

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	524
Land:	Irak
Kilde:	British Home Office.
Titel:	Operational Guidance Note
Udgivet:	1. oktober 2010
Optaget på baggrundsmaterialet:	29. november 2010



OPERATIONAL GUIDANCE NOTE

IRAQ

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1. Introduction

- 1.1** This document provides UKBA case owners with guidance on the nature and handling of the most common types of asylum and human rights claims received from nationals/residents of Iraq, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Case owners must refer to the relevant Asylum Instructions for further details of the policy on these areas.
- 1.2** Case owners *must not* base decisions on the country of origin information in this guidance; it is included to provide context only and does not purport to be comprehensive. The conclusions in this guidance are based on the totality of the available evidence, not just the brief extracts contained herein, and case owners must likewise take into account all available evidence. It is therefore essential that this guidance is read in conjunction with the relevant COI Service country of origin information and any other relevant information.

COI Service information is published on Horizon and on the internet at:

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 Asylum Instruction on Article 8 ECHR. If, following consideration, a claim is to be refused, case owners should consider whether it can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.

2. Country assessment

- 2.1** Case owners should refer the relevant COI Service country of origin information material. An overview of the country situation including headline facts and figures about the population, capital city, currency as well as geography, recent history and current politics can also be found in the relevant FCO country profile at:

<http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/>

- 2.2** An overview of the human rights situation in certain countries can also be found in the FCO Annual Report on Human Rights which can be accessed at:

<http://centralcontent.fco.gov.uk/resources/en/pdf/human-rights-reports/human-rights-report-2009>

3. Main categories of claims

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

<http://www.ind.homeoffice.gov.uk/documents/asylumpolicyinstructions/>

3.5 Credibility

- 3.5.1** This guidance is **not** designed to cover issues of credibility. Case owners will need to consider credibility issues based on all the information available to them. For guidance on credibility see para 11 of the Asylum Instructions on 'Considering the Asylum Claim' and 'Assessing Credibility in Asylum and Human Rights claims'. Case owners must also ensure that each asylum application has been checked against previous UK visa applications. Where an asylum application has been biometrically matched to a previous visa application, details should already be in the Home Office file. In all other cases, the case owner should satisfy themselves through CRS database checks that there is no match to a non-biometric visa. Asylum applications matched to visas should be investigated prior to the asylum interview, including obtaining the Visa Application Form (VAF) from the visa post that processed the application.

3.6 Claims based on the poor security conditions in Iraq

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

3.6.2 *Treatment.* The UNSC report dated 20 February 2009 stated that in recent months, Iraq witnessed gradual stabilisation and further improvements in security conditions, with a lower number of violent, high-visibility, mass-casualty attacks by militias, insurgents and criminal gangs. Nonetheless, indiscriminate attacks by roadside, car or suicide bombs were almost a daily occurrence. A particularly troubling aspect was the frequent use of women, and occasionally even children, as suicide bombers. The US State Department Human Rights report for 2009 echoed this stating that during 2009, the general security situation in the country improved substantially. Violence decreased to the lowest level since 2004, although attacks on military, police, and civilians continued. Compared to the previous year, civilian deaths from violence during the year fell 47 percent to an average of seven civilian deaths per day and Iraqi Security Forces (ISF) deaths from violence fell by 52 percent to an average of 1.4 ISF deaths per day. Successful ISF operations contributed to decreasing violence by consolidating government control of areas Shia special groups and other extremists previously dominated. Sectarian killing declined due to the continued observance, except by some breakaway factions, of a series of unilateral ceasefires the Shia militia Jaysh al-Mahdi (JAM) first announced in 2007, and the continued efforts of "Sons of Iraq" (SOI) neighbourhood security forces — initiated in 2007 and 2008 and mostly affiliated with Sunni tribal groups — to undermine the influence of the terrorist group Al-Qa'ida in Iraq (AQI) and other largely Sunni extremists.¹

3.6.3 The UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers, April 2009 stated that there has been a significant stabilisation since late 2007 and in 2008. The paper summarised some of the main developments as being: relative overall security improvements, with a significant reduction in civilian casualties and new displacement of persons, in particular in the Southern Governorates and some of the Central Governorates; a virtual halt of open Sunni-Shi'ite violence; movement of the main actors of violence (i.e. Al-Qa'eda in Iraq [AQI] and Jaish Al-Mahdi [JAM] or Mahdi Army)/'Special Groups') who have either moved or been pushed out of urban areas, weakened or are lying low; a number of successive military operations targeting Sunni and Shi'ite extremist groups which the Iraqi Government, with the support of the Multi-National Forces in Iraq (MNF-I), have been able to assert more authority over its territory; largely violence-free provincial elections in January 2009; limited, yet increasing, return of persons displaced inside and, to a lesser extent, outside the country.²

3.6.4 The UNSC report of 2 June 2009 states that armed opposition groups, Al-Qaida and other extremist elements continue to demonstrate the intent and capability to conduct major attacks against Government officials, security forces and the local population. Although there has been a demonstrable reduction in insurgent activity across the country in the past 12 months, there are still armed groups determined to incite sectarian violence and undermine public confidence in the Government's capability to provide effective security.³

3.6.5 *Actors of protection.* Case owners must refer to the Asylum Policy Instruction on Assessing the Claim. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Case owners should also take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Protection is generally provided when the authorities (or other

¹ COI Service Iraq Country Report December 2009

² COI Service Iraq Country Report December 2009

³ COI Service Iraq Country Report December 2009

organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection..

- 3.6.6** During 2009 the security services exhibited greater integration of the 'Sons of Iraq', a coalition between tribal sheikhs that unite to maintain security, into the Iraq Security Forces (ISF). The ISF strengthened their chain of command and control, and there were fewer shortages of personnel and equipment. Total trained ISF numbers grew to at least 655,000 from 590,000 in 2008, enabling the ISF to improve operations against extremist activity. Although oversight by MOI and Ministry of Defence (MOD) Internal Affairs increased, problems continued with all security services, arising from sectarian divisions, corruption, and unwillingness to serve outside the areas in which personnel were recruited. The effort of the head of the Federal Police to have police serve in provinces other than their home provinces to reduce corruption was partially successful.⁴
- 3.6.7** The MOI security forces include several components: the 292,700-member Iraqi Police Service deployed in police stations; the 43,800-member Federal Police, overwhelmingly Shia and organized into commandos and public order police; the 40,000-member Border Enforcement Police; and the 83,000 Facilities Protection Service security guards deployed at MOI direction at individual ministries. The MOI was responsible for approximately 600,000 employees, 10 percent of the country's male labour force. The IPS consists of all provincial police forces (station, patrol, traffic, and special units) assigned to the 18 Iraqi provinces. The Directorate General of Police for each province oversees operations and sustains more than 1,300 police stations across Iraq.⁵
- 3.6.8** In April 2008 the MOI established the Internal Security Forces disciplinary and criminal court system to adjudicate disciplinary violations and crimes committed by MOI police. In an environment where allegations did not often lead to convictions, there were more allegations of MOI and MOD abuses than in the previous year. There were continuing reports of torture and abuse throughout the country in many MOI police stations and MOD facilities; the incidents generally occurred during the interrogation phases. Unlike in the previous year, MOI employees accused of serious human rights abuses were generally investigated and punished rather than transferred. The MOI Internal Affairs division punished 103 officers and opened 66 new investigations into wrongdoing. The court began hearing cases in July 2008. Although the MOI Internal Security Forces Courts continued to process cases during the year, their effectiveness in holding high-level officials accountable for serious violations remained unproven. The regional courts have reviewed 5,937 cases, returned 1,475 cases for further investigation, issued 1,495 sentences, and had 814 cases pending as of July. In July alone the Internal Security Forces Courts convicted and sentenced 272 police and acquitted two. Courts sentenced six police officers to five to 15 years, eight police officers to one to five years, and 258 police officers to less than one year in jail. Two police officers were fined.⁶
- 3.6.9** The BEO Erbil stated that the KR is policed and secured effectively by a combination of the Peshmerga (the Kurdish military force that is technically part of the Iraqi armed forces), local police and the Asayeesh security force. The KRG maintains an effective border (the 'green line') between the KR and the rest of Iraq and controls entry into the KR to keep insurgent and terrorist elements out of the KR. The Peshmerga are well equipped and trained, and they remain dedicated to the security of the KRG region. Nevertheless, occasional attacks do occur in the region. Furthermore, the presence of Peshmerga forces in parts of some non-KRG provinces (e.g., Khanaqin in Diyala) has increased tensions between the GoI and the KRG and between Arabs and Kurds, hampering political cooperation.⁷

