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SM and Others (Kurds – Protection – Relocation) Iraq CG [2005] UKIAT 00111

IMMIGRATION APPEAL TRIBUNAL

Date of Hearing : 29/30 March 2005
1 April 2005
Date Determination notified:

29th June 2005

Before:

Mr D K Allen (Vice President)
Mr L V Waumsley (Vice President)
Mrs E Morton

( )
( )
( )

APPELLANTS

and

Secretary of State for the Home Department

RESPONDENT

DETERMINATION AND REASONS

1. These appeals were listed together to enable the Tribunal to provide Country Guidance on a number of issues relating to Iraqi Kurds. Ms N. Braganza for A.S. Law Solicitors appeared on behalf of the first claimant, Mr ( ). Ms Braganza instructed by Douglas & Partners, also appeared on behalf of Mr ( ), the second claimant. Ms Y. Adedeji, instructed by Livingstone Brown solicitors appeared on behalf of the third claimant, Mr ( ). Mr S. Kovats, instructed by the Treasury Solicitor appeared on behalf of the Secretary of State in all three cases.

2. The following five issues are for consideration by the Tribunal in these appeals.

(i) the nature of the authorities in the KAZ
(ii) sufficiency of protection by the Kurdish authorities, the Iraqi authorities and the coalition forces generally

(iii) the reach of the PUK throughout Iraq by means of the police and judicial systems

(iv) the availability of internal relocation for a Kurd within the KAA.

(v) the availability of internal flight for a Kurd in Iraq generally.

3. We propose as far as possible to deal with each of these issues separately, setting out the relevant evidence with regard to each issue in turn and thereafter setting out our conclusions on that evidence. Our general conclusions are set out at paragraph 279 below. First of all we set out the factual background to each appeal.

4. In the case of Mr ( ) it is the Secretary of State's appeal. Mr ( ) appealed to the Adjudicator, Mr P.J.G. White, against the Secretary of State's decision of 22 February 2002 to issue directions for his removal from the United Kingdom, asylum having been refused. The essence of his claim is as set out paragraph 15 of Mr White's determination. The appellant (as we shall refer to him) was a member of the KDP who worked in the offices of Golan Newspaper, and in particular in the copy section. This newspaper was owned by the KDP who used the printing facilities of the newspaper not only for producing material intended to be published in the newspaper but also for other printing and copying purposes including documents of a confidential and secret nature. The appellant had particular responsibility for photocopying and worked with two colleagues named Razgar and Bakir.

5. On 21 September 1999 the three of them were summoned to the supervisor's office and questioned about missing documents and the leaking of confidential information to the PUK. The nature of the information said to have been revealed was not specified. Subsequently Razgar and Bakir attempted to flee to the PUK area but they were both shot and the appellant was subsequently informed that Bakir had died, but before doing so had falsely implicated the appellant in leaking the information. The appellant went into hiding and subsequently fled from Iraq and came to the United Kingdom on 19 December 1999 and claimed asylum on arrival.

6. The Adjudicator assessed his claim, taking into account also objective evidence from Ms Sheri Laizer and other objective evidence. He found the appellant to be credible. He concluded that if the appellant were to be returned to Iraq he would still be of interest to the KDP authorities. It seems from paragraph 27 of his determination that he considered that there would not be a sufficiency of protection for the appellant

upon return to Iraq. He appears to have restricted his consideration to the situation in the KAA.

7. In his grounds of appeal the Secretary of State contended that the Adjudicator had failed to consider internal relocation and that this would not be unduly harsh. Permission was granted to argue this point.

8. Mr ( ) appealed to the Adjudicator, Mr R.A. Price, against the decision of the Secretary of State of 28 August 2003 refusing asylum.

9. Mr ( ) is a member of the Barwary tribe. He said that his family farmed their land outside Zakho but had problems with the powerful Goly tribe who wanted his family land but this was refused. These problems had began mainly from 1995 but manifested themselves particularly in April 2003 when his brother Zerevan was working on the land and the appellant was elsewhere. He found out later that Zerevan had gone to the land to work and there were irrigation problems and he had then gone on the Goly land to ensure the passage of water. Whilst doing this he was insulted by a son of the Goly tribe and shot and injured this man, who later died. They knew that there would be revenge and considered they could not fight the Goly tribe as they were powerful. His father and brother fled and he also did so, leaving Iraq and going to Turkey where he remained until June and came to the United Kingdom on 2 July 2003 and claimed asylum on the 3 July 2003.

10. The Adjudicator found the appellant to be credible. He concluded that the Goly tribe appeared to be localised and he did not accept the appellant's evidence that that tribe, which he had described as consisting of possibly 2000/3000 members, was all powerful in the KAZ and elsewhere in Iraq. He considered that the appellant could relocate within the Kurdish Autonomous Region and was satisfied that there would be a sufficiency of protection there.

11. He bore in mind however, the decision of the Court of Appeal in Gardi [2002] EWCA Civ 750 in which it was stated that the Kurdish Autonomous Region would not meet the criterion of being a state or state-like entity capable of providing protection for the purposes of the Refugee Convention. He felt constrained to follow Gardi. He went on however to consider that there was no reason why the appellant should not relocate elsewhere in Iraq and that it was not credible that a relatively small tribe, however powerful, would be able to locate him and enforce the blood feud. Though the security situation in Iraq was unsatisfactory at the time, he considered that there was no reason to find that the Coalition Forces and/or the present temporary government in Iraq would not be in a position to provide a degree of sufficiency of protection.

12. In the grounds of appeal it is argued firstly, that the Adjudicator had failed to consider whether there was a Refugee Convention reason in this case and erred in failing to address the objective material on the

issue of internal relocation. Secondly, it is argued that the Adjudicator should at least have considered adjourning the appeal to allow the appellant who was unrepresented at the hearing to obtain evidence on the question of relocation and also the question of sufficiency of protection. Subsequent to the hearing a report from Mr Joffe had been obtained which it was contended would support the appellant's claim that he could not relocate within Iraq. The other matter raised in the grounds of appeal concerned why the appeal was out of time, and the Vice President who granted permission to appeal saw merit to this and also considered that the Adjudicator might not have given sufficient consideration to the issues of sufficiency of protection and internal relocation.

13. Mr ( ) appealed to the Adjudicator, Mr J.G. Macdonald, against the decision of the Secretary of State of 5 November 2001 to issue directions for his removal from the United Kingdom, asylum having been refused.

14. Mr ( ) had been a member of the PUK until 1995. In 1983 a PUK organiser, Omer Hamakaki had murdered the appellant's uncle, Mulla Omer. When the appellant stopped working for the PUK in 1995 he opened his own business as a hairdresser. His cousin, Aso, the son of Mulla Omer, came to visit him on 3 June 2000 and on 10 June he was in his hairdressing salon and Aso was with him. Aso saw Omer Hamakaki pass by the shop and shot him, killing him, and fled to the appellant's sister's house. The appellant felt that he also had to run as he feared that Hamakaki's family would take immediate revenge upon him.

15. Both Aso and the appellant's brother were arrested in connection with the murder. The appellant's brother was released. Aso was killed by the family of Omer Hamakaki and his relations and the PUK, according to the appellant's answer to question 24 at interview. The Hamamaki family belonged to the Jaff tribe which the appellant said was present throughout the whole of Iraq. He also claimed that although Aso had been killed by Hamakaki's family the tradition of revenge killing had not been satisfied, and he was perceived as being involved in the murder.

16. He produced various documents including a letter issued by a PUK commander indicating that he was involved with Aso Omer in the killing of Mr Hamakaki, and also describing the appellant and containing instructions that he be arrested.

17. The Adjudicator accepted the appellant's evidence, including the fact that he was not involved in any way with the murder. He accepted that the documentation was genuine and noted that in essence his claim was that he feared persecution by Hamakaki's family and the Jaff tribe because the PUK would not be able to protect him and that he would not be safe anywhere in Iraq. He was not claiming that he would be persecuted by the PUK and it appeared that if returned to the PUK area

he was likely to be questioned, detained and put on trial for his involvement in the murder. His fear was essentially that he could not escape the family of the deceased who would be determined to carry out an honour killing involving him. The Adjudicator proceeded on the basis that notwithstanding the lapse of time and the revenge killing of Aso there remained a risk that Hamakaki's family would continue to be interested in the appellant.

18. The Adjudicator went on to note the objective evidence, and concluded that the PUK and the KDP were willing to offer protection to anyone who feared reprisals in the case of an honour killing. The KDP and PUK were in de facto control of the KAZ and willing to offer protection to those residing within their respective territories and there was a system in place to provide the necessary protection although the reach of such protection as they were able to offer was limited.

19. He also noted from the country report before him that people within the former KAZ who had a localised problem could safely and reasonably relocate within the former KAZ to an area where the KDP and PUK were able to provide protection, to the Kurdish dominated areas outside the former KAZ, or elsewhere.

20. The Adjudicator concluded therefore that the appellant could seek the protection of the PUK. If he were to be targeted by the deceased's family then the PUK were willing to protect him and would offer a sufficiency of protection to the appropriate standard as set out by the House of Lords in Horvath.

21. The Adjudicator also concluded that since the Ba'ath Party regime was no longer in power, the appellant would be safe throughout Iraq and given the substantial presence of the Allied Forces it was highly implausible that Hamakaki's family or the Jaff tribe would be able to target him outside the KAZ. There was nothing exceptional in his case which indicated that it would be unduly harsh for him to relocate elsewhere in Iraq.

22. In the grounds of appeal it is contended that the finding by the Adjudicator that the available protection by the PUK and KDP was limited indicated that the appellant would be at risk of persecution if returned to Iraq and that the Jaff tribe would be able to target him outside the KAZ because their reach, power and tribal influence extended across all of Iraq.

23. Permission was granted on the basis that it was arguable that the finding that there was adequate protection from the PUK was not safe. The Vice President adverted to what may conveniently be called the Gardi point (the first issue which falls to be considered by us) and also to the effectiveness of such protection. It was not considered to be arguable that the Adjudicator's conclusion that there was a lack of evidence that the Jaff tribe would find the appellant was not open to him. The Vice President also noted that since there was evidence that

the PUK had handed the appellant's co-accused, his cousin, back to the family who then killed him, that it was arguable that he faced risk on the same basis.

The nature of the authorities in the KAA

24. We consider first the issue of the legal status of the authorities in what is now the Kurdish Regional Government (KRG) area, formerly referred to variously as the KAA, KAZ and KAR (for sake of convenience we shall hereafter refer to it as the KAA) and also the ability as a matter of international law of those authorities to provide security to the inhabitants of that area. This issue has arisen for consideration in a number of cases which we now list and to which more detailed reference will be made below.

25. First is the starred determination of the Immigration Appeal Tribunal in Dyli (00/TH/02186). This was cited with approval by the Court of Appeal in Canaj [2001] EWCA Civ 782 which also heard an appeal against the decision of Dyson J as he then was in Vallaj (CO/27378/2000). Subsequently the matter arose for obiter comment by Keene LJ in Gardi [2002] EWCA Civ 750, which was specifically concerned with the KAA, as was a subsequent determination of the Tribunal in Faraj [2002] UKIAT 07376. The matter also arose for consideration by the Court of Session in Saber [2004] INLR 222 and most recently the matter was given detailed consideration by the Tribunal in its country guidance case of GH [2004] UKIAT 00248.

26. The submissions on this point were made on behalf of all three appellants by Ms Adedeji. She referred us to relevant pages of the October 2004 Country Report concerning the nature of and history of relations between the KDP and the PUK. It is said in this report at page 152 of the Secretary of State's bundle that Kurdish nationalists' aspirations within Iraq have historically been weakened by rivalry between the KDP and the PUK, though in September 1998 they signed the Washington Agreement to work towards resolving the main outstanding issues in the Kurdish regions of Iraq. On 4 October 2002 they jointly reconvened the Kurdish regional parliament for the first time since the clashes that had occurred between them in 1994.

27. After the ousting of Saddam Hussein both parties were said to be increasingly combining their political resources and efforts to re-establish the joint governments of the Kurdish regions that had been in place between 1992 and 1994.

28. Ms Adedeji also referred us to the Law of Administration for the state of Iraq (the transitional period) set out at Annex G to the Country Report and to be found at pages 189 onwards in the Secretary of State's bundle. In particular, she referred us to the fact that this involved structures set up for a transitional period and that it shall cease to have effect on the formation of elected government pursuant to a permanent constitution. Its powers are to be shared between the federal

government and the regional governments, governorates, municipalities and local administrations according to Article 4 of the law of administration. The Iraqi transitional government shall consist of a National Assembly, the Presidency Council, the Council of Ministers, including the Prime Minister and the judicial authority. Article 25 sets out the areas of exclusive competence for the Iraqi transitional government which includes such matters as formulating foreign policy and diplomatic representation, formulating and executing national security policy and formulating a fiscal policy.

29. Article 53A states that the Kurdistan Regional Government is recognised as the official government of the territories administered by that government on 19 March 2003 in the governorates of Dohuk, Arbil, Suleimania, Kirkuk, Diyala and Neneveh. The term 'Kurdistan Regional Government' shall refer to the Kurdistan National Assembly, the Kurdistan Council of Ministers and the Regional Judicial Authority in the Kurdistan region.

30. At Article 54A it is stated that the Kurdistan Regional Government shall continue to perform its current functions through the transitional period except with regard to those issues falling within the exclusive competence of the federal government as specified in this law. The Kurdistan Regional Government shall retain regional control over police forces and internal security and will have the right to impose taxes and fees within the Kurdistan region.

31. Ms Adedeji also drew our attention to the CIPU Report at page 267 and onwards in the Secretary of State's bundle concerning the 2005 elections in Iraq. The KDP and PUK had formed a joint list of the National and Kurdish Assemblies though they had competed in local provincial elections, and both parties complained of some threats and manipulation by the other side. The Kurdistan Democratic List gained the majority of votes in the Kurdistan Legislative Elections with 90% of the votes and 104 seats in the Kurdistan National Assembly. The Kurdish Alliance obtained 26% of the votes and seventy-five seats in the National Assembly.

32. She also referred us to paragraphs 1.1 to 1.13 of the Joint British Danish Fact Finding Mission to Damascus, Amman and Geneva on conditions in Iraq on July 2003. The UNHCR and Damascus were of the opinion that the parties controlling Northern Iraq behaved as they did before the fall of Saddam Hussein's regime. She also referred us to page 367 of that bundle which forms part of the Dutch Ministry of Foreign Affairs General Country Report on Iraq of December 2004, where it was noted that the Transitional National Assembly would have the task of drawing up a permanent constitution in Iraq following the elections. It is also noted at page 370 that the Transitional Administrative Law which is in force until a permanent government is formed by the end of 2005 at the latest, recognises that the KRG is the official government for the region that it was already administering before the military intention. It is said

at page 373 that under the Transitional Administrative Law the Kurdish areas have de facto autonomy during the interim period.

33. Further on in that report at page 384 it is stated that the Kurdish Parliament has stated its intention to bring its legislation in line with the central legislation of Baghdad as far as possible. The Transitional Administrative Law states that the KRG will continue its tasks during the transitional period with the exception of the tasks referred to above, that come under the exclusive responsibility of the interim government in Baghdad.

34. Ms Adedeji then took us the relevant case law. In Dyli the point was made at paragraph 13 that the protection with which the Refugee Convention was concerned was said to be 'the protection of the country' and it was irrelevant how that was achieved, whether directly, by the authorities of the country or by others. The Tribunal concluded at paragraph 14 that for the purposes of the Refugee Convention protection provided by or through UNMIK and KFOR was capable of amounting to the protection of his own country for a resident of Kosovo.

35. In Vallaj it was noted at paragraph 12 that the United Nations security Resolution 1244 (1999) provided for the establishment and deployment in Kosovo of international and security presences (i.e. UNMIK and KFOR). The Resolution did not alter the status of Kosovo as part of the Federal Republic of Yugoslavia. The UNMIK answered through the Secretary General and his Special Representative to the Security Council. Dyson J went on to say at paragraph 30 that in those rare cases where as a matter of international law the need to protect has been transferred to another entity then in his view Article 1A(2) of the Refugee Convention should be interpreted by reference to the ability of that other entity to protect the nationals of a country from persecution on any of the Convention grounds.

36. In Canaj it was conceded on behalf of the claimant that if as a matter of practical reality protection was being provided by UNMIK and KFOR then that was capable of constituting protection for the purposes of the Convention, but the argument was that they were not in fact providing the necessary protection to the requisite standard.

37. Ms Adedeji then took us on to Gardi, and in particular paragraph 37. At paragraph 37 it was suggested that the protection required had to be that of an entity capable of granting nationality to a person in a form recognised internationally, a point which had been made by the Federal Court of Australia in Tjhe Qwet Koe and Minister for Immigration and Ethnic Affairs and Others [1997] 912FCA. It was said that the KAA did not meet that criterion, and Keene LJ referred to a paper by Professor Hathaway and Ms Foster where it was said that the protection could only be provided by an entity capable of being held responsible under international law. He noted that the decision in Vallaj was not inconsistent with that proposition since the UNMIK region in Kosovo

had the authority of the United Nations plus the consent of the Federal Republic of Yugoslavia although no-one suggested that the KAA or any part of it was such an entity under international law. Had it been necessary to decide it, he would have been inclined to find in favour of the appellant on the 'protection' aspects, but he did not satisfy the requirements of the 'fear test' and as a consequence his case did not fall for protection under the Refugee Convention.

