



# OPERATIONAL GUIDANCE NOTE

## IRAQ

### CONTENTS

<b>1. Introduction</b>	<b>1.1 – 1.4</b>
<b>2. Country assessment</b>	<b>2.1 – 2.24</b>
<b>3. Main categories of claims</b>	<b>3.1 – 3.6</b>
Claims based on the poor security conditions in Iraq	3.7
Perceived Collaborators	3.8
Claims based on the fear of kidnapping	3.9
Fear of Saddam Hussein's regime	3.10
Former members of the Ba'ath party and their families	3.11
Tribal disputes	3.12
Honour killing in central and southern Iraq	3.13
Honour killing in the area administered by the KRG	3.14
De-Arabisation	3.15
Christians	3.16
Fear of Islamic Militants	3.17
Member/Support of the PKK/KADEK	3.18
Prison Conditions	3.19
<b>4. Discretionary Leave</b>	<b>4.1</b>
Claims based on the poor humanitarian conditions in Iraq	4.3
Minors claiming in their own right	4.4
Medical treatment	4.5
<b>5. Returns</b>	<b>5.1 – 5.2</b>
<b>6. Entry clearance facilities</b>	
<b>7. List of source documents</b>	

### 1. Introduction

- 1.1** This document evaluates the general, political and human rights situation in Iraq and provides guidance on the nature and handling of the most common types of claims received from nationals/residents of that country, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Caseworkers must refer to the relevant Asylum Policy Instructions for further details of the policy on these areas.
- 1.2** This guidance must also be read in conjunction with any COI Service Iraq Country of Origin Information at:
- [http://www.homeoffice.gov.uk/rds/country\\_reports.html](http://www.homeoffice.gov.uk/rds/country_reports.html)
- 1.3** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. In considering claims where the main applicant has dependent family members who are a part of his/her claim, account must be taken of the situation of all the dependent family members included in the claim in accordance with the API on Article 8 ECHR. If, following consideration, a claim is to be refused, caseworkers should consider whether it can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.

## **Source documents**

- 1.4** A full list of source documents cited in footnotes is at the end of this note.

## **2. Country assessment**

- 2.1** Following the collapse of Saddam Hussein's regime, executive, legislative and judicial authority in Iraq was vested in the Coalition Provisional Authority (CPA). The CPA appointed a 25 member Iraqi Governing Council (IGC) in July 2003 with the power to direct policy and help draw up a new constitution. That Council was dissolved on 28 June 2004 and replaced with the Iraqi Interim Government (IIG) of which Dr Ayad Allawi was appointed interim Prime Minister.<sup>1</sup>

- 2.2** The general elections were held in Iraq on 15 December 2005 to elect the first permanent government and parliament (Council of Representatives)<sup>2</sup> since the overthrow of the Saddam regime in 2003. The Shi'ite-led United Alliance (UIA) won 128 seats in the 275-member parliament. The Kurdistan Coalition won 53 seats and the Sunni-led Tawafuq Front won 44 seats. Jalal Talabani remained president and Nouri Kamel al-Maliki was sworn in as Prime Minister on 20 May 2006. The Council of Representatives approved the 37-member cabinet, composed of representatives from all groups in society including Shi'a, Sunnis and Kurds.<sup>3</sup>

The multi-party national elections were held in Iraq on 30 January 2005. The election was a victory for the Shia United Iraqi Alliance (UIA), backed by Grand Ayatollah Ali al-Sistani, with 48 percent of the votes cast and 140 seats in the 275 seat National Assembly. The Kurdish Alliance, led by Jalal Talabani, obtained 26 percent of the vote and 75 seats in the National Assembly, while the Al-Qaimah al-Iraqiyah (Iraqi List), led by the interim Prime Minister Ayad Allawi, was in third place with 14 percent and 40 seats. The results meant that the Shias and the Kurds held the balance of power. The parliament of the Region of Kurdistan approved a new unified cabinet on 7 May 2006.<sup>4</sup>

- 2.3** Constitutionally, the judiciary in Iraq is independent and no power is above the judiciary except the law. However, several sources reported in 2005 that the judiciary and judges were subject to political influence. The Iraqi court system is divided into Criminal Courts (made up of Investigative Courts, the Misdemeanour Court, the Felony Court and the Juvenile Court), Civil Courts (made up of the Magistrate's Courts, Courts of First Instance, Personal Status Courts and the Personal Matters Court), Courts of Appeal and the Central Criminal Court of Iraq (CCCI). At the federal level, the Federal Court of Cassation and the Federal Supreme Court are provided for by the 2005 Constitution. Cases in juvenile courts are heard by a three-member panel comprising, a judge, a lawyer and a social worker.
- 2.4** The criminal justice system is inquisitorial; cases are controlled and investigated by the judiciary. Defendants who are found guilty are sentenced immediately after the verdict. In October 2004, the UK Department for International Development (DFID) noted that since February 2004, 216 judges, prosecutors, lawyers and justice department officials have been trained in International Human Rights Law; and 50 judges, prosecutors and lawyers have been trained in International Humanitarian Law. Participation has been diverse: male and female judges, prosecutors and lawyers have been chosen from all areas of Iraq and from all parts of the community. A number of participants have been trained as trainers, so that the benefits of the training can be disseminated to others in Iraq.<sup>5</sup>
- 2.5** Several reports have observed that serious human rights violations continued to occur in Iraq in 2006. These have included a significant increase in the number of deliberate attacks by insurgent groups on Iraqi civilians<sup>6</sup> (except in the Kurdish Region).<sup>7</sup> Although many

---

<sup>1</sup> COIS Iraq Country Report October 2006 Section 4

<sup>2</sup> COIS Iraq Country Report October 2006 Section 4

<sup>3</sup> FCO Letter dated 12 January 2007

<sup>4</sup> COIS Iraq Country Report October 2006 Section 4

<sup>5</sup> COIS Iraq Country Report October 2006 Section 13

<sup>6</sup> COIS Iraq Country Report October 2006 Section 7

Iraqis no longer face legal obstacles to the exercise of a range of human rights and have begun to make use of their new freedoms (a fact which is reflected by the steadily growing Iraqi civil society), the precarious security situation is, nevertheless, a major obstacle to the full enjoyment of these rights. It was reported in 2006 that the new Government outlined steps required for the improvement of the security situation and addressing human rights challenges in a more transparent manner. However, the negative effect of violence on Iraqi civilians, targeted by sectarian and criminal violence or displaced as a result, coupled with inadequate provision of basic services, also affected the level of education and health care received by the population.<sup>8</sup>

- 2.6** There have been some welcome positive developments in the country, especially in the field of freedom of expression, association and assembly. Dozens of non-government organisations (NGOs), including organisations focusing on women's rights, have been established, more than 80 daily and weekly newspapers are published and scores of political parties and religious organisations have emerged.<sup>9</sup>
- 2.7** However in October 2005 UNHCR noted that the situation for women in particular had worsened due to insecurity and high criminality, insufficient protection provided by the Iraqi authorities, the poor state of the country's infrastructure as well as the general population's embracing of stricter Islamic values, often enforced by militias, families or clans.<sup>10</sup>
- 2.8 Security Situation** The security situation in Iraq deteriorated in 2006, particularly in Baghdad. The political transition and attempts at maintaining security and control by the Multinational Force and Iraqi security forces have coincided with the development of an increasingly sophisticated and complex armed opposition capable of carrying out a consistently high level of violent activity<sup>11</sup> focused, but not limited to, the area in and immediately around Baghdad.<sup>12</sup> Iraq's mosaic of communities has begun to fragment along ethnic, confessional and tribal lines, bringing instability and violence to many areas, especially those with mixed populations. Baghdad, Mosul and the western province of Al Anbar have been experiencing the most difficult security situation. The Multinational Force intelligence estimates that the number of insurgent attacks on coalition forces, Iraqi forces, and Iraqi civilians; and acts of sabotage; rose by 29% in 2005.<sup>13</sup> Iraqi police and recruitment centres have received particular attention from insurgents.<sup>14</sup>
- 2.9** On 3 July 2004, the Iraqi Interim Government passed the Order for Safeguarding National Security introducing emergency legislation to the statute books and enabling the Prime Minister to declare martial law for up to sixty days at a time. During November 2004, Iraq's Government, under the National Security Law, declared a 60-day state of emergency in response to the escalation of violence by militants. Since November 2004 the state of emergency has been renewed every month by the Prime Minister.<sup>15</sup> The UNSC report, dated 8 December 2004, noted that the state of emergency was declared in all parts of Iraq, except the three northern governorates.<sup>16</sup>
- 2.10** Domestic security responsibilities are shared within the Iraqi Interim Government between the Ministry of Interior (MOI) and the Ministry of Defence. By May 2006 Iraq had approximately 263,400 'trained and equipped' men in the Iraqi Security Forces (ISF), including 101,200 in the Iraqi police, 800 in the Navy, 600 in the Air Force, 116,500 in the Army and 44,300 in other forces. An intimidation campaign driven by insurgents to stop Iraqis joining the ISF has not significantly hampered recruitment and the ISF's ability to fight

---

<sup>7</sup> FCO Letter dated 12 January 2007

<sup>8</sup> COIS Iraq Country Report October 2006 Section 7

<sup>9</sup> Amnesty International March 2004

<sup>10</sup> UNHCR COI Iraq 2005 p2

<sup>11</sup> COIS Iraq Country Report October 2006 Section 10

<sup>12</sup> FCO Letter dated 12 January 2007

<sup>13</sup> COIS Iraq Country Report October 2006 Section 8

<sup>14</sup> COIS Iraq Country Report October 2006 Section 10

<sup>15</sup> COIS Iraq Country Report October 2006 Section 8

<sup>16</sup> COIS Iraq Country Report October 2006 Section 8

the insurgency continues to grow, although they are not yet capable of independently fighting the insurgency and rely heavily on the presence of the Multinational Forces (MNF).<sup>17</sup>

- 2.11** The new Iraqi Constitution stipulates that the region of Kurdistan, along with its existing authorities, shall be recognised as a federal region. The Constitution states that:

“Legislation enacted in the region of Kurdistan since 1992 shall remain in force, and decisions issued by the government of the region of Kurdistan, including court decisions and contracts, shall be considered valid unless they are amended or annulled pursuant to the laws of the region of Kurdistan by the competent entity in the region, provided that they do not contradict with the Constitution.”

The KRG has the right to control its police forces and internal security.<sup>18</sup>

- 2.12** The security situation in the KRG remained largely unaffected by the fall of the Saddam regime and was stable in comparison to the centre and the Governorates of Kirkuk and Mosul. A large, well-trained and well-equipped security force, known as the peshmerga, was also present in the KRG administered Governorates to control the security situation.<sup>19</sup> The PUK and KDP claim that there are 100,000 Peshmerga troops serving as the primary security force for the KRG.<sup>20</sup> However, there were successful suicide bomb attacks against the two main political parties (KDP and PUK) in Erbil in 2004, and there remains, in spite of the absence of any subsequent major attacks, an extant threat from terrorist and insurgent groups in the region. This threat is managed with considerable success by heavy Peshmerga presence, particularly at key entry points to the Kurdish Region and major cities, and the generally vigilant posture of a still largely homogenous Kurdish population. As a consequence of this relative security and regional political stability economic development is more advanced than elsewhere in Iraq.<sup>21</sup> UNHCR stated in October 2005, that while security concerns persist in the three Northern Governorates and the economy is still fragile, acts of violence are far less frequent as compared to the rest of the country and a certain level of political stability has been achieved. UNHCR added that serious protection concerns remain, especially for persons who do not originate from these areas.<sup>22</sup> In September 2006, UNHCR reiterated their position that enforced returns to the 3 northern governorates of Iraq should only include those who originate from that area.<sup>23</sup>

**2.13 Humanitarian Situation**

Iraq's infrastructure has suffered severe damage after years of wars, sanctions and general neglect, including a lack of investment in maintenance. The IMF report, dated August 2005, noted that the coverage of public services has improved, but reliability remains a serious problem.<sup>24</sup>

- 2.14** During 2005, it was reported that whilst Iraqi average national income had increased considerably since 2003, unemployment and under-employment remained high. 3.4 percent of youth are unemployed and 37.2 percent of high school and university graduates are jobless. A total of 33 percent of Iraqis are underemployed.<sup>25</sup> Apart from damaged and illegally occupied property, the UN Development Group/World Bank estimate that there are currently 1-1.5 million housing units missing, affecting up to 9 million people, thereby representing a housing 'crisis'. The country's health system has deteriorated leading to high maternity and child mortality rates and the recurrence of formerly well-controlled

---

<sup>17</sup> COIS Iraq Country Report October 2006 Section 10

<sup>18</sup> COIS Iraq Country Report October 2006 Section 6

<sup>19</sup> COIS Iraq Country Report October 2006 Section 8

<sup>20</sup> COIS Iraq Country Report October 2006 Section 12

<sup>21</sup> FCO Letter dated 12 January 2007

<sup>22</sup> UNHCR Guidelines 2005 p25

<sup>23</sup> UNHCR Letter 4 September 2006

<sup>24</sup> COIS Iraq Country Report October 2006 Section 29

<sup>25</sup> COIS Iraq Country Report October 2006 Section 2

diseases.<sup>26</sup> A shortage of medicine is still the main problem throughout the country. Doctors and pharmacists claim that simple medications such as pain killers and antibiotics are unavailable and sometimes they run out of needles and syringes.<sup>27</sup>

- 2.15** In all parts of the country, supplies of electricity, water and fuel do not meet established needs. Major reasons for this are a lack of maintenance, spare parts and training of workers, obsolete technology and corruption.<sup>28</sup> In 2004, 98 per cent of households were connected to the electricity grid, although three-quarters of households reported their electricity supply to be extremely unreliable; 78 per cent of homes had access to piped water, and 37 per cent of all homes were connected to the sewage system, but two-thirds of households reported poor reliability in the provision of safe water and sewage services.<sup>29</sup> It was reported in April 2006 that UNICEF maintained the daily trucking of water to certain residential areas and hospitals in Baghdad using private contractors, permitting approximately 180,000 residents and 4,000 hospital patients and staff to have continued access to potable water.<sup>30</sup>
- 2.16** Iraq's infrastructure has suffered severe damage after years of wars, sanctions and general neglect, including a lack of investment in maintenance. An IMF report, dated August 2005, noted that the coverage of public services has improved, but reliability remains a serious problem.<sup>31</sup>
- 2.17** Several reports observed that serious human rights violations continued to occur in Iraq in 2006. There has been a significant increase in the number of deliberate attacks by insurgent groups on Iraqi civilians<sup>32</sup> (except in the Kurdish Region).<sup>33</sup> Although many Iraqis no longer face legal obstacles to the exercise of a range of human rights and have begun to make use of their new freedoms (a fact which is reflected by the steadily growing Iraqi civil society), the precarious security situation is nevertheless a major obstacle to the full enjoyment of these rights. It was reported in 2006 that the new Government outlined steps required for the improvement of the security situation and addressing human rights challenges in a more transparent manner. However, the negative effect of violence on Iraqi civilians, targeted by sectarian and criminal violence or displaced as a result, coupled with inadequate provision of basic services, also affected the level of education and health care received by the population.<sup>34</sup> There have been some welcome positive developments in the country, especially in the field of freedom of expression, association and assembly. Dozens of non-government organisations (NGOs), including organisations focusing on women's rights, have been established, more than 80 daily and weekly newspapers are published and scores of political parties and religious organisations have emerged.<sup>35</sup>
- 2.18** However, in October 2005, UNHCR noted that the situation for women in particular had worsened due to insecurity and high criminality, insufficient protection provided by the Iraqi authorities, the poor state of the country's infrastructure as well as the general population's embracing of stricter Islamic values, often enforced by militias, families or clans.<sup>36</sup>
- 2.19 Internal Travel** Article 44 (1) of the Constitution stipulates that "Each Iraqi has freedom of movement, travel, and residence inside and outside Iraq. Whilst there are no nationwide legal restrictions on freedom of movement; Iraqis are affected by the prevailing insecurity in the country (fighting, ambushes, highway robbery, roadside bombs, mines/UXO), closure of

---

<sup>26</sup> UNHCR COI Iraq 2005 p2

<sup>27</sup> COIS Iraq Country Report October 2006 Section 28

<sup>28</sup> UNHCR COI Iraq 2005 p111

<sup>29</sup> UNDP Iraq Living Conditions Survey 2004

<sup>30</sup> COIS Iraq Country Report October 2006 Section 29

<sup>31</sup> COIS Iraq Country Report October 2006 Section 29

<sup>32</sup> COIS Iraq Report October 2006 Section 7

<sup>33</sup> FCO Letter dated 12 January 2007

<sup>34</sup> COIS Iraq Report October 2006 Section 7

<sup>35</sup> Amnesty International March 2004

<sup>36</sup> UNHCR COI Iraq 2005 p2

roads, curfews, airports and borders as well as frequent checkpoints on the roads that severely restrict freedom of movement.<sup>37</sup>

