

Asylum and Immigration Tribunal

THE IMMIGRATION ACTS

**Heard at Taylor House
On 15 March 2006
Prepared 16 March 2006**

**Determination Published
On 26 July 2006**
.....

Before

**Senior Immigration Judge Gleeson
Immigration Judge Carroll**

Between

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Bandegani, Legal Representative with
Refugee Legal Centre, London
For the Respondent: Mr P Tranter, Home Office Presenting Officer
Interpreter: Mr E L Saman, Assyrian

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 KDG connections, 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 KDG.

DETERMINATION AND REASONS

1. The appellant is an Iraqi national. This is the reconsideration of her appeal. She is an Assyrian Christian who formerly held a significant professional position with the government, negotiating contracts between the Iraqi government and Western oil companies. The appellant's core account is consistent with the background evidence regarding the situation of Christians in Iraq at the time when she came to the United Kingdom. Her credibility is not disputed; the Secretary of State has accepted her account and is no credibility issue under section 8 Asylum and Immigration (Treatment of Claimants etc.) Act 2004 as the facts relied upon as crystallising the appellant's intention not to return to Iraq arose only after she had reached the United Kingdom; if she is a refugee, it is on a *sur place* basis.

Facts

2. The appellant is a qualified chemical engineer and worked with a chemical engineering company in Iraq as a Senior Engineer, negotiating and dealing with Western companies on behalf of the Iraqi Government, using her fluent English. She is Westernised and does not wear the hijab. She is not Kurdish and has no connections with the North. She speaks Assyrian and English, identifying her as Chaldo-Assyrian and, in relation to the English language, as being likely to have links with the West. Her case is that this profile puts her at risk as a perceived collaborator, and that she lacks local protection to allow her to return to Iraq in safety. She also has family political connections through a sister, C, who had a high profile within an organisation which campaigns for the rights of women and Assyrians (Beit Nahrain); specific threats were made to C, and C's husband was kidnapped just after the appellant last came to the United Kingdom.
3. The appellant has never married, though she had a relationship with a man, M, who worked for the same company. M was deputy Director of Petroleum Drilling in the Kirkuk area and a frequent traveller to both France and the United States. They hoped to marry but were not formally engaged. The appellant has two sisters, B, who lives in the United Kingdom, and C, who lived in Iraq. She has no direct family still in Iraq now, although she has a distant cousin, D, living in the Kurdish Regional Government area (KDG). The appellant had no personal past history of persecution.
4. Because of her work with Western companies and her refusal to wear the hijab, the appellant suffered harassment and bullying at or near her work place. Her employer employed about 600 women of whom 97% were prepared to wear the hijab. The appellant was not, and this added to her visibility as a Christian and caused her difficulties; Muslims constantly told her that she was regarded as a Western spy. She was called names and harassed on her way to and from work. The appellant could cope with that; it is not the reason for her claim.
5. Similarly, she was able to worship at home, but attending Church outside the home was more difficult; she did so only irregularly. The appellant was often the subject of name-calling when entering or leaving a Church, and there were relatively few Christian churches available in which to worship. Her sister C was involved with the Beit Nahrain Party, an organisation concerned with Assyrian people, and also with the rights and plight of women in Iraq.

6. The appellant's family travelled to the United Kingdom to visit B on more than one occasion. On 15 August 2005, the appellant, with C and her family, obtained visit visas for a family visit to B. The appellant was obliged (for business reasons) to return early from the visit, travelling via Syria. On her return, she received a telephone call from the Beit Nahrain Party to warn her that Islamic people were trying to locate C and threaten her. They all lived in the same house, so the appellant was worried too.
7. Matters began to come to a head during October 2005. While the appellant was at work, three people with guns visited the family home and knocked on the door. Her mother had the good sense not to open the door. When she heard of the visit, the appellant felt frightened; she decided to use her valid visit visa to return to the United Kingdom, and re-entered the United Kingdom on 26 October 2005. Her parents remained in Iraq. She had at that time no intention to claim asylum, but soon after her arrival, the appellant received bad news, which changed her mind. The appellant learned that on 29 October 2005, her friend M had been killed in Kirkuk murdered in a hail of bullets in his own home. M's violent death is fully supported by contemporaneous press reports, which name him and are plainly genuine. Not long after that, the appellant learned that C's husband had been kidnapped and disappeared. There is no news of him.
8. On 10 November 2005, the appellant claimed asylum in the United Kingdom, relying on her individual circumstances and upon the general deterioration in the attitude to Christians in Iraq. The Secretary of State accepts that the circumstances underlying the appellant's present claim can be treated as having arisen *sur place*, though he continues to dispute that they engage the Refugee Convention or the ECHR. The facts being agreed and the Secretary of State conceding that return would be to Baghdad (but making no general concession on internal flight) we then heard oral submissions from both parties before going on to consider the background evidence as it applies to these facts.

Appellant's submissions

9. For the appellant, Mr Bandegani reminded us of the provisions of the Respondent's current Operational Guidance Note; each case should be considered on its merits. He relied upon the expert evidence of Dr Alan George, a freelance writer, journalist and consultant specialising in Middle Eastern political and economic affairs, which has written extensively on Iraq and prepared some 50 Reports on Iraqi cases for submission to both the IAT and the IAA.
10. Mr Bandegani's argument was that the cumulative effect of the background evidence before the Tribunal on the situation in Iraq, against the particular facts of this appellant's case, indicated a real risk or a reasonable degree of likelihood of persecution for the present appellant if she were to be returned now. The deterioration in circumstances because of the general radicalisation of the situation in Iraq made the situation more dangerous for Christians, women, and collaborators (persons who were prepared to work with the MNF). This appellant fell into all three groups.
11. M who had been killed in Kirkuk had a very similar profile, save that he was male. The appellant could not rely on his family to shelter her if returned, and her own parents

were now in America. Matters between the appellant and M had not advanced to a point where his family would feel any responsibility to take her in. She could not be expected either to begin to wear the hijab or to desist from her irregular Church attendance. She was a refugee and entitled to have her case determined as such.

12. In relation to Article 3 and internal relocation, Mr Bandegani submitted that *Batayav v SSHD (No 2)* [2005] EWCA Civ 366 (*Batayav No 2*) erroneously set a higher test for risk on return than that required by the 1950 Convention. We had some difficulty in following this argument, which we consider a misunderstanding of the *Batayav* formulation. We are assisted by guidance given by the Deputy President of this Tribunal on the *Batayav No 2* decision, set out in *AA (Involuntary returns to Zimbabwe) Zimbabwe CG* [2005] UKAIT 00144, at paragraphs 48 and following -

"51. Sometimes it will be necessary to show a generality of harm. This may be particularly so in cases where a claimant bases his case simply on the characteristics of the country to which he is being returned, without referring to the acts of any malevolent individual. If his case is simply based on the awfulness of his country, he will clearly need to show that the awfulness extends to the whole country, otherwise his claim lacks substance: he fails to establish the risk of harm because he can avoid it. If his claim (like *Batayav's*) is based on the conditions in Russian prisons, he needs to establish that he will be incarcerated and also that prisons in general pose the risk he fears. If they do not, he may be unable to show that there is a real risk that he will suffer the harm, as his dispatch to one of the worse (rather than one of the better) prisons would be a matter of pure speculation. Given that he showed that he was at risk of imprisonment in Russia, his case became stronger the more universal the conditions of which he complains. But that is not to say that there is an artificial barrier that his evidence has to pass. It all depends. It is a matter of logic; and the way the rules of logic work will differ from case to case.