38. This in essence was what was argued by Ms Adedeji on behalf of the appellants today. The situation with regard to the KAA was unchanged and the Transitional Administrative Law did not affect this in any material way but simply reflected what had been the position there for some time. There was still no international personality in the authorities, as was required. The PUK and KDP were very separate states, they had merged but had not fully merged. There was no unity as such between them to the required extent. The international personality aspect considered in Gardi had not been answered.

39. We referred Ms Adedeji to paragraph 21 in Vallaj where reference was made to the situation of federal states which devolve substantial powers of government to regional administrations yet it was said to be right to describe the protection as being the protection of the federal state. Ms Adedeji argued that the situation in Northern Iraq was very different from, for example, the US Federal State system. There was no unified regional government but it was mainly made up of two units, the KDP and the PUK. They operated separate systems. On the facts of the case the KRG would not be able as a matter of law to provide the protection envisaged by the Court of Appeal in Gardi. Also, as regards the suggestion that the protection came from the KRG, this was not true as there were two factions and two entities in the area and it was necessary to look at the reality. Though the Transitional Administrative Law referred to the KRG it was necessary to look at what that actually was and how it in fact operated. It was contended that the KDP and PUK could not and did not provide protection.

40. In his submissions on this point Mr Kovats argued that it was clear beyond argument that as matter of law the authorities in the KAA were capable of providing protection. He gave two reasons for this. Firstly, the authorities showed that the question was whether, on the facts, protection could be provided, and he referred us in particular to the relevant paragraphs in Dyli, Vallaj and Faraj. The appellants could not rely on Gardi as the decision was arrived at without jurisdiction and had no standing. Also the matter had been considered in detail by the Tribunal in GH where it had been concluded that it was an issue of fact, as the authorities indicated. No reason had been shown why the Tribunal should depart from that.

41. Even if Mr Kovats were wrong in that regard, there were two good reasons as a matter of law as to why protection could be provided. He referred us firstly to Article 53A of the Transitional Law and also Article 54. Even if the PUK and KDP were separate, there was forty-three

separate police authorities in the United Kingdom but there was still protection even if it were not a unitary police system.

42. Secondly, he referred us to the elections of 30 January 2005. There had been elections in the Iraqi National Assembly and for the Kurdish Regional Authority and the eighteen governorates. The KUP and PUK had won on a joint ticket in the regional and national elections. They were therefore united both nationally and regionally and this was a matter of law which was what the election results were. He referred us to paragraphs 97 to 105 in GH and also his skeleton argument at paragraph 14. By way of reply Ms Adedeji stated that the authorities could not protect as a matter of law as the KRG lacked legal personality and a capability as required by Gardi which remained persuasive.

43. In this regard Ms Braganza also referred us to paragraph 103 of GH where the point was made that the issue in relation to protection had never been fully argued in respect of the home area of the claimant or of a situation where internal relocation was in point. GH was not conclusive on the point.

44. Our starting point must be the starred determination of the Tribunal in Dyli. We attach particular weight to the conclusion at paragraph 13 that it is irrelevant how the protection of the country is achieved, whether directly by the authorities of the country or by others. The Tribunal therefore concluded that for the purpose of the Convention protection provided by UNMIK and KFOR was capable of amounting to the protection of his own country for a resident of Kosovo. It is of course relevant to bear in mind the different context that applied there, as also can be see from the comments of Dyson J in Vallaj in concluding that as he did that it would not be appropriate to adopt an unduly formalistic approach contrary to common sense and it was also important to construe the Refugee Convention as a living instrument to be interpreted in the light of current international circumstances.

45. Dyli was approved by the Court of Appeal in Canaj and Vallaj, and indeed it appears that the particular issue was no longer being argued before the court in the cases of those appeals.

46. As regards Gardi, it is of course the case that the decision there was subsequently declared to be a nullity by the Court of Appeal for want of jurisdiction in Gardi v SSHD (No. 2) (Declaration of Nullity) [2002] EWCA Civ 1560. In this regard we associate ourselves entirely with the views expressed by the Tribunal in Faraj, in particular at paragraph 13 of that determination. There the point is made that although Keene LJ was asked to verify the views of Professor Hathaway, his attention did not appear to have been drawn to the fact that the paper written by Professor Hathaway and Ms Foster was of recent origin and also did not reflect the position that Professor Hathaway together with several other refugee law experts took in the far more widely accepted Michigan Guidelines at paragraph 10, where it was stated that return on internal protection grounds to a region controlled by a non-state entity could be

contemplated, albeit only where there was compelling evidence of that entity's ability to deliver durable protection. Nor did it appear that Keene LJ's attention was drawn to the fact that the UNHCR position was that de facto entities were at least in principle capable of affording protection under the Refugee Convention. The Tribunal there emphasised the pragmatic or functional approach according to which the issue of whether a de facto entity could afford Refugee Convention protection is essentially a question of fact.

47. Upon consideration of the decision of the Court of Sessions in Saber, as was pointed out by the Tribunal in GH, there is nothing to show from the short passage at paragraph 32 of that decision that the court did anything more than adopt the provisional overview expressed briefly by Keene LJ in Gardi. In neither case does it appear that the comments made stem from a fully reasoned judgment after full argument. The point is also made at paragraph 101 in GH that it is arguable in Saber that the appeal which led to a remittal was actually decided on the narrower point that the PUK was not capable of providing appropriate protection in its own sphere of influence in part of the KAA in what was described as a situation of unrest. We agree entirely with this comment.

48. As regards the reference to Tjhe Qwet Koe at paragraph 37 in Gardi, it is clear from what is said by Tamberlin J that his interpretation of Article 1(A)(2) was confined to the situation where the claimant was stateless. It is also relevant to refer to the judgment of Décary JA in Zalzali [1991] 3CF 605, cited in GH, where he stated at page 615:

> 'The "country", the "national government", the "legitimate government", the "nominal government" will probably vary depending upon the circumstances and the evidence and it would be presumptuous to attempt to give a general definition. I will simply note here that I do not rule out the possibility that there may be several established authorities in the same country which are each able to provide protection in the part of the territory controlled by them, protection which may be adequate though not necessarily perfect.'

49. In our view therefore the weight of the authorities very much favours the pragmatic approach to the issue of protection rather than the more limited approach which suggests that protection has to be provided by an entity capable of granting nationality to a person in a form recognised internationally, as was suggested by Keene LJ in his obiter remarks in the void decision in Gardi.

50. As Mr Kovats pointed out, however, it is the case in any event that, as is set out at Article 54 of the Law and Administration for the State of Iraq, the Kurdistan Regional Government shall continue to perform its current functions throughout the transitional period, except with regard to those issues which fall within the exclusive competence of the

federal government as specified in this law. Among other things the Kurdistan Regional Government shall retain regional control over the police force and internal security. We see force to the point made by Mr Kovats that by analogy with the situation in the United Kingdom where there are 43 separate police authorities, it is nevertheless the case that protection is provided by the state.

51. Also, as a consequence of the elections of 30 January 2005, the KDP and the PUK stood on a joint ticket in the regional and national elections and therefore can properly be said to be unified both nationally and regionally as a matter of law. As a consequence we agree entirely with the conclusion of the Tribunal in GH at paragraph 106 that the PUK and the KDP acting through the Kurdistan National Assembly are the legitimate delegated government in the former KAA. It is clear that the Kurdish Regional Government and its organs are the lawfully delegated government in that region.

52. In summary, therefore on the first point, we conclude 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.

Evidence on the remaining issues

53. We turn now to the remaining issues. We set below the evidence before us both generic and specific, and the submissions of the representatives on that evidence and thereafter our findings on the generic evidence and our decisions in the particular appeals.

54. We heard oral evidence from Dr Rebwah Fatah who also provided four reports and one written in conjunction with Ms Sheri Laizer, who also gave oral evidence before us, and who has produced three reports of her own together with the joint report. The other main pieces of evidence before us consist, in no particular order, of the CIPU Country Report of October 2004, the CIPU Iraq Bulletin of August 2003, the Dutch General Report of April 2000 on North Iraq, the Joint British/Danish Fact Finding Mission on Conditions in Iraq of September 2004, the US State Department Bulletin of 26 March 2004, a Joint British Danish Fact Finding Mission to Damascus, Amman and Geneva on Conditions in Iraq of July 2003 and a General Country Report on Iraq of the Dutch Ministry of Foreign Affairs dated 14 December 2004, a UNHCR report of 29 January 2005 on the possibility of applying the internal flight or relocation alternative for Iraqi Kurds within Iraq, the UNHCR report on Iraq for 1 August 2004, the Amnesty International 2004 report on Iraq, a report of Human Rights Watch, of 3 August 2004, and an IWPR report of 18 February 2005 and a further report from the same body of 4 March 2005. As is becoming the practice in country guidance cases, we list as an appendix to this determination the main sources upon which we have relied.

The evidence of Dr Fatah

55. We turn first to the evidence of Dr Fatah. Dr Fatah is an Iraqi Kurd by origin, he is now a British citizen. He works as a Middle East specialist in particular as a writer, broadcaster and journalist. He has worked in the media extensively for the last twenty years, including being a founder columnist and editor-in-chief of a cultural Kurdish news letter, and has broadcast extensively. He is also the CEO of a media group, KurdishMedia.com which is an internet-based daily information provider on the Kurdish question. He is regularly called upon by governmental organisations, NGOs, academics, and researchers as an expert who has advised a number of British, US and European NGOs working and wanting to work in Iraqi Kurdistan including the Save the Children Fund and Christian Aid. He states that he is in professional contact on a daily basis with the situation in Iraq and that his reports have been cited in a number of immigration appeals. He has been working as an expert witness since 2000 and has worked for over seventy firms in the United Kingdom and has provided assistance to the Commissioner General for Refugees and Stateless Persons of Belgium.

56. Dr Fatah was instructed to provide reports with regard to all three appellants. His reports with regard to Mr ( ) and Mr ( ) are general to them both, although with specific comments on their individual appeals, and he has provided a separate report on Mr ( ) although a great deal of information contained in there, being generic, is to be found also in his first report of 3 January 2005 which otherwise deals with the specifics of Mr ( ) and Mr ( )'s cases. In the first report he deals in detail with tribal life in Kurdish society and the differences between Kurds and Arabs, issues of conflict between Kurds and Arabs stemming from their differences, citing a number of examples of atrocities against Kurds, and also providing comments on the Tribunal's country guidance case of GH [2004] UKIAT 00248.

57. Dr Fatah's second report is a report on Mr ( ) which as we say very largely reproduces the contents of the ( ) and ( ) report, save with regard to the specifics of Mr ( )'s case which are addressed there.

58. Dr Fatah's third report, of 10 March 2005, is entitled 'Expert Report – Election Update' and contains comment on the situation in Iraq in the light of the election of January 30, 2005 and also contains sections on sufficiency of protection in Iraq, the reach of the PUK and the KDP throughout Iraq and issues of relocation for Kurds both within the KAA and in general in Iraq.

59. Dr Fatah's fourth report of 24 March 2005 is entitled 'Expert Report – Election Update' and contains comments on the Dutch Ministry of Foreign Affairs Report of 14 December 2004 to which we have referred above.

60. Clearly we shall address in some detail later the specifics of those reports, insofar as they were not dealt with by Dr Fatah in evidence in chief and in cross-examination.

61. Dr Fatah gave evidence before us on 29 Mach 2005. He confirmed that his reports were true and he adopted their contents as part of his evidence.

62. He had most recently been in Iraq for nine days in March 2005 and he was in Kurdistan, the only safe area for him to be in.

63. He addressed various issues concerning the appeal of Mr ( ). He said that the publishing house for which Mr ( ) worked was part of the KDP and was run by Mr Barzani who is a nephew of the head of the KDP. It was a party organ. If someone leaked intelligence information from it they would be at greater risk. He did not believe that Mr ( ) could go to the PUK area because now the PUK and the KDP have their own interests in Kurdistan and in Iraq. He considered that the KDP would be able to target him in the PUK areas and also that they could ask the PUK to hand him over. The reason for saying that was that the PUK and KDP were very close now after the election. There were now KDP offices in the PUK areas, for example in Suleyimaniyah. They had run one list in the Iraqi elections and had both nominated the PUK leader for the role of the Presidency of Iraq

64. Nor did he consider that Mr ( ) could relocate to the PUK area as they would not damage their relationship with the KDP for one individual. As the PUK and KDP had won the election in Kurdistan and set up a united Kurdistan Regional Government and Parliament together, they shared a great deal of interest which was of more value to them than arguing about one individual.

65. With regard to the question of the KDP demanding that the PUK hand him over, he referred to an example of a Mr Hariri, a prominent KDP leader, who had been assassinated in February 1998 by a group of radical Islamists who had moved to an area controlled by the PUK. The assassins had been handed over by the PUK to the KDP. The PUK and KDP had a security coordination office which enabled them to exchange wanted people.

66. As regards the KDP's reach outside Kurdistan to central and southern Iraq, he said that prior to the Iraqi election and the interim government the KDP had various important positions, for example, the deputy Prime Minister of Iraq, and the head of the Iraqi armed forces and various ministers. Also, PUK and KDP peshmergas had taken part with the multinational forces in Fallujah. Also the PUK and KDP provided security for the capital. That had been confirmed by the multinational forces during the Fallujah episode. They had been found to be trustworthy and they were well organised.

67. After the Iraqi elections it was the case that now the PUK and the KDP had 77 MPs in the Iraqi parliament out of a total of 273. They were the second political force in Iraq after the Shia and the new Prime Minister was nearly certain to be a Shia and the president would be the head of

the PUK. Other important positions such as the Oil Ministry were under negotiation. Therefore they would not just be a group in Kurdistan but were now an Iraqi political force.

68. He did not believe that there was anywhere in Iraq where the KDP if interested in Mr ( ) would be unable to reach him.

69. He believed that Mr ( ) would be dealt with severely by the KDP if they found him. He did not think that Mr ( ) could be protected by the civil judiciary or by anyone. This was because his problem was with the party. It was unheard of to undermine the judgment of the party and a judge would not interfere and it was not for example a case of theft or a property matter. The security forces belonged to the party so they would not protect him.

70. As to whether Mr ( ) could move and live in a PUK area, where he did not face a risk on return, there were the problems of checkpoints and coordination between the KDP and the PUK. A KDP person moving to the PUK area would need to register with the security forces and give reasons for being there and he did not think that this would be possible. If he returned to Baghdad it was the case that it would be unsafe for him to return along the road via Fallujah. It was not possible just to choose and go and live in the PUK area if he were moving from the KDP area.

71. The suggestion was put to Dr Fatah that since the KDP and PUK were now close that there was no reason for the KDP to worry about him having leaked to the PUK in the past. Dr Fatah said that they were two different groups and both tried to buy each other's membership, so information about the other party would put them in a stronger position. This could assist at the next election. They needed to work very hard to weaken the other and gain more territory.

72. As regards any risk he would face from the families of Mr Razgar and Mr Bakir, he thought that the families blamed Mr ( ) for causing their problems. This was referred to in his statement.

73. As regards Mr ( ), Dr Fatah was asked about the Goli tribe and its reach and the extent of this in Kurdistan. He said that Kurdish society was mainly tribal. The tribes were all powerful. It could be argued, as had been done by Mr McDowell, that tribes and political groups could be equated. The tribe had its own position in Kurdistan. They were armed and could reach out to wherever they wanted if they thought it was viable and they would take revenge. He was asked whether he had knowledge of the relationship between the Goli and the KDP and he said that the KDP was an association of tribes, and the Goli was one of those tribes. He was asked to what extent among tribes there was an element of another associated tribe becoming involved if, for example, the Goli targeted Mr ( ). He said they would not as it was a tribal feud. For example, he had referred to this in his report with regard to the KDP and the idea of revenge. He was asked whether

there was a part of Kurdistan where Mr ( ) could be safe from targeting by the Goli tribe. He said that if he tried to live anywhere normally he thought he would be discovered, for example, if he was working or going to college, but it would be different if he hid away. There were many killings on a daily basis due to tribal feuds. They were small communities and it was very easy to find someone and it happened in many cases.

74. As to whether he would be outside their reach outside Kurdistan, he said that they could use their KDP connections and influence potentially to find him wherever he was in Iraq. As to the likelihood of them doing this, he said that the Goli were an influential part of the KDP and he did not think that there would be a problem for them. Therefore there was nowhere Mr ( ) could go in Iraq where he would be outside the reach of the Goli.

75. He was asked about the size of the Goli and said that they were nothing like the Jaff, concerning whom he had also given evidence. They were rather localised. They were mainly in the KDP areas and would not be found for example in Suleimaniya. He was asked what the Goli tribe would do if they found Mr ( ) and he said that a tribe would normally kill and take revenge and it was a tribal custom.

76. He was asked what the KDP would do if they found him and he said that he did not want to speculate about this. He referred to a case of a Barzani who he thought had fallen out with the KDP and was arrested in a private prison and was in a basement and after five years was given amnesty but for five years did not leave that room. That was typical of the methods those parties used. He believed that anyone who tried to undermine the KDP, especially their leaders or important tribes, would be dealt with severely. Like Mr ( ), he would not be protected by the judiciary for similar reasons. The Goli tribe was part of the KDP and there was no real distinction between the tribe and the political party.