⁴ US State Department Human Rights Report 2009: Iraq

⁵ US State Department Human Rights Report 2009: Iraq

⁶ US State Department Human Rights Report 2009: Iraq

⁷ COI Service Iraq Country Report December 2009

- 3.6.10** The ISF assumed control of cities on June 30 2009 from Multinational Force-Iraq (MNF-I) and, despite major coordinated terrorist attacks in August, October, and December, generally maintained law and order effectively. Civilian authorities generally maintained control of the ISF. However, continuing violence, corruption, and organisational dysfunction undermined the government's ability to protect human rights. Unlike in the previous year, there were no terrorist attacks within the Kurdistan region.⁸ There continue to be allegations of serious human rights violations, including torture and other ill-treatment in the KRG,⁹ it can be argued that protection is at a reasonably effective level and there is generally a sufficiency of protection. Numbers of people detained in the KRG on account of extremist/ insurgent activity are relatively small and complaints against police abuses can be made to an internal investigations department within the Ministry of the Interior.
- 3.6.11 *Internal relocation.*** Case owners must refer to the Asylum Policy Instructions on both Internal Relocation and Gender and apply the test set out in paragraph 339O of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of asylum or humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.
- 3.6.12** Article 44 (1) of the Constitution stipulates that each Iraqi has freedom of movement, travel, and residence inside and outside Iraq. In July 2004 the Iraqi Interim Government (IIG) 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 for up to 60 days at a time. 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 were in place, restricting people's freedom of movement, mainly during the night. Curfews exist in all areas of Central and Southern Iraq (23:00 to 06:00), and may be lengthened at short notice. In Baghdad the current curfew is from 22:00 to 05:00.¹⁰
- 3.6.13** Travel by road within the Central and Southern Governorates has become fairly safe in many areas, but all roads remain potentially dangerous. Roadside bombings, robbery and carjacking remain a daily occurrence in the major populated areas. The main routes from Baghdad to the North, i.e. the Baghdad Western North route from Baghdad through the Governorates of Salah Al-Din and Ninewa and further north to Dahuk as well as the Baghdad Eastern North route from Baghdad through the Governorate of Diyala up to Kirkuk, see daily roadside bombings. In the south, there is a high risk of attacks on most routes in the Governorates of Babel and Wassit, especially in the districts lying closest to Baghdad. Movement may further be limited by curfews and vehicle bans, which can be enforced at short notice (e.g. around religious holidays or elections). Travel by air from Baghdad International Airport has also relatively improved. Though there have been no recent attacks on civilian aircraft, the potential threat still exists.¹¹
- 3.6.14** The MOI's (Ministry of Interior) Passport Office maintained a policy of requiring women to obtain the approval of a close male relative before receiving a passport. On May 8, the Kurdish Regional Government (KRG) Prime Minister Nechirvan Barzani declared that,

⁸ US State Department Human Rights Report 2009: Iraq

⁹ COI Service Iraq Country Report December 2009

¹⁰ COI Service Iraq Country Report December 2009

¹¹ COI Service Iraq Country Report December 2009

unlike in the rest of the country, women older than the age of 18 would be able to obtain passports without obtaining the approval of a close male relative.¹²

- 3.6.15** The BEO [British Embassy Office] Erbil understood that for people from other parts of Iraq to obtain legal residence in the KR if they had no prior connection to the Kurdish Region (KR) it had been necessary for many years to have a sponsor in the KR but the Iraqi Government has pressed for this requirement to be dropped recently.¹³ According to the Danish fact finding mission as of October 2009 there is no longer a sponsor/guarantor requirement for Iraqis entering Sulemaniyah and wishing to reside in Sulemaniyah Governorate.¹⁴
- 3.6.16** It is usual for non-KR residents entering the KR to undergo many security checks to qualify for residence. Abdullah Ali Muhammad, Asayeesh Security Director, Erbil stated that Iraqi citizens from other parts of Iraq are free to reside in the KR under normal Iraqi law. One form of identification is required to confirm a person's identity. If police staffing checkpoints on the boundary of the KR are satisfied with a person's identity they are granted permission to enter the KR for ten days, after which they need to register at one of eighteen centres across the KR, where they can apply to stay longer. At present there are over 13,000 families from outside the KR residing in Erbil. The aim of the checks is to keep terrorists out of the KR.¹⁵
- 3.6.17** The nationality certificate and civil ID card are the most urgently needed forms of documentation for returning refugees as they restore the right to access all entitlements of Iraqi citizenship. Returnees still carrying old Iraqi documentation are able to renew documents easily. For those without these documents, further investigation into records must be carried out to prove entitlement. A non-Iraqi (e.g. Iranian) spouse of a returnee can apply for all the documents listed below except the civil ID card and the nationality certificate, which he/she may qualify for after legally remaining in Iraq for five years according to current Iraqi Nationality Law.¹⁶
- 3.6.18** An international organisation in Erbil emphasised that, generally, ethnic affiliation or religious orientation does not determine KRG authorities' decision on whether or not a person will be permitted entry. The only concerns for the authorities are the Internally Displaced Persons identity and security considerations.¹⁷
- 3.6.19** The UNHCR Eligibility Guidelines (April 2009) concluded that *"If the availability of an Internal Flight Alternative/Internal Relocation Alternative must be assessed as a requirement in a national eligibility procedure, it should be examined carefully and on a case-by-case basis, bearing in mind the strong cautions in these Guidelines."*¹⁸
- 3.6.20** In accordance with those guidelines case owners must carefully consider the appropriateness of internal relocation on a case by case basis taking full account of the individual circumstances of the particular claimant and the specific risk to that individual. However in general:
- (a) although travel by road is sometimes not without incident, ordinary Iraqis travel on a daily basis using many of the major routes; and despite some practical restrictions and registration requirements, internal relocation is not generally precluded;
 - (b) the provision of housing & core services has improved significantly in recent years - there is no indication that the level of service provision in places of proposed relocation

¹² US State Department Human Rights Report 2009: Iraq

¹³ COI Service Iraq Country Report December 2009

¹⁴ Danish Fact Finding Mission, Entry Procedures and Residence in Kurdistan Region of Iraq (KRI) for Iraqi Nationals, 15 April 2010

¹⁵ COI Service Iraq Country Report December 2009

¹⁶ COI Service Iraq Country Report December 2009

¹⁷ COI Service Iraq Country Report December 2009

¹⁸ UNHCR guidelines for assessing the international protection needs of Iraqi asylum seekers April 2009

are so much lower than in the home area that it would be unreasonable or unduly harsh to move there.

- (c) whilst lone women may not be able to settle safely in areas where they have no family ties and therefore access to support, women with support networks in the alternative location are in general able to internally relocate.

3.6.21 *Caselaw*

FH v Sweden. 32621/06 [2009] ECHR 99 (29 January 2009). The ECtHR concluded that whilst the general situation in Iraq, and in Baghdad, is insecure and problematic, it is not so serious as to cause, by itself, a violation of Article 3 ECHR.

European Court of Justice. (Elgafaji [2009] EUECJ C-465-07) 17 February 2009. The ECJ in this case found that “Article 15(c) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, in conjunction with Article 2(e) thereof must be interpreted as meaning that:

- the existence of serious and individual threat to the life or person of an applicant for subsidiary protection is not subject to the condition that that applicant adduce evidence that he is specifically targeted by reason of factors particular to his personal circumstances;
- the existence of such a threat can exceptionally be considered to be established where the degree of indiscriminate violence characterising the armed conflict taking place – assessed by the competent national authorities before which an application for subsidiary protection is made, or by the courts of a Member State to which a decision refusing such an application is referred – reaches such a high level that substantial grounds are shown for believing that a civilian returned to the relevant country or as the case may be, to the relevant region, would, solely on account of his presence on the territory of that country or region, face a real risk of being subject to that threat.” (Paragraph 45)

QD (Iraq) v Secretary of State for the Home Department [2009] EWCA Civ620 (24 June 2009)

The Court of Appeal provided further domestic guidance on *Elgafaji* and the test to be applied:

“Is there in a country of a material part of it such a high level of indiscriminate violence that substantial grounds exist for believing that an applicant, solely by being present there, faces a real risk which threatens his life or person?” The Court of Appeal also clarified that the word “exceptional” is used by the ECJ to stress that not every armed conflict or violent situation will attract the protection of Article 15c. The reference to ‘threat’ does not dilute the need for there to be a real risk. The phrase “situations of international or internal armed conflict” is broad enough to include any situation of indiscriminate violence which reaches the level described in *Elgafaji*. There is no requirement that the armed conflict itself must be “exceptional” but there must be an intensity of indiscriminate violence sufficient to meet the test in *Elgafaji*.

HM and Others (Article 15(c)) Iraq CG [2010] UKUT 331 (IAC) 22 September 2010. This country guidance case primarily concerned whether, under Article 15(c) of the EU Qualification Directive, there is in Iraq such a high level of indiscriminate violence that any civilian returned there would be at risk of serious harm. The Upper Tribunal (Immigration and Asylum Chamber) found that:

- the degree of indiscriminate violence characterising the current armed conflict taking place in Iraq does not reach such a high level that substantial grounds are shown for believing that any civilian returned there, would, solely on account of his presence there face a real risk of being subject to that threat
- even if there were certain areas where the violence reached levels sufficient to engage Article 15(c), there is likely to be considerable scope for internal relocation that achieves both safety and reasonableness in all the circumstances
- in the light of the evidence taken as a whole there is not for mere civilian returnees a real risk of persecution under the Refugee Convention or of serious harm under either the Qualification Directive or Article 3 ECHR
- current levels of violence in Iraq are unacceptably high but a very significant proportion of the violence is targeted against persons with specific characteristics over and above being mere

civilians: such persons – persons who are at greater risk – are very likely to be eligible for either refugee protection or subsidiary (humanitarian) protection under Article 15(b), as well as under Article 15(c) of the Qualification Directive under the sliding scale set out in *Elgafaji*.

