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OPERATIONAL GUIDANCE NOTE

IRAQ

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1. Introduction

- 1.1** This document summarises the general, political and human rights situation in Iraq and provides information on the nature and handling of claims frequently received from nationals/residents of Iraq. It must be read in conjunction with the RDS - COI Service Iraq Country of Origin Information Report October 2005 and any Country of Origin bulletins at:

http://www.homeoffice.gov.uk/rds/country_reports.html

- 1.2** This document is intended to provide clear guidance on whether the main types of claim are or are not likely to justify the grant of asylum, Humanitarian Protection or Discretionary Leave. Caseworkers should refer to the following Asylum Policy Instructions for further details of the policy on these areas:

API on Assessing the Claim
 API on Humanitarian Protection
 API on Discretionary Leave
 API on the European Convention on Human Rights.

- 1.3** Claims should be considered on an individual basis, but taking full account of the information set out below, in particular Part 3 on main categories of claim.

Source documents

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

2. Country assessment

- 2.1** Following the collapse of Saddam Hussein's regime, executive, legislative and judicial authority in Iraq was vested in the Coalition Provisional Authority (CPA).¹ The CPA appointed a 25 member Iraqi Governing Council (IGC) in July 2003 with the power to direct policy and help draw up a new constitution.² That Council was dissolved on 28 June 2004 for the Iraqi Interim Government (IIG) of which Dr Ayad Allawi was appointed interim Prime Minister.³ The multi-party national elections were held in Iraq on 30 January 2005.⁴ The election was a victory for the Shia United Iraqi Alliance (UIA), backed by Grand Ayatollah Ali al-Sistani, with 48 percent of the votes cast and 140 seats in the 275 seat National Assembly. The Kurdish Alliance, led by Jalal Talabani, obtained 26 percent of the vote and 75 seats in the National Assembly, while the Al-Qaimah al-Iraqiyah (Iraqi List), led by the interim Prime Minister Ayad Allawi, was in third place with 14 percent and 40 seats.⁵ The results mean that the Shias and the Kurds now hold the balance of power.⁶ One of Iraq's leading Shia politicians, Ibrahim al-Jaafari (leader of the Islamic Daawa Party and preferred candidate of the United Iraqi Alliance (UIA)), was appointed as Iraq's next interim prime minister by the country's new presidential council. Jalal Talabani was sworn in as President of Iraq.⁷
- 2.2** The criminal justice system is the responsibility of Iraq's Ministry of Justice. The courts are run by Iraqis, as are detention facilities for individuals accused or convicted of crimes. As stated under Article 43(A) of the Transitional Administrative Law (TAL) dated 8 March 2004, "The judiciary is independent, and it shall in no way be administered by the executive authority, including the Ministry of Justice. The judiciary shall enjoy exclusive competence to determine the innocence or guilt of the accused pursuant to law, without interference from the legislative or executive authorities." However, a Freedom House report 2005, noted that in practice judges come under immense political pressure.⁸ According to a report published in December 2004 the effectiveness of the judiciary was hampered by capacity problems and the general instability in Iraq. The judiciary has had to struggle with corruption and a lack of transparency, which are both a serious impediment to its effectiveness.⁹ The criminal justice system is based on the French or civil system. The system is inquisitorial; cases are controlled and investigated by the judiciary. Defendants who are found guilty are sentenced immediately after the verdict.¹⁰ In October 2004 the UK Department for International Development (DFID) noted that since February 2004, 216 judges, prosecutors, lawyers and justice department officials have been trained in International Human Rights Law; and 50 judges, prosecutors and lawyers have been trained in International Humanitarian Law. Participation has been diverse: male and female judges, prosecutors and lawyers have been chosen from all areas of Iraq and from all parts of the community. A number of participants have been trained as trainers, so that the benefits of the training can be disseminated to others in Iraq.¹¹
- 2.3 Security Situation**
Security risk assessments in June 2005 confirm that the level of threat remains high, with a particular upsurge in violence around the country since the formation of the government in

¹ COIS Iraq Country Report para 4.03

² COIS Iraq Country Report para 4.05

³ COIS Iraq Country Report para 4.08-4.09

⁴ COIS Iraq Country Report para 4.13

⁵ COIS Iraq Country Report para 4.17

⁶ COIS Iraq Country Report para 4.20

⁷ COIS Iraq Country Report para 4.21

⁸ COIS Iraq Country Report para 5.26

⁹ COIS Iraq Country Report para 5.28

¹⁰ COIS Iraq Country Report para 5.34

¹¹ COIS Iraq Country Report para 5.31

late April 2005.¹² Most attacks occur in the four Sunni provinces of Baghdad, Al Anbar, Ninewah and Saladin. Ten of Iraq's 18 provinces are quieter and more stable but are still not immune to insurgent and terrorist violence.¹³ Bombings, strikes against Iraqi and Multinational Force installations and convoys, attacks on aircraft, hostage-takings and targeted assassinations against Iraqi civilians, including public figures, many of increasing scale and sophistication, continue to be centred on Baghdad, Mosul, Ramadi and Tikrit. Iraqi police and recruitment centres have received particular attention.¹⁴ On 3 July 2004, the Iraqi Interim Government passed the Order for Safeguarding National Security introducing emergency legislation to the statute books and enabling the prime minister to declare martial law for up to sixty days at a time.¹⁵ During November 2004 Iraq's Government, under the National Security Law, declared a 60-day state of emergency in response to the escalation of violence by militants. The UNSC report, dated 8 December 2004, noted that the state of emergency was declared in all parts of Iraq, except the three northern governorates.¹⁶ Domestic security responsibilities are shared within the IIG between the Ministry of Interior (MOI) and the Ministry of Defense. As set forth in the TAL, certain elements of the Iraqi Armed Forces are under the operational control of the Multi-National Coalition Force. The MOI commands a number of uniformed forces, including the Iraqi Police Service, the Department of Border Enforcement, and the Bureau of Dignitary Protection, as well as the MOI Intelligence Service.¹⁷ While there has been a strong increase in the number of Iraqi security forces, there has been a far from proportional improvement in their capabilities. The sections of the security forces equipped and trained to handle the insurgency are only a small fraction of the total, which is partly why the insurgency continues unabated.¹⁸