52. It is for that reason that we do not think that the Court of Appeal intended to set down any general rule in any of the three decisions to which we have referred. In each case, the Court was approaching the risk alleged in that case and testing the evidence by the rules of logic. It is not surprising that different words should be used each time; nor is it surprising that in the first *Batayav v SSHD* all the members of the Court associated themselves with the warning against changing the question by fixing it in a particular form of words."

13. We respectfully apply and adopt that analysis and approach Article 3 based on the language of the Conventions, that is, real risk. Article 3 involves an empirical assessment of the conditions which prevail in the country of origin in order to ascertain whether a particular category of person is at risk, having regard to the scale, frequency and patterns of treatment of that group. The 'requirement' for a generality of harm is one of many formulations of that risk, having regard to the internal relocation question. An appellant can succeed only by showing either a general risk, or a particular risk for which there is no realistic internal relocation option which would provide sufficiency of protection.
14. Mr Bandegani submitted that *RA (Christians) Iraq CG* [2005] UKIAT 00091 applied the erroneous test in *Batayav No 2* and was unsafe. That, for the reasons set out above, is a bad argument, but the Tribunal will need to consider whether *RA* remains good law for women in this appellant's situation, or whether, due either to the changed circumstances in Iraq or any of her personal characteristics, this appellant can show a real risk or reasonable degree of likelihood or persecution for her upon return, as an

English-speaking, non-Kurdish origin Christian woman, with Western professional connections, a history of Church attendance and an objection to wearing the hijab.

Secretary of State's submissions

15. For the Secretary of State, Mr Tranter relied on the letter of refusal and argued that until the end of October 2005, the appellant's case was one of discrimination but not persecution; when she entered the United Kingdom for the second time on 26 October 2005, she did not intend to claim asylum. Nothing persecutory had ever happened to her and she could have no reasonable subjective fear (a species of reverse *Demirkaya* argument). The harassment and name-calling relied upon by Mr Bandegani predated her arrival in October 2005 and had not caused her to seek asylum.
16. The appellant was if anything a refugee *sur place* relying on the murder of M and the disappearance of C's husband. Her fears should be confined to events which naturally flowed from those two events and nothing more. She needed to show a significant change since the Tribunal's most recent country guidance decision in *RA* and she had not done so. Discrimination had not become persecution; M's death did not put her at risk. In her first witness statement at paragraph 15, the appellant described M's death as murder by 'unknown people'. Mr Tranter accepted that it was reasonably likely on the background evidence that M was shot dead because of his association with America. However, although he worked for the same employer, he worked in an entirely different part of the country and the link to the appellant was tenuous.
17. In relation to the disappearance of C's husband, the appellant's evidence was vague. No reason for the kidnapping had been given. It was not all clear why he had disappeared or whether his disappearance was linked to C's involvement in Beit Nahrain. Nevertheless, the Secretary of State accepted the fact of this disappearance, having regard to the lower standard appropriate for these Conventions.
18. In his submission, in order to succeed the appellant would need to show persecutory general country conditions. She had a highly paid job before coming to the United Kingdom with a successful position and had not been targeted. Of the 600,000 remaining Assyrian Christians in Iraq, it could reasonably be assumed that 300,000 of them were female. He accepted that the appellant had been working with contracts with Western companies, but the evidence did not show her to be at risk on that account. There was no significant change in the country evidence since *RA*; in that case, the Tribunal did consider the evidence of the bombings, murders and incidents the subject of the present submissions and nothing new or more cogent was before the Tribunal. There was therefore no general risk and no real evidence of personal risk to a single Christian woman. He asked the Tribunal to dismiss the appeal.

Appellant's reply to Secretary of State's submissions

19. In reply, Mr Bandegani relied upon the interview record for details of the harassment the appellant had suffered in Iraq; she had been threatened and felt intimidated. Her appeal was not predicated just on the evidence relating to M's husband although that was certainly a significant component in the risk to her now. As indicated in the Tribunal's starred determination in *Gomez (Non-state actors: Acero-Garces disapproved) (Colombia)* [2000] UKIAT 00007*, mixed motives for persecution or Article 3 ill-treatment were permissible.

20. He had presented evidence which was not before the Tribunal in *RA*, particularly the UNHCR evidence. He argued that there was a clear deterioration in the position of Christians in Iraq because of increased fundamentalism and targeting of people like this appellant. The facts here were very different since the appellants in *RA* and in *AK (Iraq – Christians – Risk) Iraq CG* [2004] UKIAT 00298 were both men with family members to assist them in re-settling in Iraq. Taken together, the risk factors amounted to a cumulative risk at a level which the appellant could not be expected to accept, particularly as she had no family still in Iraq to protect her.
21. The Respondent in his Operational Guidance Note accepted that there was no sufficiency of protection available, at least in central Iraq, and the evidence relating to the KRG area before this Tribunal was more detailed than that in paragraph 73 of *RA*. The US State Department Report was neutral to the Secretary of State's case and should be treated with caution since the United States was the leading country involved in the Multi-National Force (the MNF), which Iraqis regarded as an occupying force. There was no tangible improvement despite many governmental statements of intention.
22. *Demirkaya* was not determinative of this appeal; where an appellant could show a future risk it was not necessary to show past persecution; a 'last straw' could make return impossible for an appellant who previously had been able to put up with considerable discrimination while remaining in the country of origin. Individuals had motives for remaining in their countries of origin even under very difficult conditions. He reminded the Tribunal that except for the distant cousin in Kirkuk, every other occupant of the family house in Baghdad had fled Iraq and was now living abroad. There was no family network to which she could return.
23. The usefulness of the existing country guidance cases in this appeal was limited as they related to men and had not considered in any detail the position of women, or offences against Islamic mores. There was further and better evidence before the Tribunal. He asked the Tribunal again to allow the appeal.

Discussion

24. After a short discussion in chambers, we indicated that we would reserve our determination. We clarified with Mr Bandegani that he was not seeking to rely upon Article 8 ECHR, and having received confirmation of that, we consider only Article 3 of the 1950 Convention, and the 1951 Convention.

The authorities

25. Before 2004, it was clear that Christians in Iraq were not a persecuted group. However, there has been a steady deterioration of the position of Christians reflected in *AK* and *RA*, both of which relate to male Christians, and which stop just short of finding persecutory conditions. In *AK*, the Tribunal applied the threshold as set out in *Hariri* and *Batayav* involving the need to show gross and systematic persecution. The Tribunal accepted that -
- "10. There are clearly problems at least towards particular Christians in Iraq, some of which may cross the threshold of persecution or Article 3...., 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. There may be a degree of risk also to women wearing headscarves although the evidence seems to suggest

that they would be likely to risk no more than having eggs or tomatoes thrown at them".