SM and others [2005] UKIAT 00111 CG. 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)

3.6.22 Conclusion Case owners must assess the credibility of the applicant and the evidence they submit in accordance with the relevant Asylum Instructions (see para 3.2 – 3.5 above). A state of civil instability and/or where law and order has sometimes broken down does not of itself give rise to a well-founded fear of persecution for a Refugee Convention reason. The claimant can only demonstrate a well-founded claim for asylum where they can demonstrate they are at risk of adverse treatment on Convention grounds over and above that which occurs during such instability / insecurity.

3.6.23 The European Court of Human Rights has concluded that whilst the general situation in Iraq, and in Baghdad, is insecure and problematic, it is not so serious as to cause, by itself, a violation of Article 3 ECHR. However each case must be considered on its individual merits and caseowners must consider whether the personal circumstances of the individual are such that his return to Iraq would contravene Article 3 ECHR.

3.6.24 Each case must also be considered under Article 15 (c) of the EU Qualification Directive/Immigration Rule 339C to ascertain whether the individual claimant would be at real risk of indiscriminate violence. As confirmed by the courts in the case of *HM and Others*, the current evidence is that the level of indiscriminate violence in Iraq is not at such a high level that substantial grounds exist for believing that an applicant, solely by being present there, faces a real risk which threatens his life or person. For a claim to succeed under Article 15(c) of the Qualification Directive, an individual would need to show that their personal circumstances are such that they would be at real risk and that there was no internal relocation option open to them.

3.7 Perceived collaborators and/or fear of Islamic militants

3.7.1 Some claimants will make an asylum or human rights claim due to a fear of persecution/ ill treatment at the hands of insurgents/armed groups or Islamic militants on account of their association (or perceived association) with the Iraqi government or because of their “un-Islamic behaviour.

3.7.2 Treatment. Various armed groups are held responsible for targeting persons involved in the Iraqi Government and Administration at the federal and local levels, members of their families and bodyguards. The perpetrators and their motives are multi-layered. While certain acts may be motivated to de-legitimise the Iraqi Government and spread fear, other attacks seem to clearly target government officials, be it for their belonging to a certain political party or their involvement in certain political affairs. As seen in the past, extremist groups are also stepping up their efforts ahead of sensitive political events such as elections or during negotiations of legislative projects.¹⁹

3.7.3 Iraqis openly criticising or perceived to be opposing armed groups or political parties are at risk of being threatened, kidnapped or killed. This is in particularly [sic] true for tribal/religious leaders, journalists, human rights activists or other professionals that express their dissatisfaction with local parties or armed groups, refuse cooperation, allege

¹⁹ COI Service Iraq Country Report December 2009

their involvement in violence, corruption or sectarianism or engage in reconciliation efforts.²⁰

- 3.7.4** In 2008 and early 2009, there were several targeted attacks on high-ranking government officials, including members of the CoR [Council of Representatives], (deputy) ministers, other senior ministry officials and advisors to the PM. At the local level, governors, deputy governors, local mayors and members of provincial and municipal councils have been targeted. There are also many attacks on government employees, including by targeting their private or office vehicles, and government buildings. Family members, drivers and bodyguards, in particular of senior government officials, are also at risk of being killed or wounded in attacks or, in some case [sic], have been targeted deliberately.²¹
- 3.7.5** In the three northern Governorates of Sulaymaniyah, Erbil and Dahuk as well as in areas under *de facto* control of the Kurdish parties, criticism of the ruling PUK and KDP can result in intimidation, beatings, arrest and detention and extra-judicial killings. Journalists are particularly at risk.²²
- 3.7.6** The constitution states that no law may be enacted that contradicts principles of democracy or the rights and basic freedoms stipulated in the constitution, including freedom of thought, conscience, and religious belief and practice for Muslims and non-Muslims alike. Although the government generally endorsed these rights, violence by terrorists, extremists, and criminal gangs restricted the free exercise of religion and continued to exert pressure on other groups to conform to extremist interpretations of Islam's precepts.²³
- 3.7.7** Political and religious extremism after the fall of the former regime has had a particularly harsh effect on minority groups, which commonly do not have strong political or tribal networks and represent soft targets for radical elements that consider them as 'infidels' or supporters of the Iraqi Government and/or the MNF-I and pressure them to conform to strict interpretations of Islamic rules in terms of their dress, social patterns and occupations. Minority groups such as Yazidis, Shabak and Kaka'i, who are often identified as ethnic 'Kurds', have also been targeted based on their (perceived) Kurdish ethnicity.²⁴
- 3.7.8** Since 2003, inhabitants in areas under control of Sunni and Shi'ite extremist groups have been increasingly pressured to follow strict Islamic rules and were otherwise intimidated or even killed. Liquor, music or barber shops were regularly attacked as were persons considered to be dressing or behaving in an "un-Islamic" way. Numerous singers, musicians and other artists fled the country in recent years. This happened, for example, in Basrah, where Shi'ite extremists had been terrorizing the population. Recent security developments in some areas of Iraq resulted in the re-establishment of a certain amount of freedom for the civilian population and strict Islamic rules appear to have been eased. However, there continue to be occasional attacks on music stores, hairdressing salons and alcohol shops in areas where extremist groups still have a presence, in particular in Mosul, Baghdad Kirkuk and Basrah. There are concerns over the possible return of extremist groups.²⁵
- 3.7.9** In its April 2009 paper, UNHCR reported continuing sectarian violence in 2008 (though less so since mid 2007) and that a culture of impunity prevails in relation to prosecution and investigation of cases involving sectarian abuses. As a consequence, it was impossible to know the perpetrators and establish their motives. However statistics showed that since 2003, several thousand doctors and medical personnel and several hundred professors and academics had been killed and that 136 journalists and 51 media workers had been killed on duty by 14 December 2008. Most killings took place in Iraq's three major cities:

²⁰ COI Service Iraq Country Report December 2009

²¹ COI Service Iraq Country Report December 2009

²² UNHCR guidelines for assessing the international protection needs of Iraqi asylum seekers April 2009

²³ US State Department Human Rights Report 2009: Iraq

²⁴ COI Service Iraq Country Report December 2009

²⁵ UNHCR guidelines for assessing the international protection needs of Iraqi asylum seekers April 2009

Baghdad, Mosul and Basra, the majority of victims were shot by gunmen, sometimes after having been kidnapped or tortured.²⁶

3.7.10 *Actors of protection.* Case owners must refer to the Asylum Policy Instruction on Assessing the Claim. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Case owners should also take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.

3.7.11 Case owners should refer to section 3.6.6- 3.6.10 for full information regarding sufficiency of protection. In short, whilst progress has been made in central and southern Iraq, there is continuing violence, corruption, and organisational dysfunction, undermining the government's ability to protect human rights. There continue to be allegations of serious human rights violations, including torture and other ill-treatment in the KRG, but it can be argued that protection is at a reasonably effective level and there is generally a sufficiency of protection.

3.7.12 *Internal relocation.* Case owners must refer to the Asylum Policy Instructions on both Internal Relocation and Gender and apply the test set out in paragraph 3390 of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of asylum or humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.

3.7.13 Case owners should refer to section 3.6.11- 3.6.20 for full information regarding internal relocation within Iraq. In short:

- (a) although travel by road is sometimes not without incident, ordinary Iraqis travel on a daily basis using many of the major routes; and despite some practical restrictions and registration requirements, internal relocation is not generally precluded;
- (b) the provision of housing & core services has improved significantly in recent years - there is no indication that the level of service provision in places of proposed relocation are so much lower than in the home area that it would be unreasonable or unduly harsh to move there.
- (c) whilst lone women may not be able to settle safely in areas where they have no family ties and therefore access to support, women with support networks in the alternative location are in general able to internally relocate.

3.7.14 In assessing whether it is possible to internally relocate, case owners should also consider whether an applicant perceived to be a collaborator would be at risk in another part of Iraq. For example, those targeted because of their particular job may be unable to escape this perception wherever they relocate to within Iraq.

²⁶ UNHCR guidelines for assessing the international protection needs of Iraqi asylum seekers April 2009

3.7.15 *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 CG Iraq. 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).

NS [2007] UKAIT 00046 CG Iraq. “ 1) An Iraqi who is perceived as a collaborator as a consequence of his work for the UN, an NGO, the Multi-National Force, the Coalition Provisional Authority or a foreign contractor, and who has attracted the hostility of an armed group, faces a real risk of persecution on return to his home area. 2) Ability to relocate in Iraq to an area other than the KRG for such a person would depend on the circumstances of the case, including such matters as the reach of the group which has targeted him. 3) Relocation to the KRG for any Iraqi is in general only feasible if the person concerned would be allowed to enter and legally reside in the area of relocation, and has family, community and/or political links there enabling them to survive.