- 2.4** Up until July 2005 there were approximately 63,000 fully trained Iraq police. Iraq's Special Police Forces had grown from zero operational battalions in June 2004 to 20 operational battalions by the end of February 2005. Nine Police Commando battalions were now operational. Nine Public Order Battalions were operational.¹⁹ The police have been particularly hard hit by insurgent attacks which in many instances led to high numbers of policemen deserting their posts. By late June 2005 the regular police force had some 62,000 trained members on duty and was due to be at full strength of 135,000 by November 2006.²⁰
- 2.5** The two Kurdish factions, the PUK and KDP, which took control of the north after the 1991 uprising, built up police forces and local governments which remain in place, largely unaffected by the war.²¹ Criminality in Kurdistan is endemic by western terms. However, much of the activity is considered by the population to be simply a way of earning their crust. Additionally the defined perception that the West has of the areas (e.g. borders with Turkey, Iraq and Syria) is not shared by tribes straddling the designated border areas. The smuggling of sheep, alcohol and other commodities is commonplace. These crimes are largely unchecked and un-checkable by authorities.²²
- 2.6** The general security situation in the Kurdistan Regional Government (KRG) area is benign compared to the rest of Iraq.²³ The Kurdish Peshmerga continues to control the three Northern Governorates of Erbil, Dohuk and Sulaymaniyah; since the fall of the former regime it has also expanded its area of influence south into Kirkuk, Mosul and Diyala Governorates.²⁴ However, that is not to say that it is completely safe. Although it is quite

¹² COIS Iraq Country Report para 6.17

¹³ COIS Iraq Country Report para 6.18

¹⁴ COIS Iraq Country Report para 6.25

¹⁵ COIS Iraq Country Report para 6.29

¹⁶ COIS Iraq Country Report para 6.30

¹⁷ COIS Iraq Country Report para 5.91

¹⁸ COIS Iraq Country Report para 5.92

¹⁹ COIS Iraq Country Report para 5.95

²⁰ UNHCR COI 2005 p50

²¹ COIS Iraq Country Report para 5.97

²² COIS Iraq Country Report para 6.39

²³ COIS Iraq Country Report para 6.37

²⁴ UNHCR COI 2005 p59

likely that insurgents are once again living in Kurdish towns and cities in small numbers, and they would use opportunities as they present themselves to exact revenge for their ejection, the peshmerga presence and vigilance within the KRG area would make this difficult.²⁵ As a consequence the impact of the insurgency in the KRG area is not high. The green line is quite tightly controlled, and the road between Irbil and Mosul now has Kurdish checkpoints as close to Mosul as 15km. The road from Mosul to Zakho and the Turkish border is also heavily manned by Kurdish security forces, with regular checkpoints.²⁶ Whilst successful attacks in the KRG area are rare they are not non-existent. There were attacks in January 2005 in Irbil (indirect fire), and Dakuk (Improvised Explosive Devices), and the suicide bombing that killed up to 60 people and wounded around 100 others in Irbil.²⁷ UNHCR stated in October 2005 that while security concerns persist in the three Northern Governorates and the economy is still fragile, acts of violence are far less frequent as compared to the rest of the country and a certain level of political stability has been achieved. UNHCR added that serious protection concerns remain, especially for persons who do not originate from these areas.²⁸

2.7 Humanitarian Situation

During 2004, official estimates of unemployment ranged between 20 and 30 per cent. Anecdotal reports suggested that approximately half the working-age population was unemployed.²⁹ Apart from damaged and illegally occupied property, the UN Development Group/World Bank estimate that there are currently 1-1.5 million housing units missing, affecting up to 9 million people, thereby representing a housing 'crisis'. The country's health system has deteriorated leading to high maternity and child mortality rates and the recurrence of formerly well-controlled diseases.³⁰ An IRIN article, dated 15 February 2005, noted that "A shortage of medicine is still the main problem throughout the country. Doctors and pharmacists claim that simple medications such as pain killers and antibiotics are unavailable and sometimes they run out of needles and syringes."³¹ In all parts of the country, supplies of electricity, water and fuel do not meet established needs. Major reasons for this are a lack of maintenance, spare parts and training of workers, obsolete technology and corruption.³² According to the UNDP Iraq Living Conditions Survey, 98 per cent of households are connected to the electricity grid, although three-quarters of households report their electricity supply to be extremely unreliable; 78 per cent of homes have access to piped water, and 37 per cent of all homes are connected to the sewage system, but two-thirds of households report poor reliability in the provision of safe water and sewage services.³³

2.8 The UNSC report dated 7 June 2005 observed that effective monitoring of the human rights situation remains a challenge, particularly because the current security situation makes it difficult to obtain evidence and further investigate allegations. In most instances, however, the consistency of accounts points to clear patterns.³⁴ There have been some welcome positive developments in the country, especially in the field of freedom of expression, association and assembly. Dozens of non-government organisations (NGOs), including organisations focusing on women's rights, have been established, more than 80 daily and weekly newspapers are published and scores of political parties and religious organisations have emerged.³⁵

2.9 However in October 2005 UNHCR noted that the situation for women in particular had worsened due to insecurity and high criminality, insufficient protection provided by the Iraqi

²⁵ COIS Iraq Country Report para 6.37

²⁶ COIS Iraq Country Report para 6.38

²⁷ COIS Iraq Country Report para 6.37 & CIPU Bulletin, May 2005, para 3.4

²⁸ UNHCR Guidelines 2005 p25

²⁹ COIS Iraq Country Report para 6.173

³⁰ UNHCR COI 2005 p2

³¹ COIS Iraq Country Report para 5.136

³² UNHCR COI 2005 p111

³³ COIS Iraq Country Report para 6.13

³⁴ COIS Iraq Country Report para 6.04

³⁵ COIS Iraq Country Report para 6.06

authorities, the poor state of the country's infrastructure as well as the general population's embracing of stricter Islamic values, often enforced by militias, families or clans.³⁶

2.10 Internal Travel

The Transitional Administrative Law (TAL) provides for the freedom of movement, and the Government generally respected this right in practice.³⁷ Nevertheless, freedom of movement in all parts of Iraq is severely restricted due to the security situation.³⁸ Freedom of movement is further restricted due to the numerous military checkpoints which have been set up, especially in and around Baghdad as well as at the former 'green line', which separates the Northern Governorates from Central Iraq. In addition, there are illegal checkpoints set up by armed groups and militias.³⁹ On 3 July 2004 the Iraqi Interim Government passed the Order for Safeguarding National Security (Number 1 of 2004), which enabled the prime minister to declare martial law for up to sixty days (renewable with the approval of the Presidency Council). The Order provides for the imposition of curfews; the closure of roads, sea lanes, and airspace; restrictions or bans on public gatherings; surveillance of electronic and other communications; and wide powers to search property and to detain suspects.⁴⁰ In response to the security situation, the Transitional Government of 13 May 2005 extended the Order for the Safeguarding National Security in all parts of Iraq, except the three Northern Governorates (Arbil, Dahuk and Sulaymanyah), for 30 days. The Order has subsequently been extended every month.⁴¹ UNHCR noted in October 2005 that within the Iraqi context and with the exception of the capital city of Baghdad, cities are constituted of people belonging to specific tribes and families. Any newcomer, particularly when he/she does not belong to the existing tribes and families, is liable to be subject to discrimination.⁴²