The Tribunal considered in that case that the appellant (who was male) had not demonstrated a real risk of persecution.

26. The second case, *RA*, is the most recent country guidance authority and is based on evidence put before the Tribunal on 13 January 2005, the determination having been notified on 22 April 2005. In that decision, again dealing with a man, at paragraph 70-76, the Tribunal found as follows:

- "70. There is clearly therefore evidence of significant problems for Christians in a number of parts of Iraq. Most of the evidence concerns Chaldo-Assyrians, but we consider that the risk to Christians generally is not materially different from the risk to Chaldo-Assyrians and the issue is of that of assessing the level of risk that they face, and in particular as the Tribunal noted in *AK*, following *Hariri* and *Batayav*, there requires to be a consistent pattern of gross and systematic violation of rights under Article 3 for that threshold to be crossed.
71. We accept that the evidence shows a deterioration in the situation since the Tribunal considered the evidence of risk to Christians in Iraq in *AK*. It is relevant to bear in mind also, evidence summarised in the Country Report of October 2004 that the Foreign and Commonwealth Office is receiving increased Reports of intimidation against Christians. There have also been sectarian attacks and over recent months, Christian churches have been deliberately targeted in bomb attacks which have resulted in the deaths of eleven people. The Chaldean Patriarch has stated that fanaticism is on the rise, but he considered that there was no general persecution of Christians. He considered that the personal survival of Christians is likely to come under further threats as the movement for the Islamisation of Iraq gathers momentum.
72. The question before us is whether there is a real risk on return for this appellant and to what extent if any there can be said to be a real risk for Christians generally in Iraq. Increasing numbers of Christians are leaving Iraq, though equally it is clear that significant numbers remain. The number of Christians in Iraq would appear on the evidence as a whole (and in this regard we consider that the recent Report in the Daily Telegraph is somewhat in error in this respect) to be in the order of some 600,000. It is said that at one point there were over a million prior to the downfall of Saddam Hussein's régime. The number of examples to which we have referred above in the evidence persuades us and the general atmosphere of fear that the situation is closer than it was to one where there is a real risk of persecution or breach of their human rights for Christians in Iraq. We are not persuaded, however, that it has reached the point of crossing the threshold to become a real risk. It is clear that Christians are still meeting together and attending church, albeit in an atmosphere of increasing concern, and increasing examples of attacks and are clearly feeling inhibited from expressing their religion to an extent which, we accept, comes closer than previously to amounting to a real risk of persecution. However we conclude that the evidence falls short as of today of indicating that the appropriate threshold is crossed.
73. ... 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.

74. We are conscious of the fact that Iraq is a country where change occurs at a faster rate than in 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 risk to a real risk. Again, the categories identified by the Tribunal in *AK* at paragraph 10 would appear to be at particular risk..."

27. It is clear from that reasoning that the Tribunal in April 2005 came very close to considering that there was a persecutory risk to male Christians in Iraq. The appeal in *RA* was dismissed in part based upon an internal relocation option for the appellant, but principally because the country evidence fell below the standard of real risk or reasonable degree of likelihood. The *Batayav* argument is misplaced; it is clear from paragraph 72 that the Tribunal did apply the real risk test and the argument that a higher standard has been applied is factually wrong. We refer to our consideration of the *Batayav No 2* point above; the argument is also legally erroneous.

Background Evidence

28. We next considered the updated background evidence on the position in Iraq for Christians, and perceived collaborators. We have the advantage of a substantial bundle of evidence amounting to almost 700 pages, of which 494 pages constitute the appellant's bundle, together with the Respondent's Operational Guidance Note, the COI Report for October 2005 and the US State Department Report. We shall consider the Respondent's evidence first.

The Country of Origin Information Report for October 2005

29. We began by considering the Respondent's position as set out in the October 2005 Country of Origin Information Report and the current Operational Guidance Note.

Political and geographical background in Iraq

30. The Country of Origin Information report summarises a number of other international reports and we set out the summary points from those reports where relevant. The Report contains a helpful chronology of major events, so we first reminded ourselves of the events there set out which post-date the evidence before the Tribunal for *RA*, which considered material up to and including January 2005:

- *30 January 2005.* The multi party national elections were held in Iraq. The Shi'a United Iraqi Alliance (UIA) wins with 49% of the votes cast and 140 seats in the 275 seat National Assembly. The Kurdistan Alliance list led by Jalal Talebani obtains 26% of the vote and 75 seats in the National Assembly. Al-Qaimah al-Iraqiyah (Iraqi List) led by the interim Prime Minister Ayad Allawi, was in third place with 14 per cent and 40 seats.
- *28 February 2005.* More than 130 are killed by a massive car bomb in Hiller South of Baghdad in the worst single such incident since the US led invasion.
- *April 2005.* Parliament selects Kurdish leader Jalal Talebani as President Ibrahim Jaafari, a Shi'ite becomes Prime Minister. The formation of a

now government comes amid escalating violence. A new Council of Ministers is approved by the TNA on 28 April 2005.

- *May 2005.* The Iraqi government announces a huge anti-insurgency operation in Baghdad with 40,000 troops being deployed on the streets over the next week to stop the attacks that have killed more than 650 people in April 2005.

- *June 2005.* Masoud Barzani is sworn as regional President in Iraqi Kurdistan.

- *July 2005.* A study compiled by the United Kingdom based non-governmental Iraq Body Count Organisation estimated that almost 25,000 civilians died in Iraq in the war so far (between 20 March 2003 and 19 March 2005).

- *August 2005-*Draft constitution is endorsed by Shi'a and Kurdish negotiators but not by Sunni representatives.

- *September 2005-* As many as 1,000 people are feared dead following a stampede during a Shi'a religious ceremony in Baghdad."

31. The Country of Origin Information Report contains the following geographical and political statistics. The Republic of Iraq has a population of 25,175,000 (growing at just under 3% a year) of whom almost 75% live in the flat alluvial plane stretching South-East towards Baghdad and Basra to the Persian Gulf. 75% to 80% of the population are Arab and 15% to 20% are Kurdish. The number of Assyrians is tiny and the number of minority religion adherents in total is approximately 3% including Christian and other religions (Section 2 of the Report).

Christians

32. There are estimated (paragraph 6.138) to be 700,000 Christians of various denominations in Iraq, of whom 30% live in the North, with the rest mostly in Baghdad and a few in Basra. The US State Department Report on Religious Freedom notes that Assyrians and Christians are considered by many to be distinct. The majority of Iraq's Christians are Chaldo-Assyrians. Assyrians and Chaldeans are considered distinct ethnic groups, descended from some of the early Christian communities and indeed from the earliest occupiers of the land now known as Iraq. Paragraph 6.141 records that Assyrians are integrated but keeping a low profile. In Baghdad and Kirkuk, they are neutral and at October 2004, held a respected and valued place in society. Christians could not be considered as a persecuted group in October 2004.