77. As to whether his tribe, the Barwari, would protect him, he questioned how long they could protect him for. If there were no KDP issues it would be an issue between the tribes and they would go for other members of the tribe, if not him. If they adopted the party line they could use the party influence. The Barwari had political influence in the KDP also but they were also localised. The Barwari were in a KDP area. They had a political influence but it was very difficult for that to protect the appellant. In that case if both had the same influence it was a tribal issue. It was a grey area between the tribe and the party and it depended upon which would be the more influential of the two tribes. He understood that the Barwari were more educated and some of their members had left the KDP, but it did not mean however that they were not affiliated with the KDP.

78. In the light of the comment that all tribal groups were powerful, we asked Dr Fatah why Mr ( )'s own tribe would not be able to protect him from the Goli as it would be a question of prestige. He said

that the tribal view was that they had their own norms and would try to kill him or other males in his family if he was not there. He could hide in a basement but would not be able to live a normal life. With regard to his own tribe it was a question of what kind of protection they could provide. They would not be able to provide him with bodyguards.

79. As regards any other way of resolving the issue, he said that in other cases they could give women to the other tribe or make a settlement in money terms. All these tribal solutions were possible, though some tribes would not see it this way.

80. As regard Mr ( ), he knew of the Jaff tribe and he knew of Mr Hamakaki who had been an influential PUK member. There had been news in the local newspaper about him.

81. The Jaff tribe was probably the most influential and the biggest Kurdish tribe. He had a great interest in them because of their social structure. He thought they used to be nomads between Iraq and Iran in the southern part of Kurdistan around Sulemaniyah, Kirkuk and Khanaqeen. The Jaff were associated with the PUK. A Kurdish political group was an amalgamation of several tribes and the Jaff were one of the main tribes behind the PUK.

82. It was not likely that Mr ( ) would be able to live safely elsewhere in Kurdistan, for example in the KDP area. He did not think that the KDP would provide any protection for such a person. They would not undermine their interests, as he had said before. If he went elsewhere in Iraq the PUK would reach him. As to how they would be able to find him, he said that the PUK and the KDP both had important and effective intelligence services and an example of this was that the PUK's intelligence service had located Saddam Hussein and told the US of this. That was an indication of how effective they were. They were mature organisations.

83. Within the PUK various Jaff individuals were tribal leaders who influenced the policies at a very high level. As to what the PUK would do with Mr ( ), he did not want to speculate, but for example, in 1991, there was the case of a communist in Kurdistan who had accidentally killed a PUK leader and Dr Fatah had learned from PUK sources that the had been killed, and this was public knowledge.

84. Dr Fatah was also asked if he was aware of any evidence that the blood feud had continued over the period of four years during which Mr ( ) had been away from Iraq given that he had said that others would be targeted if the 'legitimate target' was not available, and he said that he was not aware.

85. Prior to the election, the deputy president (interim) of Iraq, was a PUK member and also the head of the Iraqi assembly was a PUK man and they also had people in various ministerial positions. They had an office in Baghdad and the peshmergas had taken part in the attack on

Fallujah. The KDP had also taken part and they both formed part of the Iraqi army today.

86. As regards the checkpoints in the north, prior to February 1, 2004 they existed at the entrance of all villages and towns in Kurdistan but after the bombing of the PUK and KDP headquarters in Arbil on 1 February 2004, they had realised that Islamists who had carried out the bombing could penetrate the Kurdish region and commit atrocities and now the border between Kurdistan and southern Iran was very secure. The checkpoints of both parties were manned by their peshmergas.

87. As could be seen from his and Ms Laizer's fact finding Mission report, it was very difficult to avoid the checkpoints. In the areas of both the PUK and the KDP people would be given temporary IDs to enable them to move around. When passing through checkpoints people were asked what they had with them and had to produce identification evidence and state where they came from and where they were going to. The matter would be recorded. The KDP were more organised than the PUK. The former had sophisticated computers, the latter recorded information in a book only.

88. Outside Kurdistan there was chaos. Any five or six people could get together to set up a checkpoint and trouble foreigners and target minorities and there was a risk of hold-ups. This was confirmed in the Dutch report. It was not only political but it was becoming a business.

89. As to whether there was reference at the checkpoints to the central records, he said that that did not have computers on the checkpoints but had lists of people and car numbers and it was very primitive. When people moved around they had an ID and would have to produce it at checkpoints. When a person moved into an area he would have to register with the Mukhtar and he would go through all the person's papers. This was operated by the political parties, despite the chaos.

90. He was asked to clarify the situation as to whether there were computers at the checkpoints or not. He said that there were computers when a man first entered the country from outside, for example from Turkey or Iran or Syria, but not if he were within the region. They could check details on computers if a person was taken to a security place.

91. On the question of protection within Kurdistan, he and Ms Laizer had interviewed a number of judges in Kurdistan and also the head of PUK security in Suleimaniyah and various civil organisations. They had concluded that there was a civil judiciary system in the PUK and KDP areas, though there was little connection between them. The system worked for civil issues such as marriage, death but the police were concerned with security. There was a police force coming under the civil judicial system and there were separate PUK and KDP forces. Security dealt with other issues. This included matters particularly concerning threats to Kurdish national interests. The PUK and the KDP were again separate in this.

92. Also there were tribal norms. There was a tribal judiciary system. The civil judiciary system allowed the tribal solution to resolve the problem if the tribe could solve it. It would not appear in the civil judiciary system. It was the same in both the PUK and the KDP areas.

93. As to the structure of the tribal judiciary system, he said that for example in the case of an honour killing if a woman had sex before or outside marriage then the tribe would kill her and the civil judiciary system would not interfere. It was the same with blood feuds. It was a matter of the accepted norms of the society. In his example the woman would not look to the civil system to protect her or stop the tribal system because it was accepted and the society would not undermine its own values. It might change in the future but that was the situation as of now and they had lived like that for generations. For example, they had come across womens' shelters which had now been opened in Suleimaniyah. The head of the shelter had told him that they could not contact the security as the head of security had said that if the head of the shelter organisation sent a woman back to her area she would be killed.

94. As to how he would describe the level of independence of the civil judiciary system, he said he could only work from examples. When they had interviewed Judge Shiyu he had said that they had sentenced a person to death and that person was free a week later and that was how the political parties and the tribes could interfere in the judicial system. As to the frequency of such interference, by way of reply he referred to a case involving a judge in the 1990s in the region who had said he could not do his job because of party interference, and there were examples of this in the report.

95. As regards the effectiveness of the police in the PUK and KDP areas to protect ordinary citizens, he said it did not work to any standards. He thought the police were undermined by the party security whatever they tried to do. There were a lot of police on the street but they did not really do much and the peshmergas, not the police, protected the party leaders.

96. He was asked what protection the security forces afforded and he said that Judge Razgar, whom they had interviewed, had said that the police were under-resourced and not trained. The head of security was very well protected in comparison to the judge who was not protected.

97. He was asked about protection elsewhere in Iraq. He referred to the Dutch report. It was said that there was chaos. The Shia area in the south was controlled by militants who were mainly Islamic. In the Sunni triangle there was a huge number of their organisations including radical Islamists and there was a kidnapping industry. The multinational forces were not operating in the cities now. They were in camps outside the cities and dealt with disturbances and protected the green zone. The UK Danish report or the Dutch report linked the Iraqi

national army to illegal radical organisations providing intelligence and resources to radicals. Power in Iraq was fragmented between different areas. There were also areas controlled by former loyalists at times according to a person who told him. There was not really an effective Iraqi government which could protect Iraqi citizens. The current level of security was very low and it was worse this year than last year. People stayed at home. The coalition forces themselves made it clear that they could not police the streets and there had been big attacks, for example on Fallujah. There was an example of aid workers who had not been protected in Baghdad last year.

98. He did not think that any of the three appellants could move and live elsewhere in central or southern Iraq. This would not be feasible for a Kurd especially after the Kurdish Regional Government was set up in 1991. There was a lot of difficulty. They could not speak Arabic and were very localised. If put into Baghdad such a person would find there was a different language and different religion and culture. There was also all the security there and they would have no party political affiliation and would be suspect in Baghdad and questions would be asked as to why they moved there. They could be reported to one of the groups. They might be seen as being better off than Iraqi Arabs and at risk of kidnap.

99. They might also be perceived as being associated with the multinational forces. The Kurds had opened the north after Turkey refused and had been active in the removal of the former government and so they were seen as infidels by other Iraqis on account of working with the US forces. There was a report of Israeli intelligence officers in Kurdistan and this affected the relationship of the Kurds and the Arabs. There was an example that he had given in his report of a Kurdish asylum seeker in France who had been killed.

100. In cross-examination Dr Fatah was asked about his views on the Dutch report of 2000. It was true that next to no clashes took place between the PUK and the KDP and that neither would put up with any acts of aggression by other groups within its own area. If the tribes were taken into account, there was an incident of a fight during the last month. As regards the statement that the KDP and PUK must basically be regarded as capable of protecting the population of their areas from attacks by other forces, he emphasised that this report was in 2000 and there had been an attack in February 2004 on the PUK and KDP headquarters in Arbil and there had been many deaths. It was put to him that there was only one incident albeit a serious one and he said that he gave other examples in his report.

101. He was asked whether he was saying that neither the KDP nor the PUK could provide protection within their own areas, and he said that they would find it difficult even for their members.

102. He agreed with the statement that more personal, clan related incidents did commonly occur. He did not know whether it was true that blood

feuds were less common than they used to be. It had always been tribal rule and he did not know what quantitative information had been relied on. The tribes were ruled by their norms. The parties could not intervene. As regards the statement that the PUK and KDP authorities might also intervene to bring about settlements between the families, clans and tribes concerned, he said that the Department of Social Affairs of the PUK acted as an advisor. He did not agree that it was true that where tribal chiefs could not agree or, in the case of a particularly serious criminal offence such as murder, the KDP and PUK would endeavour to ensure that due judicial process operated and a court judgment was in fact accepted. As regards the statement that fines or reduction of sentences were means available to the authorities, he said that there was evidence that certain people in the PUK and KDP were tribal leaders. On his and Ms Laizer's visit they had seen examples of the bodies of a lot of young girls found in a river and it was the case that you could not question the tribal leaders about this.

103. He agreed with the statement that the ability and willingness of the PUK and the KDP to intervene would depend in part on the power and position of the individual's family's clans and tribes concerned. He did not agree with the statement in the report that internal relocation was feasible for certain PUK supporters and family members within the PUK region from KDP territory and vice versa.

104. A Kurd could move round Kurdistan if they had problems with a political party or group. If he wanted to go and live in a different area he could not just go and do that. He was asked why not, other than bureaucratic difficulties, and he said that after coming through checkpoints a person would be able to move. It was not accurate to say, as was said in the Dutch report of 2000, that it could be assumed that a person could avoid problems with the KDP or the PUK by moving to an area dominated by the other party.

105. As regards the article by Mr Karadaghi in the Daily Star, at page 358 of the Secretary of State's bundle, he considered with regard to the first paragraph that this was not representative and the writer had hardly been there. He did not know what was meant by the word 'good' in the first paragraph.

106. As regards the statement at paragraph 3 that law and order existed, he referred to his joint report with Ms Laizer. The party law was above every law, so the statement was true. He also agreed that the security situation in the Kurdish area was a far cry from that in the rest of Iraq. It was the case that the politicians wanted to be part of Iraq but the people did not. He agreed that the politicians in the PUK and KDP wanted to present to the outside world a picture of responsible government. He was asked whether it was not in their interest to have a stable state with law and order and he said that they wanted a stable region but their power was not challenged.

107. He was asked for his comments on the article at page 313 of the Secretary of State's bundle written by the Assistant Legal Adviser at the Foreign and Commonwealth Office. As regards the comment that it was quite clear that the Iraqi judiciary had been re-established as a separate branch of the government under the supervision of the Council of Judges and it was now free from political influence and, hopefully, corruption, he said that the system was chaotic, whatever was written on paper. Islamists killed wherever they wanted. A Shia Kurd government was coming but they had nothing in common. The Shia wanted a Shia judiciary and this would put further pressure on the judicial system, and the Kurds and the Sunnis disagreed. The Iraqi judiciary system was uncertain and it could lead to a system of Sharia law. The article was speculative and had nothing to do with reality.

108. He was asked for his comments on the article at page 282 concerning judges in Iraq and their comments on the improving rule of law. He considered that was that this was the official view of the political parties. Most of the cases would not end up in the civil courts but ended up in the security. He gave the example of a case when he was there of a PUK activist assassinated by the PKK and he had been told that the judiciary system could not deal with it.

109. As regards the comment at paragraph 5.87 of the CIPU Report that the police force and local government built up by the PUK and KDP remained in place and were largely unaffected by the war, he said that it could be said that the war helped the PUK and KDP to expand to other parts of Iraq and gave them more arms. The US had tried to democratise the region. The parties had more access to resources. Their administrations were akin to Saddam Hussein's model and people were discouraged from challenging the party and it was a single party system. It was an unchallenged structure and they had a better grip and had access to resources. People became policemen because they were better paid.

110. As regards the comment in the British/Danish Fact Finding Mission report of September 2004, that there was no evidence to show whether the PUK or the KDP were persecuting each others' members, he said that they did not do so generally and that was the case. He was referred to paragraph 4.3 of that report where it was said that the system of getting the tribal leaders to solve problems in respect of criminal cases and problems between members of different tribes seemed to be surprisingly effective. He said that it was very effective. He gave an example of a tribe member who had been drunk and was told by a guard not to enter an area and did so and was shot in the back and he was a member of an influential tribe. The PUK had identified the man and the killer who had been shot.

111. As regards the comment at paragraph 4.4 of the report concerning the tribal system working well as a conflict solving institution, he said that the tribe throughout Iraq's history had solved the problems. The tribe operated as a system. It worked very differently from European

standards. Revenge was an aspect. It was an effective system for people outside the norm. He did not query the effectiveness of the tribe system but its methodology and killing and abuses.

112. He was asked whether the tribe's only method was violence being responded to by even greater violence and he said no, that was too general. Somebody who stole would be fined. With regard to more substantial matters there was a lot of violence.

113. With regard to the comment in the Dutch report of December 2004 at pages 377 and 378 of the Secretary of State's bundle, in particular the latter where it was said that it could not be established with certainty to what extent it was possible to escape the threat of vendettas and honour killings by settling elsewhere in Iraq, he said that this was inaccurate. He and Ms Laizer had obtained information from the women's shelter in Suleimaniyah, and reference to this was to be found in his report and they had included pictures of victims of honour crimes.

114. He was asked about paragraph 6.73 of the October 2004 Country Report concerning tourists visiting the north. He said that people visiting for a day was not a problem and they could go through the security checks. He accepted that it was the case that once within Kurdistan there was freedom of movement if you had your ID and could answer all the questions.

115. He was referred to paragraphs 214 and 215 of his first report, at page 39 of the appellant's bundle. This related his concern that the Parliament would be mostly Shia, and Shia concepts were not compatible with democracy and voting, and fatwas would be issued which would become decrees and one of the fatwas could be the genocide of infidel Kurds. He said that it was right that the Parliament was mostly Shia. It was put to him that the Shia had 140 seats out of 275 and he said that was the most in Iraq. It was put to him that there had been no fatwas yet and he said that there was a fatwa that the internal constitution would be incorporated and the Kurds had been deprived of their rights by Sistani and the Kurdish issue was to be internal to Iraq, and internally Kurds had problems within Iraq. The Shia and Ayatollah Sistani did not want the Kurds to have the autonomy that had been agreed in the interim constitution. The Shia now recognised that they could exercise their power in Iraq. There was still no Iraqi government as the Shia and Kurds could not get together.

116. As regards paragraph 215 that an Arab solution to the Kurdish issue might be sought and that from history that meant genocide, he said that that was his view.

117. He was referred to his statement at paragraph 39 of his third report at page 71D of the bundle that the US was wrong in imposing Allawi and Al-Yawar for the post of Prime Minister and President of Iraq. He said that partly this was right. The election had achieved several objectives.

No Iraqi national party had evolved to represent Iraq. Rival groups had got together to fight their corner.

118. It was not the case that he saw the Iraqi election as negative rather than positive, but he spoke about what it had achieved so far. The hope for an Iraqi national party had not occurred and it remained ethnically based.

119. As regards the comments at paragraphs 42 and 44 at page 71E, in particular the statement that modern Kurds expected that the PUK and KDP could be weakened by the Kurdistan election and were furious by the uniting of the PUK and KDP in one list, and regarded this as undemocratic, this was not his view. He had no views in these reports but gave the view of the majority of Kurds. There had been a lot of hope that there would be one party and an opposition, but they united and it was as if all parties in the United Kingdom had united and asked a person to vote. There was no point to an election. He did not agree with the suggestion that what he had said at paragraph 51 was sweeping in stating that so far the objective evidence suggested that the election in Iraq would not produce stability and democracy and civil society. If there were going to be change it would be now. It would be the same after the next election. He was asked whether he considered paragraph 54 at page 71G to be an objective assessment. It was said there that the elections in Iraq were like nowhere and what was known as Iraq had never existed in reality but rather involved the hammering together of different minorities and unrepresented governments, in particular the ousted Iraqi Arab Ba'ath party supported by the international community and Arab countries. With regard to the statement at paragraph 59 at 71H that the situation was leading to the creation of another strong central government perhaps not different from that of Saddam Hussein, he said that the talk was all about a military budget and it created a danger of another Ba'ath regime. No one was tackling matters such as the health of the people but it was all about defence and oil. Iraqi central government did not work as a democracy. The three distinct ethnic groups would not come together in one government.

120. He denied that he lacked objectivity. His job was facts and he was a tool. One could not be an expert if he did not know enough, by definition and nobody understood the issues better than he did.