2.11 UNHCR in their October 2005 Guidelines advised against the possibility of internal relocation in all parts of Central or Southern Iraq. The document states that although certain victims are most certainly targeted because of *who* they are, many more appear to be targeted on the basis of *what* they are, or what they represent in the eyes of perpetrators, irrespective of where they are in Iraq. UNHCR therefore conclude that it is highly unlikely that asylum-seekers who fear persecution in Central and Southern Iraq will be able to find a place in this region where they would be safe from persecution.⁴³ However, asylum and human rights claims are not decided on the basis of a general approach, they are based on the circumstances of the particular individual and the specific risk to that individual. It is important that caseworkers give individual consideration to whether the applicant's well-founded fear of persecution in one area is likely to exist in another part of Iraq. UNHCR's conclusion that it is unsafe for all persons in Central and Southern Iraq to relocate is not therefore accepted, but each case must be considered on its individual merits.

2.12 UNHCR noted in October 2005 that the availability of an Internal Relocation Alternative (IRA) in the three Northern Governorates will depend on a variety of factors and needs to be assessed on a case-by-case basis. The major factor to be considered is whether the claimant would be allowed to enter and legally reside in the area of relocation and whether he/she has family, community and/or political links that would allow for his/her protection and economic survival and integration.⁴⁴ Persons legally residing in the three Northern Governorates have access to public services such as education, employment and housing. However persons with no family, tribal or political connections may find it difficult to effectively realise these rights, for example when attempting to find employment or accommodation. This is particularly true for women, as for cultural reasons they are in need

³⁶ UNHCR COI 2005 p2

³⁷ COIS Iraq Country Report para 6.181

³⁸ COIS Iraq Country Report para 6.182

³⁹ UNHCR COI 2005 p90

⁴⁰ COIS Iraq Country Report para 6.29, 6.31

⁴¹ COIS Iraq Country Report para 6.30

⁴² UNHCR Guidelines 2005 p49

⁴³ UNHCR Guidelines 2005 p49

⁴⁴ UNHCR Guidelines 2005 p24

of their family/tribe to support them economically.⁴⁵ The FCO stated in a letter dated 10 October 2005, that "Hawler International Airport in Erbil is now open to commercial traffic and Iraqi Airways and Kurdistan Airlines are operating flights to a number of regional destinations including Amman, Kuwait, Dubai, and most recently the German city of Frankfurt."⁴⁶ Permanent check points exist between the Centre of Iraq and the three Northern Governorates, as well as on the main entry/exit points linking Erbil, Dohuk and Sulaymaniyah.⁴⁷ UNHCR stated in October 2005 that every person who does not originate from the respective Governorate and is allowed to enter will have to apply for a residence permit in order to legalise his/her stay. Applicants need to submit a petition and the necessary documentation (ID card, citizenship certificate, etc.) to the Security Department (in Sulaymaniyah Governorate) or to the Governorate Office/Department of Internal Affairs, which will then refer the request to the Security Department (Erbil and Dohuk Governorates). They will have to undergo a security screening in which their reasons for relocation will be investigated. A search will be conducted to see if they have a prior criminal record or were previously Ba'ath party members; the presence of either of these factors will lead to the denial of a residence permit and an investigation or prosecution.⁴⁸

- 2.13** In the Dohuk and Erbil Governorates, applicants for a residence permit need to either establish political links to the region or provide evidence they have fled a threat to their life; otherwise applications for a residence permit will be denied due to the serious lack of shelter in the Governorates. In all three Governorates, applicants must have a Kurdish sponsor residing in the respective Governorate in order to be granted a residence permit. The sponsor must have a good reputation and is required to know the applicant (for example as a family member or employer). At the recommendation of the Security Department, applicants are then granted residence permits for a six month-long stay.⁴⁹ Arab Iraqis are instantly recognised by Iraqi Kurds who view them with suspicion and would not generally welcome them into Iraqi Kurdistan.⁵⁰

2.14 The Kurdistan Regional Government

The Kurdistan Regional Government was recognized in the TAL as the official government of those territories that were administered by the Kurdish Regional Government on 19 March 2003 in the governorates of Dohuk, Arbil, Sulaimaniya, Kirkuk, Diyala, and Ninewah.⁵¹ The KRG retains control over its own police and internal security forces and the right to impose taxes within the region (Art. 54A).⁵² The Kurdistan Democratic List gained the majority of votes in the Kurdistan legislative election in January 2005 with 90 per cent of the votes and 104 seats in the Kurdistan National Assembly. Massoud Barzani was sworn in as the new regional president of Iraqi Kurdistan on 12 June 2005.⁵³ UNHCR observed in October 2005 that although the offices of the KDP and PUK have now started to work in each other's region, mutual respect and tolerance between the two parties has yet to be fully demonstrated.⁵⁴

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 the country of Iraq. It also contains any common claims which may raise issues covered by the API on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/punishment. It also provides guidance on whether or not

⁴⁵ UNHCR Guidelines 2005 p56

⁴⁶ COIS Iraq Country Report para 6.40

⁴⁷ UNHCR COI 2005 p76

⁴⁸ UNHCR Guidelines 2005 p54

⁴⁹ UNHCR Guidelines 2005 p54

⁵⁰ COIS Iraq Country Report para 6.196 & UNHCR Guidelines 2005 p54

⁵¹ COIS Iraq Country Report para 5.23

⁵² COIS Iraq Country Report para 5.24

⁵³ COIS Iraq Country Report para 5.13,5.25

⁵⁴ UNHCR Guidelines 2005 p17

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 flight are set out in the relevant API's, 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 claimant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in Karanakaran should be followed when deciding how much weight is to be given to the material provided in support of the claim (see the API on Assessing the Claim).
- 3.3** If the claimant does not qualify for asylum, consideration should be given to whether a grant of Humanitarian Protection is appropriate. If the claimant qualifies for neither asylum nor Humanitarian Protection, consideration should be given to whether s/he qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.
- 3.4** This guidance is **not** designed to cover issues of credibility. Caseworkers will need to consider credibility issues based on all the information available to them. (For guidance on credibility see paragraph 11 of the API on Assessing the Claim)
- 3.5** Also, this guidance does not generally provide information on whether or not a person should be excluded from the Refugee Convention or from Humanitarian Protection or Discretionary Leave. (See API on Humanitarian Protection and API on Exclusion under Article 1F or 33(2) and API on DL)