33. At paragraph 6.143, the Report deals with the Freedom House Report 2005, which recorded targeting of Iraqi Christians with 5% of the community leaving the country by year's end of 2004. Paragraph 6.144 records a UNHCR Report of 2004, noting a dramatic deterioration in the position of Christians. By December 2004, paragraph 6.147, the Report considered that the situation of Christians in Iraq had improved, at least in legislative terms.

34. At paragraph 6.150, the report sets out an excerpt from a letter from the Foreign and Commonwealth Office of 20 January 2005, as follows:

"But Iraqi Christians do face a growing sectarian threat. While we are not aware of any officially sponsored discrimination against Christian communities in Iraq, reports of

attacks on them are on the increase. ... We [FCO] see increasing evidence of sectarian intimidation. Recent examples include threatening notes pushed through doors, death threats to priests and church leaders, posters in the North warning Christians to convert to Islam or leave Iraq or face death and destruction of homes and Islamist websites calling for attacks on all infidels in Iraq. Iraqi Christians are feeling increasingly beleaguered. Church attendance is falling and some families are keeping their children away from school.”

35. The same letter is quoted at paragraph 6.153, together with an extract from another Foreign and Commonwealth Office letter dated 25 January 2005:

“Christians are relocating to Suleimaniya, Arbil and Dohuk provinces only. ... Many of the Christians in Basra and Baghdad originally came from the North (Suleimaniya, Arbil and Dohuk as well as Mosul). Under a separate scheme run by the Kurdistan Regional Governments, around 150 families have relocated from Baghdad to Faysh Habur.”

36. The US State Department Report for 2004 stated that according to the Christian Endowment Office, more than 30,000 Christian families had fled the country during 2004 and an article from the Guardian newspaper supported this on 2 August 2004.

Chaldo-Assyrians

37. The section of the report dealing with Assyrians and Chaldeans appears at paragraph 6.228 and simply reflects their different ethnicity and language. Chaldo-Assyrians do not define themselves as Arabs.

Women

38. The position of women is considered at paragraph 6.229:

“6.229 As stated in a DFID Report, dated July 2005, “Historically Iraq has had one of the best gender equality records in the Middle East, with women playing an active and visible role in political and economic life. ... Yet years of conflict, isolation from the international community, economic mismanagement and brutal government have had a very negative impact on Iraqi women. Women now suffer multiple forms of deprivation – social, economic and political.””

39. At paragraphs 6.240-6.242, the Report sets out concerns expressed by a number of international sources in 2005, as to pressure on women and girls to wear a headscarf or veil (the hijab) and attacks on them when they were not so dressed. At paragraphs 6.270-6.271, the Report considers the position of single women such as this appellant –

“6.270 As mentioned in the British/Danish fact-finding mission report, October 2004, “Sources in the Ministry of Displacement and Migration (MoDM) in Baghdad informed the delegation that single women returning to Iraq from abroad were in a less favourable position compared with women travelling with their family.”

6.271 The same report noted that “UNHCR in Amman noted that single women have a more vulnerable situation. Families can protect them, however tribes can target them just as easily as they can protect them.”

Collaborators and the MNF (Multi-National Force)

40. At paragraphs 6.323-6.329, in particular at 6.325 ff., the Report stated:

“6.325 The UNHCR in a Return Advisory, dated September 2004, noted that:

“While most security incidents prior to the handover directly targeted soldiers and or nationals of countries participating in the Coalition Forces, threats and attacks over the past six months have been increasingly aimed at Iraqi civilians employed by the UN, NGOs and foreign contractors as well as foreign nationals who work for any of the above. Furthermore, Iraqi intellectuals, medical staff, doctors, journalists, artists, as well as anyone associated with or perceived as supporting the new Interim Iraqi Government (IIG) have also become frequent targets of both harassment and violence. Members of the Iraqi police force, as well as potential police recruits are often the victims of lethal attacks.”

- 6.326 The AI report, dated 25 July 2005, added that “Hundreds of Iraqis have been killed by armed groups because they were perceived as ‘traitors’ or ‘collaborators’. Among them have been translators, drivers and other civilians working for the MNF, civil servants, government officials, judges and journalists. The attacks have sometimes resulted in the killing of people accompanying the ‘targets,’ including children.”
- 6.327 The same report also noted that “The armed groups are resentful of Kurds and Shi’as for generally having supported the military intervention in Iraq and for cooperating with the MNF.”
- 6.328 The AI report, dated 25 July 2005, however, noted that “On 26 September 2004, the IAMS [International Association of Muslim Scholars] denounced the kidnapping and killing of civilians.” [28c] (p7)
- 6.329 Furthermore, the IWPR article, dated 10 August 2004, observed that an unofficial Islamic court imposes harsh sentences on Iraqis who work for the Americans and their allies. The report stated that “An ‘Islamic resistance’ court based in Western Iraq has begun to order harsh punishments against Iraqis accused of collaborating with so-called foreign occupiers, inhabitants in the region said.””

41. Paragraphs 6.334-6.348 set out the difficulties engendered by large movements of internally displaced persons. Kidnapping and hostage-taking are dealt with at paragraphs 6.382-6.390.

OGN January 2006

42. The next document from the Secretary of State is the OGN issued on 12 January 2006 and this was relied on by both representatives. The Report sets out the difficulties for Christians (paragraph 3.16 on page 351 of the main bundle). It distinguishes (paragraph 3.16.2) between Assyrian Christians who originate from the KRG area in Northern Iraq, who can be expected to return and live there, and those who originate from Baghdad and Basra in the South. The OGN accepts that there is insufficiency of protection, other than in the KRG. It accepts that attacks on Christians are increasing and attendance at Church becoming very difficult, with numbers falling sharply. The passage on sufficiency of protection is at paragraph 3.16.4 -

3.16.4 Sufficiency of Protection Iraq's council, interim, and elected Government have all been determined to clamp down on terrorism and insurgency. [5.93] However, the rule of law, guarantees of personal security, and protection from human rights abuses vary from location to location. The massive deployment of Iraqi

police has won support from many Iraqis, who lived in fear of both bombers and common criminals.

3.16.4 Law and order exists in the Kurdistan Regional Government administered area. Kurdish police and security forces are efficient and the security situation in the self-ruled Kurdish region is significantly different from that in the rest of Iraq. Although it is quite likely that insurgents living in Kurdish towns and cities would use opportunities as they present themselves to exact revenge, the peshmerga presence and vigilance within the KRG area would make this difficult. Successful attacks are rare, primarily due to the vigilance of the Kurdish security forces. Criminality in the KRG area is endemic by Western terms. However, much of the activity is considered by the Iraqi population to be simply a way of earning a living.

3.16.5 Sufficiency of protection in central and Southern Iraq is not currently at a reasonable level, however in the Kurdistan Regional Government area it can be argued that protection is at a reasonably effective level.

43. The question of internal relocation is dealt with at paragraph 3.16.6 and following -

"3.16.6 Internal Relocation There is freedom of movement in that there are no formal restrictions within Iraq however there are limitations due to the numerous military and illegal checkpoints. Moreover at the Green Line (the border to the Kurdistan Regional Government area) there is restriction of movement into the three Northern Governorates. Certain cities limit particular ethnic groups; however, Baghdad is accessible for resettlement. The Kurdish area is much more stable than the rest of the country; it is easy to move around. Arab Iraqis are instantly recognised by Iraqi Kurds who view them with suspicion and would not generally welcome them into the KRG area.