- 2.20** In July 2004, the Iraqi Interim Government passed the Order for Safeguarding National Security allowing the Prime Minister to declare a state of emergency in any part of Iraq suffering ongoing violence, except those administered by the Kurdish Regional Government (KRG) (Erbil, Dohuk and Sulaymanyah), for up to 60 days at a time. The state of emergency allows the Prime Minister to restrict freedom of movement, impose curfews, declare restrictions or bans on public gatherings and powers to search property and detain suspects. The emergency law was extended on 6 January 2005 for 30 days to guard against attacks in the run-up to the nation's 30 January 2005 elections. Since then, the emergency law has been renewed on a monthly basis.<sup>38</sup> Under the emergency laws and subject to judicial review, the Prime Minister has the power to restrict freedom of movement by imposing curfews or cordoning off certain areas. In several cities and towns curfews are in place, restricting people's freedom of movement, mainly during the night. Fallujah is only accessible to residents holding the necessary ID cards.<sup>39</sup>
- 2.21** Women's freedom of movement is further limited due to the specific harassment and threats against them. This has increased the pressure on women to have a male family member to accompany them.<sup>40</sup>
- 2.22** Even though there are no legal restrictions as regards choosing one's place of residence in the country, there are a number of practical restrictions mostly based on political and security considerations.<sup>41</sup> However ordinary Iraqis generally use roads on a daily basis. The roads are used less at night. The Erbil to Kirkuk road is heavily used and whilst there are occasional incidents, these are few. The roads are generally used for purposes such as deliveries of goods by lorry and van, public transport such as buses, coaches and taxis. Ordinary Iraqis do not consider travel around the country by road so unsafe that they have largely curtailed travel around the country. Travel by road is more difficult and dangerous for people whose countries are participating in international coalition forces in Iraq.<sup>42</sup>
- 2.23** In order to relocate, an individual must be in possession of all the following documents:
- the personal identification number which is issued by the General Directorate of Citizenship in accordance with Iraqi civil law number 65 (1972);
  - the Iraqi Nationality Certificate which shows that the holder is Iraqi;
  - a letter of confirmation from the place of work in the intended relocation town and/or the approval of the Mukhtar (civil administrator) of the intended relocation town;
  - a declaration from the security services that the person is not involved in criminal activities.<sup>43</sup>
- 2.24** A person wishing to remain in, or move to, an area of Iraq other than his or her home town does not have to visit their home town to obtain the requisite documentation for a relocation application.<sup>44</sup>
- 2.25** Iraqi Nationality Certificates and Iraqi Civil Status IDs are issued by:
- the Directorate of Travel and Nationality/Ministry of Interior;
  - in Northern Iraq, by the Directorate of Nationality and Civil Status/Ministry of Interior in Sulaymaniyah and by the Directorate of Nationality and Civil Identification in Erbil and Dohuk.

These documents are obtained by visiting the offices as there is no reliable postal service.<sup>45</sup>

---

<sup>37</sup> COIS Iraq Country Report October 2006 Section 30

<sup>38</sup> COIS Iraq Country Report October 2006 Section 8

<sup>39</sup> COIS Iraq Country Report October 2006 Section 30

<sup>40</sup> COIS Iraq Country Report October 2006 Section 30

<sup>41</sup> COIS Iraq Country Report October 2006 Section 30

<sup>42</sup> FCO Letter dated 8 September 2006

<sup>43</sup> FCO Letter dated 6 November 2006

<sup>44</sup> FCO Letter dated 6 November 2006

- 2.26** UNHCR noted in December 2006 that the availability of an Internal Relocation Alternative (IRA) in the three Northern Governorates will depend on a variety of factors and needs to be assessed on a case-by-case basis. The major factor to be considered is whether the claimant would be allowed to enter and legally reside in the area of relocation and whether he/she has family, community and/or political links that would allow for his/her protection and economic survival and integration.<sup>46</sup> Persons legally residing in the three Northern Governorates have access to public services such as education, employment and housing. However, persons with no family, tribal or political connections may find it difficult to effectively realise these rights, for example when attempting to find employment or accommodation. This is particularly true for women, as for cultural reasons they are in need of their family/tribe to support them economically.<sup>47</sup>
- 2.27** The FCO stated in a letter dated 10 October 2005, that the International airport in Erbil and Sulaymaniyah airport were opened to commercial traffic. Iraqi Airways and Kurdistan Airlines were also operating flights to a number of regional destinations. In December 2006, Austrian Airlines started international direct flights between Vienna and Erbil and a number of other airlines including Royal Jordanian also operate international flights to Erbil and Sulaymaniyah.<sup>48</sup> Permanent check points exist between the Centre of Iraq and the three Northern Governorates, as well as on the main entry/exit points linking Erbil, Dohuk and Sulaymaniyah.<sup>49</sup> UNHCR stated in October 2005 that every person who does not originate from one of the respective Governorates and is allowed to enter must apply for a residence permit in order to legalise his/her stay. Applicants need to submit a petition and the necessary documentation (ID card, citizenship certificate, etc.) to the Security Department (in Sulaymaniyah Governorate) or to the Governorate Office/Department of Internal Affairs, which will then refer the request to the Security Department (Erbil and Dohuk Governorates). The applicant must then undergo a security screening in which their reasons for relocation will be investigated. A search is also conducted to see if they have a previous criminal record or were previously Ba'ath party members; the presence of either of these factors will lead to the denial of a residence permit and an investigation or prosecution.<sup>50</sup>
- 2.28** In the Dohuk and Erbil Governorates, applicants for a residence permit need to either establish political links to the region or provide evidence they have fled a threat to their life; otherwise applications for a residence permit will be denied due to the serious lack of shelter in the Governorates. In all three Governorates, applicants must have a Kurdish sponsor residing in the respective Governorate in order to be granted a residence permit. The sponsor must have a good reputation and is required to know the applicant (for example, as a family member or employer). At the recommendation of the Security Department, applicants are then granted residence permits for a six month-long stay.<sup>51</sup> Arab Iraqis are instantly recognised by Iraqi Kurds who view them with suspicion and would not generally welcome them into Iraqi Kurdistan.<sup>52</sup>
- 2.29** Kurds are no more likely to have difficulty travelling outside the Kurdish areas than any other section of Iraqi society.<sup>53</sup> Kurds are able to live outside the KRG. Although Kurds have been targeted outside the KRG this is no more so than any other group. Many Kurds live outside the KRG and are well represented in state institutions within Iraq such as the government, the police force and the army.<sup>54</sup>

---

<sup>45</sup> FCO Letter dated 6 November 2006

<sup>46</sup> UNHCR Guidelines 2005 p24

<sup>47</sup> UNHCR Guidelines 2005 p56

<sup>48</sup> FCO Letter dated 12 January 2007

<sup>49</sup> COIS Iraq Country Report October 2006 Section 8

<sup>50</sup> UNHCR Guidelines 2005 p54

<sup>51</sup> UNHCR Guidelines 2005 p54

<sup>52</sup> COIS Iraq Country Report October 2006 Section 22

<sup>53</sup> FCO Letter dated 8 September 2006

<sup>54</sup> FCO Letter dated 15 August 2006

### 2.30 The Kurdistan Regional Government

The new Iraqi Constitution stipulates that the region of Kurdistan, along with its existing authorities, shall be recognised as a federal region. The Constitution states that:

“Legislation enacted in the region of Kurdistan since 1992 shall remain in force, and decisions issued by the government of the region of Kurdistan, including court decisions and contracts, shall be considered valid unless they are amended or annulled pursuant to the laws of the region of Kurdistan by the competent entity in the region, provided that they do not contradict with the Constitution.”

The KRG has the right to control its police forces and internal security.<sup>55</sup> Criminality in Kurdistan is endemic by western terms. However, much of the activity is considered by the population to be simply a way of earning their crust.<sup>56</sup> The Kurdistan Democratic List gained the majority of votes in the Kurdistan legislative election in January 2005 with 90 per cent of the votes and 104 seats in the Kurdistan National Assembly. Massoud Barzani was sworn in as the new regional president of Iraqi Kurdistan on 12 June 2005.<sup>57</sup> UNHCR observed in October 2005, that although the offices of the KDP and PUK have now started to work in each other's region, mutual respect and tolerance between the two parties has yet to be fully demonstrated.<sup>58</sup> However in May 2006, the two administrations (KDP/PUK) merged (four ministries have yet to complete this process) and Erbil became the regional capital. Despite the expected difficulties of bringing together two previously opposing political forces the unification project has gone remarkably well to date.<sup>59</sup>

### 3.1 Main categories of claims

- 3.2** This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in Iraq. It also contains any common claims that may raise issues covered by the API on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant API's, but how these affect particular categories of claim are set out in the instructions below.
- 3.3** Each claim should be assessed to determine whether there are reasonable grounds for believing that the claimant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in *Karanakaran* should be followed when deciding how much weight to be given to the material provided in support of the claim (see the API on Assessing the Claim).
- 3.4** If the claimant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the claimant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.
- 3.5** This guidance is **not** designed to cover issues of credibility. Caseworkers will need to consider credibility issues based on all the information available to them. (For guidance on credibility see para 11 of the API on Assessing the Claim)

---

<sup>55</sup> COIS Iraq Country Report October 2006 Section 6

<sup>56</sup> COIS Iraq Country Report October 2006 Section 8

<sup>57</sup> COIS Iraq Country Report October 2006 Section 3

<sup>58</sup> UNHCR Guidelines 2005 p17

<sup>59</sup> FCO Letter dated 12 January 2007



**3.6** All APIs can be accessed via the IND website at:

[http://www.ind.homeoffice.gov.uk/ind/en/home/laws\\_policy/policy\\_instructions/apis.html](http://www.ind.homeoffice.gov.uk/ind/en/home/laws_policy/policy_instructions/apis.html)

**3.7 Claims based on the poor security conditions in Iraq**

**3.7.1** Many claimants will make an asylum or human rights claim based on the poor security situation in Iraq stating that it is unsafe for them to return as they may be caught up and injured or killed in a violent incident.

**3.7.2 *Treatment*** Since the collapse of the former regime Iraq has suffered car bombings, kidnappings and assassinations. The fall of the former Government in April 2003 signalled the collapse of the Iraqi state apparatus. Since that time, daily life in Iraq (with the exception, to some extent, of the three Northern Governorates of Dohuk, Sulaymaniyah and Erbil) has essentially been characterised by an extremely precarious security situation due to the activities of various insurgent groups. The general chaos created by the invasion and subsequent toppling of the former Government provided fertile space for many organised armed groups to resist the occupation and target any perceived collaborators through the use of violence, often with total impunity.<sup>60</sup> In 2006, Iraq remained a highly dangerous environment, particularly, in the centre areas as well as the Northern Governorates of Kirkuk and Mosul and the Upper South areas of the so-called 'triangle of death', with daily security incidents including armed combat between the MNF/ISF and the insurgency, attacks on the ISF, politicians and religious leaders, Iraqi civilians and public infrastructure. The situation in the three Northern Governorates of Dohuk, Erbil and Sulaymaniyah, as well as in the Lower South, is considerably more stable, but due to a number of mainly political factors, continues nevertheless to be unpredictable and tense.<sup>61</sup>

**3.7.3** There was a significant increase in 2006 in the number of deliberate attacks by insurgent groups on Iraqi civilians<sup>62</sup> including attacks on the Iraqi police and army recruitment centres. Armed groups also targeted alleged supporters or associates of the Iraqi Government, such as politicians and Government workers and their families, tribal or religious leaders, members of religious or ethnic minorities, journalists, doctors and lawyers; as well as Iraqis working with the MNF and foreign construction companies. Militia activity increased, coupled with the emergence of gangs and organised crime sometimes accused of having links to sectors of the police and the security forces as well as an increasing number of private security firms both national and international established. Militias, at times linked to political parties which are also part of the Government, continue to operate outside the law; death squads and sectarian and religious extremists are equally prone to commit human rights violations.<sup>63</sup>

**3.7.4** There are growing indications that persecution by state employees (including arbitrary arrest and unlawful detention, torture and ill-treatment as well as extra-judicial executions) is taking place in Iraq, in particular by Shiite-dominated police commandos who have been accused of deliberately targeting Sunnis. The Iraqi authorities have admitted such incidents, but are currently not able to stop them.<sup>64</sup> There appears to be a continuing trend towards the targeting of ethnic or religious communities in an aim to arouse ethnic/religious tensions in the country, in particular, between the Sunni and Shia religious communities. Increased attacks by Sunni extremist groups against Shiite religious sites or high-profile figures have been reported.<sup>65</sup> There have also been attacks on Sunni mosques.<sup>66</sup> Iraq, and in particular Baghdad, suffers from a high rate of criminality, with criminal gangs being involved in road ambushes, smuggling, stealing and kidnappings for high ransoms. The reasons for this include general insecurity, the lack of law enforcement and criminal

---

<sup>60</sup> UNHCR Guidelines 2005 p2

<sup>61</sup> COIS Iraq Country Report October 2006 Section 8

<sup>62</sup> COIS Iraq Country Report October 2006 Section 7

<sup>63</sup> COIS Iraq Country Report October 2006 Section 8

<sup>64</sup> COIS Iraq Country Report October 2006 Section 7

<sup>65</sup> UNHCR COI Iraq 2005 p15

<sup>66</sup> FCO Letter dated 12 January 2007

impunity, high unemployment and the large number of criminals that Saddam Hussein freed in an amnesty in October 2002.<sup>67</sup>

- 3.7.5** UNHCR in their December 2006 position paper advised that Iraqi asylum seekers from Southern and Central Iraq should be favourably considered as refugees under the 1951 Convention relating to the Status of Refugees, given the high prevalence of serious human rights violations related to the grounds in the 1951 Convention. They also stated that where an Iraqi from Southern or Central Iraq is not recognised as a refugee under the 1951 Convention criteria, a complementary form of protection should be granted.<sup>68</sup> However, asylum and human rights claims are not decided on the basis of a general approach, they are based on the circumstances of the particular individual and the specific risk to that individual. It is important that caseworkers give individual consideration to whether the applicant has a well-founded fear of persecution for a convention reason or are otherwise vulnerable that they may engage our obligations under the ECHR.
- 3.7.6** **Sufficiency of protection** Despite efforts by the new Government to address the situation in 2006, State institutions have been unable to protect individuals from gross human rights violations by insurgents or grant redress or compensation to the rapidly growing number of victims.<sup>69</sup> Despite efforts to reform and rebuild The Iraqi Security Forces, they are not yet capable of independently fighting the insurgency and rely heavily on the presence of the Multinational Forces (MNF).<sup>70</sup> Although there has been an increase in the number of Iraqi Security Forces (ISF), most lack adequate training to deal with the security situation, in particular the insurgents. Therefore, the ISF are unable to protect Iraqis, combat insurgents and provide security. The Iraqi Police Service (IPS) is responsible for daily patrolling of cities and towns in Iraq and although some of its units are proficient, the IPS as a whole has a reputation of being untrained and police station-bound<sup>71</sup>
- 3.7.7** The security situation in the KRG administered northern Governorates of Dahuk, Erbil and Sulaymaniyah remains largely unaffected by the fall of the Saddam regime and relatively stable in comparison to the centre and the Governorates of Kirkuk and Mosul. A large, well-trained and well-equipped security force, known as the peshmerga, is present in the KRG administered Governorates to control the security situation. Although successful attacks by insurgent groups such as Ansar Al-Sunna do take place, they are quite rare and lower-scale in comparison to other parts of the country. This was mainly due to the vigilance of the Kurdish security forces.<sup>72</sup>
- 3.7.8** In central and southern Iraq the authorities are willing to offer protection however due to the high level of insurgent attacks they are unable to provide sufficiency of protection. In the KRG, where insurgent attacks are markedly lower, it can be argued that protection is at a reasonably effective level and there is sufficiency or protection.
- 3.7.9** **Internal relocation** (Refer to 2.19 Internal Travel) UNHCR in their December 2006 position paper advised against the possibility of internal relocation in all parts of Central or Southern Iraq stating that there is no internal flight alternative, given the reach of both state and non-state agents of persecution, the lack of national protection and grave insecurity and human rights violations prevailing in those parts.<sup>73</sup> They have therefore concluded that it is highly unlikely that asylum-seekers who fear persecution in Central and Southern Iraq will be able to find a place in this region where they would be safe from persecution. However, asylum and human rights claims are not decided on the basis of a general approach, they are based on the circumstances of the particular individual and the specific

<sup>67</sup> UNHCR COI Iraq 2005 p16

<sup>68</sup> UNHCR Return advisory and position on international protection needs of Iraqis outside Iraq. Dated 18 December 2006

<sup>69</sup> COIS Iraq Country Report October 2006 Section 7

<sup>70</sup> UNHCR Guidelines 2005 p2

<sup>71</sup> COIS Iraq Country Report October 2006 Section 10

<sup>72</sup> COIS Iraq Country Report October 2006 Section 10

<sup>73</sup> UNHCR return advisory and position on international protection needs of Iraqis outside Iraq. Dated 18 December 2006

risk to that individual. It is important that caseworkers give individual consideration to whether the applicant's well-founded fear of persecution in one area is likely to exist in another part of Iraq. UNHCR's conclusion that it is unsafe for all persons in Central and Southern Iraq to relocate is not therefore accepted, but each case must be considered on its individual merits.