All APIs can be accessed via the IND website at:

http://www.ind.homeoffice.gov.uk/ind/en/home/laws_policy/policy_instructions/apis.html

- 3.6** Since 16 June 2003 the policy on Iraqi claims has been to grant Humanitarian Protection for a period of 6 months. With effect from 30 August 2005, when Humanitarian Protection is granted, leave should be granted for the standard period as set out in the current API on Humanitarian Protection.
- 3.7 Claims based on the poor security conditions in Iraq**
 - 3.7.1** Claimants may claim that due to the poor security situation and unstable situation in Iraq it is unsafe for them to return as they may be caught up and injured or killed in a violent incident.
 - 3.7.2 *Treatment*** Since the collapse of the former regime Iraq has suffered car bombings, kidnappings and assassinations. The fall of the former Government in April 2003 signalled the collapse of the Iraqi state apparatus. Since that time, daily life in Iraq (with the exception, to some extent, of the three Northern Governorates of Dohuk, Sulaymaniyah and Erbil) has essentially been governed by an extremely precarious security situation due to the activities of various insurgent groups. The general chaos created by the invasion and subsequent toppling of the former Government provided fertile space for many organised armed groups to resist the occupation and target any perceived collaborators through the use of violence, often with total impunity.⁵⁵ FCO confirmed in July 2005 that most attacks occur in the four Sunni provinces of Baghdad, Al Anbar, Ninewah and Saladin. Ten of Iraq's 18 provinces are quieter and more stable but are still not immune to insurgent and terrorist violence.⁵⁶
 - 3.7.3** Attacks increased in the period preceding the 30 January 2005 elections and then appeared to drop off slightly. However, since the formation of the ITG in late April 2005 a

⁵⁵ UNHCR Guidelines 2005 p2

⁵⁶ COIS Iraq Country Report para 6.19

spate of attacks have killed more than 1,000 people in two months as insurgents attempt to destabilize the new administration.⁵⁷ Anyone associated with or seen to be supporting the new Iraqi authorities, be they politicians, tribal or religious leaders, members of ethnic or religious minorities, journalists, doctors or lawyers have increasingly become the targets of attacks. There appears to be a continuing trend towards the targeting of ethnic or religious communities in an aim to arouse ethnic/religious tensions in the country, in particular between the Sunni and Shia religious communities. Increased attacks by Sunni extremist groups against Shiite religious sites or high-profile figures have been reported.⁵⁸ Iraq, and in particular Baghdad, also suffers from a high rate of criminality, with criminal gangs being involved in road ambushes, smuggling, stealing and kidnappings for high ransoms. The reasons for this include general insecurity, the lack of law enforcement and criminal impunity, high unemployment and the large number of criminals that Saddam Hussein freed in an amnesty in October 2002.⁵⁹

- 3.7.4 Sufficiency of protection** Despite efforts to reform and rebuild the Iraqi Security Forces, they are not yet capable of independently fighting the insurgency and rely heavily on the presence of the Multinational Forces (MNF).⁶⁰ While there has been a strong increase in the number of Iraqi security forces, there has been a far from proportional improvement in their capabilities. The sections of the security forces equipped and trained to handle the insurgency are only a small fraction of the total, which is partly why the insurgency continues unabated.⁶¹ It is accepted that the police force outside of the KRG area is not effective enough to provide security to ordinary Iraqis.⁶²
- 3.7.5** The PUK and KDP which took control of the north after the 1991 uprising, have built up police forces and local governments which remain in place, largely unaffected by the war.⁶³ Although it is quite likely that insurgents are once again living in Kurdish towns and cities in small numbers, and they would use opportunities as they present themselves to exact revenge for their ejection, the peshmerga presence and vigilance within Iraqi Kurdistan would make this difficult. Successful attacks are rare.⁶⁴
- 3.7.6** Sufficiency of protection in central and southern Iraq is not currently at a reasonable level, however in the KRG area it can be argued that protection is at a reasonably effective level.
- 3.7.7 Internal relocation** There is freedom of movement in that there are no formal restrictions within Iraq however there are limitations due to the numerous military and illegal checkpoints.⁶⁵ The imposition of curfews and the closure of roads as a result of the Safeguarding National Security Order limits freedom of movement.⁶⁶ Ease of movement within Iraq varies from place to place depending on security restrictions, and is the same for all Iraqis.⁶⁷ However Arab Iraqis are instantly recognised by Iraqi Kurds who view them with suspicion and would not generally welcome them into Iraqi Kurdistan.⁶⁸
- 3.7.8** Generally there is freedom of movement throughout Iraq; it is unlikely that internal relocation would be unduly harsh for men, and women with male partners or relatives. As a result of the recent rise in Islamic extremism single women may be unable to move around freely if unaccompanied and may not be able to settle in areas where they have no family ties as they are unlikely to be able to access resources without support.⁶⁹ In assessing this,

⁵⁷ UNHCR COI 2005 p14

⁵⁸ UNHCR COI 2005 p15

⁵⁹ UNHCR COI 2005 p16

⁶⁰ UNHCR Guidelines 2005 p2

⁶¹ COIS Iraq Country Report para 5.92

⁶² COIS Iraq Country Report para 5.96

⁶³ COIS Iraq Country Report para 5.97

⁶⁴ COIS Iraq Country Report para 6.37

⁶⁵ COIS Iraq Country Report para 6.181, 6.184

⁶⁶ COIS Iraq Country Report para 6.29, 6.31

⁶⁷ COIS Iraq Country Report para 6.183

⁶⁸ COIS Iraq Country Report para 6.196

⁶⁹ COIS Iraq Country Report para 6.270-272 & UNHCR COI 2005 p139

caseworkers will need to take all relevant factors into account including financial circumstances and health, whether the claimant has a support network.

3.7.9 **Caselaw**

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

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

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

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

3.7.10 *Conclusion* A state of general insecurity does not of itself give rise to a well-founded fear of persecution for a Refugee Convention reason unless the claimant is at serious risk of adverse treatment over and above others (see other common categories of claim in this OGN). Moreover the reports of tension and security breaches do not demonstrate that there would be a consistent pattern of gross and systematic violation of rights under Article 3 ECHR generally. The current evidence also does not suggest that the level of violence and insecurity amounts to a serious risk of unlawful killing and so a grant of Humanitarian Protection in such cases is unlikely to be appropriate. In addition no Government can be expected to guarantee the safety of all its citizens. Accordingly a grant of asylum or humanitarian protection is unlikely to be appropriate in these cases.