The evidence of Ms Laizer

121. Ms Laizer works as a Middle East specialist writer and broadcaster. She has followed this profession since 1983. She has written a number of books relevant to her area of expertise and has been involved in the making of a number of television documentaries and news broadcasts for various television and radio companies. She has provided expert opinions and testimony and information in a number of cases and in a number of countries. She has visited Iraq on a number of occasions and is regularly called upon by governmental organisations, NGOs, academics, journalists and researchers as an expert. She received

certain regular sources on Iraq from such bodies as the Institute for War and Peace Reporting and Amnesty International. They reported to each other. She had daily and weekly conversations with people in Iraq. There were publishers' lists including titles to be published and she ordered those and had regular contact with other reporters who, like her, came and went from the region. She had most recently been to Iraq last September and October with Dr Fatah. She also worked very intensively on Turkish cases and for the European Court of Human Rights.

122. With regard to Mr ( ), she considered that the KDP would still be interested in him, as even though they cooperated with the PUK it was an expedient form of cooperation and was limited. Her report with Dr Fatah showed the extent to which cooperation was not happening in certain areas where they are almost like separate countries, for example with regard to matters such as communications and the judicial system and the military. The KDP and PUK had separate peshmerga forces, and the families feeding into them had long and unforgotten histories of mutual animosity. They cooperated to the extent that an enemy of one would be handed over to the other. Dr Fatah had given an example of this. They exchanged people for their own interests. In the upper echelons there was support, for example with regard to candidacies, as long as they shared the resources.

123. If the KDP traced and found Mr ( ), she believed that he would be interrogated by the security services. She had seen them torture prisoners. On her visit with Dr Fatah they had been able to speak freely with one of the few independent human rights organisations in Kurdistan who had given them examples off the record and referred to problems of accessing KDP prisons even for lawyers. Many detainees simply disappeared in unclear circumstances. Ordinary Kurds feared falling into the hands of the KDP and the PUK security forces. They had learned a lot under Saddam; suspicion and cruelty; and there was a culture of cruelty throughout the society. Their methods would take the form of torture during the initial interrogation to establish the extent of the leak and he could be scapegoated. The party might know that he was not in fact responsible. There were very delicate questions about access to information.

124. There was no part of the KDP or PUK area where Mr ( ) would be outside the reach of the KDP, as both functioned in the same way and the information was checked. As regards the situation elsewhere in Iraq, he was from a PUK area as were his two colleagues. The PUK leader was likely to become President and they had offices in Baghdad and had a huge veto with regard to the government to be formed. A person with the potential to harm the party would still be regarded as a threat. Kurds had long memories.

125. In October they had heard that the old records were being computerised and they could screen insurgents coming in more effectively.

126. As to whether there was any part of Iraq where Mr ( ) would be outsides the reach of the KDP, she said that if he had a past background of part of his family being located elsewhere, then perhaps, but if he had no links or roots then he would stand out and his identity would be discovered. There was a lot of nervousness and it was very difficult to move about. Kurds stood out and he looked very distinctly Kurdish.

127. As to whether he could obtain protection in Kurdistan, from for example the judiciary, if the KDP found him, she said that the party's jurisdiction was greater than the rule of law or respect for the rule of law. Protection came from the party or the tribe. There was no independent place to provide protection and even leaders needed bodyguards. The reach of the party was wide.

128. As regards Mr ( ), Ms Laizer had spent four years on a PhD, up to 1992, on the depiction of Kurdish society in the nineteenth and twentieth centuries and society and media. She had a lot of information on the early tribes. They were like a lot of princedoms and it was true today. They had very powerful wealthy leaders and control over a lot of fighters. She had spent a lot of time in Mr ( )'s region and had gone there once during Saddam's regime. In areas such as his, you were expected to pay respect to the head of the tribe in the area.

129. The Goli were very highly placed in the KDP. The father of the murdered boy was a peshmerga. He controlled the pivotal town of Bignova where she had once sheltered. There was an old boys network of proud men and honour was a key matter for them. The Barwary were intellectual rather than military. He said his family was not military but low level peshmergas. There was only him and a brother who was a baby when he fled and there was no one to protect him. It was an important strategic town for the KDP.

130. She agreed that the Goli were in a localised area, but she said that the tribe was central to the KDP.

131. She did not believe that there was any part of Kurdistan where he would not be at risk from the Goli. She knew these commanders and their character well. There was a culture of revenge and they made use of their position and the parties and he would be vulnerable. It would be a matter of reclaiming the honour of a powerful man. No-one would be interested in protecting him. The tribes fed into the political parties which were a conglomeration of tribes, and matters slid into the tribal out of party interests.

132. As to whether his own tribe could protect him, she said that he did not have the protection as such. They were intellectual rather than militant and were a smaller tribe and they did not command an area and could not summon up men to protect themselves. His was a farming family. There was a social hierarchy within the tribe and they could be contrasted with the Jaff. Lineage was needed. Without it no support

could be expected. His was a small family of farmers who were pushed around by a tribe with military character.

133. As to whether he would be safe outside Kurdistan, she considered that since the Goli was central to the KDP's power structure, no one was interested in taking on a powerful unit within the KDP to protect him and his ID could be established by where he came from and he would be conspicuous as a lone Kurd in the part of Iraq where he had no ties.

134. If the KDP found him they would hand him over to the Goli tribe, given those values, and he would be returned to the area and handed over.

135. She was asked whether there were any examples of that and she said that from her interview with the human rights association head in Dohuk an example had been given of people apprehended on suspicion of being Islamic sympathisers or dissidents who posed a risk to internal security and their fate was unknown. The parties did not cooperate. People could be picked up because they looked suspicious. His fate would be in the hands of the interrogators. The KDP security people were trained to employ torture in order to get information and there was a high risk of this and they had a long history of treating dissidents and opponents thus. He would be at risk of revenge killing, being the brother of the killer.

136. In response to questions about Mr ( )'s case, Ms Laizer said that she agreed with Dr Fatah that the Jaff was one of the most powerful of the Kurdish tribes and one of the most noble and had a lot of power. They had a strong presence in Baghdad also. A lot of sub-tribes were affiliated to them. They had financed the PUK for years and were very wealthy. Prominent Jaff people had been high in the PUK for years and they were central to the PUK.

137. She had met and interviewed Mr Hamakaki in 1992. He had been a commander in the PUK, a regional organiser, and had been very powerful. They had interviewed and filmed them when there was conflict within the PUK in 1992.

138. It was not unusual that Mr ( ) did not mention any personal links with a tribe. There were plenty of ordinary people like that who had no affiliation and Dr Fatah indeed was an example of such people. It was true of many intellectuals. If you were part of a tribe it was hard to be independent of it.

139. As to whether there was anywhere in Kurdistan where the appellant would be safe from the Jaff and/or the PUK, she said that it was the case that a very senior PUK figurehead had been killed. It was unclear why the killing had not been reported, though she seemed to recall hearing about it at the time. She thought because of the way that Mr ( ) was implicated, and bearing in mind the Jaff's power and wealth, that he was at very high risk. Indeed, he was at some risk in the United Kingdom and information about people here could feed back.

140. She was asked about the fact that Mr (   )'s brother had been released, which apparently conflicted with the notion of an indefinite revenge motive. She made the point that he was not from a strong tribe and was not tribally affiliated. It was pointed out to her that this was the cases of his brother also and her response was that the appellant was implicated in the original incident. She was asked, however, about the fact of his brother's release in the context of a continuing blood feud through the family and how that squared with an ongoing blood feud. She said that he was not a member of a rival tribe and the party could take over jurisdiction as they were not two powerful tribes. There were arrest warrants. In his case the party might have the more important jurisdiction. There was a grey area between the tribes and the party and it was a question of the degree of the tribe's influence. It was not a question of two tribes and it could go either way and could be entirely dealt with by the party but it was a risk because of the grey area.

141. It was put to her that it was said that the blood feud put everybody at risk, but the brother had been set free, and why had he not been killed, did she think. She did not know and said that they could have killed him and he was not from a strong tribal family. There would have been a greater risk of the brother being killed if the family was from a stronger tribe. She was asked if it was likely to go the party, and she said it was not an issue of honour and was a simpler matter.

142. As regards the reach of the KDP, Ms Laizer agreed with Dr Fatah. Dr Fatah had however forgotten to say that the ID which a person was issued by the party was in addition to the national ID card which contained such matters as details of the person's father and grandfather and where the family lived and therefore it was possible to find out their entire family history. A lot of Saddam Hussein's information system was now in Kurdish hands. Everyone knew who everyone else was and questions were always asked about a stranger and anonymity was difficult.

143. Also they had radios at checkpoints. If a person did not have the right ID then he would be handed over to security and if they were all right they would rescreened at the next checkpoint. The officials liked to show that they were in control. They had known all about her, for example, in 1993. She had interviewed the KDP head of security who had not liked how this came across and in 1996 the KDP had tried to stop her coming into their controlled area from Syria.

144. Ms Laizer was asked about various aspects of the evidence put forward on behalf of the Secretary of State. With regard to paragraph 5.87 of the Country Report of October 2004, she considered that this was very general. It was true that the nature of the power structures in the area was largely unaffected. The police were low level and had little training and were like traffic police and the security forces were more serious. It was true therefore, but general.

145. As regards paragraph 6.73, this was pretty well out of date. The culture of suspicion did not allow for much tourism. There could be picnics or wedding parties but this would be very limited as they had found out last year and there were very few foreigners. There were very few Arabs and you could not call it tourism.

146. As regards the Joint British/Danish report of September 2004, the basis was properly set out at paragraph 4.1. The jurisdiction of the party went beyond the court. Political issues did not come before the courts. This did not deal with that point. It was a tiny comment on a large subject. She and Dr Fatah had spoken to a lot of judges including Dr Fatah's sister who was a personal status judge in Suleimaniyah. With regard to the question of freedom of movement in Iraq dealt with at paragraph 6.7 of that report, she said that most routes were difficult to travel, depending on who you were and who was with you. It was difficult for Arabs to settle in the north. At present you could not just go and settle in Baghdad without links. As the authors had said, they had limited resources and had not visited the country but relied on anonymous informers. It was a good but patchy report.

147. She did not agree with the last two paragraphs of page 283 which was part of the article on the Iraqi judges. Conditions could not be described as normal by most standards of the profession except with regard to ordinary matters such as marriage, divorce and burglary, but this had nothing to do with politics or security. As regards what was said by Judge Latif Mahmood, he would have to say that to keep his position. Not all the judges that they had spoken to had wanted to be identified. Such a person would be rooted out. With regard to the article by the Assistant Legal Adviser of the Foreign & Commonwealth Office, she had commented on this in her addendum. Only two or three weeks ago a so-called independent judge who had been due to hear the case against Saddam Hussein had been assassinated.

148. In her addendum she had also referred to the article by Mr Karadaghi. She knew the author. It was a very flimsy article to rely on as having any real weight. It was very general and he had not quoted his sources and was not working in the area. He was pro-Kurdish and was celebrating and it did not merit any more weight. There were very good things in the Kurdish areas, for example, Kurdish police wearing the Kurdish flag in contrast to the situation in Turkey.

149. With regard to the Dutch report of December 2004, in particular pages 377 to 378, this was referred to in her report. She believed there were statistics but they had been unable to access them though some had been published by the womens' shelter on honour killings in Kurdistan and Dr Fatah had brought copies back, so there were local statistics. They had seen a lot of documentary evidence and locally reported cases while they were there.

150. As regards the Dutch report of 2000, it was necessary to consider the situation chronologically and most of the information was from late

1999. It was true, as was said at page 36, that members of certain risk groups might find themselves in danger in PUK and KDP controlled areas without the KDP or PUK being able or willing to afford effective protection. It would be better to consider much more recent material. There had been a recent deterioration of law and order. With reference to the evidence in that report concerning settlement of disputes within the tribes, set out at page 39, the KDP and PUK would intervene if it was in their interests. They were superior to the courts. What was said was too general. It was a question of whether the tribal chiefs who supported the party needed to identify the victim or offender and link them to the party. If the party wished it to go to court it could and if they wished to leave it to the tribe they would.

151. The report was out of date with regard to what it said about internal relocation. There had been a change in the power structure. Everything was very tightly monitored, and the system of checkpoints had already been described. It was like going to another country.

152. The situation for a Kurd going, for example from a PUK to a KDP area, was problematic as the two cultures were quite distinct and they had different dialects and did not understand each other. There could be historical family problems. Questions would be asked. There had been very little social investment in the population. The leaders developed their wealth and resources and there was little for the people. The Kurdish culture was being lost. She was asked whether such a person could ultimately make a life there and she said it was also very expensive. Families were sustained by links to powerful parties and there was very little money. Resources had been taken by multinationals and returning exiles. Money was not going back into the population. Sanitation was very poor and there was open sewage and no electricity half the day, and it was also very hot with regular water cuts. The parties were not interested and it was very hard for unaffiliated people.

153. When cross-examined by Mr Kovats, Ms Laizer was asked, with reference to the article by the Assistant Legal Adviser of the Foreign & Commonwealth Office, and the reference there to the judiciary being free from political interference and hopefully corruption, in response to which she had referred to the judge due to try Saddam Hussein being killed, she was asked how that showed political interference. She said that it was an example of the risks generally to the judiciary in Iraq. Criminals and politicians could interfere and it was not a settled judiciary and there was no rule of law in Iraq. It was the rule of the butcher.

154. She was asked whether she could not see a difference between influencing the result of a case and a physical threat to the judge and she said that she saw that the judges were subject to threats which affected how they heard their cases. She was asked what her evidence for this was and she said it was speaking to judges in Kurdistan. She was asked whether an assassination would politically influence a case

and she said it was only an example and she tried to place her answers in context.

155. It was put to her that though she had criticised the Dutch report of April 2000 as not referring to the killing of the communists in July 2000, that this had happened after the report had been written. She said it was an out of date report. It was put to her that it was an unfair criticism and she said that she did not think so and there was a lot not reflected in the report.

156. It was put to her that since a number of her answers were by way of example from her experience from, for example from 1991 to 1992, if they were relevant why was this not? She said that was she was dealing with the roots of the social and political structures, and she had known these people for years. There was a continuity in the evidence. She was asked whether, if that was so, did it not also include 2000, and she said that they were reporting pre-2000 events. There had been a lot of change since then. The nature of the two parties had not changed. She had tried to help understanding with the culture and had to repeat information because there was a lack of taking the culture and personalities into account. She had seen and met and interviewed these people between 1985 and 2005 and had seen the declining standards of living since Saddam Hussein's regime.

157. She was asked about her reference to working very intensively on Turkish cases in the European Court of Human Rights and she said that she read a lot of evidence of defendants and there were cases of extra-judicial security killings by security forces in Kurdish cases. She read Turkish. She worked with lawyers to provide the bicultural background. She was asked whether she advised applicants and she said no, lawyers for the applicants. German Turkish and UK lawyers. The government was the aggressor. She worked for the applicant. She was asked whether she assumed that the cases were well-founded and said no, she read the papers. They accused the government of torture etc. and they were all cases where Turkey had been taken to court. It was the state and there was no recourse adequately in domestic law.

158. She was referred to page 80 of Mr Kovats' bundle at paragraph 6.5 where there was a quotation from the US State Department Report of 2003 on Iraq. She said that she had spoken about the failure by the parties to implement a lot of the legislation that they had sought to introduce and she thought it was a partial observation. She had cited many examples. There was a culture of abuse. She was asked whether she accepted that generally the laws were observed and she said not when it related to political matters. She knew the nature of the sources consulted and they said there was insufficient access. She was asked who were the independent experts the US consulted and said she did not know. She said that the US was generally one of the best sources but it was a very general statement.

159. She was asked about the fact that she used to work as a coordinator for the Kurdish Community Centre and she said it was a charity and she was involved in fund raising for women and childrens' groups and providing training for refugees, as she spoke Kurdish and Turkish. She had been able to help for a time but it was very unprofessionally managed and she had tried to teach them how things were done but it was very difficult and eventually she had resigned. She had just left Turkey where she had been living and it was in the mid-1980s.

160. She was asked whether she accepted that she was not objective about the Kurdish issue and she said not at all and she was very critical of things going on in Kurdish society and this could be seen in her books. She knew most of the most prominent intellectuals in Kurdistan and in Europe and the USA.

161. She was asked how many Kurds there were in Iraq outside the KAA and said she did not know. They had always lived outside and many had links with the regime. It was easy to go back to the family area if you had roots. There was a significant Kurdish population everywhere.

162. It was put to her that cities in Iraq were often anonymous and clan links and so on would be weaker. She said that this was not true in the Middle Eastern cities. People would be identified by their father or a political party and the family and its past defined a person. She was asked whether the reports were therefore wrong to say that the situation was different in the cities. She said the situation there was clearly more flexible, but people were conspicuous and people did not move about so much as they did in large cities in the west.

163. She was asked whether it was true for the appellants here that as she had said with reference to the 2000 report that that was unhelpful as you had to go back to the specific instances. She agreed and said that she did write negative reports. She had had no contact with the appellants.

164. It was put to her that she was saying in her reference to Judge Mahmood that in effect he was a political time-server. She said that was not entirely what she was saying but she referred to the difficulty of a person criticising his masters. She was asked whether she accepted that he was independent and if he was untruthful if he said he was independent. She said she referred to the culture. He could not be expressing his entire experience, but if he was serving the PUK loyally through the courts she accepted it. People were required to speak in that way. If you wanted to be part of the system you did not criticise it.