LM [2006] UKAIT Iraq CG 00060 “guidance on Christian women perceived as collaborators and internal relocation to KRG is here considered and extended. The guidance in RA (Christians) Iraq CG [2005] UKIAT 00091 remains for the time being valid in cases concerning Christians with no other distinguishing profile. “

3.7.16 *Conclusion* Case owners must assess the credibility of the applicant and the evidence they submit in accordance with the relevant Asylum Instructions (see para 3.2 – 3.5 above). 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 case owner 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.

3.7.17 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 that of the population at large 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 case owner 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) and who are unable to acquire protection or relocate internally, a grant of asylum will be appropriate. Where the treatment feared is not for one of the five Refugee Convention grounds a grant of Humanitarian Protection may be appropriate.

3.8 **Claims based on fear of kidnapping**

3.8.1 Some claimants will make an asylum or human rights claim due to a fear of ill treatment amounting to persecution because of the number of kidnappings in Iraq.

- 3.8.2 *Treatment.*** During the year kidnappings and disappearances remained severe problems. The majority of the reported cases appeared to be financially motivated, with large ransom demands, rather than sectarian-based. Police believed that the majority of cases went unreported.²⁷
- 3.8.3** Unlike in previous years, there were fewer reports that police arrested civilians without an arrest warrant and held them for ransom. On November 17, a Baghdad police lieutenant was arrested for the kidnapping and murder of his neighbour's son. The officer had demanded a ransom and subsequently killed the child. He remained in custody awaiting trial at year's end.²⁸
- 3.8.4** Kidnappings were often conducted for ransom, and religious minorities and children were often the target of such kidnappings. Kidnappers who did not receive the ransom often killed their victims. The MOI Human Rights office reported that it investigated 525 missing person cases during the year; results were pending.²⁹
- 3.8.5** Those targeted for kidnapping or killing included members of religious and ethnic minorities, such as Christians and Palestinians, members of professional associations, i.e. doctors, lawyers and journalists, and women.³⁰
- 3.8.6 *Actors of protection.*** Case owners must refer to the Asylum Policy Instruction on Assessing the Claim. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Case owners should also take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.
- 3.8.7** Case owners should refer to section 3.6.6- 3.6.10 for full information regarding sufficiency of protection. In short, whilst progress has been made in central and southern Iraq, there is continuing violence, corruption, and organisational dysfunction which undermines the government's ability to protect human rights. There continue to be allegations of serious human rights violations, including torture and other ill-treatment in the KRG, but it can be argued that protection is at a reasonably effective level and there is generally a sufficiency of protection.
- 3.8.8 *Internal relocation.*** Case owners must refer to the Asylum Policy Instructions on both Internal Relocation and Gender and apply the test set out in paragraph 339O of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of asylum or humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.

²⁷ US State Department Human Rights Report 2009: Iraq

²⁸ US State Department Human Rights Report 2009: Iraq

²⁹ US State Department Human Rights Report 2009: Iraq

³⁰ COI Service Iraq Country Report December 2009

3.8.9 Case owners should refer to section 3.6.11- 3.6.20 for full information regarding internal relocation within Iraq. In short:

- (a) although travel by road is sometimes not without incident, ordinary Iraqis travel on a daily basis using many of the major routes; and despite some practical restrictions and registration requirements, internal relocation is not generally precluded;
- (b) the provision of housing & core services has improved significantly in recent years - there is no indication that the level of service provision in places of proposed relocation are so much lower than in the home area that it would be unreasonable or unduly harsh to move there.
- (c) whilst lone women may not be able to settle safely in areas where they have no family ties and therefore access to support, women with support networks in the alternative location are in general able to internally relocate.

3.8.10 In assessing whether it is possible to internally relocate, case owners should also consider whether an applicant's perceived fear of kidnap would be the same in another part of Iraq. For example, those targeted because of their particular job or religion may be unable to escape the perceived threat of kidnapping wherever they relocate to within Iraq.

3.8.11 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 CG Iraq. 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).

3.8.12 Conclusion Case owners must assess the credibility of the applicant and the evidence they submit in accordance with the relevant Asylum Instructions (see para 3.2 – 3.5 above). A claimant who has a localised threat on the basis that they be a target for kidnap 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. However, 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. Kidnapping motivated by economic reasons does not engage the UK's obligations under the 1951 UN Convention and therefore a grant of asylum would not be appropriate, however, in some circumstances it may be that grounds for fear of kidnapping due to economic reasons may be well founded and a grant of Humanitarian Protection appropriate depending on the facts of the case.

3.9 Former members of the Ba'ath Party

3.9.1 Some claimants will make an asylum or human rights claim due to their fear of ill-treatment amounting to persecution at the hands of state and non state agents on account of their past membership of the Ba'ath Party.

3.9.2 Treatment According to Article 135 (5) of the Iraq Constitution "Mere membership in the dissolved Ba'ath party shall not be considered a sufficient basis for referral to court and a

member shall enjoy equality before the law and protection unless covered by the provisions of De-Ba'athification and the directives issued according to it".³¹

- 3.9.3** Members of the former Ba'ath Party may further face discrimination on the basis of their affiliation with the former regime. The Justice and Accountability Law of January 2008, which was aimed at (partly) reversing the effects of the previous 'De-Ba'athification' process, under which approximately 150,000 former Ba'athists, mostly Sunni Arabs, were excluded from government employment and pensions, is not yet being implemented, depriving many former Ba'athists and members of the former regime of government employment or pensions entitled under the law. There have also been reports that the Shi'ite-dominated Government is discriminating against former Ba'athists in public sector employment. Further, it cannot be ruled out that previous Ba'ath Party affiliation may increase the risk to a detainee of being subjected to unfair treatment or abuse if held in a Shi'ite dominated detention facility.³²
- 3.9.4** Since the elections in 2005, when Shi'ite parties came to power, former Ba'athists have been subject to systematic attacks, mainly by Shi'ite militias. For various reasons, targeted attacks against former members and associates of the Ba'ath Party and the former regime appear to have lessened to a large extent. One possible reason is that a large number of former Ba'athists and associates of the former regime have already fled Iraq since 2003, while those remaining have often been able to align themselves with the current parties in power and/or have been reemployed into the public sector or the ISF. Another reason is that Shi'ite militias have been lying low or were weakened after military operations in 2008.³³
- 3.9.5** While members of the former Ba'ath Party and regime are no longer systematically targeted, they may still fall victim in individual cases, for example as a result of personal revenge of former victims or their families against perpetrators of detention, torture or other violations of human rights. While some killings of former Ba'athists or members of the former regime have been documented in the media in 2008 and 2009, mainly in the Central Governorates, other cases may go unreported, not least because the exact motivation behind an attack may not always be known. Today, many former Ba'athists have found a new identity in the Iraqi society as politicians, professionals or tribal leaders.³⁴

The KRG controlled area

- 3.9.6** Arabs in the areas of Mosul and Kirkuk under de facto control of the KRG and the Region of Kurdistan have also become victims of threats, harassment and arbitrary detention, often in facilities of the Kurdish security and intelligence services in the region because of their perceived association with the former regime. Arab IDPs in the three Northern Governorates reportedly suffer discrimination and are given little assistance by the Kurdish authorities due to security fears.³⁵
- 3.9.7 *Actors of protection.*** Case owners must refer to the Asylum Policy Instruction on Assessing the Claim. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Case owners should also take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective

³¹ COI Service Iraq Country Report December 2009

³² COI Service Iraq Country Report December 2009

³³ COI Service Iraq Country Report December 2009

³⁴ COI Service Iraq Country Report December 2009

³⁵ COI Service KRG area of Iraq Report September 2009

legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.

3.9.8 Case owners should refer to section 3.6.6- 3.6.10 for full information regarding sufficiency of protection. In short, whilst progress has been made in central and southern Iraq, there is continuing violence, corruption, and organisational dysfunction which undermines the government's ability to protect human rights. There continue to be allegations of serious human rights violations, including torture and other ill-treatment in the KRG, but it can be argued that protection is at a reasonably effective level and there is generally a sufficiency of protection.

3.9.9 *Internal relocation.* Case owners must refer to the Asylum Policy Instructions on both Internal Relocation and Gender and apply the test set out in paragraph 339O of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of asylum or humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.

3.9.10 Case owners should refer to section 3.6.11- 3.6.20 for full information regarding internal relocation within Iraq. In short:

- (a) although travel by road is sometimes not without incident, ordinary Iraqis travel on a daily basis using many of the major routes; and despite some practical restrictions and registration requirements, internal relocation is not generally precluded;
- (b) the provision of housing & core services has improved significantly in recent years - there is no indication that the level of service provision in places of proposed relocation are so much lower than in the home area that it would be unreasonable or unduly harsh to move there.
- (c) whilst lone women may not be able to settle safely in areas where they have no family ties and therefore access to support, women with support networks in the alternative location are in general able to internally relocate.

3.9.11 Case owners will also need to consider whether the applicant's Ba'ath party involvement would be likely to be known in another part of Iraq. Internal relocation would not be a reasonable option for former Ba'athists who are nationally known through exposure in the media.

3.9.12 Caselaw

OH [2004] UKIAT 00254, promulgated 15th 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.