3.8 **Perceived collaborators**

3.8.1 Claimants may claim that as a result of their work for the UN, NGOs or foreign contractors, or because of the real or perceived support for the transitional Iraqi Government they face a real risk of being targeted by insurgents and as a result being taken hostage or becoming the target of a violent attack.

3.8.2 *Treatment* US military intelligence officials say they believe that three interconnected groups are the most powerful actors in the Iraqi insurgency today: Ansar Al-Islam, Ansar Al-Sunna and Al-Qaeda in Iraq, the last of which is headed by Jordanian militant Abu Musab Al-Zarqawi. A loose coalition of insurgent groups (including guerrillas from Jaish Ansar Al-

Sunna, Jaish Mohammed and Al-Qaeda in Iraq) are believed to have a controlling presence in the cities of Fallujah, Ramadi, Samarra, Baqouba, Al- Qaim, Tal Afar and Mosul. Since August 2003, there have been increased attacks on civilian targets or so-called 'soft targets': the assassination of Iraqis cooperating with the MNF or the Iraqi authorities and suicide bombings targeting the UN, the ICRC, foreign embassies and diplomats, Shia mosques and civilians, Kurdish political parties, hotels and Christian churches. Iraqis who support the political process are often viewed as 'collaborators'.⁷⁰

3.8.3 Members of the Iraqi police force, as well as potential police recruits are often the victims of lethal attacks.⁷¹ Amnesty International reported on 25 July 2005 that "Hundreds of Iraqis have been killed by armed groups because they were perceived as 'traitors' or 'collaborators'. Among them have been translators, drivers and other civilians working for the MNF, civil servants, government officials, judges and journalists. The attacks have sometimes resulted in the killing of people accompanying the 'targets,' including children."⁷²

3.8.3 According to Iraq's Deputy Minister of Higher Education and reported in May 2005, more than 2,000 academics left Iraq under the former regime; since its fall a further 260 have followed them, mainly due to threats by insurgents who have already killed 47 academics.⁷³ A study carried out by a special commission set up by the Ministry of Health between January and April 2005 found that more than 160 doctors and other medical personnel have been killed and kidnapped since January 2005. According to Dr Muhammad Al-Hassuny, Director of the Programme, doctors have been targeted by insurgents because of their financial status and social prestige in Iraqi society. In addition, they represent easy targets for violent gangs that specialise in kidnapping because they move around the city to see patients and often cannot afford large numbers of bodyguards.⁷⁴

3.8.4 *Sufficiency of protection* While there has been a strong increase in the number of Iraqi security forces, there has been a far from proportional improvement in their capabilities.⁷⁵ It is accepted that the police force outside of the KRG area is not effective enough to provide security to ordinary Iraqis.⁷⁶

3.8.5 The current stability in Kurdistan stands in stark contrast to other parts of the country.⁷⁷ The PUK and KDP which took control of the north after the 1991 uprising, have built up police forces and local governments which remain in place, largely unaffected by the war.⁷⁸ Although it is quite likely that insurgents are once again living in Kurdish towns and cities in small numbers, and they would use opportunities as they present themselves to exact revenge for their ejection, the peshmerga presence and vigilance within Iraqi Kurdistan would make this difficult. Successful attacks are rare.⁷⁹

3.8.6 Sufficiency of protection in central and southern Iraq is not currently at a reasonable level, however in the KRG area it can be argued that protection is at a reasonably effective level.

3.8.7 *Internal relocation* There is freedom of movement in that there are no formal restrictions within Iraq however there are limitations due to the numerous military and illegal checkpoints.⁸⁰ The imposition of curfews and the closure of roads as a result of the Safeguarding National Security Order limits freedom of movement.⁸¹ Ease of movement within Iraq varies from place to place depending on security restrictions, and is the same for

⁷⁰ UNHCR COI 2005 p65

⁷¹ COIS Iraq Country Report para 6.325

⁷² COIS Iraq Country Report para 3.26

⁷³ UNHCR Guidelines p41

⁷⁴ UNHCR Guidelines p44

⁷⁵ COIS Iraq Country Report para 5.92

⁷⁶ COIS Iraq Country Report para 5.96

⁷⁷ COIS Iraq Country Report para 6.218

⁷⁸ COIS Iraq Country Report para 5.97

⁷⁹ COIS Iraq Country Report para 6.37

⁸⁰ COIS Iraq Country Report para 6.181, 6.184

⁸¹ COIS Iraq Country Report para 6.29, 6.31

all Iraqis.⁸² However Arab Iraqis are instantly recognised by Iraqi Kurds who view them with suspicion and would not generally welcome them into Iraqi Kurdistan.⁸³

3.8.8 Generally there is freedom of movement throughout Iraq; it is unlikely that internal relocation would be unduly harsh for men, and women with male partners or relatives. As a result of the recent rise in Islamic extremism single women may be unable to move around freely if unaccompanied and may not be able to settle in areas where they have no family ties as they are unlikely to be able to access resources without support.⁸⁴ Caseworkers will also need to take all relevant factors into account including financial circumstances, health, and whether the claimant has a support network. In assessing whether internal relocation would be appropriate in the individual's case, caseworkers will need to consider whether the applicant's perceived collaboration would be apparent in another part of Iraq. For example those targeted because of their job, or religion may be unable to escape the threat of perceived collaboration wherever they relocate in Southern or Central Iraq.⁸⁵

3.8.9 Caselaw

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

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

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

3.9 Claims based on the fear of kidnapping

3.9.1 Claimants may claim that due to the rise in hostage taking in Iraq they face a serious risk of being taken hostage.