165. It was put to her that perhaps since he said he had no protection he did not need it. She said that everyone needed protection. People were vulnerable at every moment on the streets in Iraq and judges were at risk and afraid for their security and most people had guns. He had to be very happy and lucky if he did not feel that.

166. It was put to her that she was being cynical because of her prejudices, and she said that she was not cynical but looking at what happened daily. She knew the main players in the tribes and was not prejudiced. She had spoken to a lot of sources and was respected within and without the community for her views. She had been accused of being a spy. Amnesty International had turned her down as she was too well known as a writer. She took risks. She resented the implication that she was prejudiced.

Mr Joffe's report

167. There is also a report by Mr Joffe on Mr ( ). Much of that report is general, and we shall come back to parts of it in due course. As regards Mr ( )'s case, Mr Joffe, who sets out his credentials at page 72 of the bundle, states that Mr ( )'s neighbours were part of the dominant Bahdinani Kurmanji-speaking linguistic group who dominate in northern Kurdistan and the KDP. He stated that the neighbours of Mr ( ) appear to be part of the clan known as the Goli which may have been a replicate of the southern Kurdish Kolya'i but are more likely to be aligned to the Kurmanji-speaking Jezire or Botan. He states that normally linguistic affiliation is as important as location in Kurdish trial groupings.

168. He goes on to say that the Goli would pursue the blood feud unrelentingly, and, given their support for the KDP, they would be able to do so with impunity. If Mr ( ) were to be returned to Kudistan he would face an immediate threat from the KDP given the location of the Goli clan within its power structure. He goes on to consider that if the clan is also linked to the southern Kurdistan Kolya'i then he could not be returned to the PUK region as he could be easily tracked down there as well.

UNHCR report of 29 January 2005

169. We also have before us the report referred to above of the UNHCR of 29 January 2005 considering the possibility of applying internal relocation to the situation of an Iraqi Kurd within Iraq.

170. It is said at paragraph 3 of the first page of that report which is at 1a of the appellant's bundle, that, depending on the circumstances of the individual case, the application of the internal relocation alternative with respect to ethnic Kurds from Iraq may be neither a relevant nor a reasonable option and that in particular those concerned may not be able to move lawfully to other regions in northern Iraq, including the KAZ and the governorates of Kirkuk and Mosul. It is said that they could also face unreasonable hardship as the conditions for legal integration and economic survival might not be met. It is also said that the quality of life for persons relocated to these areas would generally fail to meet the basics norms of civil, political and socio-economic human rights. In addition, Kurds would face discrimination and undue hardship based on the serious practical obstacles of obtaining

protection, legal residence, accommodation entitlement and other aspects which would facilitate a normal livelihood in the place of relocation.

171. The report goes on to say at 1d that an extremely cautious approach should be adopted in assessing the availability of an internal flight alternative for Iraqi Kurds within Iraq. The reports notes that the situation in the three governorates in the Kurdish Autonomous Zone (Suleimaniyah, Erbil and Dohuk) has not changed significantly since the fall of the Saddam Hussein regime and though the overall security situation there is apparently more stable than the rest of the country, the situation remains tense. The PUK and KDP continue to exist separately and to exercise individual rather than joint influence and control over the various socio-economic aspects of life in the areas under their respect control in the north. Neither the KDP nor the PUK allow political dissent in their respective areas of control and a long institutional memory of the deep divisions between the two subsists. It is also said that the judicial system in the Kurdish administered areas has not reached the basic standards regarding independence nor is it capable of providing sufficient protection from persecution by non-state actors.

172. It is said at 1e that in effect any Iraqi who has been abroad or in other parts of the country, including Kurds, must go through checkpoints at the unofficial borders and this means that they must possess documentation and proof of former residency in order to be allowed to cross into northern Iraq through the checkpoints. There is also reference to a risk of discrimination if people are relocated to areas from which they do not originate and it is considered that an individual's fear of persecution from one faction would not be able to find safety in the areas dominated by the other faction.

173. The report goes on to state that protection depends upon a person's personal profile and connections as well as the tribal structure and a person who lacked family links or links to the community in the area in which they were relocated and whose relocation would take place without prior acceptance by the local tribal clan leaders, would undoubtedly be exposed to serious risk of rejection which could lead to physical insecurity and/or undue hardship and this would especially be the case for persons whose tribal affiliations were different from those dominant in the area to which they were relocated, or whose tribe was in conflict with the dominant tribe in that area. A person relocated to an area where they did not have family, tribal or clan support would also face difficulties in accessing basic services, accommodation and particularly the employment market.

174. In a further letter of 24 March 2005, the UNHCR reiterate their view that the application of the internal flight alternative or relocation alternative with respect to the ethnic Kurds in Iraq may be neither a relevant nor a reasonable option and that an extremely cautious

approach should be adopted in assessing the viability of an internal flight alternative.

The Dutch Report of 2000

175. The Dutch Official general report on northern Iraq of April 2000 is sourced by findings and reports from Netherlands embassies in the region and documents from a variety of sources.

176. At section 2.4 it is said that neither the KDP nor the PUK would put up with any acts of aggression by other groups within its own area and must basically be regarded as capable of protecting the population of their areas from attacks by other forces. There has been a reduction in the number of checkpoints along the front line between the two parties.

177. Also within section 2.4, in particular at pages 39 to 40 of the report is a section on blood feuds and clan related incidents. It is said that in the fabric of northern Iraq's predominantly traditional, tribal society, blood feuds and practices whereby disputes are settled in customary ways or people take the law into their own hands are not unknown, although blood feuds are said to be less common than they used to be. Kurdish tribal traditions mean that the vendettas, against which the PUK and the KDP cannot always proved effective protection, sometimes cost lives. Murder, abduction, manslaughter and serious injury are encountered. The holding of arms is widespread in northern Iraq.

178. In seeking to resolve blood feuds and similar inter-tribal problems, in addition to the judiciary, in a relatively large number of cases the various families and tribes are also involved. The tribal chiefs are often called in to reach a settlement without any need for magistrates to intervene. It is common for conflict to be 'resolved' by payment of blood money and/or by marrying off women.

179. It is also said that the PUK and KDP authorities may also intervene to bring about settlements between the families, clans and tribes concerned. Where tribal chiefs cannot agree or in the case of a particularly serious criminal offence (such as murder) the KDP and the PUK will endeavour to ensure that due judicial process operates and that a court judgment is in fact accepted. One means available to the authorities here is the imposition of fines or reduction of sentences.

180. The report goes on to say however that the ability and willingness of the PUK and the KDP to intervene will depend in part on the power and position of the individuals, families, clans and tribes concerned. The PUK and KDP will not always take action, not even in the case of 'honour killings'. The point is also made that problems of a traditional and tribal nature arise mainly in the countryside. In Suleimania, Arbil and other urban centres, tribal ties are of lesser importance with more scope for departing from traditional Kurdish customs.

181. Section 3.3.5 deals with the judicial process. It is said that the judiciary is considered to be independent although Amnesty International claims that because of the considerable influence of the parties and clans it cannot hitherto be said that there is an independent judiciary in northern Iraq.

The October 2004 Country Report

182. From the October 2004 Country Report we note that it is said that the KDP and the PUK are increasingly combining their political resources and efforts to re-establish the joint governance of the Kurdish regions that was in place during 1992 to 1994. It is said that the judiciary in northern Iraq is generally independent, and both the PUK and the KDP have established human rights ministries. It is said at paragraph 6.5, quoting from the US State Department Report of 2003, that according to press reporting and independent observers, both the PUK and the KDP have generally observed the laws they have enacted with regard to such matters the establishment of an independent judiciary and freedom of the press. Their record is not however unblemished, as can been seen from the same report.

The British/Danish Report of September 2004

183. We turn next to the joint British/Danish Fact Finding Mission to Baghdad of 1-8 September 2004. This Mission was conducted in Baghdad and Amman, and the delegation met with as many of the Iraqi ministries as it was able to arrange in Baghdad and also met representatives from the Ministry of Displacement and Migration, the Ministry of Justice, the Ministry of Human Rights and a number of other sources knowledgeable about the situation in Iraq.

184. At paragraph 4.1 of the report the importance of the tribes is emphasised, and it is said that the conflict solving systems of the tribes are much more effective than the police and the courts. There is however more reliance on the court system in the north than in the south. It is said to be very common in Iraq to ask tribal leaders to solve different problems in respect of criminal cases and problems between member of different tribes, and the system seems to be surprisingly effective. Sources from the Ministry of Displacement and Migration in Baghdad said that in particular in the countryside the tribal system worked well as a conflict solving institution. UN sources in Amman said that tribal leaders had an effective conflict solving power in rural areas whereas in the bigger cities their competence was limited. However UNHCR in Amman stated that the tribal conflict solving system was active all over Iraq.

185. There was said to be no evidence to indicate whether the PUK or KDP persecute each others members.

The Dutch Report of December 2004

186. The next report which we consider is the Dutch Ministry of Foreign Affairs general country report on Iraq of December 2004. This covers the period from the 3 June to 24 November 2004. It is based partly on information from public sources such as various United Nations organisations and non-governmental organisations and is also based on on-site findings, (although it is noted that there was limited scope for investigation in the country during the reporting period owing to the unstable security situation in Iraq), and also on confidential reports by the Dutch representations in Iraq, the neighbouring countries, EU member states and the United States.

187. It is said that in the provinces under the rule of the KRG the administrative structure has changed little at operational level since the fall of Saddam Hussein and the governments in Erbil and Suleimania respectively function in exactly the same way as before the military intervention. The two governments have repeatedly expressed their intention of integrating their administrations and have taken a few steps towards this, but little has been achieved to date in this regard.

188. The reporting period revealed a further deterioration in the security situation compared to the previous reporting period, though in the KRG areas it was relatively peaceful. It was assumed that vendettas and honour killings occurred throughout Iraq though it notes that no figures were available and it was not possible to give an accurate estimate of the extent to which it was possible to find protection against vendettas and honour killings from the present Iraqi security organisations. It is also said that it cannot be established with certainty to what extent it is possible to escape the threat of vendettas and honour killings by settling elsewhere in Iraq. There is reference to a change in the law in 2002 in the KRG area to the effect that honour crimes are no longer permitted in this region.

189. It is said that the security situation is relatively calm in the KRG areas in comparison with the rest of the country, although incidents of violence against Kurds are noted. It is also noted that according to UNHCR in the period between the overthrow of Saddam Hussein to April 2004 some 80,000 – 120,000 Iraqis returned from neighbouring counties and countries in the region. The UNHCR and the Iraqi authorities in the form of the Ministry of Displacement and Migration were opposed to returns partly because of the security situation and poor living conditions and limited absorption capacity. The UNHCR has facilitated the voluntary return of Iraqis from neighbouring countries, including assisting some cases of facilitated returns of Kurdish Iraqis from Iran to the KRG region though this was discontinued in late November because of poor weather conditions.

190. As regards internal relocation, the April 2000 Dutch report considered that there was a relocation alternative within northern Iraq. The same view was expressed in the August 2003 CIPU Report Iraq Bulletin and the October 2004 CIPU Report notes that there is freedom of movement and tourism within the KAZ. The point is also made in the

September 2004 British/Danish Fact Finding Mission that Kurds from the northern parts of the country could resettle in the area outside the Kurdish controlled zone and that every ethnic group could resettle in the Baghdad area which is described as a real multi-ethnic and multi religious city. In addition there is a letter from the Foreign and Commonwealth Office dated 2 February 2005, stating that there is an unknown number of Kurds living in southern Iraq and no evidence to suggest that they were at increased risk from attacks.

Submissions

191. We turn now to the submissions of the representatives. In addition to their oral submissions, we have a joint skeleton argument from Ms Braganza and Ms Adedeji, and a skeleton argument from Mr Kovats.

192. Ms Braganza argued, with regard to the question of the reach of the PUK and KDP and tribes, that nowhere was safe in northern Iraq and nor was there safety outside Kurdistan in central and southern Iraq. If the Tribunal were with her and Ms Adedeji on that then the question of relocation did not arise. The skeleton then went on to consider the extent of protection offered in Kurdistan and elsewhere in Iraq.

193. With regard to the Country Guidance determination of the Tribunal in GH, the point was made that different experts gave evidence in that case and different factors and different factual circumstances existed and also different background material and the dating was also significant. The Tribunal had heard oral evidence up to July 2004, with most of the evidence being up to May 2005. The situation was volatile and fluid and there had been elections after that. It was only of very little relevance today.

194. With regard to the comments on the Tribunal in GH on the UNHCR, the matters relied on on behalf of the instant appellants from the UNHCR were matters where the UNHCR reported directly from its sources and was not commenting. Also its views were in a number respects endorsed by Ms Laizer and Dr Fatah. It was unclear whether the Secretary of State contended that Kurds could relocate to central and southern Iraq. There was general insecurity and violence and general lawlessness. Kurds were treated as collaborators with the multinational forces. The UNHCR report of January 2005 raised the question of whether there was effective protection. It raised questions of the relationship between the PUK and the KDP and the Tribunal had Ms Laizer's evidence on that also. There was limited human rights monitoring in the two areas. If it was relevant to the appeals the Tribunal was asked to find that there was not a functioning and sufficiently effective judicial system in place. If the Tribunal found there was a safe part, then all the factors concerning access to the safe part as well as living there came into play.

195. It was clear from the UNHCR report that it was necessary to consider the issue of heavy dependency on tribe, family and community and the

absence of effective state or quasi-state protection. There was not a sufficiency of protection. People returning to Baghdad would never get to the north unless they were accompanied. Relocation would only be possible with prior acceptance.

196. With regard to Dr Fatah's report, his expertise should be borne in mind. With regard to Mr Kovats' suggestion that Dr Fatah lacked impartiality, it should be noted that everything he said was sourced and had examples. He had given explanations for his answers and his evidence had not been undermined and he was a credible expert. Both he and Ms Laizer were very frank and detailed and reliable and both had been front-line reporters to the Tribunal and the Tribunal knew their full histories and this should be contrasted with the other reporters, for example the Foreign & Commonwealth Office Assistant Legal Adviser who set out his personal views but it was not clear what they were and what his sympathies were and caution should be exercised in assessing the weight given to unqualified and undetailed reports put forward on behalf of the Secretary of State.

197. The Tribunal was referred to the expert reports. Ms Laizer emphasised the importance of the cultural context. Examples were provided and it was actual evidence and not speculation. It was clear that the situation after the elections was deteriorating. The experts comments could be read on the Dutch report and Mr Joffe's report was of significance to the case of Mr Goli.

198. Ms Laizer should not properly be regarded as being partial. It was not inappropriate for her to act for claimants and she did not provide reports if they were not favourable. In any event it was clear that she worked for government organisations. She provided a detailed assessment of risk. Her reports also dealt with aspects of the objective evidence put forward on behalf of the Secretary of State. Emphasis was placed on the lack of security and stability in northern Iraq and the instability in the centre and the south and the slightness of the police presence and the influence of the tribal system.

199. Ms Adedeji then addressed us. She took us to aspects of the Country Report relating to such matters as the targeting of Iraqi policemen and the fact that road travel was hazardous. Police quite often ignored court orders. The picture was a bleak one. Militias had been in control in certain areas. She reminded us of the evidence concerning checkpoints. She contended that the evidence did not show that the PUK and KDP did not have a presence in the local police and also this was relevant to the intensity of the checks on the borders. The expert evidence was that there were checkpoints throughout.

200. The Secretary of State had put in very little evidence concerning the tribes. Ability and willingness to protect were different matters.

201. With regard to the particular appeals, Ms Braganza addressed us first in relation to ( ). She referred us to paragraph 12 in the decision of

the Court of Appeal in P and M [2004] EWCA Civ 1640. There was no error of law. The issue of relocation had not been raised until after the hearing before the Adjudicator.

202. As regards Mr ( ), the Adjudicator erred in not granting an adjournment. The Adjudicator said it would be easy for him to relocate and there would be a sufficiency of protection, but there was no reference to the background material. The Tribunal now had Mr Joffe's report on the Goly. The Adjudicator had also applied the wrong standard of proof at paragraph 9.6. It was unclear what, if any, Convention reason there was in the case. As to whether that was material depended upon what issues flowed from what the Convention reason was. The two Conventions could not be used interchangeably. This was a fundamental omission. The determination was entirely unsafe.

203. As to the question of why it was that the appellant's maternal uncle was still running a business and there had been no action against him if the blood feud was extended as it claimed, Ms Braganza argued that the starting point was the Adjudicator's findings. Mr Joffe did not say that every male member of the family would be at risk. The appellant had not been asked about this. There was no basis for the Adjudicator's conclusions. The various points made should not just be considered individually but also cumulatively.

204. Ms Adedeji then addressed us on the specifics of Mr ( )'s case. It was clear that the Jaff tribe were linked with the PUK. That issue had been before the Adjudicator. The issue of PUK protection presupposed that the appellant would be safe from the Jaff tribe but that was not necessarily so. He had told the Adjudicator that the Jaff tribe was very large. The Tribunal was reminded of Ms Laizer's and Dr Fatah's evidence on this also. Ms Laizer had met the deceased, Mr Hamakaki, who was a powerful figure within the PUK and it was therefore less likely that they would be willing to protect Mr ( ). He had a fear of being handed over to the Jaff by the PUK.