3.9.13 *Conclusion* Case owners must assess the credibility of the applicant and the evidence they submit in accordance with the relevant Asylum Instructions (see para 3.2 – 3.5 above). In establishing whether a claimant has a well founded fear of persecution on account of membership of the former Ba'ath Party, a claimant will need to show that their activities for the Ba'ath party have brought them to the adverse attention of those they fear, whether locally through their direct actions or on a wider stage because they are inextricably associated with the abuses of the former regime. In the event that a local threat from non-

State agents is established, it would not be unduly harsh for the claimant to relocate elsewhere in Iraq and neither asylum nor Humanitarian Protection would be appropriate.

- 3.9.14** 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 3.9.15 below).
- 3.9.15** Case owners should note that some mid to high ranking members of the Ba'ath party may have been responsible for serious human rights abuses and crimes against humanity. If it is accepted that a claimant was an active operational high ranking member for the Ba'ath party and the evidence suggests he/she has been involved in such actions, then case owners should consider whether one of the Exclusion clauses is applicable. Case owners should refer such cases to a Senior Caseworker in the first instance.

3.10 Honour killings

- 3.10.1** Some claimants will make an asylum or human rights claim due to ill treatment amounting to persecution at the hands of non-state agents on the basis of allegedly bringing the honour of the family into disrepute.
- 3.10.2 *Treatment.*** So-called 'honour killings', i.e. murders committed by a family member to protect the family's honour, are reportedly on the rise. Many women and girls, and, to a lesser extent, men and boys, are at risk of death if they are accused of behaviour believed to have brought shame on the family, such as loss of virginity (even by rape), infidelity, a demand for divorce or a refusal of marriage. Women can be killed for reasons based solely on suspicions or rumours without the opportunity to defend themselves. The Iraqi Penal Code (Law No. 111 of 1969) contains provisions that allow lenient punishments for 'honour killings' on the grounds of provocation or if the accused had 'honourable motives'. The punishment is between 6 to 12 months imprisonment. Article 409 further provides that if a person surprises his wife or a female relative committing adultery and kills or injures one or both parties immediately, the punishment will not exceed three years. The law does not provide any guidance as to what 'honourable motives' are and therefore leaves the door open for wide interpretation and abuse.³⁶
- 3.10.3** Honour killings remained a serious problem. Legislation in force permits honour considerations to mitigate sentences. According to the UNHCR in April, honour killings were prevalent in all parts of the country. For the first nine months of the year, the domestic NGO Human Rights Data Bank recorded 314 burn victims (125 instances of self-immolation and 189 cases of burning), compared with 234 burn victim during the same period in 2008.³⁷

Honour killings in the KRG controlled area

- 3.10.4** A KRG human rights official reported in December 2008 that the KRG does not consider an honour killing legally different from murder, the same punishment therefore applies to both. The nature of the crime makes it difficult for authorities to find sufficient evidence to prosecute cases. KRG human rights authorities reported that for the year 2008, 117 women died in honour killings, but for 2009, the KRG reported a total of 528 honour killings. The UN Assistance Mission for Iraq (UNAMI) and civil society observers considered both figures to be low.³⁸

³⁶ COI Service Iraq Country Report December 2009

³⁷ COI Service Iraq Country Report December 2009

³⁸ COI Service Iraq Country Report December 2009

- 3.10.5** Despite the fact that “honour killings” are considered by law as homicide, “honour killings” continue to be reported in high numbers and are reportedly among the primary unnatural causes of death among women. Given the fact that “honour killings” are prohibited by law, they are often concealed as accidents, suicides or suicide attempts. Reportedly, incidents of self-immolation are on the increase, with at least one case reported daily and many more either going unreported or concealed as accidents. While the KRG pledges to investigate and prosecute “honour killings” and other violence against women, most cases go unpunished. In the rare cases in which a person is convicted of having committed an “honour crime”, sentences are often lenient. UNHCR stated they were aware that most women at risk of “honour killing” will not complain to the police and legally prosecute the family members involved for fear of retribution and bringing further shame to the family.³⁹
- 3.10.6 *Actors of protection.*** Case owners must refer to the Asylum Policy Instruction on Assessing the Claim. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Case owners should also take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.
- 3.10.7** The Iraqi Penal Code as is applicable in Central and Southern Iraq contains provisions that allow lenient punishments for honour killings on the grounds of provocation or if the accused had “honourable motives”. The punishment is between 6-12 months. The law does not provide any guidance about what honourable motives are and therefore leaves the door open for wide interpretation and abuse.⁴⁰
- 3.10.8** In the KRG, law 101 of the Iraqi penal code (allowing the death penalty as punishment for prostitution) was often used as a justification by males for violence against females, and efforts to change current laws in the KRG were resisted by the PUK and the KDP. In 1999, the Kurdish National Authority passed an Act to make honour killings punishable in line with other murders but was prevented by the Central Iraqi government from implementing it on the basis that it was contrary to the Iraqi penal code. Consequently, a man found guilty of killing a woman for family honour often received only three months imprisonment. However, the KRG human rights minister has said that honour killings are now investigated as murder under section 406 of Iraqi law. This means that the death penalty can be imposed for honour killings and husbands guilty of murdering their wives no longer have legal impunity from prosecution.⁴¹
- 3.10.9** Private shelters for women suffering from domestic violence exist in Central and Southern Iraq and the KRG, however, space is limited and information regarding their locations is not easy obtainable.⁴² There are six shelters operating in Northern Iraq: one each in Dohuk, Erbil and Kirkuk, and three in Sulaimaniya.⁴³ Asuda, is a Sulaimaniyah-based women's NGO that provides shelter for victims of violence and abuse. Asuda has worked since 2000 to highlight the plight of female victims of violence, domestic abuse, and tribal honour killings. Asuda now runs five shelters, three of them in partnership with the KRG for homeless women or those with psychological problems. The other two are shelters for

³⁹ UNHCR guidelines for assessing the international protection needs of Iraqi asylum seekers April 2009

⁴⁰ COI Service Iraq Country Report December 2009

⁴¹ COI Service Kurdistan Regional Government Area of Iraq report September 2009

⁴² US State Department Human Rights Report 2009: Iraq

⁴³ COI Service Kurdistan Regional Government Area of Iraq Country Report September 2009

victims of violence. Asuda has received funding from the UK-based NGO Christian Aid since 2004; it works largely in the KR but campaigns on protection issues across Iraq.⁴⁴

3.10.10 Honour killings are frequently committed with impunity given the high level of social acceptance of this type of crime, including amongst law enforcement officials. On the rare occasions where perpetrators are arrested and charged, they are given lenient punishments. As a result, women and girls are reluctant even to report sexual attacks for fear of being ostracized or even killed by their family.⁴⁵ The IPS can therefore not be said to provide a sufficiency of protection for women who are subject to violence or honour killings.

3.10.11 The KRG is policed and secured effectively by a combination of the Peshmerga (the Kurdish military force that is technically part of the Iraqi armed forces), local police and the Asayeesh security force.⁴⁶ According to Amnesty, since the creation of KRG police directorates specialising in violence against women, the number of complaints of violence against women has increased, apparently because the establishment of the directorates has facilitated reporting of such crimes, particularly in the urban areas of the KR where the directorates are located. However, some police officers in the KR are reported to be unwilling or unable to respond effectively when confronted with cases of violence against women. That said, it has also been reported that compared with other parts of Iraq, mechanisms for women in the KR are more advanced.⁴⁷ Violence against women is no longer a taboo subject in the KR and the phenomenon is recognised by the KRG. The KRG is committed publicly to addressing gender-based violence against women and they acknowledge that honour killings are a problem that needs to be addressed. Official acknowledgement of the phenomenon in itself represents a significant change in public attitude to the practice and there is a growing acceptance amongst the population in the KR of the unacceptability of honour killings.⁴⁸

3.10.12 *Internal relocation.* Case owners must refer to the Asylum Policy Instructions on both Internal Relocation and Gender and apply the test set out in paragraph 339O of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of asylum or humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.

3.10.13 Case owners should refer to section 3.6.11- 3.6.20 for full information regarding internal relocation within Iraq. In short:

- (a) although travel by road is sometimes not without incident, ordinary Iraqis travel on a daily basis using many of the major routes; and despite some practical restrictions and registration requirements, internal relocation is not generally precluded;
- (b) the provision of housing & core services has improved significantly in recent years - there is no indication that the level of service provision in places of proposed relocation are so much lower than in the home area that it would be unreasonable or unduly harsh to move there.

⁴⁴ COI Service Kurdistan Regional Government Area of Iraq Country Report September 2009

⁴⁵ COI Service Iraq Country Report December 2009

⁴⁶ COI Service Iraq Country Report December 2009

⁴⁷ Amnesty International Report, Hope and Fear , Human Rights in the Kurdistan Region of Iraq, April 2009

⁴⁸ COI Service Kurdistan Regional Government Area of Iraq Country Report September 2009

- (c) whilst lone women may not be able to settle safely in areas where they have no family ties and therefore access to support, women with support networks in the alternative location are in general able to internally relocate.

3.10.14 In assessing whether women can avoid the threat of honour crimes through settling elsewhere in Iraq, case owners will need to take all the 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.

3.10.15 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 CG Iraq. 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”.