3.9.2 Treatment. According to UNHCR in their Country of Origin Report dated October 2005, 5,000 Iraqis have been kidnapped since the fall of the former regime, with many other kidnappings going unreported. Besides kidnappings taking place for political motives, members of wealthy families, businessmen, professionals and expatriates remain at risk of being kidnapped by criminal gangs and insurgent groups, which often work together.⁸⁶ Scores of hostages were executed by their captors. Other kidnappings were carried out by armed groups to extract ransoms from families or employers.⁸⁷ Many of the hostages, both

⁸² COIS Iraq Country Report para 6.183

⁸³ COIS Iraq Country Report para 6.196

⁸⁴ COIS Iraq Country Report para 6.270-6.272 & UNHCR COI 2005 p139

⁸⁵ UNHCR Guidelines 2005 p49

⁸⁶ UNHCR COI 2005 p16

⁸⁷ COIS Iraq Country Report para 6.382

Iraqis and foreign nationals, were said to have been tortured.⁸⁸ Several Iraqi Christians have been kidnapped and this has to do with a general perception in Iraq that the Christian community is wealthy.⁸⁹

- 3.9.3** Amnesty International in a report dated 25 July 2005 noted that, "It is difficult to distinguish between armed political groups and criminal gangs when it comes to hostage-taking as there are many credible reports suggesting that hostages, in particular foreign nationals, taken by criminal gangs are then handed over to armed political groups in exchange for money. In many cases armed political groups seem to have made the release of their victims conditional on payment of money even when they make political demands such as the withdrawal of foreign troops."⁹⁰
- 3.9.4** **Sufficiency of protection** While there has been a strong increase in the number of Iraqi security forces, there has been a far from proportional improvement in their capabilities.⁹¹ It is accepted that the police force outside of the KRG area is not effective enough to provide security to ordinary Iraqis.⁹²
- 3.9.5** The PUK and KDP which took control of the north after the 1991 uprising, have built up police forces and local governments which remain in place, largely unaffected by the war.⁹³ Although it is quite likely that insurgents are once again living in Kurdish towns and cities in small numbers, and they would use opportunities as they present themselves to exact revenge for their ejection, the peshmerga presence and vigilance within Iraqi Kurdistan would make this difficult. Successful attacks are rare.⁹⁴
- 3.9.6** Sufficiency of protection in central and southern Iraq is not currently at a reasonable level, however in the Kurdistan Regional Government area it can be argued that protection is at a reasonably effective level.
- 3.9.7** **Internal relocation** There is freedom of movement in that there are no formal restrictions within Iraq however there are limitations due to the numerous military and illegal checkpoints.⁹⁵ The imposition of curfews and the closure of roads as a result of the Safeguarding National Security Order limits freedom of movement.⁹⁶ Ease of movement within Iraq varies from place to place depending on security restrictions, and is the same for all Iraqis.⁹⁷ However Arab Iraqis are instantly recognised by Iraqi Kurds who view them with suspicion and would not generally welcome them into Iraqi Kurdistan.⁹⁸
- 3.9.8** Generally there is freedom of movement throughout Iraq; it is unlikely that internal relocation would be unduly harsh for men, and women with male partners or relatives. As a result of the recent rise in Islamic extremism single women may be unable to move around freely if unaccompanied and may not be able to settle in areas where they have no family ties as they are unlikely to be able to access resources without support.⁹⁹ Caseworkers will also need to take all relevant factors into account including financial circumstances, health and whether the claimant has a support network. In assessing whether internal relocation would be appropriate in the individual's case, caseworkers will need to consider whether the applicant's reason to be kidnapped would be apparent in another part of Iraq. For

⁸⁸ COIS Iraq Country Report para 6.383

⁸⁹ COIS Iraq Country Report para 6.387

⁹⁰ COIS Iraq Country Report para 6.390

⁹¹ COIS Iraq Country Report para 5.92

⁹² COIS Iraq Country Report para 5.96

⁹³ COIS Iraq Country Report para 5.97

⁹⁴ COIS Iraq Country Report para 6.37

⁹⁵ COIS Iraq Country Report para 6.181, 6.184

⁹⁶ COIS Iraq Country Report para 6.29, 6.31

⁹⁷ COIS Iraq Country Report para 6.183

⁹⁸ COIS Iraq Country Report para 6.196

⁹⁹ COIS Iraq Country Report para 6.270 – 6.272 & UNHCR COI 2005 p139

example those targeted because of their job, or religion may be unable to escape a real risk of kidnapping wherever they relocate in Southern or Central Iraq.¹⁰⁰

3.9.9 *Caselaw*

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

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

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

3.10 *Fear of Saddam Hussein’s regime*

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

3.10.2 *Treatment* Saddam Hussein’s regime was ousted in military action by coalition forces in March and April 2003.¹⁰¹ Shortly after the end of major military operations the Ba’ath Party was dissolved. In the early months of the U.S.-led occupation, authorities banned the Ba’ath Party and removed all senior Ba’athists from the government and security forces. But U.S. officials began to shift their strategy in April 2004 and, in a bid to strengthen the officer corps, allowed some senior ex-Ba’athists to return to the security forces.¹⁰² Many of those involved in the insurgency or in armed groups are believed to be former army officers, Ba’athists and members of the various security agencies of the previous regime.¹⁰³

¹⁰⁰ UNHCR Guidelines 2005 p49

¹⁰¹ COIS Iraq Country Report para 4.01

¹⁰² COIS Iraq Country Report para 4.03 & 6.303

¹⁰³ COIS Iraq Country Report para 6.304

- 3.10.3 Sufficiency of protection** While there has been a strong increase in the number of Iraqi security forces, there has been a far from proportional improvement in their capabilities.¹⁰⁴ It is accepted that the police force outside of the KRG area is not effective enough to provide security to ordinary Iraqis.¹⁰⁵
- 3.10.4** The PUK and KDP which took control of the north after the 1991 uprising, have built up police forces and local governments which remain in place, largely unaffected by the war.¹⁰⁶ Although it is quite likely that insurgents are once again living in Kurdish towns and cities in small numbers, and they would use opportunities as they present themselves to exact revenge for their ejection, the peshmerga presence and vigilance within Iraqi Kurdistan would make this difficult. Successful attacks are rare.¹⁰⁷
- 3.10.5** Sufficiency of protection in central and southern Iraq is not currently at a reasonable level, however in the KRG area it can be argued that protection is at a reasonably effective level.
- 3.10.6 Internal relocation** There is freedom of movement in that there are no formal restrictions within Iraq however there are limitations due to the numerous military and illegal checkpoints.¹⁰⁸ The imposition of curfews and the closure of roads as a result of the Safeguarding National Security Order limits freedom of movement.¹⁰⁹ Ease of movement within Iraq varies from place to place depending on security restrictions, and is the same for all Iraqis.¹¹⁰ However Arab Iraqis are instantly recognised by Iraqi Kurds who view them with suspicion and would not generally welcome them into Iraqi Kurdistan.¹¹¹
- 3.10.7** Generally there is freedom of movement throughout Iraq; it is unlikely that internal relocation would be unduly harsh for men, and women with male partners or relatives. As a result of the recent rise in Islamic extremism single women may be unable to move around freely if unaccompanied and may not be able to settle in areas where they have no family ties as they are unlikely to be able to access resources without support.¹¹² Caseworkers will also need to take all relevant factors into account including financial circumstances, health and whether the claimant has a support network.
- 3.10.8 Conclusion** Taking into account the fall of Saddam's regime in April 2003, the dissolving of the Ba'ath Party and actions taken against former senior members it is very unlikely that claimants will be able to demonstrate a continuing risk of persecution by agents of the former regime and a grant of asylum or HP will not generally be appropriate.
- 3.11 Former members of the Ba'ath Party and their families**
- 3.11.1** Claimants may claim that as a result of their past membership of the Ba'ath Party they have been targeted and are likely to suffer persecution or ill-treatment from both or either State or non-State agents.
- 3.11.2 Treatment** Most estimates put Ba'ath Party membership before the collapse of Saddam's regime at an estimated 1 million to 2.5 million. Party membership was a prerequisite for advancement in many fields in Saddam's Iraq and ordinary membership did not of itself imply support for the Party's policies.¹¹³ At the lowest level, (Ba'ath Party) study circles (*halaqa*) and cells (*kheliya*) held weekly meetings with a dozen or so activists from the same neighbourhood or sector. The party's divisions (*firqa*), which included all the cells