205. With regard to the judicial system, the Adjudicator had found that on return Mr ( ) was likely to be acquitted. It was unclear how he came to that conclusion and unclear what the basis was for thinking that there would be a trial. Clearly his cousin Aso had been killed two days after being detained and had not been tried. The Adjudicator had not considered whether the PUK would protect the appellant in the light of his evidence. The determination was flawed and was unsafe.

206. As to whether he would be at risk on return, it should be found that he would be, given the Adjudicator's credibility findings and in the light of the evidence before the Tribunal. The determination was flawed and was unsafe.

207. The PUK had issued arrest warrants, indicating a continuing interest. The Adjudicator had accepted the documents. He had also found that the passage of time did not necessarily diminish the risk to the appellant.

There was enough evidence before the Tribunal to decide, in the light of the Adjudicator's findings, that the appellant would be at risk on return.

208. With regard to the brother who was released, he had not been suspected of complicity, unlike the appellant, and within the PUK the Jaff would be likely to use their influence to get hold of the appellant. The fact of the brother's release by the PUK did not negate evidence of a blood feud in this case. It was a recent matter. The uncle had been killed by Mr Hamakaki back in 1983. The Adjudicator had accepted that the deceased's family retained an interest in the appellant. He was targeted because the Jaff thought he had taken part in the murder and this was a matter that was specific to him, rather than being a matter of targeting all male members of the family.

209. Ms Braganza addressed us again briefly in relation to this issue in the case of Mr ( ). Mr Joffe had said that it might be directed and did not say it would be and it was dangerous to apply too much logic to persecutors. The Tribunal was referred to C2 in the appellant's initial statement where he had said that his sister told him that the Goli had been looking for him and his brother and his father and they were on the wanted list and that was why no one else, for example his uncle, was of interest. The Tribunal was also referred to the appellant's latest statement at paragraph 5 referring to his only other family member being his maternal uncle whom he had tried to contract, unsuccessfully. It could be that the uncle had been targeted. Mr ( ) remained at risk overall. One should not be excessively analytical in assessing the motives of the persecutor. The blood feud could be manifested in different ways and in any event there was nowhere that either Mr ( ) or Mr ( ) could go to escape. If the Tribunal found there was a safe part then it would be unduly harsh.

210. Mr Kovats divided his submissions into three parts. The first of these we have already dealt with, that being the nature of the KRA and its ability to protect as a matter of law. The second concerned the general country guidance issues in the case of sufficiency of protection and relocation, including his views on the witnesses. The third concerned the individual appeals

211. As regards Dr Fatah, Mr Kovats acknowledged that he was clearly very knowledgeable of the area and could be described as an expert witness of knowledge. Also in his oral evidence he had been at pains to be objective and to assist the Tribunal as best he could. Mr Kovats had seven points, however, to make with regard to Dr Fatah's evidence.

212. On a number of occasions he was asked leading questions about the general situation and avoided direct answers and gave examples. This was fair, but it was necessary to note that he had restricted himself to examples and did not say that the examples were necessarily of general application.

213. Secondly, despite his best efforts, it was contended that because Dr Fatah cared deeply about the situation of Iraqi Kurds he was too close to the action to be clearly objective and this had come across with regard to his comments on the significance of the elections and the position of the Kurds, and the Tribunal was referred to page 39 of the appellant's bundle at paragraphs 214 and 215 with his comments on genocide. It could be an understandable personal fear, but it portrayed an emotional response. The same comment could be made about the election and how it had proved the United States wrong with regard to Mr Allawi.

214. Also Dr Fatah had accepted that relocation within the KAA would be possible if there were no problems with the parties. There would be problems with bureaucracy but it was possible.

215. Understandably Dr Fatah's knowledge of Iraq outside the KAZ, at least as regards recent events, was limited. This could be contrasted with his knowledge of the KAZ, though Mr Kovats accepted that he did speak to people.

216. Dr Fatah accepted that the KDP and the PUK were well aware that they needed to show the outside world that they could run a respectable government and protect human rights. The situation in Turkey could be compared to this. They would not be likely to jeopardise matters on the human rights front. He had also accepted that the PUK and the KDP were not fighting each other, even if they did not trust each other very much.

217. If, as Dr Fatah said, the reach of the KDP and the PUK extended throughout Iraq, then it must follow that that reach extended to the provision of protection throughout Iraq. These were two sides of the same coin. The figures were that there were some 3.8m Kurds in Kurdistan and 1.2m outside Kurdistan so that one was talking about a lot of people.

218. Finally, with regard to Dr Fatah, the security concerns within Kurdistan at present were fears by the authorities of Islamist insurgents and to a lesser extent disgruntled, displaced Arabs whose properties had been occupied. The concerns were therefore not focused on fellow Kurds. The Tribunal was referred to pages 358 to 359 of Mr Kovats' bundle. As regards whether the Islamists in question were not Kurds, it could be that the word 'Kurd' was being used in two different senses and Islamists could be Kurds, but there were also people who saw themselves primarily as Kurds in contrast to those who saw themselves primarily as Islamists.

219. As regards Ms Laizer, Mr Kovats regarded her as a far less satisfactory witness and he argued that she was not sufficiently objective to be an expert. He had six points to make on her evidence.

220. The first was that she had shown a lack of objectivity in her answer about the political influence of the judiciary. Initially in evidence she said that an example of this was the assassination of a judge and he had put to her that it was a different issue and she had either failed to understand or did not accept this.

221. Secondly, she had a tendency to make unsupported assertions. With regard to the 2003 US State Department Report which he had taken her to, and the reference to independent observers, she criticised them but she did not know who they were.

222. There was also a certain inconsistency in her evidence. She had relied on a lot of old examples from 1991 etc. and her recent examples tended to be of attacks by Islamists and not Kurds, yet she could not accept that any weight should be attached to the 2000 Dutch report. This was compounded by the fact that her own evidence, as she accepted when he had put it to her, was that one could not generalise and it came back to the specific case, but she would not accept this from the Dutch report at page 40 at the top.

223. Some of her criticisms were captious, for example her criticism of the April 2000 Dutch report for failing to mention the killing of five people though this had occurred some months later in July.

224. Her knowledge was not of the order of that of Dr Fatah. For example, she could not say how many Kurds lived in Iraq outside the KAZ.

225. Also some of her answers revealed a partial attitude. For example concerning her very extensive work on human rights cases, she seemed surprised when he had asked her if she had worked for governments and her comment relating to whether she should be working for 'the aggressor' should be noted, and she had criticised the UK/Danish or the Dutch 2004 report as they had not even bothered to go to the country and this was untrue as could be seen from page 225 and page 363.

226. Mr Kovats then moved on to the documentary evidence and he relied on the references made in his skeleton argument. He highlighted particular matters, for example paragraph 3.17 of the Country Report. A lot of people had returned to Iraq since the overthrow of Saddam Hussein's regime and this was a factor of considerable weight. Also the UNHCR reasons for not encouraging repatriation were logistical rather than being safety related and this was important in considering the position.

227. With regard to the individual appeals, Mr Kovats addressed us first on Mr ( ). He accepted that the reasons for refusal letter did not address relocation elsewhere in Iraq, and there had been no Presenting Officer before the Adjudicator. He argued however that P and M could be distinguished in that it was confined to its own facts whereas this was listed as a country guidance case. The Nationality, Immigration and Asylum Act 2002 allowed the Tribunal to have regard to matters arising after the Adjudicator's decision, at s.102, and it must follow that the Tribunal could when appropriate determine matters of law by reference to matters not before the Adjudicator. P and M had been a 1999 Act case and s.102 did not apply.

228. As regards risk in Mr ( )'s case, the Tribunal was referred to paragraphs 22 and 23 of the determination. There was no finding in the

appellant's favour on the question of risk of a blood feud from two families. Nor was there any suggestion that he was ever privy to any sensitive information and he did not suggest that he had ever photocopied anything sensitive and all the evidence pointed to him being a very low level operator. On his own case he did not know what the confidential information was that he was supposed to have passed on and the Tribunal could not speculate, so there was no evidence that such information was ever passed on. The passage of time should also be borne in mind and it was for the Tribunal to consider whether it was a continuing live issue, especially in the context of relocation from the KDP to the PUK area. He was entitled to a finding on risk and if he got over that, the appellant could relocate.

229. With regard to Mr ( ), the Adjudicator raised the question of Convention reason but did not answer it. The Tribunal was referred to the decision of the Court of Appeal in Skenderaj [2002] 4AllRR 555. It was necessary to form a judgment as to whom it was the appellant claimed to fear especially whether it was the family, as was contended on behalf of the Secretary of State, or if it was a different entity, then what that entity was.

230. As regards relocation, the Adjudicator had dealt with this and protection together and the findings should stand other than the erroneous Gardi point.

231. On the question of sufficiency of protection, Ms Braganza had argued that it was inconsistent to find that he could relocate but this was answered at paragraph 9.5 of the determination and it was a sound judgment on the facts. The fatal shooting had been done by the appellant's brother. Dr Fatah had been in error with regard to that as he believed the appellant did the shooting. The appellant had two other brothers and he did not say that they or his four sisters had fled.

232. In his statement of 16 February 2005 he had heard nothing about his father and the brother who had fled and said nothing about the other brother but referred to the maternal uncle. At least there was an uncle and possibly a brother who had stayed put. He was not suspected of being complicit in the murder so he was at risk only from the family connection.

233. Dr Fatah had declined to say that the Goli tribe were more important than the Barwary and said that both had political influence with the KDP. They were both localised, he had accepted.

234. As regards the reliance placed on Mr Joffe's evidence, the Tribunal was referred to what had been said in GH on Mr Joffe who had been said not to be sufficiently objective. Even when looked on its merits, his report was unsatisfactory and it was hard to see how he got from paragraph 1 to paragraph 5, and the report lacked reasoning.

235. As regards the adjournment point, he had sought to get legal advice and not evidence and it was known that the solicitor's letter was dated 28 October and the hearing was on 11 November which had given him ample

opportunity to seek fresh legal representation or ask for the assistance of his previous solicitors concerning the approach to the appeal. He should not have been treated as someone on his own with no opportunity to put a case together. There was no evidence to the Adjudicator to indicate that an adjournment would have assisted.

236. With regard to the appeal of Mr ( ) and the question of sufficiency of protection, he did not fear the PUK as such but the influence of Mr Hamakaki's family. His own case was that although the PUK had issued a warrant he did not fear them but Mr Hamakaki's family. There was a Convention reason issue there.

237. Dr Fatah had said that the Jaff were an amalgamation of subclans and groups. It was known that the PUK had arrested Mr ( )'s brother and released him after a few hours and he had not been handed over to Mr Hamakaki's family. Also it was now the case that two members of Mr ( )'s family had been killed and one upon the other side so there was no obvious reason to continue the feud. Apparently there had been nothing since 2000 with regard to continuation of the feud.

238. Taken together, the Adjudicator had a sound evidential basis for his conclusion that the PUK would protect the appellant and it was their duty to do so as the government of the area

239. As regards the reach of the PUK outside the KAA, they could harm and they could protect and he referred the Tribunal to page 15 at paragraph 70 of Dr Fatah's report of 3 January 2005. The Tribunal should not ignore Dr Fatah but have caveats about his evidence, but Ms Laizer's evidence should be disregarded.

240. In reply, Ms Braganza contended that it was very serious to make findings that the experts were partisan or partial. Both were well aware of their duty to the Tribunal and of their role as experts. The way in which Mr Joffe's evidence had been treated in GH was irrelevant to Dr Fatah and Ms Laizer. It was not only a question of their oral evidence but also their expert reports and they needed to be assessed for the weight to be attached to them. Dr Fatah had been criticised for one line referring to 'genocide' and this should not lead to a condemnation of his evidence even if it was thought to be a warning he should not have made. He should not be found not to be reliable or to be relatively valuable only. Indeed Mr Kovats relied on what he said at the time. He had given answers by example and he explained that he did not make bare assertions and the points were set out in his report which should be read together. The examples given by Mr Kovats did not show that being close to the action made his evidence unreliable. He could not be selective with his evidence. As regards the contention that he had limited experience of the situation outside the KAA, the Tribunal had his full CV and the extent of his visits and could assess his reliability.

241. Ms Braganza disputed the point concerning reach and protection as being two sides of the same coin. Reach was communication and a network and was not the same thing as protection.

242. As regards Ms Laizer, the Tribunal had her full CV and background. As concerned the contention of 'bare assertions' these were supported by evidence and examples and again her oral evidence supplemented the written reports.

243. With regard to the point concerning what she said about the 2000 report, she had explained her past historical experience and the Tribunal would need to go back to the evidence and she had explained the context. The same people had been running the judiciary so there was no change. With regard to the complaint that she lacked knowledge of the number of Kurds outside the KAZ as being indicative of a lack of knowledge generally, she had been asked to deal with specific issues and the point was irrelevant.

244. Only one basis had been put forward for the suggestion that she was partisan and this was the ECHR point. She had not been asked if she worked for the respondent government and the government was the aggressor in those actions and they were actions against the state so it was an accurate description. It was not a matter of weight and was for the Tribunal to assess. It was asked however that the Tribunal accept both experts' evidence.

245. As regards the point concerning P and M in Mr ( )'s case, the same point must apply here. The evidence remained the same. The country guidance point in that regard was irrelevant, it was still necessary to identify an error of law. As regards the suggestion that he was of low level, it should be noted that two of his colleagues had been shot so it had been treated as a very serious matter, and the Tribunal was referred to Ms Laizer's evidence on this. It was a question of how he was perceived, and it was as a traitor. He would still be of interest.

246. As regards Mr ( ), Skenderaj could be distinguished as a case involving purely a family against a family. This was a tribal land dispute and an incident between the two which had evolved into a tribal revenge killing. The Tribunal was referred to paragraphs 16, 18 and 24 in Skenderaj. The Barwary were not just a family unit and there did not need to be a general blood feud between the two sides.

247. Ms Braganza put in a decision of the Court of Appeal in Liu [2005] EWCA Civ 249 and referred us in particular to paragraph 12. She went on to make the point that the fact that not all Barwary were persecuted was not a problem. As to the question of the causal link and whether it was the land ownership and not the membership of the tribe that was the reason, she argued that it was a changing set of events even if the land was the triggering event. Tribal intervention escalated the triggering event.

248. In her final submissions Ms Adedeji referred to the Adjudicator's findings with regard to looking to the PUK for protection. What had happened to

the cousin was very important. He was detained by the PUK a day after the killing and a day later he was dead. Mr ( ) risked being given no opportunity to explain or prove his non-involvement, given the perception. It had never been suggested that the brother was involved. The PUK would still be able to reach the appellant if he relocated elsewhere. His evidence had been to link Mr Hamakaki to the Jaff tribe and the Tribunal was referred in particular to paragraphs 34 and 35 of the determination.

Determination and Reasons

249. We have found it convenient in structuring our determination to follow broadly the approach adopted by Mr Kovats in his submissions of providing first of all some comments on the evidence of the two experts from whom we heard, next setting out our views on the general issues of country guidance which are before us and then finally going on to consider the three individual appeals.

250. We agree with Mr Kovats that Dr Fatah was in general a witness who showed a good deal of knowledge of Iraqi affairs, especially as regards the situation in the north, though perhaps inevitably his up-to-date assessment of the situation outside the north is more limited, though we bear in mind what he says about the regular contacts he has and the ways in which he keeps himself up-to-date. We bear in mind the point made by Ms Braganza that it is difficult for an expert who may on the one hand have it said that he is too close to the action and too involved such as to lack objectivity, and on the other hand that he may have inadequate knowledge and therefore be of reduced assistance in that regard. On the whole we consider that Dr Fatah's evidence can be taken as being reliable. We note the extent to which his reports are sourced and that clearly assists. We do however find ourselves in agreement with Mr Kovats that at times in Dr Fatah's evidence his commitment to the Iraqi Kurds gave the impression of affecting his judgment. This is in particular found in his comments at paragraphs 214 and 215 of his first report. These comments are made in the context of a section headed 'The Prospect of Iraqi Election for Kurds' and no paragraphs in that section are sourced. In paragraphs 214 to 215 Dr Fatah surmises that the Parliament were mostly Shia and Shia concepts are not compatible with democracy and voting and they simply watch the lips of the Ayatollahs to give fatwas and those fatwas will become decrees. He speculates that one of these fatwas could be genocide of infidel Kurds. He goes on to state that the Iraqi Parliament via a democratic process can deprive all the rights the Kurds gained and that Kurds have no international protection. He states that the Kurds are back to square one; look for an Arab solution to the Kurdish issue. He goes on to state the following 'And we all know, throughout painful history, what this means, genocide'.

251. We do not consider that this paragraph demonstrates objectivity. It may well reflect Dr Fatah's private concerns about what may happen to Kurds in Iraq, but it is not sourced evidence and as such must be taken as detracting from the overall view that we could otherwise come to that he is

an objective source of information on the situation in Iraq. We regard as being of lesser significance the point made by Mr Kovats concerning Dr Fatah's views on how the election proved the United States to be wrong with regard to Mr Alawi. It was perhaps not a wholly objective comment, but it does not detract in any material way in our view from the general weight to be attached to his evidence.