3.10.16 Conclusion. Case owners must assess the credibility of the applicant and the evidence they submit in accordance with the relevant Asylum Instructions (see para 3.2 – 3.5 above) If a woman can show the threat of honour killing (or other forms of serious harm); that protection is denied; and, internal relocation is not available, they could qualify for asylum on grounds of a 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 and 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.

3.10.16 The situation for women in the KRG 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.

3.11 Christians

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 Islamic Fundamentalists because they are Christian.

3.11.2 Treatment. Reported estimates from Christian leaders of the Christian population in 2003 ranged from 800,000 to 1.4 million. Current population estimates by Christian leaders range from 500,000 to 600,000. Approximately two-thirds of Christians are Chaldeans (an eastern rite of the Catholic Church), nearly one-fifth are Assyrians (Church of the East), and the remainder are Syriacs (Eastern Orthodox), Armenians (Roman Catholic and Eastern Orthodox), Anglicans, and other Protestants. Most Assyrian Christians are in the north, and most Syriac Christians are split between Baghdad, Kirkuk, and Ninewa Province. Christian

leaders estimate that as much as 50 percent of the country's Christian population lives in Baghdad, and 30 to 40 percent lives in the north, with the largest Christian communities located in and around Mosul, Erbil, Dohuk, and Kirkuk. The Archbishop of the Armenian Orthodox Diocese reported that 15,000 to 16,000 Armenian Christians remained in the country, primarily in the cities of Baghdad, Basrah, Kirkuk, and Mosul. Evangelical Christians reportedly number between 5,000 and 6,000. They can be found in the northern part of the country, as well as in Baghdad, with a very small number residing in Basrah.⁴⁹

- 3.11.3** Although the Constitution recognises Islam as the official religion and states that no law may be enacted that contradicts the established provisions of Islam, it also states that no law may be enacted that contradicts principles of democracy or the rights and basic freedoms stipulated in the Constitution. Moreover, it guarantees freedom of thought, conscience, and religious belief and practice for Muslims and non-Muslims alike.⁵⁰ However, Christians are at particular risk because of their religious ties with the West and thus, by association, with the multinational forces (MNF-I) in Iraq. The fact that Christians, along with Yazidis, were allowed to trade in alcohol in Iraq under Saddam Hussein has also made them a target in an increasingly strict Islamic environment.⁵¹
- 3.11.4** There were targeted attacks on members of the various Christian denominations in Iraq in 2008 which included a series of attacks on churches in Mosul and Kirkuk in January 2008, the kidnapping of four Christian activists from Al-Sakhra Church in Basrah, the abduction and subsequent killing of the Chaldean Christian archbishop of Mosul in February/March 2008, and the killing of a Christian priest in Baghdad on 5 April 2008. In addition, a campaign of threats and targeted assassinations in Mosul between August and October 2008, resulted in the displacement of more than 10,000 Christians.⁵²
- 3.11.5** Given the Iraqi Government's commitment to provide protection to Mosul's Christians and somewhat improved security conditions, a number of these displaced Christians decided to return to their homes; however, many are still too fearful to return. A renewed attack that led to the death of two young Christian women and the wounding of their mother in Mosul on 12 November 2008 and the reported execution-style killing of a Christian man on 15 January 2009 underlined the fragility of the security situation. In December 2008, the Chaldean Auxiliary Bishop Shlemon Warduni of Baghdad warned that (foreign) evangelicals' activities in Iraq are putting the "*Christian minority at risk, exposing it to the unjust accusation of proselytism*".⁵³
- 3.11.6** In its April 2009 paper, UNHCR advised that in the current climate of religious intolerance, the conversion of a Muslim to Christianity would result in ostracism as leaving Islam is unacceptable in many communities and families. In certain cases, there is a risk that the convert might be killed by his/her own family members, who consider themselves disgraced by the person's conversion. According to *Shari'a* Law, a Muslim who converts to Christianity is considered an *apostate* and the punishment can be execution. Although not forbidden by law, Iraq does not recognize conversions from Islam to Christianity or to other religions. Converts have no legal means to register their change in religious status. Iraq's *Personal Status Law* (Law No. 188 of 1959) denies converts any inheritance rights. Furthermore, Muslims who convert to Christianity may, in practice, be subject to other forms of severe discrimination, as their family/community may force their spouses into divorce or confiscate their properties. In addition they are reportedly often harassed by government officials and police. It is highly unlikely that a crime committed against a convert, be it by his/her family or by Islamist groups, would be properly investigated and prosecuted in the Central and Southern Governorates.⁵⁴

⁴⁹ US State Department Religious Freedom Report 2009: Iraq

⁵⁰ US State Department Religious Freedom Report 2009: Iraq

⁵¹ COI Service Iraq Country Report December 2009

⁵² UNHCR guidelines for assessing the international protection needs of Iraqi asylum seekers April 2009

⁵³ UNHCR guidelines for assessing the international protection needs of Iraqi asylum seekers April 2009

⁵⁴ UNHCR guidelines for assessing the international protection needs of Iraqi asylum seekers April 2009

3.11.7 The Court in the ECtHR case of *FH v Sweden* in 2009 addressed the issue of Christians and took into account that there were several incidents directed against Christians in Iraq. An attack in October 2008 in the town of Mosul resulted in twelve Christians being killed. However the court found that Christian congregations were still functioning in Iraq and, from the general information available, it could be seen that the Iraqi Government had condemned all attacks against this group and had intervened with police and military following the October attack to ensure their safety. The court thereby ruled that it was clear that there was no State-sanctioned persecution of Christians and, since the attacks were condemned by Islamic groups and no one took accepted responsibility for them, it appeared that the reported attacks were carried out by individuals rather than by organised groups. In these circumstances, the Court found that the applicant in that case would be able to seek the protection of the Iraqi authorities if he felt threatened and that the authorities would be willing and in a position to help him.⁵⁵

Situation for Christians in the KRG controlled area

3.11.8 The Immigration and Refugee Board of Canada (IRB) reported, on 15 January 2009 that the Kurdistan region has been a destination for internally-displaced Christians. According to Prime Minister Nechirvan Barzani of the Kurdistan Regional Government (KRG), 20,000 Christian families have settled in the Dohuk and Erbil governorates since 2003. KRG Prime Minister Barzani has stated that Christians are welcome in the Kurdistan region and that the government is assisting Christians with employment, rebuilding 100 villages and helping families by providing monthly stipends. The FCO have also stated, in a report dated 27 March 2009, that George Mansour, KRG Minister for Civil Society Affairs, stated that the position of Christians in the KR was good. Christians enjoy full freedom of worship in the KR, they are represented in the KRG and the Kurdish National Assembly (KNA), the KRG's parliament. Minister Mansour went on to state that there are no difficulties for Christians in the KR in day-to-day life. There is no discrimination in employment against Christians. The main obstacle to securing employment in the KR can be political affiliation rather than religion or ethnicity. However, some Iraqi Christians in the Kurdistan region have complained of a lack of employment and opportunities. They stated that the cost of living is high and the monthly stipend lasts only about four days; there are also shortages of kerosene, water, electricity and accommodations.⁵⁶

3.11.9 *Actors of protection.* Case owners must refer to the Asylum Policy Instruction on Assessing the Claim. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Case owners should also take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.

3.11.10 Case owners should refer to section 3.6.6- 3.6.10 for full information regarding sufficiency of protection. In short, whilst progress has been made in central and southern Iraq, there is continuing violence, corruption, and organisational dysfunction which undermines the government's ability to protect human rights. There continue to be allegations of serious human rights violations, including torture and other ill-treatment in the KRG, but it can be argued that protection is at a reasonably effective level and there is generally a sufficiency of protection.

⁵⁵ ECtHR Case of *F.H v Sweden* 20 January 2009

⁵⁶ COI Service Iraq Country Report December 2009

3.11.11 Internal relocation. Case owners must refer to the Asylum Policy Instructions on both Internal Relocation and Gender and apply the test set out in paragraph 3390 of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of asylum or humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.

3.11.12 Case owners should refer to section 3.6.11- 3.6.20 for full information regarding internal relocation within Iraq. In short:

- (a) although travel by road is sometimes not without incident, ordinary Iraqis travel on a daily basis using many of the major routes; and despite some practical restrictions and registration requirements, internal relocation is not generally precluded;
- (b) the provision of housing & core services has improved significantly in recent years - there is no indication that the level of service provision in places of proposed relocation are so much lower than in the home area that it would be unreasonable or unduly harsh to move there.
- (c) whilst lone women may not be able to settle safely in areas where they have no family ties and therefore access to support, women with support networks in the alternative location are in general able to internally relocate.

3.11.13 Caselaw

SR Iraq [2009] UKAIT 00038 The Tribunal found that:

- A significant number of Christians have been able to enter the Northern Governorates. The evidence suggests that a sponsor may be needed but there is no reason why the appellant could not seek sponsorship from a local church (particularly in Sulaymaniyah but also in Erbil and Dohuk). Sponsorship appears to be a nominal matter. (para 97)
- It would not be unduly harsh for a Christian Arab Iraqi at risk elsewhere in Iraq to relocate to the KRG. (para 97)
- Once in the KRG the appellant would be able to manage, particularly with the support of the church. This existence may be difficult without family or clan support, but would not be unduly harsh. (para 98)
- The Iraq Country Policy Bulletin of 17 December 2007 lists the documentation a person needs to relocate in Iraq, without which a person cannot access food and work. It is unnecessary to return to a person's home area to acquire such documentation. The difficulties involved in acquiring this documentation would not make relocation to the KRG unreasonable. (para 101)

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.