3.16.7 Generally there is freedom of movement throughout Iraq; it is unlikely that internal relocation would be unduly harsh for men, and women with male partners or relatives. As a result of the recent rise in Islamic extremism, single women may be unable to move around freely if unaccompanied and may not be able to settle in areas where they have no family ties, as they are unlikely to be able to access resources without support. In assessing this, caseworkers will need to take all relevant factors into account including financial circumstances, health, whether the claimant has a support network.

3.16.8 Christians in Mosul number around 100,000 and make up the largest Christian community in the North, however they have been targeted in this area. Numbering only 10,000 and only 2% of the local population, Christians in Kirkuk fare much better and are well respected by all sides. The Christian community in Basra in the South is small and under much less threat than those in the North. Many Christians, around 1,000 families so far, are relocating back to Sulaimaniyah under a scheme, which provides them with land, housing and jobs. In turn, they will provide skills and investment into the area. It is not considered unduly harsh for Christians to relocate to areas where there are numerous other Christians, or where they are well respected."

44. The guidance given to the Secretary of State's case workers is at 3.16.10:

"3.16.10 Conclusion a claimant who has a localised threat on the basis that they are a Christian and is unable to acquire protection in their local area, may be able to relocate to an area where that localised threat does not exist. *The caseworker will need to take into consideration the nature of the threat and how far it would extend to, and*

whether it would be unduly harsh to expect the claimant to relocate. In the absence of an internal relocation argument a claim made on these grounds may be well founded and a grant of refugee status may be appropriate.” [Emphasis added]

45. Guidance on fear of Islamic militants is at paragraph 3.17.10:

“3.17.8 Conclusion a general fear of Islamic Militants does not of itself give rise to a well-founded fear of persecution, and no government can be expected to guarantee the safety of all its citizens. However, there will be individuals whose fear is over and above the common population because of aspects of their nature that they cannot or should not be expected to change. This assessment will need to be taken based on the merits of the individual case. Moreover, the caseworker will need to take into consideration the nature of the threat and how far it would extend to, and whether it would be unduly harsh to expect the claimant to relocate. For claimants who can demonstrate a well-founded fear of persecution by Islamic extremists due to a Convention reason (e.g. their religion or their political opinion, imputed or otherwise) [and who] are unable to acquire protection or relocate internally a grant of asylum will be appropriate.”

46. The section on perceived collaborators is at 3.8 and the conclusion is in similar terms, accepting the evidence of the risk to those working for the MNF and people accompanying them.

Evidence from the US State Department

47. We then considered the US State Department evidence, bearing in mind the reservations expressed by Mr Bandegani. The Report, which appears in the bundle at pages 146-160, relates to the period before the elections, and is, to that extent, out of date. We have accordingly referred to the current Report, which was not in our bundle but was issued on 8 March 2006 and existed before the date of our hearing. It records the following human rights problems:

1. Pervasive climate of violence
2. Misappropriation of official authority by sectarian, terrorist, and insurgent groups
3. Arbitrary deprivation of life
4. Disappearances
5. Torture and other cruel, inhuman, or degrading treatment or punishment
6. Impunity
7. Poor conditions in pre-trial detention facilities
8. Arbitrary arrest and detention
9. Denial of fair public trial
10. An immature judicial system lacking capacity
11. Limitations on freedoms of speech, press, assembly, and association due to terrorist and militia violence restrictions on religious freedom
12. Large number of internally displaced persons (IDPs)
13. Lack of transparency and widespread corruption at all levels of government
14. Constraints on nongovernmental organizations (NGOs)
15. Discrimination against women, ethnic and religious minorities

48. That is a chilling list, especially given the perspective of the American-led MNF and its rôle in the region. The US State Department Report records that

“Civic life and the social fabric remained under intense strain from the insurgency, as well as from a continuing shortage of basic services and staples. Despite this pressure, the IIG in 6 months set and kept to a legal and electoral course based on respect for political rights. This included most importantly the right of citizens to change peacefully their government through nationwide, free, and fair elections. The development of a Human Rights Ministry, the ongoing empowerment of women, and the explosive growth of nongovernmental organizations (NGOs) and civic associations reflected a governmental commitment to human rights. The Government's success in building an accommodating structure for the exercise of civil liberties, although burdened by the heritage of dictatorship and disregard for law, was shown clearly in the citizens' embrace of freedoms of speech and press, peaceful assembly, and association and religion. While major problems still remained, they were of a far different magnitude and nature than previously.”

49. Under Freedom of Religion the Report stated:

"The [transitional legislation] provides for freedom of thought, conscience and religious belief and practice. While the government endorsed these rights, its efforts to prevent or remedy violations were hampered by substantial politically and religiously driven violence between Sunni and Shi'a [and] by harassment of Christians. Deficiencies in security force capabilities and in the rule of law made it difficult for the justice system to investigate or address violations of these rights. ... Government leaders spoke often of the need for all citizens to unite regardless of religious orientation in the face of terrorism and repeatedly emphasised their commitment to equal treatment for all religions and ethnicities...

According to a number of estimates the Christians in the country decreased from 1.4 million in 1987 to approximately 750,000 during the year with Catholics comprising the majority. According to church leaders in Arbil and Mosul Christians in the North account for roughly 30% of the country's Christian population. Christian religious leaders estimate approximately 750,000 Iraqi Christians live abroad. The on-going insurgency significantly harmed the ability of all religions to practice their faith...

There were allegations that the KRG engaged in discriminatory behaviour against religious minorities... Assyrian Christians also allege that the KDP dominated judiciary routinely discriminated against non-Muslims and legal judgments in their favour were not enforced...

During the year members of Catholic, Assyrian and Armenian orthodox churches as well as clerics left Shi'a-dominated Basra because of religious and social economic discrimination and because of fear for their lives due to the unstable security situation for Christians. Extremists, including terrorist groups and militia members targeted many individuals because of their religious orientation and very conservative elements of society targeted others because of their secular leanings. Many also were victims of general lawlessness that permitted insurgents and criminal gangs, as well as those in police uniform to victimise citizens with impunity. In addition to kidnapping, individuals were the victims of harassment intimidation and murder. Some Christians in Basra Reportedly were faced to pay for protection for their personal welfare.