252. We turn to the evidence of Ms Laizer. Mr Kovats made a number of points as a consequence of which he invited us in effect to ignore her evidence. We consider that a number of the points he made are well taken. We do have a concern at her reference to the government in the European human rights cases in relation to which she has advised as being 'the aggressor' as indicative of a partisan attitude. The criticism of the UK/Danish and Dutch Reports on the basis that they had not been to Iraq is not made out. That again is at best careless and at worst indicative of partisanship, or at least an element of unwarranted contempt for the processes by which the reports were written. We were also concerned by the fact that she criticised the independent observers referred to in the 2003 State Department Report and yet she did not know who they were. We also would have expected her to have some idea of the number of Kurds outside Kurdistan. The criticism of the April 2000 Dutch report for failing to contain comment on matters that had occurred after that report was written was again a matter that flawed her evidence. There is, we agree, an element of inconsistency in criticising the 2000 Dutch report for lacking weight and being based on out of date information when it was the case that the same was true of a number of elements of her evidence. We did not find persuasive her explanation that she deals with the roots of the social and political structures and has known these people for years. She appeared to be drawing an unwarranted distinction between her techniques and those employed by the writers of the reports. We agree also with the point made by Mr Kovats that she demonstrated a degree of a lack of objectivity in her response to the questions about political influence on the judiciary using the example of assassination of a judge in this regard and did not find her response when it was put to her in cross-examination to be satisfactory.

253. We bear in mind of course the points made by Ms Braganza concerning Ms Laizer's experience and the degree of first hand information and the nature of the sources which she uses to inform her evidence. It is of course the case that a good deal of what she says is uncontentious. We do not consider it appropriate to go as far as Mr Kovats invited us to do in disregarding her evidence in its entirety, but we consider that it must properly be regarded with a significant degree of caution given the specific flaws in her evidence which we have identified above.

254. The final matter which we should address before moving on to our assessment of the specific issues, is the Tribunal Country Guidance decision in GH. We agree with Mr Kovats that this should be regarded as a starting point for the consideration of the country position, given its status as a relatively recent and very thorough assessment of a number of issues concerning the situation in Iraq. Having said that, we bear in mind

the point made by Ms Braganza and Ms Adedeji that the situation in Iraq is fluid and in a state of constant evolution, that there were different experts before the Tribunal in GH and the issues there were in a number of respects different. Nevertheless the Tribunal commented on a number of issues which are relevant to the appeals before us and of course, as we have set out above, provided a very thorough and careful assessment of the issues on the first point before us, for which we are indebted.

255. We move on to consider the issue of sufficiency of protection. The issue of course does not arise if no real risk is found to exist, but that is a matter which we consider is more properly addressed with regard to the individual appeals before us when we come on to them.

256. In GH the Tribunal assessed the evidence before it as indicating that the general picture was one of comparative stability in Kurdistan in a region under a common administration with a functioning security and judicial system. The Tribunal gave specific consideration to the views of the UNHCR in a letter of 6 May 2004. The Tribunal concluded that the views set out in that letter represented a substantial extension of the obligations of signatories to the Refugee Convention into far broader general humanitarian considerations. Among other things they ignored the fundamental principle that the burden of proof was on the asylum claimant and that the effect of the judgment in Horvath [2000] INLR 149 was directed to the general question of whether the relevant state authority provides a general system of protection to its citizens which it is willing to enforce by appropriate criminal sanctions without discrimination. The UNHCR letter was regarded as proposing a system which guaranteed the protection of an individual claimant which in the view of the Tribunal sought to impose far too high a burden on the state authority. To that extent the views of the UNHCR did not reflect the asylum and human rights jurisprudence of the United Kingdom courts. The Tribunal went on to conclude at paragraph 126 that those representing the lawful authorities in Kurdistan were currently providing a sufficiency of protection against Islamic extremists and terrorists.

257. It is of course the case that the issues before us do not concern protection from Islamists or terrorists. The specific concerns are firstly, in the case of Mr ( ), that he remains of interest to the KDP who wrongly suspect him of passing confidential information to the PUK, and also fear of the family members of his two colleagues who were killed; in the case of Mr ( ) to be at risk from members of the Goli clan to whom he fears he might be handed over by the KDP; and in the case of Mr ( ) that he fears that the PUK who issued arrest warrants concerning him would hand him over to the Jaff clan subsequent to the killing by his cousin Aso of Mr Hamakaki, a prominent member of the PUK and member of the Jaff clan.

258. As we have set out above, we consider that the authorities in the KAA are capable of providing protection as a matter of law under the Refugee Convention. The question must then follow, what the situation is as regards protection as a matter of fact. It is not without relevance that the

Tribunal in GH found that the authorities were able to provide a sufficiency of protection against Islamic extremists and terrorists. That was a finding on the factual ability of the authorities and not just on their ability as a matter of law. As we have noted, this is however far from being determinative of the issue of protection in these cases, given the significant links between tribes and political parties in Kurdistan, which has clear relevance to the situation for Mr ( ) and Mr ( ), and of course Mr ( )'s concerns are that he is at risk from the KDP itself as well as from the family members of his colleagues. The two issues cannot be separated in the sense that in our view the extent to which protection can or may be provided in the KAA will depend upon the nature of the risk in connection with which protection is sought. The points we have set out above from GH in this regard provide an example of that. We see no reason to disagree with the views expressed by the Tribunal in GH concerning the ability of the authorities in the KAA to provide a sufficiency of protection against Islamic extremists and terrorists.

259. What however of the situation for a person who for whatever reason has fallen foul of the PUK or the KDP? The first question must be how a person who is from the KDP or PUK will be treated within his or her own area. The point is made in the Country Report at paragraph 5.49 that the judiciary in the KAA is generally independent, and the KDP and PUK have established human rights ministries. The US State Department Report of 2003 notes, as we have set out above, that the KDP and PUK have committed human rights abuses in the past and indeed there have been reports that they still torture detainees and prisoners. It is however the case that prior to the fall of the regime they both enacted laws establishing an independent judiciary and generally observed such laws in practice and in addition both have set up human rights ministries to monitor human rights conditions and submit reports to the relevant international bodies to recommend ways to end abuses.

260. The Secretary of State's bundle also contains the Radio Free Europe article of 15 September 2004 quoting the Chief Justice of Kurdistan, Judge Latif Mahmood, who said that in Iraqi Kurdistan for many years they had had a well functioning judicial system. He said that the judicial system is in place, a democracy is in place, there is a parliament in Iraqi Kurdistan and a judge is free to make rulings in accordance with his own convictions and without external pressure.

261. By contrast, in the joint report of Dr Fatah and Ms Laizer, a more negative picture is painted. In their evidence they both emphasised the distinction between the civil judiciary system in Kurdistan and the system where political and security matters are involved. There is a police force which comes under the civil judicial system but security deals with other issues. They interviewed Judge Razgar, who said that the civil judicial system might be 'independent' but it had been marginalised in the sense that there was no budget for the work and a lack of training. He was asked if outside forces such as the parties or the security services interfered with the legal processes of the court, and replied that no one had ever given

him instructions about what to do, but he said that the security forces were more influential than the judiciary because the party system depended upon this. He said that the police were basically corrupt but not particularly influential. By contrast Judge Shiyu said that there was external interference in the work of the court and gave examples. He did not accept that a judge could challenge party decisions. He did not consider that a party leader who committed an offence such as manslaughter or murder would be held accountable before a court. Ms Laizer was somewhat dismissive of what was said by Judge Mahmood and stated that he could not be expressing his entire experience and considered that people were required to speak in the way that he did.

262. For ourselves, we can see no reason why Judge Mahmood should not have said what he did. No doubt the experience of the judges in Kurdistan will differ from person to person to an extent, but we bear in mind the fact that he is the Chief Justice of Kurdistan, and we consider that weight must be attached to what he said. We bear in mind also that Judge Razgar made it clear that no one had ever instructed him about what to do, though we do note the point he made about the influence of the security forces.

263. We also attach weight to what is said in the Dutch report of April 2000. This represents to our mind a balanced view of the judicial process in the north, and we have no reason to suppose that there has been any significant change since that time. The point is made that it is difficult to determine the extent to which individual judges are genuinely politically independent. The report also deal with blood feuds and vendettas. We have already mentioned the references in it to the situation in the KAA where it is said that in addition to the judiciary, a relatively large number of cases involving blood feuds and similar inter-tribal problems involve the families and tribes. Tribal chiefs are often called in to reach a settlement without any need for a magistrate to intervene and blood money and/or marrying off women are ways in which conflicts are commonly resolved. Settlements are also brought about between families, clans and tribes concerned, by the intervention of the PUK and the KDP who will endeavour to ensure that due judicial process operates and a court's judgment is in fact accepted. With regard to this, Ms Laizer made the point that the KDP and PUK would intervene if it was in their interest. She contended that this report was too general, if the party wanted the matter to go to court then it would, otherwise they would leave it to the tribes.

264. In our view, the evidence indicates that a significant number of cases will end up being dealt with by the ordinary courts, and in regard to such matters we conclude that the courts are generally independent. Otherwise, it would seem that matters raising inter-tribal problems are likely to be dealt with by negotiations involving either the tribal chiefs or intervention by the PUK or KDP authorities. It is also relevant to note, at paragraph 3.30 in the September 2004 British/Danish Report, that traditional tribal justice and other forms of conflict solution are accommodated in the articles of the penal and criminal procedure codes that deal with reconciliation, and (paragraph 4.3 and 4.4 of the same report) the tribal system of conflict solving, most common in the southern

parts of Iraq, is seen as surprisingly effective. It may be that a person from the KDP area who has fallen out with the KDP would face problems of a kind where of course questions of sufficiency of protection would not arise because it was a problem that he experienced with the authorities in his own area. Though much would depend on the nature of the problem he had with the authorities in his own area, we consider that if such a person was of significant interest to the authorities on account of perceived or actual disloyalty or political dispute, there is a real risk that he would experience persecutory ill-treatment. This situation is of relevance of course to the appeal of Mr ( ). If the problems are from Islamist extremists or terrorists or raise general issues involving the criminal law, then we are satisfied that there is a sufficiency of protection from the authorities in the KAA as a question of fact.

265. We move on to consider the situation where a person such as Mr ( ) or Mr ( ) claims problems arising out of tribal conflict. We have set out above the points made in the Dutch report of 2000 in this regard. We note Dr Fatah's disagreement with the statement in that report that the KDP and PUK would endeavour to ensure that due judicial process operates and a court judgment is in fact accepted in cases where tribal chiefs cannot agree or in the case of particularly serious criminal offences. He did not however elaborate on his reasons for disagreement. For ourselves, we can see no reason to disbelieve what is said in the Dutch report in that regard. Ms Laizer's evidence was that a key question was the relationship between the tribe and the party. If the tribe were an essential part of the party then it would not want to offend the honour of a valuable man but if it was a lesser matter the party could deal with it. The question of whether honour was at issue was of relevance. The party might be more likely to take over if it was not a matter of a dispute between rival tribes.

266. We do not read Ms Laizer's evidence as significantly disagreeing with the Dutch report of 2000, and insofar as it does, we prefer the views of the Dutch report. We bear in mind the concerns we have expressed above about Ms Laizer's evidence. In our view the matters set out at page 39 of the Dutch report set out the situation not only then but as of now, since we have no reason to suppose that the situation has changed since then, no evidence in that regard having been brought to our attention. On the whole, therefore, we consider that inter-tribal and clan disputes are, in a significant number of cases, likely to be resolved either by settlements negotiated by tribal chiefs or as a consequence of intervention by the PUK and the KDP authorities. We accept that in the case of a powerful tribe whose honour is seen as having been affronted by the actions of a particular person, the party might in such a case not intervene, but we would consider that case to be very much the exception rather than the rule. It is important to bear in mind the point to which Mr Kovats adverted in his submissions of the importance to the PUK and the KDP in showing the outside world that they can run a responsible government and pay proper attention to human rights matters. It is not unreasonable to infer that they would not be likely to espouse policies damaging to their efforts to establish their human rights credentials.. That is in no sense a

guarantee that they will always scrupulously observe the protection of human rights, but it is nevertheless a factor of some materiality as part of the general context of life in the KAA at present.

267. We turn to the question of relocation within the KAA. This is most likely to arise in the case of a person who has problems within for example the KDP area and raises the question of whether he or she could be expected to relocate to the PUK area.

268. In GH the Tribunal noted that it might be the case that personal differences still existed on the basis of what took place during the period when the KDP and PUK were opposed to each other during the mid-1990s such that in some cases some people from the PUK area could not live in the KDP area and vice versa, but concluded that the degree of current cooperation and common cause which the parties have did not, in the Tribunal's view, support the contention that there could not be a general freedom of movement within Kurdistan. As we have seen, the Tribunal was also critical of the UNHCR's views on relocation. Those views are further set out in some detail in the January 2005 report to which we have referred above. It is important to bear in mind that the UNHCR's views are predicated on the circumstances of an individual case and refer to relocation as an alternative that may be neither a relevant nor a reasonable option. The UNHCR express the view at 1f of the appellant's bundle in this report that within the KAZ Kurds from KDP controlled areas will face serious difficulties relocating to PUK areas with the converse also being true. It is said that inter-factional rivalry means that persons originating from the opposing faction's areas will be viewed with suspicion and hostility and therefore individuals fearing persecution from one faction will not be able to find safety in the areas dominated by the other. This is in many ways an effective précis of the views of Dr Fatah and Ms Laizer, who also, as can be seen, provided detailed evidence particularly arising from their joint report concerning checkpoints in Kurdistan and the kind of questions that are asked of people when seeking to move around within that area. As against that the October 2004 Country Report noted that there is freedom of movement and indeed tourism within Kurdistan. The September 2004 British/Danish report was advised there was no evidence to show whether the PUK and KDP persecuted each other's members. In this context it is also relevant to bear in mind, as is pointed out at paragraph 6 at 1e of the appellant's bundle, taken from the UNHCR Report of January 2005, that there are large Kurdish populations in other governorates in the north of Iraq such as Mosul and Kirkuk which would technically fall under the jurisdiction of the interim government as it was then in Baghdad, and cannot be described as being assimilated to the situation of the KAZ. It is also said that the situation in Mosul and Kirkuk has been very tense in recent months. The point is made that individuals must possess documentary proof of former residence in order to be allowed to cross into northern Iraq through the checkpoints. It is said that safe and practical access to Mosul and Kirkuk is generally not problematic but the area is not legally accessible to all Kurds since in particular Kurds from the KAZ face legal difficulties in accessing the area as the documentation they possess may have been issued by the KAZ authorities and as such would not be

recognised by the local authorities of other areas. It is said that people such as Kurds originating from elsewhere who are unable to prove past links to Kirkuk would have difficulty in legally accessing the area, as priority would be given to former residents who wish to return.

269. We do not read that as indicating that the kind of risks which have been described for a person going from the KDP to the PUK area or vice versa would exist. There may well be difficulties in such cases, but we consider that the evidence set out in the UNHCR document does not show either a real risk that such persons would be persecuted or that the conditions they would face would be such as to give rise to a real risk of their human rights being breached.

270. Much of the argument before us was essentially related to the problems that would be experienced as a consequence of the information that would have to be given at the various checkpoints. We bear in mind in this context the views of the UNHCR that we have already set out above of the suspicion and hostility that a person from a KDP area going to the PUK area would face, and vice versa. Dr Fatah in his oral evidence and in his joint report with Ms Laizer referred to the fact that the PUK and the KDP both give temporary IDs to a person entering their area and there would be questions about the person and their background and where they came from and where they were going to.

271. Though we accept that there is likely to be suspicion of a person going from a KDP to a PUK area or vice versa, if, as we accept is likely to be the case, it is discovered that they are from the other area, we do not consider that it can properly be said that a person being viewed with suspicion and hostility can be said to face a real risk of persecution or breach of their human rights. That must be, however, subject to the proviso that it would depend upon the nature of the information about the person concerned that was forthcoming. If they had been previously a significant thorn in the flesh of the party into whose area they now sought to move, then we can envisage that they might face real and potentially serious difficulties. As regards the question of whether such a person, which is perhaps the more likely situation, could move to that area to escape problems in the other area, we can see no reason why the PUK would feel impelled to return to the KDP a person who had fallen out with them. The weight of Dr Fatah's and Ms Laizer's evidence, and also that of the UNHCR, was that the PUK and the KDP essentially operate two systems in the north, the inference being that such cooperation as exists is essentially at a high political level. The situation on the ground would appear to be significantly different, and the evidence does not indicate a real likelihood of it being seen to be in the interests of, for example, the PUK, to return a KDP man to his area. They might regard him with some suspicion, but given his reasons for leaving his area we see no real risk of anything more than suspicion.

272. We consider next the issue of relocating away from the north to southern or central Iraq. We bear in mind that it is likely that a claimant refused

asylum may well be returned to Baghdad, but that is of course not guaranteed.

273. The first issue is that of the reach of the PUK and KDP outside the north. The view is expressed in the British/Danish Fact Finding Mission of September 2004 that Kurds from the northern part of the country could resettle in areas outside the Kurdish controlled zone and that every ethnic group could resettle in the Baghdad area which was described as being a real multi-ethnic and multi-religious city. Evidence from the Foreign & Commonwealth Office in the form of a letter of 22 February 2005 indicates that there is an unknown number of Kurds living in southern Iraq and that there was no evidence to suggest that Kurds in the south were at increased risk from attacks. The evidence suggests that there are something over one million Kurds living outside the north.

274. Dr Fatah's evidence was that it depended upon the person and that in any event he could not just choose to go and live away from the north. A Kurd would experience a lot of difficulty. In general they did not speak Arabic and they were very localised and their religion and culture were different and they lacked a party political affiliation in the south and would be suspect, for example, in Baghdad where questions would be asked as to why they had moved there and they could be reported to one of the groups. They were also seen as being better off than Iraqi Arabs and were at risk of kidnap and also were adversely regarded on account of their perceived association with the multinational forces.