- 3.7.10** Ease of movement within Iraq varies from place to place depending on security restrictions, and is the same for all Iraqis. As a result of the recent rise in Islamic extremism single women may be unable to move around freely if unaccompanied and may not be able to settle in areas where they have no family ties as they are unlikely to be able to access resources without support. In assessing this, caseworkers will need to take all relevant factors into account including financial circumstances, health and whether the claimant has a support network. However, there is generally freedom of movement throughout the country and it is unlikely that internal relocation would be unduly harsh for men, and women with male partners or relatives.<sup>74</sup>

### 3.7.11 *Caselaw*

**SM and others [2005] UKIAT 00111.** The Tribunal considered that "the authorities in the KRG are able as a matter of international law to provide security and protection to the inhabitants of that region." (para 52) They added that, "We also conclude that there is general sufficiency of protection for Kurds in the KAA subject to the exceptional case where a person has either fallen foul of the party in his own area and remains within that area or where there is a tribal dispute which unusually would not be resolved either by mediation or by tribal leaders or the intervention of one of the political parties." (para 279) On internal relocation the Tribunal noted that there are over 1 million Kurds living outside the KAA (para 273). In addition to internal relocation not being unduly harsh within the KAA, they also considered that relocation to the south would not be considered unduly harsh. (para 279)

**GH [2004] UKIAT 00248, promulgated 10 Sept 2004.** Tribunal conclude that the generality of people in Iraqi Kurdistan do not live in conditions that could arguably engage Art 3 (para 94). In more general terms they assess the risk to life of innocent civilians from terrorist activities based on the number of estimated deaths as a percentage of the population (0.025%) and agree that "*the Secretary of State is right in his submission that the risk to the civilian population arises from [sic] the chance of being in the wrong place at the wrong time*" and that if the figures include deaths of Iraqi combatants "*..then the small percentage risk will be reduced even further*" (para 92 p35).

Para 81 "*Whilst it may be the case that personal differences still exist on the basis of what took place during the periods when the KDP and PUK were opposed to each other during the mid-1990s, so that in individual cases it may be that some from the PUK area could not live in the KDP area and vice versa, the degree of current co-operation and the common cause which the parties have does not in our view support the contention that there cannot be a general freedom of movement within the area of Iraqi Kurdistan capable of being exercised safely*". In relation to the effectiveness of the system of government the Tribunal state at para 83 "*The general picture which emerges is one of comparative stability in a region under a common administration with a functioning security and judicial system*".

**AR [2004] UKIAT 00273, promulgated 28<sup>th</sup> September 2004.** Tribunal assess the removals policy of individuals to Iraq and the implications for Articles 2 & 3 of the ECHR. IAT find that return in itself to Iraq would not constitute a breach of Articles 2 or 3, as there is no evidence of persons returned being subject to a consistent pattern of gross and systematic breaches of their human rights. Dismissed by Tribunal.

- 3.7.12 *Conclusion*** A state of general insecurity does not of itself give rise to a well-founded fear of persecution for a Refugee Convention reason unless the claimant is at serious risk of adverse treatment over and above others. If an appellant can demonstrate that they have been individually targeted, and that internal relocation would be unduly harsh, a grant of asylum might be appropriate. However, see other common categories of claim in this OGN for further guidance on those claims. Generally the reports of tension and security breaches in Iraq do not demonstrate that there would be a consistent pattern of gross and systematic

<sup>74</sup> UNHCR COI Iraq 2005 p139

violation of rights under Article 3 ECHR. The current evidence also does not suggest that the level of violence and insecurity amounts to a serious risk of unlawful killing and so a grant of Humanitarian Protection in such cases is unlikely to be appropriate. In addition, no Government can be expected to guarantee the safety of all its citizens. Accordingly, a grant of asylum or humanitarian protection is unlikely to be appropriate in these cases.

### 3.8 Perceived collaborators

- 3.8.1** Some claimants will make an asylum or human rights application due to a fear of ill treatment amounting to persecution at the hands of insurgents on account of their work for the UN, NGOs or foreign contractors, or because of the real or perceived support for the transitional Iraqi Government.
- 3.8.2 *Treatment*** Several reports noted in 2005 that numerous Iraqis have been attacked and killed by armed groups because they were perceived as ‘collaborators’ or ‘traitors’.<sup>75</sup> These insurgents are largely inspired by tribal and local loyalties, as well as nationalism and religious duty. They are also opposed to the continued presence of the MNF in Iraq and believe military action against them is a legitimate response.<sup>76</sup>
- 3.8.3** US military intelligence officials say they believe that three interconnected groups are the most powerful actors in the Iraqi insurgency today: Ansar Al-Islam, Ansar Al-Sunna and Al-Qaeda in Iraq. A loose coalition of insurgent groups (including guerrillas from Jaish Ansar Al-Sunna, Jaish Mohammed and Al-Qaeda in Iraq) are believed to have a controlling presence in the cities of Fallujah, Ramadi, Samarra, Baqouba, Al-Qaim, Tal Afar and Mosul.<sup>77</sup> Since August 2003, there have been increased attacks on civilian targets or so-called ‘soft targets’: the assassination of Iraqis cooperating with the MNF or the Iraqi authorities and suicide bombings targeting the UN, the ICRC, foreign embassies and diplomats, Shia mosques and civilians, Kurdish political parties, hotels and Christian churches. Iraqis who support the political process are often viewed as ‘collaborators’.<sup>78</sup>
- 3.8.4** Members of the Iraqi police force, as well as potential police recruits are often the victims of lethal attacks. Amnesty International reported on 25 July 2005 that “Hundreds of Iraqis have been killed by armed groups because they were perceived as ‘traitors’ or ‘collaborators’”. Among them have been translators, drivers and other civilians working for the MNF, civil servants, government officials, judges and journalists. The attacks have sometimes resulted in the killing of people accompanying the ‘targets,’ including children.”<sup>79</sup>
- 3.8.5 *Sufficiency of protection*** Despite efforts by the new Government to address the situation in 2006, State institutions have been unable to protect individuals from gross human rights violations by insurgents or grant redress or compensation to the rapidly growing number of victims.<sup>80</sup> Despite efforts to reform and rebuild The Iraqi Security Forces, they are not yet capable of independently fighting the insurgency and rely heavily on the presence of the Multinational Forces (MNF).<sup>81</sup> Although there has been an increase in the number of Iraqi Security Forces (ISF), most lack adequate training to deal with the security situation, in particular the insurgents. Therefore, the ISF are unable to protect Iraqis, combat insurgents and provide security. The Iraqi Police Service (IPS) is responsible for daily patrolling of cities and towns in Iraq and although some of its units are proficient, the IPS as a whole has a reputation of being untrained and police station-bound<sup>82</sup>

<sup>75</sup> COIS Iraq Country Report October 2006 Section 8

<sup>76</sup> COIS Iraq Country Report October 2006 Section 8

<sup>77</sup> COIS Iraq Country Report October 2006 Section 12

<sup>78</sup> UNHCR COI Iraq 2005 p65

<sup>79</sup> COIS Iraq Country Report October 2006 Section 8

<sup>80</sup> COIS Iraq Country Report October 2006 Section 7

<sup>81</sup> UNHCR Guidelines 2005 p2

<sup>82</sup> COIS Iraq Country Report October 2006 Section 10

- 3.8.6** The security situation in the KRG administered northern Governorates of Dahuk, Erbil and Sulaymaniyah remains largely unaffected by the fall of the Saddam regime and relatively stable in comparison to the centre and the Governorates of Kirkuk and Mosul. A large, well-trained and well-equipped security force, known as the peshmerga, is present in the KRG administered Governorates to control the security situation. Although successful attacks by insurgent groups such as Ansar Al-Sunna do take place, they are quite rare and lower-scale in comparison to other parts of the country. This was mainly due to the vigilance of the Kurdish security forces.<sup>83</sup>
- 3.8.7** In central and southern Iraq the authorities are willing to offer protection however due to the high level of insurgent attacks they are unable to provide sufficiency of protection. In the KRG, where insurgent attacks are markedly lower, it can be argued that protection is at a reasonably effective level and there is sufficiency of protection.
- 3.8.8** *Internal relocation* (Refer to 2.19 Internal Travel) UNHCR in their December 2006 position paper advised against the possibility of internal relocation in all parts of Central or Southern Iraq, given the reach of both state and non-state agents of persecution, the lack of national protection and grave insecurity and human rights violations prevailing in those parts.<sup>84</sup> However, asylum and human rights claims are not decided on the basis of a general approach, they are based on the circumstances of the particular individual and the specific risk to that individual. It is important that caseworkers give individual consideration to whether the applicant's well-founded fear of persecution in one area is likely to exist in another part of Iraq. UNHCR's conclusion that it is unsafe for all persons in Central and Southern Iraq to relocate is not therefore accepted, but each case must be considered on its individual merits.
- 3.8.9** Ease of movement within Iraq varies from place to place depending on security restrictions, and is the same for all Iraqis. As a result of the recent rise in Islamic extremism single women may be unable to move around freely if unaccompanied and may not be able to settle in areas where they have no family ties as they are unlikely to be able to access resources without support. In assessing this, caseworkers will need to take all relevant factors into account including financial circumstances, health and whether the claimant has a support network. However, there is generally freedom of movement throughout the country and it is unlikely that internal relocation would be unduly harsh for men, and women with male partners or relatives.<sup>85</sup> In assessing this, caseworkers will need to consider whether the applicant's perceived collaboration would be apparent in another part of Iraq. For example those targeted because of their job, or religion may be unable to escape the threat of perceived collaboration wherever they relocate in Southern or Central Iraq.<sup>86</sup>

#### **3.8.10 Caselaw**

**SM and others [2005] UKIAT 00111.** The Tribunal considered that "the authorities in the KRG are able as a matter of international law to provide security and protection to the inhabitants of that region." (para 52) They added that, "We also conclude that there is general sufficiency of protection for Kurds in the KAA subject to the exceptional case where a person has either fallen foul of the party in his own area and remains within that area or where there is a tribal dispute which unusually would not be resolved either by mediation or by tribal leaders or the intervention of one of the political parties." (para 279) On internal relocation the Tribunal noted that there are over 1 million Kurds living outside the KAA (para 273). In addition to internal relocation not being unduly harsh within the KAA, they also considered that relocation to the south would not be considered unduly harsh. (para 279)

**GH [2004] UKIAT 00248.** The Tribunal concluded that in Sulaimaniyah "we are also satisfied that those representing the lawful authorities in his home area are currently providing a sufficiency of protection against the Islamic extremists and terrorists and we see no arguable reason why such protection would not be equally available to the appellant." (para 126).

<sup>83</sup> COIS Iraq Country Report October 2006 Section 10

<sup>84</sup> UNHCR Return advisory and position on international protection needs of Iraqis outside Iraq. Dated 18 December 2006

<sup>85</sup> UNHCR COI Iraq 2005 p139

<sup>86</sup> UNHCR Guidelines 2005 p49

**3.8.11 Conclusion** A claimant who has a localised threat on the basis that they are perceived to be a collaborator and is unable to acquire protection in their local area may be able to relocate to an area where that localised threat does not exist. The caseworker will need to take into consideration the nature of the threat and how far it would extend, and whether it would be unduly harsh to expect the claimant to relocate. A claim made on these grounds may be well founded and a grant of refugee status due to political opinion or imputed political opinion may be appropriate depending on the facts of the case.

### **3.9 Claims based on the fear of kidnapping**

**3.9.1** Some claimants will make an asylum or human rights claim due to a fear of ill treatment amounting to persecution due to the rise in hostage taking in Iraq.

**3.9.2 Treatment.** Kidnappings, which became one of most prevalent crimes in Iraq, remained a serious problem in 2005 and affected all sectors of Iraqi society. In particular, insurgents and criminal gangs targeted translators, drivers, private contractors, aid workers, journalists and others who work with foreign governments, as well as individuals from wealthy families and professional people, such as doctors, university professors and businessmen.<sup>87</sup> Christians were often assumed to be wealthy by Iraqi standards. As a result they were frequently kidnapped for ransom money.<sup>88</sup>

**3.9.3** No accurate statistics are available because, in most cases, the victims' families do not seek the assistance of the police or the judicial system but appeal instead to leaders of militias or tribes who may have influence with the alleged kidnappers.<sup>89</sup> However, according to UNHCR, in their Country of Origin Report dated October 2005, 5,000 Iraqis have been kidnapped since the fall of the former regime, with many other kidnappings going unreported. Besides kidnappings taking place for political motives, members of wealthy families, businessmen, professionals and expatriates remain at risk of being kidnapped by criminal gangs and insurgent groups, which often work together.<sup>90</sup>

**3.9.4** It is difficult to distinguish between armed political groups and criminal gangs when it comes to hostage-taking as there are many credible reports suggesting that hostages, in particular foreign nationals, taken by criminal gangs are then handed over to armed political groups in exchange for money. In many cases armed political groups seem to have made the release of their victims conditional on payment of money even when they make political demands such as the withdrawal of foreign troops.<sup>91</sup> Despite the payment of ransom, kidnappers often killed their victims but the widespread nature of this phenomenon precludes reliable statistics.<sup>92</sup>

**3.9.5** Iraqi and US military officials have sometimes announced the arrest of members of armed groups who are accused of hostage-taking and killing.<sup>93</sup>

**3.9.6 Sufficiency of protection** Despite efforts by the new Government to address the situation in 2006, State institutions have been unable to protect individuals from gross human rights violations by insurgents or grant redress or compensation to the rapidly growing number of victims.<sup>94</sup> Despite efforts to reform and rebuild The Iraqi Security Forces, they are not yet capable of independently fighting the insurgency and rely heavily on the presence of the Multinational Forces (MNF).<sup>95</sup> Although there has been an increase in the number of Iraqi

---

<sup>87</sup> COIS Iraq Country Report October 2006 Section 9

<sup>88</sup> COIS Iraq Country Report October 2006 Section 21

<sup>89</sup> COIS Iraq Country Report October 2006 Section 9

<sup>90</sup> UNHCR COI Iraq 2005 p16

<sup>91</sup> COIS Iraq Country Report October 2006 Section 9

<sup>92</sup> COIS Iraq Country Report October 2006 Section 9

<sup>93</sup> COIS Iraq Country Report October 2006 Section 9

<sup>94</sup> COIS Iraq Country Report October 2006 Section 7

<sup>95</sup> UNHCR Guidelines 2005 p2

Security Forces (ISF), most lack adequate training to deal with the security situation, in particular the insurgents. Therefore, the ISF are unable to protect Iraqis, combat insurgents and provide security. The Iraqi Police Service (IPS) is responsible for daily patrolling of cities and towns in Iraq and although some of its units are proficient, the IPS as a whole has a reputation of being untrained and police station-bound<sup>96</sup>

- 3.9.7** The security situation in the KRG administered northern Governorates of Dahuk, Erbil and Sulaymaniyah remains largely unaffected by the fall of the Saddam regime and relatively stable in comparison to the centre and the Governorates of Kirkuk and Mosul. A large, well-trained and well-equipped security force, known as the peshmerga, is present in the KRG administered Governorates to control the security situation. Although successful attacks by insurgent groups such as Ansar Al-Sunna do take place, they are quite rare and lower-scale in comparison to other parts of the country. This was mainly due to the vigilance of the Kurdish security forces.<sup>97</sup>
- 3.9.8** In central and southern Iraq the authorities are willing to offer protection however due to the high level of insurgent attacks they are unable to provide sufficiency of protection. In the KRG, where insurgent attacks are markedly lower, it can be argued that protection is at a reasonably effective level and there is sufficiency or protection.
- 3.9.9** **Internal relocation** (Refer to 2.19 Internal Travel) UNHCR in their December 2006 position paper advised against the possibility of internal relocation in all parts of Central or Southern Iraq, given the reach of both state and non-state agents of persecution, the lack of national protection and grave insecurity and human rights violations prevailing in those parts.<sup>98</sup> UNHCR therefore conclude that it is highly unlikely that asylum-seekers who fear persecution in Central and Southern Iraq will be able to find a place in this region where they would be safe from persecution. However, asylum and human rights claims are not decided on the basis of a general approach, they are based on the circumstances of the particular individual and the specific risk to that individual. It is important that caseworkers give individual consideration to whether the applicant's well-founded fear of persecution in one area is likely to exist in another part of Iraq. UNHCR's conclusion that it is unsafe for all persons in Central and Southern Iraq to relocate is not therefore accepted, but each case must be considered on its individual merits.
- 3.9.10** Ease of movement within Iraq varies from place to place depending on security restrictions, and is the same for all Iraqis. As a result of the recent rise in Islamic extremism single women may be unable to move around freely if unaccompanied and may not be able to settle in areas where they have no family ties as they are unlikely to be able to access resources without support. In assessing this, caseworkers will need to take all relevant factors into account including financial circumstances, health and whether the claimant has a support network. However, there is generally freedom of movement throughout the country and it is unlikely that internal relocation would be unduly harsh for men, and women with male partners or relatives.<sup>99</sup> Caseworkers will also need to consider whether the applicant's reason to be kidnapped would be apparent in another part of Iraq. For example those targeted because of their job, or religion may be unable to escape a real risk of kidnapping wherever they relocate in Southern or Central Iraq.<sup>100</sup>

### 3.9.11 **Caselaw**

**SM and others [2005] UKIAT 00111.** The Tribunal considered that "the authorities in the KRG are able as a matter of international law to provide security and protection to the inhabitants of that region." (para 52) They added that, "We also conclude that there is general sufficiency of protection for Kurds in the KAA subject to the exceptional case where a person has either fallen foul of the party in his own area and remains within that area or where there is a tribal dispute which unusually

<sup>96</sup> COIS Iraq Country Report October 2006 Section 10

<sup>97</sup> COIS Iraq Country Report October 2006 Section 10

<sup>98</sup> UNHCR Return advisory and position on international protection needs of Iraqis outside Iraq. Dated 18 December 2006

<sup>99</sup> UNHCR COI Iraq 2005 p139

<sup>100</sup> UNHCR Guidelines 2005 p49

would not be resolved either by mediation or by tribal leaders or the intervention of one of the political parties.” (para 279) On internal relocation the Tribunal noted that there are over 1 million Kurds living outside the KAA (para 273). In addition to internal relocation not being unduly harsh within the KAA, they also considered that relocation to the south would not be considered unduly harsh. (para 279)

**GH [2004] UKIAT 00248.** The Tribunal concluded that in Sulaimaniyah “we are also satisfied that those representing the lawful authorities in his home area are currently providing a sufficiency of protection against the Islamic extremists and terrorists and we see no arguable reason why such protection would not be equally available to the appellant.” (para 126).