Women and girls were reportedly often threatened for not wearing the traditional headscarf (hijab), assaulted with acid for non-compliance and sometimes killed for refusing to cover their heads or for wearing Western style clothing. Some women were reportedly denied employment and educational opportunity because they were

non-Muslim or did not present themselves as sufficiently conservative. "[Emphasis added]

50. In the section on internally displaced persons, the Report reflects that the vast majority of IDPs were non-Arabs, including Chaldo-Assyrians forcibly relocated further South as part of the Saddam régime's Arabisation process. The Ministry for Displacement and Migration continued support for a ban on the forced return of Iraqi citizens to the country from abroad due to poor security conditions and inadequate social infrastructure. Six Chaldo-Assyrians had been elected to the government. However, women leaders claimed that

"Some extremist groups targeted women by kidnapping and terrorising them in an effort to force them to refrain from working in public and remain at home, wear veils, and adhere to a very conservative interpretation of Islam. "

51. According to a February 2006 Amnesty International Report, women and girls fear abduction, rape, killing, and the lack of security remained a serious threat. Two to three women were murdered each week in Basra where banners were frequently seen which threatened women who did not wear the hijab. It was widely believed that many of the women died because they were not wearing the hijab, including some women who were targeted and taken from their homes and killed. In October, for example, three young women were fatally shot in the head and their bodies left near the University.

52. Under national, racial and ethnic minorities the report records that Kurdish authorities discriminated against Christians in the North. In its 2005 Report to Congress on International Religious Freedom, the US Department of State reinforces the statements already considered in this decision.

Dr Alan George's expert report

53. The appellant supports her claim with a report from Dr George. His expert report is directed at setting the appellant's account in context. Much of the information summarised in the Report is available in its original form in the bundle before us, or pre-dates the April 2005 promulgation of the decision in *RA*. The only part of this Report which is later than that appears at paragraph 54:

"54. As recently as September 2005 the entire lay leadership of the Anglican Church in Iraq went missing and were feared dead after being attacked while returning by road from a trip to Jordan although it would appear they were not targeted specifically because they were Christians."

54. Dr George emphasises that Christians are widely perceived as collaborators and it is this combination of religious risk and political opinion and perception which is the most dangerous feature of the appellant's position.

UNHCR guidelines October 2005

55. We also have the benefit of the UNHCR Guidelines relating to the eligibility of Iraqi asylum seekers issued in October 2005. UNHCR Guidelines are of enormous help to the Tribunal, although, given their differential purpose, they can rarely be determinative of the issues before the Tribunal. They are nevertheless a clear record of

information obtained from a unique perspective. The information obtained which forms the subject of the Iraq Report has, unusually, been obtained without a UN presence within the country as following attacks on its Iraqi headquarters, the UN withdrew from Iraq and has not returned; as recently as December 2005 the UNHCR confirmed that Iraqi operations were still being run on "remote management" basis, in close co-operation with the authorities within Iraq.

56. At paragraph B27(a) the Report stated:

- "27. Religious minorities including Christians and Mandaeans represent approximately 3% of an estimated Iraqi population of 24 million. The fall of the former régime has seen explosion of Islamist extremist movement and militias, which target among others members of religious minorities. The latter have become the regular victims of discrimination, harassment, and at times persecution with incidents ranging from intimidation and threats to the destruction of property, kidnapping and murder.
28. Iraq's Christian population includes among others, members of the Assyrian, Chaldean, Armenian and Catholic sects. Many Assyrian Christians originate from the Governorate of Nimewa whose capital, Mosul, is the second largest city in Iraq. Other Assyrians, including some members of the Assyrian Democratic Party or sympathisers thereof, originate from Baghdad and its original surroundings. Many of Iraq's other Christians originate from Basrah. Most Iraqi Christians claim fear of persecution from insurgent groups (e.g. Ansar Al-Sunna) and Islamic militia such as the Bardr organisation or the Mehdi Army, which have substantial control of the streets in various major cities and towns.
29. Since the fall of the former régime, the largely secular environment that previously existed in Iraq has been seriously eroded... While much of the hardship and harassment that they report that they face is symptomatic of the situation of general insecurity faced by all Iraqis in present-day Iraq, members of the Christian minority nevertheless appear to be particularly targeted. Iraqi Christians feel especially apprehensive about the overwhelming presence of extremist Islamic groups and armed militias whose display of intolerance towards non-Muslims has become a nearly daily feature in Iraq.
30. Resentment towards Christians appears to be particularly vehement in the South and in the so-called Sunni triangle where rising extremist attitudes are fuelling the trend towards a stricter interpretation of Islam.
31. Whilst discriminatory acts against Christians do not always amount to persecution *per se*, the results are combined and continuous discriminatory measures must be assessed carefully in each case, since they could amount to persecution on cumulative grounds. *Particular consideration should be given to those cases where discrimination creates unreasonable obstacles [and] makes it impossible to earn a livelihood or enjoy socio-economic rights, or has created a climate of fear, insecurity or apprehension for the individual concerned.* [Emphasis added]

20. The Report considered imputed political opinion, at paragraph 42-43 -

- "42. Iraqis who previously worked for, presently work for, or have any type of association with the MNF or any other type of international organization or company are perceived by the insurgency as condoning and supporting the occupation of Iraq and have been indiscriminately targeted since the fall of the former régime. Since there

are no clear indicators regarding how insurgent groups choose their targets, the only distinguishing factors seems to be any type of affiliation, perceived or real, with the forces considered to be 'occupiers', although other factors such as an individual's religion, ethnicity or gender may, in the eyes of perpetrators, constitute additional criteria for targeting specific persons.

43. Acts committed against employees or perceived supporters of the MNF or international organizations or companies may vary from verbal harassment and threats to individuals and their families to stop working for the 'enemy' to kidnapping, physical attacks and even murder. Neither the local authorities nor the MNF are capable of granting proper security to their respective local nationals and employees. Annex 7 of that Report deals with internal flight or relocation alternative and advises against the possibility of internal relocation in all parts of central or Southern Iraq, as it is considered neither relevant nor reasonable. In the three Northern Governorates, it records that the KRG authorities are "implementing strict controls on the presence of non-Kurdish persons in their areas depending upon the applicant especially his or her ethnic and political profile he/she may well not be allowed to relocate to the three Northern Governorates for security or political reasons. While certain factors seem to lead clearly to a denial of admission, e.g. form of Ba'ath Party membership or a criminal record at times decisions seem to be taken in a discretionary manner and it is difficult to establish clear criteria to predict who will be admitted or rejected."

57. Mosul and Kirkuk have already absorbed just under 22,000 IDP families but for persons not originating from there, are now considered not to be a safe refuge area –

"13...until the status of Kirkuk and other disputed areas has been addressed, any population movements to that area could exacerbate already existing tensions, and lead to further displacement. In addition, the Turkomen, Kurdish and Arab communities in Kirkuk have recently decided to form an IDP Committee, which will be tasked with among other issues verifying that potential returnees to Kirkuk are able to prove prior residence in Kirkuk before they will be admitted to the city. Persons who originate from elsewhere in Iraq and are unable to prove past links to Kirkuk will therefore have difficulty legally accessing the city unless they are supported by the Kirkuk authorities, as priority will be given to former residents who wish to return rather than to new arrivals."

58. The Northern Governorates have introduced strict security measures at their checkpoints to reject anybody who does not originate from the respective Governorate or have a Kurdish sponsor to guarantee his or her entry and stay among other criteria. This appellant has no such sponsor; M's parents may live in Kirkuk but they are under no obligation to her. She does not speak Kurdish and has, herself, no connection with the North. Her distant cousin D did what he could for her but will not help her further; indeed, it is doubtful whether he is still in the country.