¹⁰⁴ COIS Iraq Country Report para 5.92

¹⁰⁵ COIS Iraq Country Report para 5.96

¹⁰⁶ COIS Iraq Country Report para 5.97

¹⁰⁷ COIS Iraq Country Report para 6.37

¹⁰⁸ COIS Iraq Country Report para 6.181, 6.184

¹⁰⁹ COIS Iraq Country Report para 6.29, 6.31

¹¹⁰ COIS Iraq Country Report para 6.183

¹¹¹ COIS Iraq Country Report para 6.196

¹¹² COIS Iraq Country Report para 6.270 - 6.272 & UNHCR COI 2005 p139

¹¹³ COIS Iraq Country Report para 6.301

within a district office or factory, occupied the next highest level, and then the sections (*shu'ba*) and branches (*fara'*) which made up urban areas or Governorates.¹¹⁴ While the level of affiliation or rank held within the Ba'ath party may sometimes be a determining factor regarding who is targeted, it is generally difficult to pinpoint exactly why a particular individual may be targeted. Low-ranking officials of the Ba'ath party have also been killed or otherwise attacked because of the activities they were involved in.¹¹⁵ There have been reprisals against former Ba'athists who were considered to have committed abuses, and not necessarily only nationally known figures; informers or members of local security apparatus might be known locally and could be at greater risk of reprisals from those who had a grievance against them.¹¹⁶ Since the January 2005 elections, Shiite militants have stepped up their campaign to exact street justice from men who were part of the regime that oppressed and massacred members of their sect for decades. While Shiite politicians turn a blind eye, assassins are working their way through a hit list of Saddam's former security and intelligence personnel.¹¹⁷ As regards the Ba'ath Party rank and file members, the UNHCR in October 2005 noted that whilst many Iraqis today suffer harassment as a result of their previous low or mid level membership in the Ba'ath Party, this harassment may not necessarily reach the level of persecution.¹¹⁸

3.11.3 There is no evidence to suggest that the relatives or associates of former Ba'athists are being targeted in reprisal attacks, although a number have been caught up in attacks aimed at the Ba'athists themselves.¹¹⁹

3.11.4 Sufficiency of protection While there has been a strong increase in the number of Iraqi security forces, there has been a far from proportional improvement in their capabilities.¹²⁰ A Knight Ridder article, dated 25 February 2005, stated that "The war between Shiite vigilantes and former Ba'ath Party members is seldom investigated and largely overshadowed by the insurgency. The U.S. military is preoccupied with hunting down suicide bombers and foreign terrorists, and Iraq's new Shiite leaders have little interest in prosecuting those who kill their former oppressors or their enemies in the insurgency. It is accepted that the police force outside of the KRG area is not effective enough to provide security to ordinary Iraqis."¹²¹

3.11.5 The PUK and KDP which took control of the north after the 1991 uprising, have built up police forces and local governments which remain in place, largely unaffected by the war.¹²² Although it is quite likely that insurgents are once again living in Kurdish towns and cities in small numbers, and they would use opportunities as they present themselves to exact revenge for their ejection, the peshmerga presence and vigilance within Iraqi Kurdistan would make this difficult. Successful attacks are rare.¹²³

3.11.6 Sufficiency of protection in central and southern Iraq is not currently at a reasonable level, however in the KRG area it can be argued that protection is at a reasonably effective level.

3.11.7 Internal relocation In many cases the threat of reprisals against former lower ranking members of the Ba'ath party will be a localised problem. There is freedom of movement in that there are no formal restrictions within Iraq however there are limitations due to the numerous military and illegal checkpoints.¹²⁴ The imposition of curfews and the closure of roads as a result of the Safeguarding National Security Order limits freedom of

¹¹⁴ UNHCR Guidelines 2005 p38

¹¹⁵ UNHCR Guidelines 2005 p15

¹¹⁶ COIS Iraq Country Report para 6.308

¹¹⁷ COIS Iraq Country Report para 6.313

¹¹⁸ UNHCR Guidelines 2005 p16

¹¹⁹ COIS Iraq Country Report para 6.314 – 6.315

¹²⁰ COIS Iraq Country Report para 5.92

¹²¹ COIS Iraq Country Report para 6.312

¹²² COIS Iraq Country Report para 5.97

¹²³ COIS Iraq Country Report para 6.37

¹²⁴ COIS Iraq Country Report para 6.181, 6.184

movement.¹²⁵ Ease of movement within Iraq varies from place to place depending on security restrictions, and is the same for all Iraqis.¹²⁶ However Arab Iraqis are instantly recognised by Iraqi Kurds who view them with suspicion and would not generally welcome them into Iraqi Kurdistan.¹²⁷

3.11.8 Generally there is freedom of movement throughout Iraq; it is unlikely that internal relocation would be unduly harsh for men, and women with male partners or relatives. As a result of the recent rise in Islamic extremism single women may be unable to move around freely if unaccompanied and may not be able to settle in areas where they have no family ties as they are unlikely to be able to access resources without support.¹²⁸ Caseworkers will also need to take all relevant factors into account including financial circumstances, health and whether the claimant has a support network. In assessing whether internal relocation would be appropriate in the individual's case, caseworkers will need to consider whether the applicant's Ba'ath party involvement would be apparent in another part of Iraq. For example those targeted because of their job may be unable to escape the threat of repercussions wherever they relocate in southern or central Iraq.¹²⁹

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

3.11.10 Caselaw

OH [2004] UKIAT 00254, promulgated 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.