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)

“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 CG Iraq. 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).

3.11.13 Conclusion Case owners must assess the credibility of the applicant and the evidence they submit in accordance with the relevant Asylum Instructions (see para 3.2 – 3.5 above). 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. Case owners should take into consideration the nature of the threat, how far it would extend, and whether it would be unduly harsh to expect the claimant to relocate. The KRG area of Iraq has and continues to provide a safe haven to Iraqi Christians fleeing other parts of the country and most Christian Iraqis from the KRG area would be able to seek protection from the KRG security forces who are generally willing and able to offer 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.

3.12 Member/ Supporter of the PKK/ KADEK

3.12.1 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. Case owners should refer claims based on membership to a Senior Caseworker.

3.13 Prison conditions

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

3.13.2 The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of ECHR and warrant a grant of Humanitarian Protection. If imprisonment would be for a Refugee Convention reason or in cases where for a Convention reason a prison sentence is extended above the norm, the claim should be considered as a whole but it is not necessary for prison conditions to breach Article 3 in order to justify a grant of asylum.

3.13.3 Consideration. Despite a law mandating that detention facilities be under the sole control of the MOJ (Ministry of Justice), four separate ministries operated detention facilities: the MOJ, MOI (Ministry of Interior), MOD (Ministry of Defence), and MOLSA (Ministry of Labour and Social Affairs), whose facilities are exclusively for juvenile detention. KRG social welfare authorities operated prisons in the KRG, and KRG security authorities operated pre-

trial detention facilities. KRG internal security forces and KRG intelligence services operated separate detention facilities as well. Kurdish authorities operated eight detention facilities that combined pre-trial and post-conviction housing and eight additional internal security pre-trial detention facilities.⁵⁷

- 3.13.4** Although the government had not yet adequately resourced the MOJ with the personnel, supplies, equipment and facilities to assume complete control over all detention operations throughout the country, there was significant progress in transferring MOD detainees to MOJ detention facilities. At the end of 2009 there were 11 MOJ prisons and seven MOJ pre-trial detention facilities.⁵⁸
- 3.13.5** MOI detention facilities comprise an estimated six Federal Police facilities and 294 Iraqi Police facilities. There are an estimated 1,200 smaller MOI police holding stations throughout the country. Although there were no independently verified statistics, it was estimated that the MOI facilities held as many as 8,000 pre-trial detainees. The MOD operated 27 Iraqi Army pre-trial detention centres for detainees captured during military raids and operations. There were reports of unofficial detention centres throughout the country. The MOD lacks the legal authority to detain civilians and is required to transfer detainees to MOI or MOJ facilities within 24 hours. In May the MOD began transferring its civilian detainees to MOJ custody. At year's end an estimated 75 percent of MOD detainees (approximately 1,500 persons) had been transferred.⁵⁹
- 3.13.6** The majority of individuals in MOI and MOD facilities were pre-trial detainees. Overcrowding of pre-trial detainees remained a problem in all detention facilities throughout the country, due to slow case processing. The MOJ is the only government entity with the legal authority to hold, care for, and guard post-trial detainees. The total capacity of MOJ's Iraqi Corrections Service (ICS) facilities was 20,295 beds (not including emergency capacity) which included 304 dedicated beds for women. The total number of prisoners in the ICS was 20,223, 47 percent of whom were pre-trial detainees.⁶⁰
- 3.13.7** In MOI and MOD detention facilities, conditions and treatment of detainees were generally reported as poor. The MOI Human Rights Directorate conducted 120 inspections during the year and found that most facilities had shown improvement from the previous year, but overcrowding remained widespread. Many lacked adequate food, exercise facilities, medical care, and family visitation. Limited infrastructure or aging physical plants in some facilities resulted in marginal sanitation, limited access to water and electricity, and poor quality food. Medical care in MOI and MOD detention facilities was not provided consistently, and there continued to be allegations of abuse and torture in some facilities. At the MOD's detention centre in the International Zone in Baghdad, detainees were denied family visits or access to counsel, were held in overcrowded cells, and exhibited evidence of torture and abuse.⁶¹
- 3.13.8** Despite limited resources and funds, MOJ detention facilities provided detainees with better treatment and living conditions than MOI and MOD detention facilities. Medical care in MOJ's ICS prisons in some locations exceeded the community standard. ICS personnel made significant progress in meeting internationally accepted standards for prisoner needs. The MOJ is responsible for training ICS guards and correctional executive management staff, providing the facilities with necessary supplies and equipment, addressing overcrowding, facilitating case processing, and providing prison rehabilitation programs.⁶²
- 3.13.9** The ICS internal affairs department monitored abuse or violations of international standards for human rights in prisons. Allegations of abuse have resulted in the disciplining of ICS

⁵⁷ US State Department Human Rights Report 2009

⁵⁸ US State Department Human Rights Report 2009

⁵⁹ US State Department Human Rights Report 2009

⁶⁰ US State Department Human Rights Report 2009

⁶¹ US State Department Human Rights Report 2009

⁶² US State Department Human Rights Report 2009

officers in some cases. During the year there were two allegations that ICS staff abused detainees.⁶³

3.13.10 The law mandates that women and juveniles be held separately from adult males.

Although this law was generally observed, in some cases women were held in the same detention facility as men, but in segregated quarters and cell-blocks. An MOD inspection of a facility in Baghdad's International Zone found women at the facility, albeit in separate cells. Juveniles were also occasionally held with adults. MOD inspections of its own International Zone facility and Old Muthanna detention facilities found juveniles living in the same cells as adult detainees. Additionally pretrial detainees and convicted prisoners were sometimes held in the same facility due to space limitations.⁶⁴

3.13.11 During 2009 MOLSA's juvenile facilities improved. In June the Tobschi juvenile facility in Baghdad completed renovations and increased its capacity from 265 to 327 beds. The current population at Tobschi is 279 pre-trial juveniles. The Kharq juvenile facility remained overcrowded, with a capacity of 245 and a total population of 435 post-trial juveniles. There have been no reported instances of abuse or mistreatment in MOLSA facilities.⁶⁵

3.13.12 KRG security authorities operated male pre-trial detention facilities and KRG social welfare authorities operated male post-trial and female and juvenile pre-trial and post-trial detention facilities in the Kurdistan region. The national MOHR (Ministry of Human Rights) and a KRG human rights official visited several detention facilities run by KRG social welfare authorities during the year. The KRG internal security forces and the KRG intelligence services operated separate detention facilities. Domestic and international human rights NGOs and intergovernmental organisations generally had access to pre-trial and post-trial facilities. Access by independent organizations to the facilities of the KRG internal security and intelligence services was limited to the MOHR, International Committee of the Red Cross (ICRC), and UN.⁶⁶

3.13.13 National detention facilities permitted visits by representatives of the national MOHR and members of parliament, and KRG detention facilities permitted visits by the national MOHR and KRG human rights authorities. The MOHR's fourth annual report covering 2009 was generally critical of prison standards across the country. It reported 326 confirmed cases of torture or abuse within the MOI, 152 cases within the MOD, 14 cases within MOLSA, 12 cases in Peshmerga facilities in the Kurdistan region, and one case in the MOJ for the year. The Higher Judicial Council (HJC) was investigating the cases at year's end.⁶⁷

3.13.14 Domestic and international human rights NGOs and intergovernmental organisations generally did not have access to national MOI detention and pre-trial facilities, although the MOHR initiated a programme during the year to train NGOs in how to conduct prison inspections. Some inter-governmental organisations had access to similar facilities of the KRG internal security and intelligence forces. Only the ICRC visited several detention facilities and prisons under the MOI, MOD, MOLSA, and MOJ around the country and had access to KRG detainees, some of whom were held in Asayish facilities. The ICRC visited these facilities during the year. During the year the ICRC carried out 76 visits to 26 central government detention facilities. The ICRC also regularly visited 32 KRG detention facilities.⁶⁸

3.13.15 Conclusion. Whilst prison conditions in Iraq are reportedly poor (hygiene conditions and overcrowding being a particular problem) and despite reports that officials sometimes mistreat inmates, conditions are not generally severe enough to meet the high Article 3 threshold and there is no information to suggest that particular groups of inmates are more

⁶³ US State Department Human Rights Report 2009

⁶⁴ US State Department Human Rights Report 2009

⁶⁵ US State Department Human Rights Report 2009

⁶⁶ US State Department Human Rights Report 2009

⁶⁷ US State Department Human Rights Report 2009

⁶⁸ US State Department Human Rights Report 2009

at risk of such mistreatment than others. Therefore, 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. Case owners should note that where the claimant has committed a serious crime, and faces a credible sentence in excess of two years in Iraq, the case should be referred to a senior caseworker.