59. The Report identifies (paragraphs 37-39) the major factor in assessing reasonableness of return as whether a person has family, community and or political links in the proposed area of relocation to permit economic survival and integration. Integration difficulties are particularly strong for those like this appellant, who do not speak either Kurdish or Arabic (the appellant speaks only Assyrian and English). A letter of 11 April 2005 from the UNHCR gives further support to the difficulties for Christians in Iraq and particularly the pressure for Christian women to wear the hijab.

60. The Beth Suryoyo Assyrian Forum as at 3 December 2005 provided a non-exclusive list of deaths reported in the media including on March 16, General Alcub, a Chaldo-Assyrian assassinated returning from home Baghdad. General Alcub a former Deacon at the Chaldean Catholic Cathedral, reopened the Kirkuk police force after the fall of Saddam Hussain and openly criticised the Kurdish position on the ownership of Kirkuk. The Report records numerous incidents, including three deaths of Assyrians in the quarter of Baghdad where the appellant used to live; a car bomb in June 2005 in Kirkuk (which killed a child and injured his parents); kidnapping in Kirkuk on 11 August 2005; an attack on the guards of the former Iraqi Minister of Displacement and Migration, (six guards, four killed and one injured); the storming of a Christian home in East Baghdad ; the death of four Christian women (despite it being a Christian majority area) ; the death of another police officer on 2 December 2005 ; and the assassination of M on 29 October 2005, after he had been threatened by the KDP , asking him to quit his job as an oil engineer and join the Party.

61. A press report on 23 February 2005 from the Guardian newspaper, written by the President of Assyrian National Assembly in Iraq states that –

"Systematic low-level ethnic cleansing has driven thousands of Assyrian Christians from their homes. Our churches have been fire-bombed and our women forced to wear the hijab".

62. A Report from Human Rights Watch (October 2005) identifies attacks against Christians in Baghdad as having begun in March 2004, when two children aged 5 and 14 were shot, after their parents were warned by Harakat and Ansar Al-Islam, apparently because their father sold alcohol. There are also reports of destruction of churches and of relocation by hundreds of Christians to Arbil, Sulemaniya and Kirkuk (the Northern Governorates). For families with male members that may perhaps remain an option but the UNHCR evidence is of marked lack of enthusiasm for further inward migration by those living in the Northern Governorates, coupled with increasingly strong controls imposed on inward movement.

63. Human Rights Watch reinforces the evidence of the risk to Iraqi and foreign civilians working for or suspected of working for the MNF and perceived as collaborators. Attacks are intended as "punishment for perceived collaboration and as a warning to others who might consider such work". Whilst the evidence is largely anecdotal, it is clear that connections between Christians and the MNF, whether perceived or real, have been the motivating force of a good many deaths of both men and women in the last year. The section headed 'Attacks on Women' is particularly helpful:

"Some insurgent groups have targeted women who are politicians, civil servants, journalists, women's rights activists, who work as cleaners or translators for foreign governments or militaries. They have also attacked them for what they considered immoral or un-Islamic behaviour like dancing, socialising with men, or not wearing a hijab (the Islamic headscarf) and some groups have abducted and at times killed foreign women to pressure government or humanitarian organisations into leaving Iraq.

Not all of these attacks are on account of gender. Many of these attacks appear to have been motivated primarily by the victims' perceived connection to the foreign military presence or the current Iraqi government as described in the chapters in this report that cover those targeted groups.

The attacks against women's rights activists and women who exhibit behaviour deemed immoral or un-Islamic however do seem motivated by the fact that the targets were women or helping women.

In general, the violence and lack of security as well as religious cultural conservatism are now having a major impact on Iraqi women, who once enjoyed a prominent rôle in their country's public life. The danger of kidnapping and assaults keeps many professional women at home and limits their participation in the country's evolving political institutions. “

64. According to a January 2005 report by Women for Women International the violence is preventing women from playing a rôle in civic life:

"Women with Western dress and progressive ideas have been attacked. The abduction and murders of these prominent women have sent a ripple of fear through local communities. Although the press has covered the stories of high profile foreign aid workers Iraqi women have seen members of their own communities, pharmacists, lawyers, council women assassinated. The effect is chilling and threatens the public participation of Iraq's most educated women...the fear of violence, abduction and rape have emptied the streets of women and caused disruption to education as children are also increasingly kept at home. Growing numbers of women are also leaving the country".

In an interview with Ms Yanar Muhammad, who founded the Organisation of Women's Freedom in Iraq she said that she received death threats as early as 2004 after defending women's rights on Iraqi television. She was told: "Stop speaking out for women's rights or we will kill you". An E-mail signed by Jaysh Al-Sahaba (Army of the Prophet's Companions) stated that because of her psychologically disturbed ideas they would have to kill her and crucify her. Ms Muhammad told the press: "It sounded to me like a serious warning". In this context, we remind ourselves of C's involvement with Beit Nahrain, a movement for the rights of Assyrians and women in Iran. That concludes our review of the evidence before the Tribunal.

Decision

65. We deal first with general risk categories, having regard to the objective evidence summarised above -

65.1.1 **Male Christians.** We have not heard full argument on the risk for men based on Christianity, or upon alternatively Chaldo-Assyrian ethnicity. The country guidance decision in *RA* stands in those respects, but this decision modifies the Tribunal's country guidance position in relation to Christian women in Iraq and a detailed consideration of the position of male Chaldo-Assyrian Christians is for another decision. The evidence of risk to an ordinary male Iraqi Christian with family members still in Iraq shows progressive deterioration due to the ongoing hostilities in Iraq under the control of the MNF but we reach no firm conclusion as to whether it yet amounts to persecution or breaches Article 3 ECHR.

65.1.2 **Christians.** Christian observance outside the home is increasingly difficult with few Churches available and harassment for those entering and leaving them. Many Christians have left Iraq, and others like this appellant go to Church only irregularly, preferring to practise their religion in the safety of their homes. There is a particular difficulty for women, since as Christians they do not wish to

cover their heads with the hijab, which makes them conspicuous on the street and at work.

65.1.3 Association with the MNF. Those (male or female) who work in prominent positions in companies associated with the MNF or doing business with the West are at risk of death or kidnapping, they will be perceived both as wealthy (and thus worth kidnapping), and more dangerously, as collaborating with the occupying forces and if unable to relocate, there is a real risk of persecution or death for such people and their family members. Again, in Refugee Convention terms, the risk relates to their perceived political opinion as collaborators with the occupying forces, as Iraqis perceive the MNF to be.

65.1.4 Chaldo-Assyrians. Chaldo-Assyrians are a specific, very small ethnic group. They speak Assyrian, and if educated, may be English speakers. They do not speak Arabic or Kurdish. They are likely to be Christians.

66. English speakers. The risk of being regarded as a collaborator increases for those who speak English, especially if they do not speak Kurdish or Arabic. The Tribunal has considered the sponsor's oral evidence, the documentary evidence and the appellant's application and reached the following conclusions. We have reminded ourselves of the appropriate standard of proof (balance of probabilities) and that the burden of proof is on the appellant to that standard.