**3.9.12 Conclusion** Doctors and other professionals, Christians, and those who are members of rich families have been the primary targets for kidnapping or killing because they are, or are perceived to be, wealthy. Individuals from within this group may be able to demonstrate that they are personally at serious risk of being kidnapped and there is not sufficient protection available to them. A claimant who has a localised threat on that basis and who is unable to acquire protection in their local area may be able to relocate to an area where that localised threat does not exist. For individuals who face a real risk of kidnapping, caseworkers should consider their claims in the context of the stability of their local area. Kidnapping motivated by economic reasons would not engage the UK’s obligations under the 1951 UN Convention and therefore a grant of asylum would not be appropriate. However, a claim made on the grounds of fear of kidnapping due to economic reasons may be well founded and Humanitarian Protection will be appropriate depending on the facts of the case. For claimants who can demonstrate a well-founded fear of persecution due to a Convention reason, and are unable to acquire protection or relocate internally a grant of asylum will be appropriate.

### **3.10 Fear of Saddam Hussein’s regime**

**3.10.1** Some claimants will make an asylum or human rights claim due to a fear of ill treatment amounting to persecution at the hands of the former regime of Saddam Hussein on account of military service/draft evasion and desertion, pressure to join Fedayeen Saddam, forced recruitment into Al Quds/Jerusalem Army/Fedayeen Palestine, non-Arabs who suffered under “Arabisation”, doctors and associated professions who have refused to obey orders of the former regime to punish people by undertaking operations involving branding and amputations, Shi’a Clerics who were not appointed by the former regime; and their families, and those that fear the consequences of illegal departure from Iraq under Saddam’s regime.

**3.10.2 Treatment** Saddam Hussein’s regime was ousted in military action by coalition forces in March and April 2003.<sup>101</sup> Shortly after the end of major military operations the Ba’ath Party was dissolved. In the early months of the U.S.-led occupation, authorities banned the Ba’ath Party and removed all senior Ba’athists from the government and security forces. But U.S. officials began to shift their strategy in April 2004 and, in a bid to strengthen the officer corps, allowed some senior ex-Ba’athists to return to the security forces.<sup>102</sup> Many of those involved in the insurgency are thought to be former Ba’athists and members of the Iraqi Sunni community.<sup>103</sup> Saddam Hussein was sentenced to death by an Iraqi court on 5 November after a year-long trial over the killings of 148 Shias from the town of Dujail in the 1980s.<sup>104</sup> On 30 December 2006 Saddam Hussein was hanged in northern Baghdad for crimes against humanity.<sup>105</sup>

**3.10.3 Sufficiency of protection** Despite efforts by the new Government to address the situation in 2006, State institutions have been unable to protect individuals from gross human rights violations by insurgents or grant redress or compensation to the rapidly growing number of

<sup>101</sup> COIS Iraq Country Report October 2006 Section 3

<sup>102</sup> COIS Iraq Country Report October 2006 Section 17

<sup>103</sup> COIS Iraq Country Report October 2006 Section 12

<sup>104</sup> BBC News: Saddam ‘executed by end of year’ 7 November 2006

<sup>105</sup> BBC News ‘Saddam Hussein Executed in Iraq’ dated 30 December 2006



victims.<sup>106</sup> Despite efforts to reform and rebuild The Iraqi Security Forces, they are not yet capable of independently fighting the insurgency and rely heavily on the presence of the Multinational Forces (MNF).<sup>107</sup> Although there has been an increase in the number of Iraqi Security Forces (ISF), most lack adequate training to deal with the security situation, in particular the insurgents. Therefore, the ISF are unable to protect Iraqis, combat insurgents and provide security. The Iraqi Police Service (IPS) is responsible for daily patrolling of cities and towns in Iraq and although some of its units are proficient, the IPS as a whole has a reputation of being untrained and police station-bound<sup>108</sup>

- 3.10.4** The security situation in the KRG administered northern Governorates of Dahuk, Erbil and Sulaymaniyah remains largely unaffected by the fall of the Saddam regime and relatively stable in comparison to the centre and the Governorates of Kirkuk and Mosul. A large, well-trained and well-equipped security force, known as the peshmerga, is present in the KRG administered Governorates to control the security situation. Although successful attacks by insurgent groups such as Ansar Al-Sunna do take place, they are quite rare and lower-scale in comparison to other parts of the country. This was mainly due to the vigilance of the Kurdish security forces.<sup>109</sup>
- 3.10.5** In central and southern Iraq the authorities are willing to offer protection however due to the high level of insurgent attacks they are unable to provide sufficiency of protection. In the KRG, where insurgent attacks are markedly lower, it can be argued that protection is at a reasonably effective level and there is sufficiency or protection.
- 3.10.6 *Internal relocation*** (Refer to 2.19 Internal Travel) UNHCR in their December 2006 position paper advised against the possibility of internal relocation in all parts of Central or Southern Iraq, given the reach of both state and non-state agents of persecution, the lack of national protection and grave insecurity and human rights violations prevailing in those parts.<sup>110</sup> UNHCR therefore conclude that it is highly unlikely that asylum-seekers who fear persecution in Central and Southern Iraq will be able to find a place in this region where they would be safe from persecution. However, asylum and human rights claims are not decided on the basis of a general approach, they are based on the circumstances of the particular individual and the specific risk to that individual. It is important that caseworkers give individual consideration to whether the applicant's well-founded fear of persecution in one area is likely to exist in another part of Iraq. UNHCR's conclusion that it is unsafe for all persons in Central and Southern Iraq to relocate is not therefore accepted, but each case must be considered on its individual merits.
- 3.10.7** Ease of movement within Iraq varies from place to place depending on security restrictions, and is the same for all Iraqis. As a result of the recent rise in Islamic extremism single women may be unable to move around freely if unaccompanied and may not be able to settle in areas where they have no family ties as they are unlikely to be able to access resources without support. In assessing this, caseworkers will need to take all relevant factors into account including financial circumstances, health and whether the claimant has a support network. However, there is generally freedom of movement throughout the country and it is unlikely that internal relocation would be unduly harsh for men, and women with male partners or relatives.<sup>111</sup>
- 3.10.8 *Conclusion*** Taking into account the fall of Saddam's regime in April 2003, the dissolving of the Ba'ath Party and actions taken against former senior members, it is very unlikely that claimants will be able to demonstrate a continuing risk of persecution by agents of the former regime and a grant of asylum or HP will not generally be appropriate.

<sup>106</sup> COIS Iraq Country Report October 2006 Section 7

<sup>107</sup> UNHCR Guidelines 2005 p2

<sup>108</sup> COIS Iraq Country Report October 2006 Section 10

<sup>109</sup> COIS Iraq Country Report October 2006 Section 10

<sup>110</sup> UNHCR return advisory and position on international protection needs of Iraqis outside Iraq. Dated 18 December 2006

<sup>111</sup> UNHCR COI Iraq 2005 p139

### 3.11 Former members of the Ba'ath Party and their families

- 3.11.1** Some claimants will make an asylum or human rights claim due to a fear of ill treatment amounting to persecution at the hands of both state and non-state agents on account of their past membership of the Ba'ath Party.
- 3.11.2 *Treatment*** Most estimates put Ba'ath Party membership before the collapse of Saddam's regime at an estimated 1 million to 2.5 million. Party membership was a prerequisite for advancement in many fields in Saddam's Iraq and ordinary membership did not of itself imply support for the Party's policies.<sup>112</sup> At the lowest level, (Ba'ath Party) study circles (*halaqa*) and cells (*kheliya*) held weekly meetings with a dozen or so activists from the same neighbourhood or sector. The party's divisions (*firqa*), which included all the cells within a district office or factory, occupied the next highest level, and then the sections (*shu'ba*) and branches (*fara'*) which made up urban areas or Governorates.<sup>113</sup> While the level of affiliation or rank held within the Ba'ath party may sometimes be a determining factor regarding who is targeted, it is generally difficult to pinpoint exactly why a particular individual may be targeted. Low-ranking officials of the Ba'ath party have also been killed or otherwise attacked because of the activities they were involved in.<sup>114</sup>
- 3.11.3** Thousands of former Ba'ath Party members in governmental establishments, universities and schools have lost their jobs as a result of the de-Ba'athification process, irrespective of their level of association within the Party. Others claim that they are systematically targeted for assassination or extortion by Islamic militia parties. Many attacks also appear to be the result of personal vendettas against members of the Ba'ath Party.<sup>115</sup> Since the January 2005 elections, Shiite militants have stepped up their campaign to exact street justice from men who were part of the regime that oppressed and massacred members of their sect for decades. While Shiite politicians turn a blind eye, assassins are working their way through a hit list of Saddam's former security and intelligence personnel.<sup>116</sup> As regards the Ba'ath Party rank and file members, the UNHCR in October 2005 noted that whilst many Iraqis today suffer harassment as a result of their previous low or mid level membership in the Ba'ath Party, this harassment may not necessarily reach the level of persecution.<sup>117</sup>
- 3.11.4 *Sufficiency of protection*** Despite efforts by the new Government to address the situation in 2006, State institutions have been unable to protect individuals from gross human rights violations by insurgents or grant redress or compensation to the rapidly growing number of victims.<sup>118</sup> Despite efforts to reform and rebuild The Iraqi Security Forces, they are not yet capable of independently fighting the insurgency and rely heavily on the presence of the Multinational Forces (MNF).<sup>119</sup> Although there has been an increase in the number of Iraqi Security Forces (ISF), most lack adequate training to deal with the security situation, in particular the insurgents. Therefore, the ISF are unable to protect Iraqis, combat insurgents and provide security. The Iraqi Police Service (IPS) is responsible for daily patrolling of cities and towns in Iraq and although some of its units are proficient, the IPS as a whole has a reputation of being untrained and police station-bound<sup>120</sup>
- 3.11.5** The security situation in the KRG administered northern Governorates of Dahuk, Erbil and Sulaymaniyah remains largely unaffected by the fall of the Saddam regime and relatively stable in comparison to the centre and the Governorates of Kirkuk and Mosul. A large, well-trained and well-equipped security force, known as the peshmerga, is present in the KRG administered Governorates to control the security situation. Although successful attacks by insurgent groups such as Ansar Al-Sunna do take place, they are quite rare and lower-

<sup>112</sup> COIS Iraq Country Report October 2006 Section 17

<sup>113</sup> UNHCR Guidelines 2005 p38

<sup>114</sup> UNHCR Guidelines 2005 p15

<sup>115</sup> COIS Iraq Country Report October 2006 Section 17

<sup>116</sup> COIS Iraq Country Report October 2006 Section 17

<sup>117</sup> UNHCR Guidelines 2005 p16

<sup>118</sup> COIS Iraq Country Report October 2006 Section 7

<sup>119</sup> UNHCR Guidelines 2005 p2

<sup>120</sup> COIS Iraq Country Report October 2006 Section 10

scale in comparison to other parts of the country. This was mainly due to the vigilance of the Kurdish security forces.<sup>121</sup>

**3.11.6** In central and southern Iraq the authorities are willing to offer protection however due to the high level of insurgent attacks they are unable to provide sufficiency of protection. In the KRG, where insurgent attacks are markedly lower, it can be argued that protection is at a reasonably effective level and there is sufficiency of protection.

**3.11.7 *Internal relocation*** (Refer to 2.19 Internal Travel) UNHCR in their December 2006 position paper advised against the possibility of internal relocation in all parts of Central or Southern Iraq, given the reach of both state and non-state agents of persecution, the lack of national protection and grave insecurity and human rights violations prevailing in those parts.<sup>122</sup> UNHCR therefore conclude that it is highly unlikely that asylum-seekers who fear persecution in Central and Southern Iraq will be able to find a place in this region where they would be safe from persecution. However, asylum and human rights claims are not decided on the basis of a general approach, they are based on the circumstances of the particular individual and the specific risk to that individual. It is important that caseworkers give individual consideration to whether the applicant's well-founded fear of persecution in one area is likely to exist in another part of Iraq. UNHCR's conclusion that it is unsafe for all persons in Central and Southern Iraq to relocate is not therefore accepted, but each case must be considered on its individual merits.

**3.11.8** In many cases the threat of reprisals against former lower ranking members of the Ba'ath party will be a localised problem. Ease of movement within Iraq varies from place to place depending on security restrictions, and is the same for all Iraqis. As a result of the recent rise in Islamic extremism single women may be unable to move around freely if unaccompanied and may not be able to settle in areas where they have no family ties as they are unlikely to be able to access resources without support.<sup>123</sup> In assessing this, caseworkers will need to take all relevant factors into account including financial circumstances and health, whether the claimant has a support network. However, there is generally freedom of movement throughout the country and it is unlikely that internal relocation would be unduly harsh for men, and women with male partners or relatives. Caseworkers will also need to consider whether the applicant's Ba'ath party involvement would be apparent in another part of Iraq. For example those targeted because of their job may be unable to escape the threat of repercussions wherever they relocate in southern or central Iraq.<sup>124</sup>

**3.11.9** Internal relocation would not be a reasonable option for former Ba'athists who are nationally known through exposure in the media.

#### **3.11.10 Caselaw**

**OH [2004] UKIAT 00254, promulgated 15<sup>th</sup> September 2004.** The appellant claimed that his father was a Ba'ath party member who had been murdered in 1999 (his father's activities resulted in arrests, executions and deportations). The appellant was a simple member of the Ba'ath party and attended meetings. When he was asked to join the Fidayi Saddam group and go to Palestine and fight against Israel he fled from Iraq as he feared refusing would mean execution. IAT find that there would be no risk to the appellant on return.

**3.11.11 *Conclusion*** Whilst many Iraqis today suffer harassment as a result of their previous membership in the Ba'ath Party, it is unlikely that this harassment will reach the level of persecution. To establish a well-founded fear, a claimant will need to show that their activities brought them to the adverse attention of those they fear, whether locally through their direct actions or on a wider stage because they are inextricably associated with the abuses of the former regime. In the event that a local threat from non-State agents is

---

<sup>121</sup> COIS Iraq Country Report October 2006 Section 10

<sup>122</sup> UNHCR return advisory and position on international protection needs of Iraqis outside Iraq. Dated 18 December 2006

<sup>123</sup> UNHCR COI Iraq 2005 p139

<sup>124</sup> UNHCR Guidelines 2005 p49

established, it would not be unduly harsh for the claimant to relocate elsewhere in Iraq and neither asylum nor HP would be appropriate.

**3.11.12** Internal relocation would not be an option for nationally known figures. Where a claimant is able to establish a well-founded fear on the grounds that they are nationally known and associated with the activities of the former regime, the activities that brought them to national attention would generally mean they would be of interest to the authorities in Iraq. Therefore a grant of asylum might be appropriate in these cases, if one of the exclusion clauses is not applicable (see section 3.11.13 below).

**3.11.13** Caseworkers should note that some high ranking members of the Ba'ath party have been responsible for serious human rights abuses and crimes against humanity. If it is accepted that a claimant was an active operational high ranking member for the Ba'ath party and the evidence suggests he/she has been involved in such actions, then caseworkers should consider whether one of the Exclusion clauses is applicable. Caseworkers should refer such cases to a Senior Caseworker in the first instance.

### **3.12 Tribal disputes**

**3.12.1** Some claimants will make an asylum or human rights claim due to a fear of ill treatment amounting to persecution at the hands of members of their tribe or another with whom there is a tribal dispute.