4. Discretionary Leave

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

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

4.3 Minors claiming in their own right

4.3.1 Minors claiming in their own right who have not been granted asylum or HP can only be returned where (a) they have family to return to; or (b) there are adequate reception and care arrangements. Those who cannot be returned should, if they do not qualify for leave on any more favourable grounds, be granted Discretionary Leave for a period as set out in the relevant Asylum Instructions.

4.4 Medical treatment

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

4.4.2 The Constitution of Iraq stipulates that every citizen has the right to health care. The health system in Iraq has private and public sectors. Because of the attention paid by the government and international organisations to developing this system, the differences between the two sectors are not great. No public health insurance system is available in the country. Only those that work for special companies and organizations have access to health insurance schemes.⁶⁹

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

⁶⁹ COI Service Iraq Country Report December 2009

bought from private pharmacies only. A wide range of medicines made by different manufacturers are available, including Swiss, Indian and those manufactured in Iraq.⁷⁰

- 4.4.4** There is a shortage of cancer medicines in Iraq. These can be received from specialised cancer hospitals which are government-run. Waiting times for medication are known to be months, and in some cases even years. As a solution, patients usually buy those medicines from other countries, mainly Jordan, where those drugs are available in private pharmacies.⁷¹
- 4.4.5** For vulnerable cases public hospitals usually do not charge for medication and they note on the receipts that it concerns a vulnerable case. In this way, the finance department of the hospital will not charge the patient. People who are suffering from chronic diseases have a Medical Card; they receive their medications every month free of charge from a nearby clinic, usually located in the same district.⁷²
- 4.4.6** On 14 January 2009, IRIN News stated: "To be HIV-positive in Iraq means social isolation - and even death at the hands of religious extremists who believe the virus is proof that an HIV-positive person must have engaged in indecent acts. Iraq has a very low HIV prevalence rate: only 44 people are HIV-positive, according to Ihsan Jaafar, who heads the Health Ministry's public health directorate, responsible for combating HIV/AIDS. The virus first came to Iraq in 1985 via contaminated blood imported from a French company. It was detected the following year in scores of people suffering from haemophilia, a hereditary blood disorder."⁷³
- 4.4.7** Patients who are HIV-positive get the equivalent of about US\$85 per month from the government, as well as a clothing allowance. Those infected in 1985 are paid an extra \$200 monthly. They get free monthly check-ups; their partners are examined every three months, and other family members are checked every six months. Baghdad has at least 11 medical centres for this purpose and there is also one such centre in each province. In cooperation with the World Health Organisation (WHO), the ministry prescribes combination therapy involving three antiretroviral drugs free of charge.⁷⁴
- 4.4.8** For patients with mental health issues, psycho-social support is available in public hospitals (departments in some hospitals in the main cities) and in private clinics where the same psychiatrists in public hospitals are working. Cases needing urgent treatment and hospitalisation for a short time (acute cases) depend on public hospitals (psychiatric departments), available in Suleimanya, Dahuk and Erbil. For these admissions, the treatment period should not exceed one month and in most cases doctors are allowed to hospitalise patients for a maximum of two weeks. For cases with a longer term or permanent need of hospitalisation, the government has established rehabilitation centres (for female cases only), like Soz Rehabilitation centre in Tasluja – Sulaimaniyah. The government is planning to open more centres. Most of the current psychotropic drugs are available in Suleimanya; some of these are generic.⁷⁵

The KRG

- 4.4.9** The Kurdish region has a large number of medical facilities, in both the public and private sectors in major cities and towns. Smaller towns have community clinics, which can cover minor illnesses and offer a range of basic medical services including infant vaccinations.⁷⁶

⁷⁰ COI Service Iraq Country Report December 2009

⁷¹ COI Service Iraq Country Report December 2009

⁷² COI Service Iraq Country Report December 2009

⁷³ COI Service Iraq Country Report December 2009

⁷⁴ COI Service Iraq Country Report December 2009

⁷⁵ COI Service Iraq Country Report December 2009

⁷⁶ COI Service Iraq Country Report December 2009

- 4.4.10** Frontier Medical stated that general and emergency hospitals in the Kurdish region are equipped, run and deliver services to a reasonable standard and, while not to Western standards, are adequate for people's needs. Hospital administration varies in quality and can often appear chaotic. Demand for all services was high and medical facilities can be overcrowded.⁷⁷
- 4.4.11** The FCO report dated 27 March 2009, mentioned that Frontier Medical stated that doctors in the Kurdish region were trained and performed to a high standard. Most Iraqi (including Kurdish region) doctors have been trained to Western standards, either overseas or in Iraq, which follows a UK-based curriculum.⁷⁸
- 4.4.12** Frontier Medical stated that pharmaceuticals are supplied centrally by the Iraqi Government from Baghdad to Kurdish region medical facilities. The central supply is supplemented at local level in the KR from local budgets. Some hospital and clinic administrators in the KR have expressed a belief that KR medical facilities are disadvantaged in relation to the rest of Iraq in terms of pharmaceutical supply. It is claimed that supplies can arrive late and pharmaceuticals supplied to the Kurdish region are often sourced in India or Egypt rather than Jordan or Europe and are believed to be of inferior quality and more likely to be counterfeit. All hospitals have pharmacies and all cities and towns have private pharmacies stocking a wide range of medicines.⁷⁹
- 4.4.13** Article 3 threshold will not be reached in the majority of medical cases and a grant of Discretionary Leave will not usually be appropriate. Where a case owner considers that the circumstances of the individual applicant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

5. Returns

- 5.1** There is no policy which precludes the enforced return to Iraq of failed asylum seekers who have no legal basis of stay in the United Kingdom.
- 5.2** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.
- 5.3** Iraqi nationals may return voluntarily to any region of Iraq at any time by time in one of three ways: (a) leaving the UK by themselves, where the applicant makes their own arrangements to leave the UK, (b) leaving the UK through the voluntary departure procedure, arranged through the UK Immigration service, or (c) leaving the UK under one of the Assisted Voluntary Return (AVR) schemes. The AVR scheme is implemented on behalf of the UK Border Agency by the International Organization for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining any travel documents and booking flights, as well as organising reintegration assistance in Iraq. The programme was established in 1999, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Iraqi nationals wishing to avail themselves of this opportunity for assisted return to Iraq should be put in contact with the IOM offices in London 0800 783 2332 or www.iomlondon.org.

⁷⁷ COI Service Iraq Country Report December 2009

⁷⁸ COI Service Iraq Country Report December 2009

⁷⁹ COI Service Iraq Country Report December 2009

- 5.4** Iraq nationals who have committed a criminal offence in the UK may alternatively be eligible for the Facilitated Return Scheme which was established in 2006 to support the early removal of foreign national prisoners to their home country. The scheme works in tandem with (but separate to) the Early Removal Scheme (ERS) which allows foreign national prisoners to be removed from the UK up to 270 days before their Earliest Release Date subject to the length of the sentence. Applications for the Facilitated Return Scheme are made direct to the Criminal Casework Directorate of the UK Border Agency.

6. List of source documents

- ☐ UK Border Agency COI Service Iraq Country of Origin Information Report (dated 10 December 2009). http://www.homeoffice.gov.uk/rds/country_reports.html
- ☐ UK Border Agency COI Service KRG Country of Origin Information Report (dated 16 September 2009) <http://rds.homeoffice.gov.uk/rds/pdfs09/iraq-kurdistan-180909.doc>
- ☐ Foreign and Commonwealth Office (FCO) Country Profile: Iraq <http://www.fco.gov.uk/en/about-the-fco/country-profiles/middle-east-north-africa/iraq>
- ☐ FCO letters dated 8 September 2006 & 28 August 2008
- ☐ The UNHCR's Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum Seekers dated August 2007. <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=46deb05557>
- ☐ The UNHCR's Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum Seekers dated April 2009 <http://www.unhcr.org/refworld/docid/49f569cf2.html>
- ☐ US State Department Human Rights Report 2009: Iraq <http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136069.htm>
- ☐ US State Department Religious Freedom Report 2009: Iraq <http://www.state.gov/g/drl/rls/irf/2009/127348.htm>
- ☐ Danish fact finding mission, Security and Human Rights issues in the Kurdistan region of Iraq July 2009 <http://www.nyidanmark.dk/NR/rdonlyres/5EAE4A3C-B13E-4D7F-99D6-8F62EA3B2888/0/Iraqreport09FINAL.pdf>
- ☐ Danish Fact Finding Mission, Entry Procedures and Residence in Kurdistan Region of Iraq (KRI) for Iraqi Nationals, April 2010 http://www.nyidanmark.dk/NR/rdonlyres/254B813A-98D3-4DF1-935A-B047C1A231DD/0/rapport_irak_ifa_2010.pdf
- ☐ Amnesty International Report, Hope and Fear , Human Rights in the Kurdistan Region of Iraq, April 2009 <http://www.amnesty.org/en/news-and-updates/report/security-forces-above-law-iraqi-kurdistan-20090414>
- ☐ Wadi website, Assistance for Women in distress in Iraq and Iraqi Kurdistan, undated <http://www.wadinet.de/projekte/newiraq/women/shelters.htm>
- ☐ ECtHR Case of F.H v Sweden 20 January 2009 <http://www.bailii.org/eu/cases/ECHR/2009/99.html>

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October 2010