275. Though we bear in mind the difficulties described by Dr Fatah, and also by UNHCR at paragraph 16 at page 1f of their report, and confining our comments for the moment to the situation where a Kurd does not have problems with the PUK or KDP, we do not consider that the evidence shows that relocation would be unduly harsh or give rise to a reasonable degree of likelihood of breach of the individual's human rights. What is said by Dr Fatah and the UNHCR and Ms Laizer also on this point has to be seen in the context of the very large number of Kurds who live outside the north and including the very significant numbers in Baghdad.

276. We consider next the question of the reach of the KDP and/or PUK outside northern Iraq. In this regard Dr Fatah referred to the increasingly national role played by the two parties. Up to date they provided security for the capital. They now of course have seventy-seven MPs in the Iraqi parliament and are the second political force in the country after the Shia and the new president would be the head of the PUK. They are now an Iraqi political force. As a consequence he did not think that there was any part of Iraq to which the parties would not be able to extend their reach if they were interested in a person. This was true of both the PUK and the KDP.

277. As we have seen, Ms Laizer agreed with Dr Fatah on this. The ID card system would enable a person's entire family history to be discovered. Everyone knew who everyone else was and questions were always asked about strangers.

278. We consider, however, that this must depend upon the record that the person has. The degree of interest that the particular political party has in them must surely be a factor in assessing the likelihood that the system of checks referred to would reveal a person in whom the party had a significant interest. We do not consider that the evidence shows that, even bearing in mind the national role that the PUK and the KDP now have, they in any sense exercise or propose to exercise their powers with a view to identifying people in whom they have an interest outside the north. The bald statement by Dr Fatah at paragraph 78 of his third report at page 71K of the bundle that the PUK and KDP can reach throughout Iraq via the police and judicial system, does not indicate the ways in which he believes that reach would be effected. No doubt they have their own judicial system and police and armed forces in the north, but we do not consider that the evidence substantiates the contention that they have the kind of reach described by Dr Fatah and Ms Laizer. We consider the evidence is lacking in this regard. There are systems with a relative degree of sophistication to enable checks to be made in the north, but we do not consider that it has been shown that similar systems exist in the south and that a person relocating, for example to Baghdad, would come across the kind of system of checks that would mean that the details would be passed on to the PUK and or the KDP simply because he was a person from that region and that as a consequence this would be followed up by them leading potentially to adverse consequences to him.

279. In conclusion, on the general issues, we consider that the authorities in the KAA are able as a matter of international law to provide security and protection to the inhabitants of that regime. We also conclude that there is a 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. 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.

The individual appeals

280. We turn to the individual appeals. The difficulty that the Secretary of State faces in the case of Mr ( ) is that, as Mr Kovats accepted, the issue in relation to which permission to appeal was granted, that of the failure of the Adjudicator to deal with internal relocation, was not raised in the reasons for refusal letter and nor, given that there was not a Presenting

Officer in attendance before the Adjudicator, was it raised before the Adjudicator.

281. At paragraph 34 in its judgment in P and M [2004] EWCA Civ 1640, with reference to a similar failure in that case on the part of the Secretary of State to rely on the issue of internal relocation prior to the appeal to the Tribunal, the Court of Appeal expressly considered whether the Secretary of State should be permitted to raise the issue on appeal. In the view of the court, unless an explanation was put forward by the Secretary of State as to why the issue was not raised earlier, the Tribunal should be slow to allow such an issue to be raised on appeal. As we have noted above, Mr Kovats, having accepted that the reference to relocation in paragraph 16 of the refusal letter referred only to relocation elsewhere in the KAZ, argued that P and M was confined to its own facts whereas Mr ( )'s case with the others was listed as a country guidance case. This is a reference to paragraph 35 in P and M where the Court of Appeal stated that it did not ignore the fact that it was an important part of the role of the Immigration Appeal Tribunal to give guideline decisions which thereafter should be borne in mind by Adjudicators who were required to determine similar issues. There was nothing in the Immigration Appeal Tribunal's decision in that particular appeal however to suggest that it was purporting to set out any such guideline approach. The court went on to say that certainly before any such guidelines could properly be made there must be clear evidence to support a decision that it was intended to influence the decisions of Adjudicators generally and that evidence was not available to the Immigration Appeal Tribunal.

282. Mr Kovats also made the point that P and M arose under the Immigration and Asylum Act 1999, whereas s.102 of the Nationality, Immigration and Asylum Act 2002, which governs the appeals before us today, allows the Tribunal to consider evidence about any matter which it thinks relevant to the Adjudicator's decision, including evidence which concerns a matter arising after the Adjudicator's decision. He argued that there was an intention that the Tribunal could identify an error of law by reference to factual material not before the Adjudicator.

283. In our view there is a clear distinction between evidence concerning a matter arising after the Adjudicator's decision and our jurisdiction to interfere with the Adjudicator's determination only if an error of law is shown in it. We have not been offered an explanation as to why the issue of relocation was not raised earlier. It may be surmised that relocation outside the KAZ did not form a part of the reasons for refusal letter since at that time the Secretary of State was not proposing to return Iraqi Kurds to anywhere but the north. But the hearing before Mr White took place in October 2003, well after the downfall of Saddam Hussein's regime, and no submissions were put in to suggest that relocation was now a feasible alternative. The Court of Appeal in P and M at paragraph 33 expressed the view that to expect the Adjudicator to determine the issue despite the fact that it was not raised before her in that case was to place an unnecessary and inappropriate burden upon her and upon the appellant who appeared before her. To our mind that reasoning applies equally to

the situation before Mr White. We do not consider that it can properly be argued that there is an error of law in his failure to deal with internal relocation given the comments of the Court of Appeal in P and M on this. It is not a matter arising after the Adjudicator's decision. The issue of relocation and the possibility of relocating to the south was clearly an issue that existed prior to the decision of the Adjudicator and at that time, and we do not consider that s.102(2) of the 2002 Act has any relevance to the point.

284. Nor do we consider that there is merit to the argument that a proper distinction can be drawn between Country Guidance cases and non-country guidance cases in this regard. The comments of the Court of Appeal at paragraph 35 in P and M cannot in our view properly be read as limiting what the court had said at paragraphs 33 and 34 about the inappropriateness of the issue of relocation being raised as late as the appeal before the Tribunal. We do not consider that it can be said logically to follow from the fact that a case is a country guidance case that that can in some sense turn a matter which is not an error of law otherwise into an error of law.

285. Accordingly we have concluded that the Secretary of State has not identified an error of law in the Adjudicator's determination in the case of Mr ( ). The appeal is accordingly dismissed.

286. However, since the issues raised in that appeal have both some general significance as noted above and relevance to the more specific situation of a person who has fallen out with the KDP on account of suspicion of collaboration with or assistance to the PUK in the past, we consider it is relevant to set out what our findings in this regard would be had we not concluded that there was no error of law in the determination.

287. The Adjudicator found that Mr ( ) would still be of interest to the KDP, and there is no challenge to his findings in that regard. The question arises then of whether, on the one hand he could relocate to the PUK area, or on the other hand whether he could relocate elsewhere in Iraq. We consider that it is not without relevance to bear in mind that the events in question occurred in 1999, and we agree with Mr Kovats that there is no suggestion that he was ever privy to any sensitive information and he did not suggest he had ever photocopied anything sensitive and indeed appears to have been no more than a very low level operator. As against that, however, as Ms Braganza pointed out, it is the case that his colleagues Razgar and Bakir thereafter attempted to flee to the PUK area but were both shot.

288. Although from this it can properly be inferred as indeed the Adjudicator did, that he would remain at risk from the KDP, we do not consider that he would be unable to relocate to the PUK area. The evidence has been somewhat paradoxical as to the extent to which PUK and KDP are or are not working together, but given that the weight particularly of Dr Fatah and Ms Laizer's evidence was that they essentially operate two separate system in the north, we can see no reason why the PUK would feel

impelled to return the appellant to the KDP on account of purported assistance to the PUK some five years ago. The inference from Dr Fatah and Ms Laizer was that the cooperation between the two is essentially at a high political level, and on the ground we can see no reason, as we say, why it should be thought to be in the interests of the PUK to return Mr ( ) to the KDP area. We accept that he might well be regarded with a degree of suspicion as a person from the KDP area, but on the assumption that he would say why it was that he had problems with the KDP we can see no reason why the PUK would return him.

289. In the alternative we consider that he could relocate elsewhere in Iraq. We do not consider that he is a person with the kind of profile who would be likely to be brought to the attention of the KDP as someone in whom they had any ongoing interest. It may be that memories are long, but as we have noted, we consider that there is an absence of evidence to indicate that there exists the kind of information gathering machinery and assessment of such information as to make it at all likely that his identity would be brought to the attention of the KDP in for example Baghdad.

290. As regards any risk he might face from the families of the two dead men, we consider again that such risk as he might face from them can be resolved by relocation either to the PUK area or elsewhere in Iraq.

291. We turn to Mr ( )'s appeal. In the light of our findings on the Gardi point, we consider that the Adjudicator clearly fell into error in concluding as he did that the KAR was not capable in law of providing protection to him. We also consider that the Adjudicator erred in not making a finding on whether or not there was a Refugee Convention reason. We do not, however, consider that the Adjudicator erred in refusing an adjournment. It was clear that his previous solicitors were not longer prepared to act for him and he had been given sufficient notice of that, in our view, to enable him to obtain alternative representation. The Adjudicator was therefore correct to proceed to hear the appeal as he did.

292. As regards the substance of the case, it is clear from Mr ( )'s evidence that the Goli have some 2/3000 members. He said that they were everywhere and were all over Iraq, though that appears somewhat inconsistent with the claimed size of the tribe in numerical terms. Dr Fatah says that the KDP is an association of tribes of which the Goli are one. He also thought that wherever Mr ( ) went in Kurdistan he would be discovered. The Goli could use their KDP influence even outside Kurdistan to find him potentially wherever he was in Iraq. He considered that they were an influential part of the KDP and did not think that there would be a problem for them. He stated that the Goli tribe were rather localised and were mainly in the KDP area and would not for example be found in Sulaimaniya. They would normally take revenge and that would be in the form of killing. As to whether the KDP would hand him over, he answered this by way of an example which did not to our mind shed any

particular light on the likelihood of the KDP handing Mr ( ) over to the Goli.

293. He questioned how long Mr ( )'s tribe would be able to protect him. He accepted that the Barwary, Mr ( )'s tribe, have political influence in the KDP also and again are localised. He considered that that political influence would nevertheless mean that it would not prevent it being very difficult for them to protect Mr ( ). In cases where both had the same influence it was a tribal issue and there was a grey area between the tribe and the party. He understood the Barwary to be more educated.

294. He considered that a settlement such as giving a woman to the other tribe or a money settlement was possible but some tribes did not see it that way.

295. Ms Laizer went so far as to say that the Goli are very highly placed in the KDP. She contended that the father of the murdered boy was a peshmerga who controlled the pivotal town of Bignova. This was an important strategic town for the KDP. The tribe would not protect him. They were intellectual rather than militant and were a smaller tribe and his was a farming family. If the KDP found him they would hand him over to the Goli tribe.

296. We consider that Dr Fatah's evidence was rather more balanced than Ms Laizer's in this regard. He seemed to us more realistic in accepting that a number of tribal solutions represented a possible outcome to the problems that Mr ( ) has with the Goli tribe. He did not go as far as Ms Laizer in his statement regarding the importance of Goli tribe to the KDP. The localised nature and relatively small size in numerical terms of the Goli should also in our view be properly borne in mind.

297. We have considered also the report of Mr Joffe concerning Mr ( ). We agree with Mr Kovats that there was something of a jump in Mr Joffe's report from his statement that the rival tribe appeared to have been part of a clan known as the Goli who may have been a replicate of the southern Kurdish Kolya'i but were more likely to have been linked to the Kurmanji speaking Jezire or Botan to his reference to Mr ( ) facing an immediate threat from the KDP if returned to Kurdistan, given the location of the Goli clan within its power structure. We see no basis for his assumption in that regard on our reading of his report. We attach therefore little weight to Mr Joffe's views on the risk to Mr ( ) from the Goli tribe.

298. This case would appear to us on the evidence to be one which would be most likely to be resolved as between the tribes with or without the assistance of the KDP. It is after all not contended that Mr ( ) himself killed the member of the Goli tribe but it was his brother who has subsequently fled. We bear in mind what we have said above about the objective evidence concerning resolution of disputes, placing particular reliance as we have done on the Dutch report of 2000.

299. If we are wrong in this regard, we consider that Mr ( ) would be able to relocate to the PUK area without this being unduly harsh or giving rise to a real risk of breach of his human rights. We do not consider that it is reasonably likely that the PUK would hand him over to the KDP or to the Goli tribe. We can see no reason why they would think it appropriate or necessary to do so given the essential separateness to which we have referred above of the two regimes in the north. Alternatively again Mr ( ) could relocate to the south or elsewhere in Iraq, for example to Baghdad, without this being unduly harsh or involving a real risk of a breach of his human rights for reasons we have set out with regard to the case of Mr ( ).

300. We conclude therefore in the case of Mr ( )'s appeal that, though there were errors of law in the Adjudicator's determination, they were not material since the ultimate conclusion dismissing the asylum appeal and the human rights appeal was in our view a correct one albeit for rather different reasons.

301. We turn now to the appeal of Mr ( ). Mr ( ) faces the potential difficulty that the tribe concerning which he faces a potential problem is by general agreement a powerful affiliation of a number of subclans and a major force in the PUK. Mr Hamakaki, who was killed by Mr ( )'s cousin, was clearly a man of some influence in the PUK. The Adjudicator accepted that the PUK have issued documents which effectively amount to arrest warrants. Mr ( )'s fear is of the Jaff party. He does not claim to fear persecution by the PUK but rather that he will not escape the family of Mr Hamakaki who will be determined to kill him. Dr Fatah inferred that the PUK would be able to find him wherever he was in Iraq though his answer to the question in this regard was by way of an example concerning another case and again was not of particular assistance. Ms Laizer endorsed Dr Fatah's evidence about the size and influence of the Jaff. It was relevant to bear in mind that Mr ( ) is not affiliated to a tribe but like a number of other people in Kurdistan lacks affiliation and that is not an irrelevant aspect of the question of risk concerning him. She considered that he was at very high risk because of the way in which he had been implicated.

302. It is not, however, without relevance that Mr ( )'s cousin Aso killed Mr Hamakaki some years after Mr Hamakaki had killed Aso's father. Aso himself of course has now been killed. It is also not without relevance that the appellant's brother was detained by the PUK for a number of hours and then released. The point is made however that the appellant is regarded as being implicated in the killing since it was from his hairdressing salon that Aso shot Mr Hamakaki and therefore he is considered as being implicated in a way in which his brother is not.

303. We do not consider on the evidence before us that Mr ( ) faces a real risk on return. One relevant factor as we have noted above is that he is unaffiliated to a tribe and a consequence of this is that the honour of the Jaff tribe has not been affronted in the way in which it might have been if

a member of a similar tribe had killed one of its members. There is also the very pertinent point adverted to by Mr Kovats that there have now been two killings on the side of Mr ( )'s family and only one killing on the Jaff side. The balance, as it were, is therefore in their favour. Ms Laizer accepted that in Mr ( )'s case the party might have the more important jurisdiction than might otherwise be the case as he was not a member of a rival tribe. The matter could go either way. We see this as resiling somewhat from her earlier statement that she considered that he was at great risk.

304. In our view an issue of particular determinative significance in this regard is the fact that the PUK have issued warrants. To our mind this clearly indicates that they have decided that they will deal with the matter. This can hardly be said to have been done without any involvement of the Jaff tribe given what we are told about its power and influence within the PUK. We are satisfied therefore that the decision in this case has been made that the matter will be dealt with by the PUK rather than by Mr ( ) being placed in the hands of the Jaff tribe or that tribe having the opportunity to get their hands on him insofar as, given the balance that exists in their favour, they retain any real interest in him. Accordingly we consider that he can properly be returned since he would be dealt with by the PUK who operate a judicial system of some independence and in relation to a charge concerning which he claims not to be guilty and we consider it is proper to conclude that he is not at any real risk of persecution or breach of his human rights. We do not consider that there is an error of law in the Adjudicator's determination and although in some regards our reasoning is somewhat different from his, we consider that the appeal in this case must also be dismissed.

D.K. ALLEN
VICE PRESIDENT

APPENDIX OF MAIN SOURCES

Four reports from Dr Rebwah Fatah

One report from Dr Fatah and Ms Sheri Laizer

Three reports from Ms Laizer

CIPU Country Report for October 2004

CIPU Iraq Bulletin of August 2003

Dutch General Report of April 2000 on North Iraq

Joint British/Danish Fact Finding Mission on Conditions in Iraq of September 2004

US State Department Bulletin of 26 March 2004

Joint British/Danish Fact Finding Mission to Damascus, Amman and Geneva on Condition in Iraq of July 2003

General Country Report on Iraq of the Dutch Ministry of Foreign Affairs of 14 December 2004

UNHCR report of 29 January 2005 on the possibility of applying the internal flight or internal relocation alternative for Iraqi Kurds within Iraq

UNHCR report on Iraq for 1 August 2004

Amnesty International Report 2004 on Iraq

Human Rights Watch of 3 August 2004

IWPR Reports of 18 February 2005 and 4 March 2005