**3.12.2 *Treatment*** Iraq is a largely tribal society with at least three-quarters of the Iraqi people belonging to one of the country's 150 tribes.<sup>125</sup> The *Law on Criminal Proceedings* leaves space for the use of tribal justice or other forms of extrajudicial procedures (e.g. religious courts) in three main areas:

- Offences giving rise exclusively to a private right of action (offences for which criminal proceedings may only be initiated upon the complaint of the aggrieved party);
- Conciliation prior to verdict leading to the suspension of legal action;
- Subsequent pardon on request of the victim.

These provisions also continue to be applicable in the three Northern Governorates.<sup>126</sup> In the case of blood disputes, the punishment of the perpetrator by a court may actually not solve the case as, according to tribal rules, only the payment of compensation or revenge killing can restore justice.<sup>127</sup> It was noted in 2003 that people had been exploiting the tribal arbitration mechanism whereby tribal leaders would mediate between the families of victims and perpetrators to try to arrive at a figure for compensation, or 'blood money'. In the aftermath of the conflict, tribal leaders had been 'swamped' with false claims from people trying to earn a few dollars and openly expressed concern at the damage that tribal-based criminality was having on their communities.<sup>128</sup>

**3.12.3** Tribes are very important in the country. It is very common in Iraq to ask the tribal-leaders to solve problems between members of different tribes. A decision of a sheik (tribal leader) is normally respected by everyone, even by the defeated party. Tribal leaders have an effective conflict - solving power in the rural areas whereas in the bigger cities their competence is limited.<sup>129</sup>

**3.12.4** UNHCR in their October 2005 Country of Origin Information report noted that there is concern that policemen, who are often more loyal to their tribe than to their duty, may enter tribal feuds and further undermine the reputation and effectiveness of the Iraqi Security Forces (ISF). In the past, feuds have also taken place between the Garamsha and the

---

<sup>125</sup> UNHCR COI Iraq 2005 p123

<sup>126</sup> UNHCR COI Iraq 2005 p123

<sup>127</sup> UNHCR COI Iraq 2005 p124

<sup>128</sup> COIS Iraq Country Report October 2006 Section 22

<sup>129</sup> COIS Iraq Country Report October 2006 Section 22

Basun tribe, the Garamsha and the Awlad Amer tribe and the Al-Abtut and Al-Hamadne tribes.<sup>130</sup>

- 3.12.5** UNHCR noted in the same report that whereas tribal justice is a system commonly-used in dealing with inter-tribal feuds, it has also provided justification for killings of US soldiers and suspected collaborators. According to Paul McGeough, author of 'Mission Impossible - The Sheikhs, the US and the future of Iraq', much of the violence against the US and persons considered to be collaborating with the 'occupation' is a result of tribal justice and revenge killings. On 1 August 2003, the Washington Post reported on a particularly acute example of tribal justice: the killing of an Iraqi 'collaborator' by his father and brother in the attempt to avoid a string of revenge killings dictated by tribal tradition.<sup>131</sup>
- 3.12.6 *Sufficiency of protection*** Despite efforts by the new Government to address the situation in 2006, State institutions have been unable to protect individuals from gross human rights violations by insurgents or grant redress or compensation to the rapidly growing number of victims.<sup>132</sup> Despite efforts to reform and rebuild The Iraqi Security Forces, they are not yet capable of independently fighting the insurgency and rely heavily on the presence of the Multinational Forces (MNF).<sup>133</sup> Although there has been an increase in the number of Iraqi Security Forces (ISF), most lack adequate training to deal with the security situation, in particular the insurgents. Therefore, the ISF are unable to protect Iraqis, combat insurgents and provide security. The Iraqi Police Service (IPS) is responsible for daily patrolling of cities and towns in Iraq and although some of its units are proficient, the IPS as a whole has a reputation of being untrained and police station-bound<sup>134</sup>
- 3.12.7** The security situation in the KRG administered northern Governorates of Dahuk, Erbil and Sulaymaniyah remains largely unaffected by the fall of the Saddam regime and relatively stable in comparison to the centre and the Governorates of Kirkuk and Mosul. A large, well-trained and well-equipped security force, known as the peshmerga, is present in the KRG administered Governorates to control the security situation. Although successful attacks by insurgent groups such as Ansar Al-Sunna do take place, they are quite rare and lower-scale in comparison to other parts of the country. This was mainly due to the vigilance of the Kurdish security forces.<sup>135</sup>
- 3.12.8** In central and southern Iraq the authorities are willing to offer protection however due to the high level of insurgent attacks they are unable to provide sufficiency of protection. In the KRG, where insurgent attacks are markedly lower, it can be argued that protection is at a reasonably effective level and there is sufficiency or protection.
- 3.12.9 *Internal relocation*** (Refer to 2.19 Internal Travel) Tribes are regional power-holders<sup>136</sup> and therefore if there is a localised tribal dispute the individual should be able to relocate to escape the problem. However UNHCR noted in October 2005 that within the Iraqi context and with the exception of the capital city of Baghdad, cities are constituted of people belonging to specific tribes and families. Any newcomer, particularly when he/she does not belong to the existing tribes and families, is liable to be subject to discrimination.<sup>137</sup> However tribes do appear to have limited influence in Baghdad.<sup>138</sup> Though relocation by persons of a certain tribe may cause resentment and discrimination on the part of the receiving tribe, such relocation is not considered unduly harsh.
- 3.12.10** Ease of movement within Iraq varies from place to place depending on security restrictions, and is the same for all Iraqis. As a result of the recent rise in Islamic extremism single

<sup>130</sup> UNHCR COI Iraq 2005 p90

<sup>131</sup> UNHCR COI Iraq 2005 p124

<sup>132</sup> COIS Iraq Country Report October 2006 Section 7

<sup>133</sup> UNHCR Guidelines 2005 p2

<sup>134</sup> COIS Iraq Country Report October 2006 Section 10

<sup>135</sup> COIS Iraq Country Report October 2006 Section 10

<sup>136</sup> COIS Iraq Country Report October 2006 Section 22

<sup>137</sup> UNHCR Guidelines 2005 p49

<sup>138</sup> COIS Iraq Country Report October 2006 Section 22

women may be unable to move around freely if unaccompanied and may not be able to settle in areas where they have no family ties as they are unlikely to be able to access resources without support. In assessing this, caseworkers will need to take all relevant factors into account including financial circumstances and health, whether the claimant has a support network. However, there is generally freedom of movement throughout the country and it is unlikely that internal relocation would be unduly harsh for men, and women with male partners or relatives.<sup>139</sup> Caseworkers will also need to consider whether the applicant's past fear is likely to be known in another part of Iraq.<sup>140</sup>

### 3.12.11 *Caselaw*

**SM and others [2005] UKIAT 00111.** The Tribunal considered that "the authorities in the KRG are able as a matter of international law to provide security and protection to the inhabitants of that region." (para 52) They added that, "We also conclude that there is general sufficiency of protection for Kurds in the KAA subject to the exceptional case where a person has either fallen foul of the party in his own area and remains within that area or where there is a tribal dispute which unusually would not be resolved either by mediation or by tribal leaders or the intervention of one of the political parties." (para 279) On internal relocation the Tribunal noted that there are over 1 million Kurds living outside the KAA (para 273). In addition to internal relocation not being unduly harsh within the KAA, they also considered that relocation to the south would not be considered unduly harsh. (para 279)

**GH [2004] UKIAT 00248.** The Tribunal concluded that in Sulaimaniyah "we are also satisfied that those representing the lawful authorities in his home area are currently providing a sufficiency of protection against the Islamic extremists and terrorists and we see no arguable reason why such protection would not be equally available to the appellant." (para 126).

**3.12.12 *Conclusion*** Tribes within Iraq are important informal civil authorities that can invariably mediate and dissolve a threat which will negate any element of fear the claimant had. Where tribal elders or the tribal structure can successfully mediate and subdue a particular conflict, it is likely that the threat of persecution will not materialise. The grant of asylum or Humanitarian Protection in such cases is unlikely to be appropriate. It is nevertheless possible that claimants unable to avail themselves of such tribal support will be able to demonstrate a continuing threat from a tribal dispute which could amount to persecution. In general as outlined above victims of a tribal dispute are not members of a particular social group but a grant of Humanitarian Protection may be appropriate in cases where there is no sufficiency of protection and no internal relocation alternative. However, where an individual is able to show that his tribe is so infamous or well known that they do form a distinct group within society, and further more is able to show that the state refused to protect them simply because of who they were, then they may fall for consideration under the Refugee Convention as a particular social group and may in exceptional circumstances qualify for a grant of asylum.

### 3.13 Honour killings in Central and Southern Iraq

**3.13.1** Some claimants will make an asylum or human rights claim due to ill treatment amounting to persecution at the hands of non-State agents on the basis of allegedly bringing the honour of their family into disrepute.

**3.13.2 *Treatment*** Most victims of 'honour crimes' are women and girls who are considered to have shamed the women's families by immoral behaviour. Often the grounds for such an accusation are flimsy and no more than rumour. Women might be killed because they lost their virginity before marriage, they demanded divorce or refused marriage, had extra-marital affairs, or even because they were raped. 'Honour crimes' are most often perpetrated by male members of the women's families in the belief that such crimes restore their and the family's honour.<sup>141</sup> 'Honour killings' occur mainly in conservative Muslim families (both Shiite and Sunni, of both Arab and Kurdish backgrounds), in all areas of Iraq.

<sup>139</sup> UNHCR COI Iraq 2005 p139

<sup>140</sup> UNHCR Guidelines 2005 p49

<sup>141</sup> COIS Iraq Country Report October 2006 Section 25

'Honour killings' cannot be justified by Islam or Sharia law, but are a 'tribal custom stemming from the patriarchal and patrilineal society's interest in keeping strict control over familial power structures'.<sup>142</sup> A study conducted by the Ministry of Women's Affairs reported in May 2005 found that more than 400 women have been raped since the fall of the former regime and more than half of this group were later killed for honour-related reasons.<sup>143</sup> The lack of a functioning judicial system during the months after the 2003 war contributed to an increase in the part played by tribal bodies in resolving conflicts, including in relation to 'honour crimes'.<sup>144</sup>

- 3.13.3** However according to UNHCR in Oct 2005 tribal justice is also seen as sanctioning 'honour killings', forced marriages and other forms of tribal customs, seriously violating the rights of women and girls. While most cases are resolved through the payment of money, other forms of compensation such as arranged marriages are used, although to a lesser extent. This practice is known as 'exchange-for-blood marriage', in which one or two women of a tribe are given to the male relatives of another tribe as compensation for the killing of one of that tribe's members.<sup>145</sup>
- 3.13.4** Some women try and commit suicide, particularly through self-immolation, in order to 'cleanse' the honour of the family or to escape killing or other forms of violence. The practices of hymen reconstruction on girls that have lost their virginity and backstreet abortions both pose a serious health risk but appear for some girls to be the only way to escape killing.<sup>146</sup>
- 3.13.5** Women who have fled Iraq on their own or with their children may face additional risks. Women who do not benefit from any type of family network or tribal links to protect them are at risk and are likely to be prime targets for traffickers.<sup>147</sup>
- 3.13.6** **Sufficiency of protection** Despite efforts to reform and rebuild the Iraqi Security Forces, they are not yet capable of independently fighting the insurgency and rely heavily on the presence of the Multinational Forces (MNF).<sup>148</sup> Although there has been an increase in the number of ISF, most lack adequate training to deal with the security situation, in particular the insurgents. Therefore, the ISF are unable to protect Iraqis, combat insurgents and provide security.<sup>149</sup> Police, often from the same tribe or town, are often unwilling to get involved in honour killings, turning instead a blind eye to these crimes.<sup>150</sup>
- 3.13.7** Article 111 of the Iraqi Penal Code exempts from prosecution and punishment men who kill other men or female relatives in defence of their family's honour. The *Penal Code* contains provisions that allow lenient punishments for 'honour killings'.<sup>151</sup> The punishment will be between 6-12 months imprisonment. Article 409 further provides that if a person surprises his wife or a female relative committing adultery and kills/injures one or both immediately, the punishment will not exceed three years. The law does not provide any guidance as to what 'honourable' motives are.<sup>152</sup>
- 3.13.8** During the summer of 2004, the Iraqi NGO 'Organization of Women's Freedom in Iraq' (OWFI) opened two shelters – one in Baghdad and one in Kirkuk – both of which are in secret locations and have the capacity to host up to 20 women at a time. The Chairwomen of OWFI reported that they face 'extreme difficulties' of reaching out to women, who are often unable to even leave their homes. Asuda, the first protection centre for women

---

<sup>142</sup> UNHCR COI Iraq 2005 p37

<sup>143</sup> UNHCR COI Iraq 2005 p38

<sup>144</sup> COIS Iraq Country Report October 2006 Section 25

<sup>145</sup> UNHCR COI Iraq 2005 p124

<sup>146</sup> COIS Iraq Country Report October 2006 Section 25

<sup>147</sup> UNHCR Guidelines 2005 p21

<sup>148</sup> UNHCR Guidelines 2005 p2

<sup>149</sup> COIS Iraq Country Report October 2006 Section 10

<sup>150</sup> FCO Letter dated 12 January 2007

<sup>151</sup> COIS Iraq Country Report October 2006 Section 25

<sup>152</sup> UNHCR COI Iraq 2005 p33

endangered by 'honour killings', was opened in a hidden place in Sulaymaniyah in 2000. Since women seeking protection often have to stay for long periods of time, Asuda offers a 'home' which includes education, leisure and daily activities. Mediation between the women and their families aims at enabling the women's return, but this may not always be possible and there have been cases of fathers assuring their daughters that they have forgiven them, only to murder them once they are back in the family home.<sup>153</sup> The extent to which the current security organisations in Iraq can offer protection to women exposed to (sexual) violence at the hands of third parties or honour crimes is unknown. It is generally accepted that the authorities outside of the KRG area are not effective enough to provide security to ordinary Iraqis or lone women who are in an even worse position.

**3.13.9 Internal relocation** (Refer to 2.19 Internal Travel) UNHCR in their December 2006 position paper advised against the possibility of internal relocation in all parts of Central or Southern Iraq stating that there is no internal flight alternative, given the reach of both state and non-state agents of persecution, the lack of national protection and grave insecurity and human rights violations prevailing in those parts.<sup>154</sup> UNHCR therefore conclude that it is highly unlikely that asylum-seekers who fear persecution in Central and Southern Iraq will be able to find a place in this region where they would be safe from persecution. However, asylum and human rights claims are not decided on the basis of a general approach, they are based on the circumstances of the particular individual and the specific risk to that individual. It is important that caseworkers give individual consideration to whether the applicant's well-founded fear of persecution in one area is likely to exist in another part of Iraq. UNHCR's conclusion that it is unsafe for all persons in Central and Southern Iraq to relocate is not therefore accepted, but each case must be considered on its individual merits.

**3.13.10** Ease of movement within Iraq varies from place to place depending on security restrictions, and is the same for all Iraqis. As a result of the recent rise in Islamic extremism single women may be unable to move around freely if unaccompanied and may not be able to settle in areas where they have no family ties as they are unlikely to be able to access resources without support. However, there is generally freedom of movement throughout the country and it is unlikely that internal relocation would be unduly harsh for men, and women with male partners or relatives.<sup>155</sup> In assessing whether women can avoid the threat of honour crimes through settling elsewhere in Iraq, caseworkers will need to take all relevant factors into account including financial circumstances, health, and whether the claimant has a support network. Dependent on the facts of the case some women may not be able to relocate.

**3.13.11 Conclusion** Honour killings occur in all parts of the country, and both men and women could be targeted. If a woman can show the threat of honour killing (or other forms of serious harm) arises because they are women, and if internal relocation is not available, they could qualify for asylum on grounds of a particular social group as it is generally accepted that the authorities outside of the KRG are unable to offer sufficiency of protection. This is likely to be most relevant when women come from male-dominated tribes or religious groups that impose strict rules on the conduct of women. However, honour killings might not always be gender-related, there might be cases where men are as likely as women to be killed for committing certain indiscretions which have brought shame on their family. If internal relocation is considered unduly harsh then Humanitarian Protection might be appropriate in these cases.

### **3.14 Honour killing in the area administered by the KRG**

**3.14.1** Some claimants will make an asylum or human rights claim due to a fear of ill treatment amounting to persecution at the hands of non-State agents in the KRG area of Iraq on account of allegedly bringing the honour of their family into disrepute.

