country Report August 2011 (para 28:26) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/

- 4.4.11** Frontier Medical stated that pharmaceuticals are supplied centrally by the Iraqi Government from Baghdad to Kurdish region medical facilities. The central supply is supplemented at local level in the KR from local budgets. Some hospital and clinic administrators in the KR have expressed a belief that KR medical facilities are disadvantaged in relation to the rest of Iraq in terms of pharmaceutical supply. It is claimed that supplies can arrive late and pharmaceuticals supplied to the Kurdish region are often sourced in India or Egypt rather than Jordan or Europe and are believed to be of inferior quality and more likely to be counterfeit. All hospitals have pharmacies and all cities and towns have private pharmacies stocking a wide range of medicines.¹⁴⁶
- 4.4.13** Article 3 threshold will not be reached in the majority of medical cases and a grant of Discretionary Leave will not usually be appropriate. Where a case owner considers that the circumstances of the individual applicant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

5. Returns

- 5.1** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.
- 5.3** 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 Immigration service, or (c) leaving the UK under one of the Assisted Voluntary Return (AVR) schemes.
- 5.4** The AVR programme is implemented on behalf of the UK Border Agency by Refugee Action which 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. Iraqi nationals wishing to avail themselves of this opportunity for assisted return to Iraq should be put in contact with Refugee Action Details can be found on Refugee Action's web site at:

www.refugee-action.org/ourwork/assistedvoluntaryreturn.aspx

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¹⁴⁶ COIS Iraq Country Report August 2011 (para 28:25) www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/