67. There are special risks for educated women and for Christians, particularly those of Chaldo-Assyrian ethnicity. The following is our guidance on the position of women in Iraq, particularly those from the Chaldo-Assyrian Christian community –

(i) **Women.** Before the Iraq war, Iraqi women played a full part in civic life, able to work and to campaign on behalf of women's rights. Those who are still attempting to do so are now at enhanced risk, as are their family members. Professional women cannot expect the social freedom they had previously and may be obliged to remain at home. Many educated women have already left Iraq.

(ii) **Non-hijab wearers.** Women who, as Christians, or because of Westernised views, do not wear the hijab will be easily identifiable and at increased risk on that account. The risk is one of perceived political opinion (Western or MNF support/ collaboration) and/or religion (un-Islamic behaviour). Women living in Iraq who refuse to wear the hijab risk discrimination and harassment on a daily basis, and some will suffer kidnappings and death. The risks from this factor alone do not reach the level required for persecution and remain, just, at the level of discrimination and harassment, except, on the evidence before us, in Basra. The situation has deteriorated and may well deteriorate further to a level at which not wearing the hijab could be sufficient on its own, but that is not the position today. However, the addition of one other factor can be enough to tip the balance and engage international protection.

68. Internal flight. The Secretary of State's OGN accepts that there is no sufficiency of protection for those at risk in the South and centre of Iraq at present. Return is likely

to be to Baghdad, and in relation to individuals who have risk factors in the South, the Secretary of State should be prepared to explain how they could return in safety to their particular area of origin. If it is Baghdad then the risk is incurred immediately. The risk to those who return to the South may be less if they have family who can ensure their reintegration.

69. **KDG links and the Northern Governorates.** Persons with links to the KDG may be able to mitigate their position by internal relocation, but entry to the Northern Governorates is restricted. The Governorates of Kirkuk, Sulaimaniyah and Dohuk are now accepting only those who have a proven link to their territories, or for whom (and in this respect, specific evidence is required) someone in the territory is prepared to sponsor them. In general, those who are admitted to the KDG will be of Kurdish origin and will be Kurdish speakers, particularly as the evidence shows that the Northern Governorates have tightened entry controls to these areas.
70. **Conclusion.** Not every Christian woman returning to Iraq will be a refugee on the facts as they stand today; the list given above should not be treated as a shopping list. For example, a woman with family support and access to the KDG, who is prepared to wear the hijab, will be significantly safer than the present appellant. Each case will turn on its own particular facts, but where a person falls into several of the categories set out in paragraph 66 above, a Tribunal may well conclude (unless there is any significant change for the better in Iraq) that such a person is at risk engaging both the Refugee Convention and Article 3 ECHR.

The facts of LM's case

71. LM is an English-speaking Assyrian Christian woman, educated, non-hijab wearing and formerly holding a significant position in a company which traded with the MNF or occupying forces. Her account has been accepted in full as credible against the background evidence.
72. LM has no family support in Iraq and is a family member of C, who campaigned for women's rights and the rights of Assyrians. She speaks neither Kurdish nor Arabic and has no sponsor in the KDG. We remind ourselves that before coming to the United Kingdom, the appellant was regularly harassed and threatened on the street and at her place of work in Baghdad. In October 2005, armed men came to her home, which was the reason she returned to the United Kingdom to visit B.
73. Her sister C's involvement in Beit Nahrain has resulted in C's husband disappearing. That is in line with the background evidence and, since no ransom demand has been received, it is very likely that he has been killed. C left Iraq, as did the appellant's parents. The risk the appellant as a family member of C's family is an aggravating factor, increasing the risk for this appellant, based on perceived political opinion (rights of Iraqi women, Beit Nahrain).
74. The appellant has no internal relocation option. She has no one to sponsor her in the KDG and she formerly lived and worked in Baghdad. LM's particular profile is such as to put her at risk today; the evidence is overwhelming that a conspicuous Christian woman, with no Northern languages, fluent English, a history of collaboration with the

West and no family support anywhere in Iraq is at real risk of persecution by Islamic militants.

75. We have considered the Secretary of State's argument that these matters are not relevant because the appellant's decision to return was triggered by the death of M and C's husband's disappearance and that arguments in this respect should be limited to the *sur place* element of her claim. However, we think that is an unsafe way in which to approach the agreed facts of the present case. It is clear from the appellant's evidence throughout that she was the subject of harassment by virtue of her rôle as a high-profile working woman and her failure to wear the hijab at work. She was feeling increasingly nervous during 2005. The threats and discrimination of which she was the victim during that period were not too much for her to withstand and she continued to work regardless although she did come to the United Kingdom to visit B returning briefly and then re-entering on the same visitor's visa to complete that visit.
76. In the light of the deteriorating circumstances in Iraq for Assyrian Christians and those associated with the MNF, we consider that the subjective operation of the death of M as far away as Kirkuk (whilst working for the same company and in a public negotiating rôle very similar to that which the appellant held in Baghdad), and the disappearance of C's husband, were sufficient to drive the appellant to the decision she made, not to return to Iraq. Her subjective perception that the risk she would now run on return had reached a level where it was too dangerous for her, is objectively justified in the light of the background evidence.
77. We are quite satisfied on these particular facts that in the circumstances that prevail in Iraq today a lone woman of this appellant's profile is at real risk of Article 3 or Article 2 ill-treatment and that there is a reasonable degree of likelihood if returned she would suffer persecution or possibly even death.
- 78. This appeal is allowed under the Refugee Convention and Article 3 ECHR.**

Signed
Senior Immigration Judge Gleeson

Cases considered in this determination

AK (Iraq – Christians – Risk) Iraq CG [2004] UKIAT 00298
RA (Christians) Iraq CG [2005] UKIAT 00091
AA (Involuntary returns to Zimbabwe) Zimbabwe CG [2005] UKAIT 00144
Batayav v SSHD (No 2) [2005] EWCA Civ 366

Materials before the Tribunal

Individual documents relating to LM

Witness Statement
Copy of Coalition Provisional Authority travel document
Salary statement for June 2005
Ministerial order, Republic of Iraq, Ministry of oil
Copy of LM's passport

Country background documents

Expert Report of Dr Alan George
US Department of State: Iraq Country Report on International Religious Freedom 2005
UNHCR Guidelines relating to the Eligibility of Iraqi Asylum-Seekers
UNHCR: Christian women in Iraq
US Department of State: Iraq Country Report on Human Rights Practices 2005
House of Lords: Iraq: Women and Religious Minorities
October 2005 Iraq COI Report and September 2005 OGN
US State Department Report 2006

Press Reports

List of "Reported" Assyrians murdered in Iraq in 2005
Extract from 'Zinda' Magazine
No votes in Nineveh, Iraqi Assyrians are victims of Kurdish ethnic cleansing
Twelve killed as bombers attack Christians in Iraq, The Guardian
Iraq's Christians Consider Fleeing as Attacks on Them Rise
Iraqi Christians fear Muslim wrath, Washington Times