<sup>153</sup> COIS Iraq Country Report October 2006 Section 25

<sup>154</sup> UNHCR return advisory and position on international protection needs of Iraqis outside Iraq. Dated 18 December 2006

<sup>155</sup> UNHCR COI Iraq 2005 p139



- 3.14.2 *Treatment*** Please see para 3.13.2. In addition, the Kurdistan Regional Government has been a leading voice in denouncing Iraq 'honour killings' and its amendment of the penal code to consider such killings as ordinary crime is commendable. Furthermore, the Kurdish Regional Government has made significant progress in acknowledging the occurrence of 'honour killings' and in raising public awareness regarding this matter. However, in the first half of 2006, there was a significant increase in the rate of female mortality due to accidents or crimes in the Region of Kurdistan. The situation of women is significantly different in the Region of Kurdistan. The Women Affairs Committee in the Kurdistan Regional Assembly has worked significantly to ensure that women enjoy their rights in the Region.<sup>156</sup>
- 3.14.3** Mutilation is another form of 'honour crime' used in northern Iraq as a punishment for people accused of a relationship considered to be illegitimate.<sup>157</sup>
- 3.14.4 *Sufficiency of protection*** The security situation in the KRG administered northern Governorates of Dahuk, Erbil and Sulaymaniyah remained largely unaffected by the fall of the Saddam regime and relatively stable in comparison to the centre and the Governorates of Kirkuk and Mosul. A large, well-trained and well-equipped security force, known as the peshmerga, is present in the KRG administered Governorates to control the security situation.<sup>158</sup>
- 3.14.5** Between 2000 and 2002 the Kurdish authorities amended the law so that courts could no longer find 'honourable motivation' a mitigating circumstance in 'honour crimes' against women.<sup>159</sup>
- 3.14.6** Several organisations have been established in Northern Iraq that offer support for women at risk of violence, including survivors of attempted 'honour killings'. One of these organisations is the Sulaimaniya-based Asuda Centre for Combating Violence against Women (Asuda Centre), which in August 2002 opened a shelter for women survivors of violence at a secret location. Moreover women's shelters were established in Sulaymaniyah in January 1999 (*Nawa Centre*) and Erbil in April 2002 (*Khanzad Centre*). The centres provide food and accommodation, psychological treatment, social assistance, legal aid as well as a mediation programme. Since women seeking protection often have to stay for long periods of time, Asuda offers a 'home' which includes education, leisure and daily activities.<sup>160</sup>
- 3.14.7** The extent to which the current security organisations in Iraq can offer protection to women exposed to (sexual) violence at the hands of third parties or honour crimes is unknown. It is generally accepted that the authorities outside of the KRG area are not effective enough to provide security to ordinary Iraqis or lone women who are in an even worse position. In the KRG, the security forces are able to offer protection to women but because women are either too afraid to approach them or because the police are unwilling to get involved in 'family business', often do not get involved.<sup>161</sup> However, it can be argued that protection for women is at a reasonably effective level in the KRG and that there is generally a sufficiency of protection.
- 3.14.8 *Internal relocation*** (Refer to 2.19 Internal Travel) UNHCR in their December 2006 position paper advised against the possibility of internal relocation in all parts of Central or Southern Iraq stating that there is no internal flight alternative, given the reach of both state and non-state agents of persecution, the lack of national protection and grave insecurity and human rights violations prevailing in those parts.<sup>162</sup> UNHCR therefore conclude that it is highly

<sup>156</sup> COIS Iraq Country Report October 2006 Section 25

<sup>157</sup> COIS Iraq Country Report October 2006 Section 25

<sup>158</sup> COIS Iraq Country Report October 2006 Section 10

<sup>159</sup> COIS Iraq Country Report October 2006 Section 25

<sup>160</sup> COIS Iraq Country Report October 2006 Section 25

<sup>161</sup> FCO Letter dated 12 January 2007

<sup>162</sup> UNHCR Return advisory and position on international protection needs of Iraqis outside Iraq. Dated 18 December 2006

unlikely that asylum-seekers who fear persecution in Central and Southern Iraq will be able to find a place in this region where they would be safe from persecution. However, asylum and human rights claims are not decided on the basis of a general approach, they are based on the circumstances of the particular individual and the specific risk to that individual. It is important that caseworkers give individual consideration to whether the applicant's well-founded fear of persecution in one area is likely to exist in another part of Iraq. UNHCR's conclusion that it is unsafe for all persons in Central and Southern Iraq to relocate is not therefore accepted, but each case must be considered on its individual merits.

- 3.14.9** The Asuda Centre sends women to far away villages and places in other regions of Northern Iraq, where they are not known and can find protection.<sup>163</sup> Women have freedom of movement within Iraq however this is limited due to the specific harassment and threats against them. This has increased the pressure on women to have a male family member to accompany them..<sup>164</sup> Persons legally residing in the three Northern Governorates have access to public services such as education, employment and housing. However persons with no family, tribal or political connections may find it difficult to effectively realise these rights, for example when attempting to find employment or accommodation. This is particularly true for women, as for cultural reasons they are in need of their family/tribe to support them economically.<sup>165</sup> In assessing whether women can avoid the threat of honour crimes through settling elsewhere in Iraq, caseworkers will need to take all relevant factors into account including financial circumstances, health, and whether the claimant has a support network. Dependent on the facts of the case some women may not be able to relocate.

### 3.14.10 *Caselaw*

**SM and others [2005] UKIAT 00111.** The Tribunal considered that "the authorities in the KRG are able as a matter of international law to provide security and protection to the inhabitants of that region." (para 52) They added that, "We also conclude that there is general sufficiency of protection for Kurds in the KAA subject to the exceptional case where a person has either fallen foul of the party in his own area and remains within that area or where there is a tribal dispute which unusually would not be resolved either by mediation or by tribal leaders or the intervention of one of the political parties." (para 279) On internal relocation the Tribunal noted that there are over 1 million Kurds living outside the KAA (para 273). In addition to internal relocation not being unduly harsh within the KAA, they also considered that relocation to the south would not be considered unduly harsh. (para 279)

**GH [2004] UKIAT 00248 promulgated 10 Sept 2004.** The Tribunal concluded that in Sulaimaniyah "*we are also satisfied that those representing the lawful authorities in his home area are currently providing a sufficiency of protection against the Islamic extremists and terrorists and we see no arguable reason why such protection would not be equally available to the appellant.*" (para 126).

In relation to the effectiveness of the system of government the Tribunal state at para 83 "*The general picture which emerges is one of comparative stability in a region under a common administration with a functioning security and judicial system.*"

**Haji [2003] HX 33658-02 promulgated 30 April 2003.** The IAT held that protection was available and was vigorously supported by the PUK and KDP.

- 3.14.11 Conclusion** The situation in the KRG for women is significantly different to the rest of Iraq, with amendments to the penal code and women's shelters improving conditions for women in the region. It can be argued that sufficiency of protection is available to women, against the threat of honour killing, in the KRG and therefore, in the majority of cases, a grant of asylum or humanitarian protection would not be appropriate. However if in individual circumstances a woman can show the threat of honour killing (or other forms of serious harm) arises because they are women, and if protection is denied because they are women and if internal relocation is not available, they could qualify for asylum on grounds of a

<sup>163</sup> COIS Iraq Country Report October 2006 Section 25

<sup>164</sup> COIS Iraq Country Report October 2006 Section 30

<sup>165</sup> UNHCR Guidelines 2005 p56

particular social group. This is likely to be most relevant when women come from male-dominated tribes or religious groups that impose strict rules on the conduct of women. Honour killings might not always be gender-related, there might be cases where men are as likely as women to be killed for committing certain indiscretions which have brought shame on their family. If in such a case sufficient protection is not available and internal relocation is considered unduly harsh then Humanitarian Protection might be appropriate.

### 3.15 De-Arabisation

- 3.15.1** Some Arab claimants will make an asylum or human rights claim due to a fear of ill treatment amounting to persecution due to being forcibly evicted from the Kurdish properties given to them under the Arabisation programmes instituted by Saddam Hussein. These forcible evictions are undertaken by Kurds returning to the area re-claiming properties they had formerly occupied.
- 3.15.2 *Treatment*** Since 1975, the former Iraqi government forcibly displaced hundreds of thousands of Kurds, Turkomans, and Assyrians from their homes, and brought in Arab settlers to replace them, under a policy known as 'Arabization'. After the overthrow of Saddam Hussein, returning Kurds started to demand their original homes back from the Arabs now living there. Returning Kurds, displaced by the Arabization policies of the former regime, themselves displaced thousands of Arabs who then took refuge in military bases in the contested city of Kirkuk.<sup>166</sup>
- 3.15.3** While the majority of Arabs who had come north during the Arabization campaign fled their homes without facing direct threats or violence, a significant number who chose to remain in their homes did face direct threats and intimidation from returning Kurds, although Human Rights Watch is not aware of many cases in which such threats materialized into violence or killings. In almost all cases, returning Kurds left pre-Arabization Arab populations alone and focused their threats and intimidation on the Arabs who had come north during the Arabization campaign.<sup>167</sup>
- 3.15.4** The Iraq Property Claims Commission (IPCC) was the organisation set up to reinstate peoples' property rights that were taken away by widespread property confiscations by the former Iraqi Government. The IPCC process is open to all persons, or their heirs, who have been wrongfully deprived of real property (e.g. house, apartment or parcel of land) or an interest in real property (e.g. right to farm the land) because of actions taken by the former governments between July 17, 1968 and April 9, 2003 and or actions which can be attributed to them. Claims can also be made by people who lost real property or an interest in real property between 18 March 2003 and 30 June 2005 as a result of their ethnicity, religion or sect, or for purposes of ethnic cleansing, or by individuals who had been previously dispossessed of their property as a result of the former regime's policy of property confiscation. The deadline to file claims was initially 30 June 2005, but it was subsequently extended to 30 June 2007.<sup>168</sup> Article 58(2) TAL provides that in accordance with Article 10 of the IPCC *Statute* 'newly introduced' persons (Arab families settled by the former regime in Northern Iraq) may either be resettled, receive compensation, new land in their place of origin or compensation for the cost of moving to these areas. While it appears that many 'secondary displaced' Arabs do not wish to return to the areas of origin, in particular those originating from the South, there are strong calls from the Kurdish side not to allow them to remain in the formerly 'Arabized' areas, particularly in view of a popular referendum, as this would endorse the injustice of *Arabization*.<sup>169</sup> The Commission for Resolution of Real Property Disputes (CRRPD) replaced the IPCC in March 2006.<sup>170</sup> The CRRPD has a low rate of case resolution (payment) and this process is expected to come under the umbrella of 'normalisation' of Article 140 of the Constitution.<sup>171</sup>

<sup>166</sup> COIS Iraq Country Report October 2006 Section 31

<sup>167</sup> COIS Iraq Country Report October 2006 Section 31

<sup>168</sup> COIS Iraq Country Report October 2006 Section 31

<sup>169</sup> UNHCR COI Iraq 2005 p77

<sup>170</sup> COIS Iraq Country Report October 2006 Section 31

<sup>171</sup> FCO Letter dated 12 January 2007

- 3.15.5 Sufficiency of protection** By April 2006, 132,607 claims had been received by the CRRPD. Adjudication of claims started in October 2004 and by April 2006 21,730 claims had been decided.<sup>172</sup> Sufficiency of protection in Central and Southern Iraq is not currently at a reasonable level, however the Iraq authorities are, through the CRRPD, opening the process to all persons, or their heirs, who have been wrongfully deprived of real property.
- 3.15.6** For those who have been forcibly evicted from their property, this is the process which assesses their or anyone else's right to the property. Consequently there is a process whereby an Iraqi can seek reparations for a forcible eviction, however, it is unlikely that an Iraqi can seek sufficient protection to prevent an eviction.
- 3.15.7 Internal relocation** (Refer to 2.19 Internal Travel) UNHCR in their December 2006 position paper advised against the possibility of internal relocation in all parts of Central or Southern Iraq stating that there is no internal flight alternative, given the reach of both state and non-state agents of persecution, the lack of national protection and grave insecurity and human rights violations prevailing in those parts.<sup>173</sup> UNHCR therefore conclude that it is highly unlikely that asylum-seekers who fear persecution in Central and Southern Iraq will be able to find a place in this region where they would be safe from persecution. However, asylum and human rights claims are not decided on the basis of a general approach, they are based on the circumstances of the particular individual and the specific risk to that individual. It is important that caseworkers give individual consideration to whether the applicant's well-founded fear of persecution in one area is likely to exist in another part of Iraq. UNHCR's conclusion that it is unsafe for all persons in Central and Southern Iraq to relocate is not therefore accepted, but each case must be considered on its individual merits.
- 3.15.8** While many Arabs have returned south to former towns and villages, others – without communities to return to or who fear insecurity in places of origin – remain in makeshift camps in the north, particularly around Mosul.<sup>174</sup> Ease of movement within Iraq varies from place to place depending on security restrictions, and is the same for all Iraqis. As a result of the recent rise in Islamic extremism single women may be unable to move around freely if unaccompanied and may not be able to settle in areas where they have no family ties as they are unlikely to be able to access resources without support. In assessing this, caseworkers will need to take all relevant factors into account including financial circumstances and health, whether the claimant has a support network. However, there is generally freedom of movement throughout Iraq and it is unlikely that internal relocation would be unduly harsh for men, and women with male partners or relatives.<sup>175</sup>
- 3.15.9 Conclusion** The Commission for Resolution of Real Property Disputes (CRRPD) is a key part of the effort to redress the Ba'athist crimes against the Iraqi people. Movement of individuals out of towns such as Kirkuk and Mosul is being structured by the CRRPD. Whilst forced eviction by non-State agents has been evident, and ethnic tension is at high levels, it is unlikely that individuals once evicted are likely to suffer persecution or inhuman or degrading treatment. A grant of asylum or Humanitarian Protection is unlikely to be appropriate.
- 3.16 Christians**
- 3.16.1** Some claimants will make an asylum or human rights claim due to a fear of ill treatment amounting to persecution at the hands of Islamic Fundamentalists as a result of their type of business or membership of a non-Islamic religion in a pre-dominantly Islamic country.

---

<sup>172</sup> COIS Iraq Country Report October 2006 Section 31

<sup>173</sup> UNHCR Return advisory and position on international protection needs of Iraqis outside Iraq. Dated 18 December 2006

<sup>174</sup> COIS Iraq Country Report October 2006 Section 31

<sup>175</sup> UNHCR COI Iraq 2005 p139

- 3.16.2 *Treatment*** Iraq's Christian population includes, among others, members of the Assyrian, Chaldean, Armenian and Catholic sects. Many Assyrian Christians originate from the Governorate of Ninewa, whose capital Mosul is the second largest city in Iraq. Other Assyrians originate from Baghdad and its surroundings. Many of Iraq's other Christians originate from Basrah.<sup>176</sup> Christians are seriously affected by the dramatic deterioration of the situation of non-Muslim communities, and are facing a growing sectarian threat. Iraqi Christians feel especially apprehensive about the overwhelming presence of extremist Islamic groups and armed militias, whose display of intolerance towards non-Muslims has become a nearly daily feature in Iraq.<sup>177</sup>
- 3.16.3** Christians are often assumed to be wealthy by Iraqi standards. As a result they are frequently kidnapped for ransom money.<sup>178</sup> (See Section 3.9 for guidance on claimants who fear kidnapping). However in the KRG areas the situation for Christians is more stable.<sup>179</sup>
- 3.16.4** The FCO advised in January 2005 that whilst they are not aware of any officially sponsored discrimination against Christian communities in Iraq, reports of attacks on them are on the increase. They have seen increasing evidence of sectarian intimidation. Examples include threatening notes pushed through doors, death threats to priests and church leaders, posters in the north warning Christians to convert to Islam or leave Iraq or face death and destruction of homes and Islamist websites calling for attacks on all infidels in Iraq. As a result church attendance is falling and some families are keeping their children away from school. Insurgents generally believed that Christians were 'collaborators' and supporters of the MNF and Iraqi authorities and were therefore viewed as 'traitors.' (See Section 3.8 for guidance on claims from perceived collaborators). Furthermore, Christians are particularly targeted by hardline Islamists. There are numerous reports about attacks directed against businesses owned by Christians such as liquor stores, hairdressing salons and shops selling Western music in 2005.<sup>180</sup>
- 3.16.5** The situation for Christians in the KRG administered area was more stable in 2005. The UNHCR background paper, dated 1 October 2005, added that "The relationship between Kurds and Christians is characterised by more mutual tolerance and therefore Christians in the three Northern Governorates generally face less pressure. Christians can worship freely without interference by the Kurdish authorities<sup>181</sup> and do not face discrimination as they are partners in the Government."<sup>182</sup>
- 3.16.6 *Sufficiency of protection*** The Iraqi authorities as well as religious leaders have repeatedly called for tolerance and religious freedom and have condemned attacks against religious minorities.<sup>183</sup> Despite efforts by the new Government to address the situation in 2006, State institutions have been unable to protect individuals from gross human rights violations or grant redress or compensation to the rapidly growing number of victims.<sup>184</sup> Despite efforts to reform and rebuild the Iraqi Security Forces, they are not yet capable of independently fighting the insurgency and rely heavily on the presence of the Multinational Forces (MNF).<sup>185</sup> Although there has been an increase in the number of ISF, most lack adequate training to deal with the security situation, in particular the insurgents. Therefore, the ISF are unable to protect Iraqis, combat insurgents and provide security. As they are not yet capable of independently fighting the insurgency the ISF rely heavily on the presence of the Multinational Forces (MNF). The Iraqi Police Service (IPS) is responsible for daily patrolling of cities and towns in Iraq. Although some units are proficient, the IPS as a whole has a reputation of being untrained and police station-bound<sup>186</sup>

---

<sup>176</sup> UNHCR Guidelines p9

<sup>177</sup> UNHCR Guidelines p10

<sup>178</sup> COIS Iraq Country Report October 2006 Section 21

<sup>179</sup> COIS Iraq Country Report October 2006 Section 21

<sup>180</sup> COIS Iraq Country Report October 2006 Section 21

<sup>181</sup> COIS Iraq Country Report October 2006 Section 21

<sup>182</sup> FCO Letter dated 12 January 2007

<sup>183</sup> COIS Iraq Country Report October 2006 Section 21

<sup>184</sup> COIS Iraq Country Report October 2006 Section 7

<sup>185</sup> UNHCR Guidelines 2005 p2

<sup>186</sup> COIS Iraq Country Report October 2006 Section 10

- 3.16.7** The security situation in the KRG administered northern Governorates of Dahuk, Erbil and Sulaymaniyah remained largely unaffected by the fall of the Saddam regime and relatively stable in comparison to the centre and the Governorates of Kirkuk and Mosul. A large, well-trained and well-equipped security force, known as the peshmerga, is present in the KRG administered Governorates to control the security situation. Although successful attacks, by insurgent groups such as Ansar Al-Sunna do take place, they are quite rare and lower-scale in comparison to other parts of the country. This was mainly due to the vigilance of the Kurdish security forces.<sup>187</sup>
- 3.16.8** In central and southern Iraq the authorities are willing to offer protection, however, due to the high level of insurgent attacks they are unable to provide sufficiency of protection. In the KRG, where insurgent attacks are markedly lower, it can be argued that protection is at a reasonably effective level to provide sufficiency or protection.
- 3.16.9 *Internal relocation*** (Refer to 2.19 Internal Travel) UNHCR in their December 2006 position paper advised against the possibility of internal relocation in all parts of Central or Southern Iraq stating that there is no internal flight alternative, given the reach of both state and non-state agents of persecution, the lack of national protection and grave insecurity and human rights violations prevailing in those parts.<sup>188</sup> UNHCR therefore conclude that it is highly unlikely that asylum-seekers who fear persecution in Central and Southern Iraq will be able to find a place in this region where they would be safe from persecution. However, asylum and human rights claims are not decided on the basis of a general approach, they are based on the circumstances of the particular individual and the specific risk to that individual. It is important that caseworkers give individual consideration to whether the applicant's well-founded fear of persecution in one area is likely to exist in another part of Iraq. UNHCR's conclusion that it is unsafe for all persons in Central and Southern Iraq to relocate is not therefore accepted, but each case must be considered on its individual merits.
- 3.16.10** Ease of movement within Iraq varies from place to place depending on security restrictions, and is the same for all Iraqis. As a result of the recent rise in Islamic extremism single women may be unable to move around freely if unaccompanied and may not be able to settle in areas where they have no family ties as they are unlikely to be able to access resources without support. In assessing this, caseworkers will need to take all relevant factors into account including financial circumstances and health, whether the claimant has a support network. However, there is generally freedom of movement throughout Iraq and it is unlikely that internal relocation would be unduly harsh for men, and women with male partners or relatives.<sup>189</sup>
- 3.16.11** Approximately 30 per cent of Christians live in the north of Iraq. In this area the relationship between Kurds and Christians is characterised by more mutual tolerance. Christians in the three Northern Governorates also generally face less pressure.<sup>190</sup> It is not considered unduly harsh for Christians to relocate to areas where there are numerous other Christians, or where they are well respected.

### **3.16.12 *Caselaw***

**LM [2006] UKAIT 00060 CG** The Tribunal find that female Christians are not at risk of persecution or Article 3 ECHR breach but additional factors (prominent position in companies associated with Multi-National Force, westernised, women's rights activities or refusal to wear hijab, lack of KRG connections, no family support, English speaking or non-Kurdish speaking) may increase the risk to a level engaging both Conventions. The Tribunal find that the case of **RA [2005] UKIAT 00091** remains correct on the position of male Christians and that there is no sufficiency of protection outside KRG.

<sup>187</sup> COIS Iraq Country Report October 2006 Section 10

<sup>188</sup> UNHCR Return advisory and position on international protection needs of Iraqis outside Iraq. Dated 18 December 2006

<sup>189</sup> UNHCR COI Iraq 2005 p139

<sup>190</sup> COIS Iraq Country Report October 2006 Section 21

**RA [2005] UKIAT 00091 CG.** The Tribunal concluded that "The evidence is not such at this stage as to indicate problems for a person relocating to the north such as to render this unduly harsh or, in the case of Article 3 of the Human Rights Convention to indicate a real risk of breach of their human rights in effecting such relocation and living in the north." (para 73)

**AK [2004] UKIAT 00298 CG.** The Tribunal accepted that "sellers of alcohol, owners of cinemas where sexually explicit films are shown, and perhaps people who speak English on account of their Christianity are at particular risk." Moreover clerics of some eminence and prominence would be at risk. (para 10) The IAT further considered that the appellant was not a businessman of any kind who might be perceived as being wealthy. (para 11) The IAT saw no evidence that there would be a consistent pattern of gross and systematic violation of rights under Article 3 given the particular circumstances of the Appellant and the risk as a consequence in the light of that which he faces.

**SM and others [2005] UKIAT 00111.** The Tribunal considered that "the authorities in the KRG are able as a matter of international law to provide security and protection to the inhabitants of that region." (para 52) They added that, "We also conclude that there is general sufficiency of protection for Kurds in the KAA subject to the exceptional case where a person has either fallen foul of the party in his own area and remains within that area or where there is a tribal dispute which unusually would not be resolved either by mediation or by tribal leaders or the intervention of one of the political parties." (para 279) On internal relocation the Tribunal noted that there are over 1 million Kurds living outside the KAA (para 273). In addition to internal relocation not being unduly harsh within the KAA, they also considered that relocation to the south would not be considered unduly harsh. (para 279)

**GH [2004] UKIAT 00248.** The Tribunal concluded that in Sulaimaniyah "we are also satisfied that those representing the lawful authorities in his home area are currently providing a sufficiency of protection against the Islamic extremists and terrorists and we see no arguable reason why such protection would not be equally available to the appellant." (para 126).

**3.16.13 Conclusion** A claimant who has a localised threat on the basis that they are a Christian and is unable to acquire protection in their local area, may be able to relocate to an area where that localised threat does not exist. The caseworker will need to take into consideration the nature of the threat and how far it would extend to, and whether it would be unduly harsh to expect the claimant to relocate. Most Christian Iraqis from the KRG area would be able to seek protection. However, if on the circumstances of an individual case from central or southern Iraq it is found that internal relocation is unduly harsh, it may be appropriate to grant refugee status in those circumstances. Caseworkers should cross reference to sections on perceived collaboration, fear of Islamic militants, and fear of kidnapping where appropriate.

### **3.17 Fear of Islamic Militants**

**3.17.1** Some claimants will make an asylum or human rights claim based on ill treatment amounting to persecution at the hands of Islamic militants because the claimant's activities do not accord with the extreme interpretation of Islam. The claimant may be selling pornographic videos or liquor or the claimant is female and is deemed to be acting in an 'anti-Islamic' way. The fear is generally of Ansar-al-Islam or a comparable militant Islamic group.

**3.17.2 Treatment** The Government generally respects freedom of thought and religion. However the rise of Islamic fundamentalism (both Shia and Sunni) as well as the insurgency's declared goal of stirring up sectarian violence in Iraq has had a serious impact on the exercise of these rights in practice, and has created a climate of decreasing tolerance for religious minorities and Muslims, both women and men, who do not adhere to strict interpretations of Islam.<sup>191</sup>

**3.17.3** Islamic extremists reportedly targeted female university students in 2005 in a number of cities, demanding that they cease wearing western-style clothing and cover their heads

---

<sup>191</sup> UNHCR COI Iraq 2005 p160

while in public. Additionally, these extremists allegedly called for a separation of male and female students in some universities.<sup>192</sup>

- 3.17.4** Those who put on makeup or choose not to wear the veil fall victim to militants. Many women in Mosul, north of Baghdad, say insurgent groups are trying to impose Taleban-style restrictions on them and make the city a more conservative place.<sup>193</sup>
- 3.17.5** During 2005, the Imam Mehdi Army sought to ensure that strict Islamic codes were followed in some towns and cities in Southern Iraq. Alcohol, hairdressing salons and music shops were closed down. In March 2005, a students' picnic in Basrah was dissolved by armed followers of Al-Sadr who claimed that the students had violated Islamic norms by dressing in Western clothing, singing, and dancing. Two students were reported killed and more injured.<sup>194</sup>
- 3.17.6** Other people have been targeted by these groups, including members of religious minorities such as Christians and Sabean/Mandeans, alcohol sellers, well-known secularists, Ba'athists, former civil servants and former members of the old security services.<sup>195</sup> In Baghdad Islamic radicals have warned Christians running liquor stores to shut up shop. Some store owners have been beaten or suffered worse violence.<sup>196</sup> Such attacks are thought to be the work of local Iraqi Islamists, aiming to enforce a strict Islamic code, including a ban on alcohol.<sup>197</sup>
- 3.17.7 *Sufficiency of protection.*** Despite efforts by the new Government to address the situation in 2006, State institutions have been unable to protect individuals from gross human rights violations by insurgents or grant redress or compensation to the rapidly growing number of victims.<sup>198</sup> Despite efforts to reform and rebuild The Iraqi Security Forces, they are not yet capable of independently fighting the insurgency and rely heavily on the presence of the Multinational Forces (MNF).<sup>199</sup> Although there has been an increase in the number of Iraqi Security Forces (ISF), most lack adequate training to deal with the security situation, in particular the insurgents. Therefore, the ISF are unable to protect Iraqis, combat insurgents and provide security. The Iraqi Police Service (IPS) is responsible for daily patrolling of cities and towns in Iraq and although some of its units are proficient, the IPS as a whole has a reputation of being untrained and police station-bound<sup>200</sup>
- 3.17.8** The security situation in the KRG administered northern Governorates of Dahuk, Erbil and Sulaymaniyah remains largely unaffected by the fall of the Saddam regime and relatively stable in comparison to the centre and the Governorates of Kirkuk and Mosul. A large, well-trained and well-equipped security force, known as the peshmerga, is present in the KRG administered Governorates to control the security situation. Although successful attacks by insurgent groups such as Ansar Al-Sunna do take place, they are quite rare and lower-scale in comparison to other parts of the country. This was mainly due to the vigilance of the Kurdish security forces.<sup>201</sup>
- 3.17.9** In central and southern Iraq the authorities are willing to offer protection however due to the high level of insurgent attacks they are unable to provide sufficiency of protection. In the KRG, where insurgent attacks are markedly lower, it can be argued that protection is at a reasonably effective level and there is sufficiency or protection.

**3.17.10 *Internal Relocation*** (Refer to 2.19 Internal Travel) UNHCR in their December 2006

---

<sup>192</sup> COIS Iraq Country Report October 2006 Section 25

<sup>193</sup> COIS Iraq Country Report October 2006 Section 25

<sup>194</sup> UNHCR COI Iraq 2005 p89

<sup>195</sup> COIS Iraq Country Report October 2006 Section 21

<sup>196</sup> The Guardian, 2 August 2004

<sup>197</sup> FCO letter 22 October 2004

<sup>198</sup> COIS Iraq Country Report October 2006 Section 7

<sup>199</sup> UNHCR Guidelines 2005 p2

<sup>200</sup> COIS Iraq Country Report October 2006 Section 10

<sup>201</sup> COIS Iraq Country Report October 2006 Section 10



position paper advised against the possibility of internal relocation in all parts of Central or Southern Iraq stating that there is no internal flight alternative, given the reach of both state and non-state agents of persecution, the lack of national protection and grave insecurity and human rights violations prevailing in those parts.<sup>202</sup> UNHCR therefore conclude that it is highly unlikely that asylum-seekers who fear persecution in Central and Southern Iraq will be able to find a place in this region where they would be safe from persecution. However, asylum and human rights claims are not decided on the basis of a general approach, they are based on the circumstances of the particular individual and the specific risk to that individual. It is important that caseworkers give individual consideration to whether the applicant's well-founded fear of persecution in one area is likely to exist in another part of Iraq. UNHCR's conclusion that it is unsafe for all persons in Central and Southern Iraq to relocate is not therefore accepted, but each case must be considered on its individual merits.

**3.17.11** Ease of movement within Iraq varies from place to place depending on security restrictions, and is the same for all Iraqis. As a result of the recent rise in Islamic extremism single women may be unable to move around freely if unaccompanied and may not be able to settle in areas where they have no family ties as they are unlikely to be able to access resources without support. In assessing this, caseworkers will need to take all relevant factors into account including financial circumstances and health, whether the claimant has a support network. However, there is generally freedom of movement throughout Iraq and it is unlikely that internal relocation would be unduly harsh for men, and women with male partners or relatives.<sup>203</sup>

### **3.17.12 Case law**

**SM and others [2005] UKIAT 00111.** The Tribunal considered that "the authorities in the KRG are able as a matter of international law to provide security and protection to the inhabitants of that region." (para 52) They added that, "We also conclude that there is general sufficiency of protection for Kurds in the KAA subject to the exceptional case where a person has either fallen foul of the party in his own area and remains within that area or where there is a tribal dispute which unusually would not be resolved either by mediation or by tribal leaders or the intervention of one of the political parties." (para 279) On internal relocation the Tribunal noted that there are over 1 million Kurds living outside the KAA (para 273). In addition to internal relocation not being unduly harsh within the KAA, they also considered that relocation to the south would not be considered unduly harsh. (para 279)

**GH [2004] UKIAT 00248.** The Tribunal concluded that in Sulaimaniyah "we are also satisfied that those representing the lawful authorities in his home area are currently providing a sufficiency of protection against the Islamic extremists and terrorists and we see no arguable reason why such protection would not be equally available to the appellant." (para 126).

**3.17.13 Conclusion** A general fear of Islamic militants does not of itself give rise to a well-founded fear of persecution, and no Government can be expected to guarantee the safety of all its citizens. However, there will be individuals whose fear is over and above the common population because of aspects of their nature that they cannot or should not be expected to change. This assessment will need to be based on the merits of the individual case. Moreover the caseworker will need to take into consideration the nature of the threat and how far it would extend, and whether it would be unduly harsh to expect the claimant to relocate. For claimants who can demonstrate a well-founded fear of persecution for reason of one of the five Refugee Convention grounds (e.g. their religion or their political opinion, imputed or otherwise), are unable to acquire protection or relocate internally, a grant of asylum will be appropriate. Where the treatment is not for reason of one of the five Refugee Convention grounds a grant of Humanitarian Protection may be appropriate.

### **3.18 Member/Supporter of the PKK/KADEK**

<sup>202</sup> UNHCR Return advisory and position on international protection needs of Iraqis outside Iraq. Dated 18 December 2006

<sup>203</sup> UNHCR COI Iraq 2005 p139

**3.18.1** The Kurdistan Workers' Party (PKK), now known as KADEK or KongraGel, is listed as a proscribed organisation in the UK Terrorism Act 2000 (Amendment) Order 2001. Caseworkers should refer claims based on membership to a Senior Caseworker.

### **3.19 Prison conditions**

**3.19.1** Claimants may claim that they cannot return to Iraq due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in Iraq are so poor as to amount to torture or inhuman or degrading treatment or punishment.

**3.19.2 *Treatment.*** Iraq's prison system is twofold. On the one hand, detainees are held by the Iraqi authorities (including the Kurdish authorities); on the other hand the MNF is authorised by UN Security Council Resolution 1546 and also 1637 to carry out activities 'necessary to counter ongoing security threats posed by forces seeking to influence Iraq's political future through violence', including the 'internment' of members of these forces 'where it is necessary for imperative reasons of security'. The ICRC has visited prison and detention facilities both under the control of the Iraqi authorities and the MNF in order to monitor conditions of detention and treatment of detainees and to help prisoners establish contact with their families.<sup>204</sup>

**3.19.3** In addition to the official prisons, the Ministry of Interior runs a number of unofficial detention facilities outside the control of the Ministry of Justice. There have been numerous reports on serious human rights violations in these facilities, including the widespread use of torture.<sup>205</sup>

**3.19.4** Evidence continued to emerge in 2006 pointing to torture and other cruel, inhumane or degrading treatment in detention centres administered by the Ministry of Interior (MOI) or affiliated forces throughout Iraq. It should be noted that senior members of the new Iraqi Government have publicly indicated their determination to mark a difference with the previous Government and thus take action on human rights violations. Under the National Reconciliation plan, the Government is promising to allow national and international organizations to visit prisons and inspect the conditions of the prisoners. On 1 June 2006, the Joint Detention Centres' Inspection Committee, led by Deputy Prime Minister Dr. Salam Al-Zuba'i, carried out an inspection in a place identified as 'Site 4,' holding detainees previously held by the Public Order and Wolf Brigades. The committee found that detainees were being held in "overcrowded, unsafe and unhealthy conditions". The committee also found that the "detainees suffered systematic physical and psychological abuse by MOI officials."<sup>206</sup>

**3.19.5** Detainees reported receiving little or no food or water for several days at a stretch, and being held in severely overcrowded cells with no room for lying down to sleep, without air conditioning, and in unhygienic conditions. Beside common allegations of mistreatment and abuse, conditions inside many Iraqi prisons are reportedly sub-standard. Overcrowding, poor hygiene, lack of medical care, inadequate buildings, juveniles held with adult detainees, and torture were some of the problems reported.<sup>207</sup>

**3.19.6** A new prison called Al-Mina was built in Basra to ease overcrowding at the nearby al-Ma'aqal jail. Al-Mina prison, which has a total capacity for 600 inmates, has running water, electrical and sewage facilities. Renovation and construction on an additional 3 facilities, totaling 4,200 beds, continued at the end of 2005.<sup>208</sup> UNHCR stated in October 2005 that reportedly, prison conditions have significantly improved but often do not yet meet international standards.<sup>209</sup>

---

<sup>204</sup> UNHCR COI Iraq 2005 p52-53 and COIS Iraq Country Report October 2006. Section 15

<sup>205</sup> UNHCR COI Iraq 2005 p53

<sup>206</sup> COIS Iraq Country Report October 2006 Section 15

<sup>207</sup> COIS Iraq Country Report October 2006 Section 15

<sup>208</sup> COIS Iraq Country Report October 2006 Section 15

<sup>209</sup> UNHCR COI Iraq 2005 p153

- 3.19.7** In January 2005, Human Rights Watch (HRW) conducted interviews in Iraq with 90 detainees, 72 of whom alleged having been tortured or ill-treated, particularly under interrogation. The HRW report 2006 stated that the torture and ill-treatment of detainees in Iraqi custody remains a serious concern, with the level of reported incidents rising.<sup>210</sup> Torture and ill-treatment reportedly occurred mainly in unofficial detention facilities run by the Ministry of Interior, but also in prisons and detention facilities under the control of the Iraqi Correctional Service of the Ministry of Justice.<sup>211</sup>
- 3.19.8** In the Kurdish Region with its two distinct judicial systems, there are separate prison and detention facilities in the KDP-administered area and the PUK-administered area.<sup>212</sup> The KDP and PUK judiciaries are in the process of merging.<sup>213</sup> In the Governorates of Erbil and Dohuk, the main regular prison is called *Mohata*, located in Erbil, and has separate sections for men and women. In the Governorate of Sulaymaniyah, the major prison complex is called Ma'askar Salam. In addition, the Kurdish security (*Asayish*) and intelligence (KDP: *Parastin*, PUK: *Dazgay Zaniary*) agencies run special detention facilities which are not under the control of the authorities but rather of political parties (the KDP and PUK respectively). These detention facilities (mainly known are the *Akre* Prison, run by the *Asayish* and the Salaheddin Prison run by the *Parastin* in the Governorate of Erbil as well as the *Dazgay Zaniary* Prison in Qalachwalan, with others in secret locations) hold political and security cases (e.g. suspected members of Islamic groups, PKK members and critics of the ruling parties). It is reported that the rules of due process are systematically violated in these unofficial detention facilities. Human rights organisations and the ICRC have access to the *Akre*, the *Mohata* and the *Ma'askar Salam* prisons, while detention facilities run by the *Parastin* and the *Dazgay Zaniary* are apparently off limits to international observers.<sup>214</sup>
- 3.19.9 Conclusion.** Claimants may claim that they cannot return to Iraq due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in the Iraq are so poor as to amount to torture or inhuman treatment or punishment.
- 3.19.10** Whilst prison conditions in Iraq are poor with poor hygiene conditions and over crowding being a particular problem, these conditions will not normally be sufficiently severe to meet the high Article 3 threshold. In addition to these adverse conditions there are reports that officials act with impunity and sometimes mistreat inmates. Detention facilities run by the Ministry of Interior have received reports of cruel, inhumane or degrading treatment and are outside the control of the Ministry of Justice. However the information available does not suggest that particular groups of inmates are more at risk of such mistreatment than others. There is no evidence that the mistreatment is of such a systematic nature as to make removal a breach of Article 3 on these grounds.
- 3.19.11** Even where claimants can demonstrate a real risk of imprisonment on return to Iraq a grant of Humanitarian Protection will not generally be appropriate. However, the individual factors of each case should be considered to determine whether detention will cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3, relevant factors being the likely length of detention the likely type of detention facility and the individual's age and state of health. Where in an individual case treatment does reach the Article 3 threshold a grant of Humanitarian Protection will be appropriate.

#### **4. Discretionary Leave**

- 4.1** Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. Since 16 June 2003 the policy on Iraqi claims has been to grant Discretionary Leave for a period of 6 months where it was accepted that the medical/humanitarian conditions in Iraq

<sup>210</sup> COIS Iraq Country Report October 2006 Section 15

<sup>211</sup> UNHCR COI Iraq 2005 p146

<sup>212</sup> UNHCR COI Iraq 2005 p54 and COIS Iraq Country Report October 2006 Section 15

<sup>213</sup> FCO Letter dated 12 January 2007

<sup>214</sup> UNHCR COI Iraq 2005 p54 and COIS Iraq Country Report October 2006 Section 15

would breach Article 3. With effect from 30 August 2005 Discretionary Leave should be granted for the standard period as set out in the API on Discretionary Leave.

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

**4.3 Claims based on the poor humanitarian conditions in Iraq**

**4.3.1** As noted at paragraph 2.7, humanitarian conditions are still difficult in some areas, but they are not sufficiently harsh in any part of the country that they would amount to torture or inhuman or degrading treatment or unlawful killing such as to breach the UK's obligations under Article 3 of ECHR. Therefore a grant of DL is unlikely to be appropriate. However caseworkers will of course need to consider whether the individual circumstances of a particular case might dictate a different outcome.

**4.4 Minors claiming in their own right**

**4.4.1** Minors claiming in their own right who have not been granted asylum or HP can only be returned where they have family to return to or there are adequate reception, care or support arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception arrangements in place.

**4.4.2** Minors claiming in their own right without a family to return to, or where there are no adequate reception, care or support arrangements, should if they do not qualify for leave on any more favourable grounds, be granted DL for a period of three years or until their 18<sup>th</sup> birthday, whichever is the shorter period.

**4.5 Medical Treatment in Iraq**

**4.5.1** Claimants may claim they cannot return to Iraq due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 and/or 8 to be engaged.

**4.5.2** Hospitals usually support both in-patient and out-patient pharmacies and provide medicine free of charge or at minimal cost. The Medicine For Peace study dated 7 February 2005, showed that all surveyed hospitals in Baghdad experienced either sporadic or persistent deficiencies in essential drug categories, and most hospitals suffered from shortages of medical supplies such as sterile needles, intravenous tubing, cannulas, sterile gloves, masks, antiseptics and soap in hospitals with surgical services.<sup>215</sup> The MFP survey shows that most medical and surgical sub-specialty services are available in the health care system in Baghdad, however a number are seriously deficient. There are inadequate surgical support services, a lack of competent anaesthetists and nurses and shortages of antibiotics for surgical procedures. In addition, Iraq's health system lacks services in a number of areas of chronic disease care, such as dialysis, adult and paediatric medical oncology and radiation oncology.<sup>216</sup> The health care system in Iraq continued in 2005 to encounter a shortage of staff, equipment and medicines as well as a sporadic electricity and water supply.<sup>217</sup> There is no shortage of doctors in the Kurdish Region as a result of many doctors fleeing to the relative safety from more dangerous cities in the south. However, public health facilities are under equipped and often lack basic drugs. Private health facilities are in reasonably good supply for those who can pay.<sup>218</sup>

<sup>215</sup> UNHCR COI Iraq 2005 p103 and COIS Iraq Country Report October 2006 Section 28

<sup>216</sup> UNHCR COI Iraq 2005 p104 and COIS Iraq Country Report October 2006 Section 28

<sup>217</sup> COIS Iraq Country Report October 2006 Section 28

<sup>218</sup> FCO Letter dated 12 January 2007

- 4.5.3** The Private Health sector is strong and powerful and has the capacity to supplement the weakness of the public sector especially in curative services. A high number of private clinics are distributed nationwide. In addition there are private hospitals run by specialists mostly located in Baghdad and to a lesser extent in the centres of provinces. Those clinics, in addition to its curative duties, handle a system of distribution of drugs to patients with a long list of chronic diseases through subsidised prices. Most medical and surgical sub-specialty services are available in the health care system in Baghdad, but a number have serious deficiencies, such as inadequate surgical support services.<sup>219</sup>
- 4.5.4** In 2005, there were 15 hospital beds, 6.3 doctors, and 11 nurses per 10,000 population. Plans called for US\$1.5 billion of the national budget to be spent on health care in 2006. In February 2005, it was reported that the health system was improving in southern Iraq. According to medical staff in the area, the working environment improved and conditions were better than during the Saddam regime. However continuing insecurity and lawlessness constrain access to health facilities, and fighting has caused a large number of casualties and damage to the health infrastructure.<sup>220</sup>
- 4.5.5** HIV/AIDS patients receive free medication at the AIDS Research Centre in Baghdad, where most cases have been diagnosed, yet officials from the centre reported in 2005 a shortage of treatment because the Ministry of Health has failed to replenish their stocks.<sup>221</sup>
- 4.5.6** There is a lack of qualified professionals within the mental health care system. The Ministry of Health reported in 2005 that there are about nine psychiatric clinics (both specialised psychiatric hospitals as well as psychiatric units in general hospitals) and two psychiatric units in the two Teaching Hospitals in Baghdad. Clinical psychiatry is centred at two institutions: the old city asylum, Al Rashad, and a small hospital for acute patients, Ibn Rushd. Both buildings are old, worn structures that were extensively looted in April 2003. Ibn Rushd underwent considerable reconstruction. Psychiatric services can also be found in other governorates of Iraq, however there is a lack of drugs to treat the most severe cases of mental health illnesses.<sup>222</sup>
- 4.5.7** Where a caseworker considers that the circumstances of the individual claimant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

#### **4.5.8 Caselaw**

**FK [2004] UKIAT 00310 CG, promulgated 25<sup>th</sup> November 2004.** The Tribunal have considered the general situation in Iraq and as conceded by the Home Office, the situation is not ideal from the prospective of child or health or development. However, the Tribunal are satisfied, as set out in **N [2004] INLR 10** that the very high (extreme) threshold will only be reached in specific situations and does not apply as a generality. The IAT conclude that the very high threshold has not been met in this case.

### **5. Returns**

- 5.1** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim.
- 5.2** Iraqi nationals may return voluntarily to Iraq at any time by way of the Voluntary Assisted Return and Reintegration Programme (VARRP) operated by the International Organisation

<sup>219</sup> COIS Iraq Country Report October 2006 Section 28

<sup>220</sup> COIS Iraq Country Report October 2006 Section 28

<sup>221</sup> COIS Iraq Country Report October 2006 Section 28

<sup>222</sup> COIS Iraq Country Report October 2006 Section 28

for Migration (IOM) on behalf of the Home Office and co-funded by the European Refugee Fund. Direct flights are now available to Erbil, whereas previously voluntary returns went along a land route from Jordan. IOM will provide advice and help with obtaining travel documents and booking flights, as well as organising reintegration assistance in Iraq. Since July 2003, over 2600 Iraqis have returned to Iraq under the VARRP. The VARRP voluntary return programme provides returnees with reintegration assistance used to either support the start of a small business, vocational training, employment or education. In addition to reintegration assistance VARRP returnees are provided with transportation to the UK airport, help at the airport, international flights, travel documentation and assistance with onwards domestic transportation to their final destination. The programme was established in 2001, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Iraqi nationals wishing to avail themselves of this opportunity for assisted return to Iraq should be put in contact with the IOM offices in London on 020 7233 0001 or [www.iomlondon.org](http://www.iomlondon.org)

## 6. **Entry clearance facilities**

- 6.1** The designated post for applications for long-term entry clearance for Iraqis is Amman in Jordan. Iraqis are free to enter Jordan to make such applications on GV3's in conjunction with Iraqi passports. British Embassy Amman will issue both visit visas and settlement visas on Iraqi Interim Travel Documents. Iraqis who do not have travel documents to return to Iraq have the option to register with the International Organization for Migration's Voluntary Assisted Return and Reintegration Programme.
- 6.2** In travelling between Amman and Baghdad the risks to date have included: insurgent attacks, mainly against drivers suspected transporting goods for multinational forces, and contractors; also, vehicles ambushes carried out by armed groups aimed not only at coalition forces, but also at regular travellers who often carry valuables and money in absence of a functioning banking system; as well as, road checkpoints set up by armed groups.<sup>223</sup> The main routes leading out of Baghdad are highly insecure, in particular the airport road, the roads leading West to Jordan and Syria (which pass through Ramadi and Fallujah) and South to Hilla.<sup>224</sup> However ordinary Iraqis generally use roads on a daily basis. The road from Erbil to Kirkuk is heavily used and whilst there are occasional incidents, these are few.<sup>225</sup>
- 6.3** Road travel between Baghdad and Amman, Damascus and Beirut remains uninterrupted and the most common way of travel for Iraqi nationals. Royal Jordanian and Syrian Airways fly regular services into Baghdad, and Gulf Airways also operates regularly into Dubai. Those travelling from northern Iraq would usually travel across into Syria as the fastest and most convenient route down to Amman. It is also easier for Iraqi nationals holding UK travel documents to enter Syria than Jordan.<sup>226</sup>
- 6.4** **Caselaw**  
**SA Iraq CG [2006] UKAIT 00011** In the light of evidence now available the Tribunal is satisfied that generally it is not disproportionate to a legitimate aim within article 8 (2) to require an Iraqi national to return to Iraq and travel to Jordan to make an application for entry clearance.
- 6.5** Iraqis regularly make visa applications at the consular section in Amman, and it is considered not disproportionate to travel to Amman to seek entry clearance. The route to Amman could be via Highway 10, or alternatively it is open to the claimant to travel a different route to Amman, or to travel to another UK issuing post. It is reasonable to require that claimants who have established family ties in the UK return to Iraq and apply for a settlement visa in the normal way.

## 7. **List of source documents**

<sup>223</sup> UNHCR 'safety of routes into Iraq'

<sup>224</sup> COIS Iraq Country Report October 2006 Section 30

<sup>225</sup> FCO Letter dated 8 September 2006

<sup>226</sup> CIPU Country Bulletin 2005 para 4.2

- Country of Origin Information Service (COIS), Iraq Country of Origin Information Report October 2006 [http://www.homeoffice.gov.uk/rds/country\\_reports.html](http://www.homeoffice.gov.uk/rds/country_reports.html)
- Joint British Danish Fact Finding Mission to Baghdad and Amman on Conditions in Iraq, 01-08/09/04  
[http://www.udlst.dk/english/publications/ThePublications/factfinding\\_iraq\\_november\\_2004.htm](http://www.udlst.dk/english/publications/ThePublications/factfinding_iraq_november_2004.htm)
- The Foreign and Commonwealth Office (FCO)
  - letter dated 12 April 2005
  - letter dated, 20 January 2005
- United Nations High Commission of Refugees (UNHCR)
  - Return advisory regarding Iraqi asylum seekers and refugees, September 2004
  - Safety of Routes into Iraq, 11 April 2005
  - Country of Origin Information (COI) Iraq, October 2005 <http://www.unhcr.org/cgi-bin/texis/vtx/home/openssl.pdf?tbl=RSDLEGAL&id=435637914>
  - Guidelines relating to the eligibility of Iraqi asylum seekers, dated October 2005 <http://www.unhcr.org/cgi-bin/texis/vtx/home/openssl.pdf?tbl=RSDLEGAL&id=4354e3594>
  - Return advisory and position on international protection needs of Iraqis outside Iraq. Dated 18 December 2006  
<http://www.unhcr.org/home/RSDLEGAL/458baf6f4.pdf>
- Country Information and Policy Unit, Country Information Bulletin, May 2005
- The Netherlands Ministry of Foreign Affairs General Country report on Iraq, Translated in and owned by the UK, December 2004
- BBC news
  - 'Car bomb blasts rock Iraqi town,' dated 24 May 2005
  - 'Blasts hit Mosul security forces,' dated 26 June 2005
  - Saddam 'executed by end of year,' dated 7 November 2006 [http://news.bbc.co.uk/1/hi/world/middle\\_east/6126404.stm](http://news.bbc.co.uk/1/hi/world/middle_east/6126404.stm)
  - 'Saddam executed in Iraq' dated 30 December 2006  
[http://news.bbc.co.uk/1/hi/world/middle\\_east/6218485.stm](http://news.bbc.co.uk/1/hi/world/middle_east/6218485.stm)
- United States State Department (USSD)
  - International Religious Freedom Country Report on Iraq, dated 8 November 2005  
<http://www.state.gov/g/drl/rls/irf/2005/51600.htm>
- The Guardian
  - 'Twelve killed as bombers attack Christians in Iraq', dated 2 August 2004  
<http://www.guardian.co.uk/Iraq/Story/0,2763,1274107,00.html>
- Amnesty International
  - 'One year on the human rights situation remains dire' dated 18 March 2004.  
<http://web.amnesty.org/library/index/engmde140062004>
- UNDP Iraq Living Conditions Survey 2004  
<http://www.iq.undp.org/ILCS/houseenv.htm>

**Asylum and Appeals Policy Directorate**  
**12 February 2007**