3.11.11 Conclusion Whilst many Iraqis today suffer harassment as a result of their previous membership in the Ba'ath Party, it is unlikely that this harassment will reach the level of persecution.¹³⁰ To establish a well-founded fear, a claimant will need to show that their activities brought them to the adverse attention of those they fear, whether locally through their direct actions or on a wider stage because they are inextricably associated with the abuses of the former regime. In the event that a local threat from non-State agents is established, it would not be unduly harsh for the claimant to relocate elsewhere in Iraq and neither asylum nor HP would be appropriate.

3.11.12 Internal relocation would not be an option for nationally known figures. Where a claimant is able to establish a well-founded fear on the grounds that they are nationally known and associated with the activities of the former regime, the activities that brought them to national attention would generally mean they would be of interest to the authorities in Iraq. However it is also likely that their role within the former regime would exclude them from the provisions of the Refugee Convention, and from eligibility for HP. All applications from senior members of the Ba'ath party are to be referred to a SCW before decision.

3.12.1 Tribal disputes

3.12.1 Claimants may claim that as a result of a tribal dispute they fear ill-treatment or persecution from members of their or another tribe with whom they have a dispute.

3.12.2 Treatment Iraq is a largely tribal society with at least three-quarters of the Iraqi people belonging to one of the country's 150 tribes.¹³¹ The *Law on Criminal Proceedings* leaves

¹²⁵ COIS Iraq Country Report para 6.29, 6.31

¹²⁶ COIS Iraq Country Report para 6.183

¹²⁷ COIS Iraq Country Report para 6.196

¹²⁸ COIS Iraq Country Report para 6.270 – 6.272 & UNHCR COI 2005 p139

¹²⁹ UNHCR Guidelines 2005 p49

¹³⁰ UNHCR Guidelines 2005 p16

¹³¹ UNHCR COI 2005 p123

space for the use of tribal justice or other forms of extrajudicial procedures (e.g. religious courts) in three main areas:

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

These provisions also continue to be applicable in the three Northern Governorates.¹³² In the case of blood disputes, the punishment of the perpetrator by a court may actually not solve the case as, according to tribal rules, only the payment of compensation or revenge killing can restore justice.¹³³ It was noted in 2003 that people had been exploiting the tribal arbitration mechanism whereby tribal leaders would mediate between the families of victims and perpetrators to try to arrive at a figure for compensation, or 'blood money'. In the aftermath of the conflict, tribal leaders had been 'swamped' with false claims from people trying to earn a few dollars and openly expressed concern at the damage that tribal-based criminality was having on their communities.¹³⁴

3.12.3 Tribes are very important in the country. It is very common in Iraq to ask the tribal-leaders to solve problems between members of different tribes. A decision of a sheik (tribal leader) is normally respected by everyone, even by the defeated party.¹³⁵ Tribal leaders have an effective conflict - solving power in the rural areas whereas in the bigger cities their competence is limited.¹³⁶

3.12.4 UNHCR in their October 2005 Country of Origin Information report noted that there is concern that policemen, who are often more loyal to their tribe than to their duty, may enter tribal feuds and further undermine the reputation and effectiveness of the Iraqi Security Forces (ISF). In the past, feuds have also taken place between the Garamsha and the Basun tribe, the Garamsha and the Awlad Amer tribe and the Al-Abtut and Al-Hamadne tribes.¹³⁷

3.12.5 UNHCR noted in the same report that whereas tribal justice is a system commonly-used in dealing with inter-tribal feuds, it has also provided justification for killings of US soldiers and suspected collaborators. According to Paul McGeough, author of 'Mission Impossible - The Sheikhs, the US and the future of Iraq', much of the violence against the US and persons considered to be collaborating with the 'occupation' is a result of tribal justice and revenge killings. On 1 August 2003, the Washington Post reported on a particularly acute example of tribal justice: the killing of an Iraqi 'collaborator' by his father and brother in the attempt to avoid a string of revenge killings dictated by tribal tradition.¹³⁸

3.12.6 *Sufficiency of protection* While there has been a strong increase in the number of Iraqi security forces, there has been a far from proportional improvement in their capabilities.¹³⁹ It is accepted that the authorities outside of the KRG area are not effective enough to provide security to ordinary Iraqis.¹⁴⁰

¹³² UNHCR COI 2005 p123

¹³³ UNHCR COI 2005 p124

¹³⁴ COIS Iraq Country Report para 6.321

¹³⁵ COIS Iraq Country Report para 6.318

¹³⁶ COIS Iraq Country Report para 6.319

¹³⁷ UNHCR COI 2005 p90

¹³⁸ UNHCR COI 2005 p124

¹³⁹ COIS Iraq Country Report para 5.92

¹⁴⁰ COIS Iraq Country Report para 5.96

3.12.7 The PUK and KDP which took control of the north after the 1991 uprising, have built up police forces and local governments which remain in place, largely unaffected by the war.¹⁴¹ Sufficiency of protection in Central and Southern Iraq is not currently at a reasonable level, however in the KRG area it can be argued that protection is at a reasonably effective level.

3.12.8 Internal relocation Tribes are regional power-holders¹⁴² and therefore if there is a localised tribal dispute the individual should be able to relocate to escape the problem. However UNHCR noted in October 2005 that within the Iraqi context and with the exception of the capital city of Baghdad, cities are constituted of people belonging to specific tribes and families. Any newcomer, particularly when he/she does not belong to the existing tribes and families, is liable to be subject to discrimination.¹⁴³ However tribes do appear to have limited influence in Baghdad.¹⁴⁴ Though relocation by persons of a certain tribe may cause resentment and discrimination on the part of the receiving tribe, such a relocation is not considered unduly harsh.

3.12.9 There is freedom of movement in that there are no formal restrictions within Iraq however there are limitations due to the numerous military and illegal checkpoints.¹⁴⁵ The imposition of curfews and the closure of roads as a result of the Safeguarding National Security Order limits freedom of movement.¹⁴⁶ Ease of movement within Iraq varies from place to place depending on security restrictions, and is the same for all Iraqis.¹⁴⁷ However Arab Iraqis are instantly recognised by Iraqi Kurds who view them with suspicion and would not generally welcome them into Iraqi Kurdistan.¹⁴⁸

3.12.10 Generally there is freedom of movement throughout Iraq; it is unlikely that internal relocation would be unduly harsh for men, and women with male partners or relatives. As a result of the recent rise in Islamic extremism single women may be unable to move around freely if unaccompanied and may not be able to settle in areas where they have no family ties as they are unlikely to be able to access resources without support.¹⁴⁹ Caseworkers will also need to take all relevant factors into account including financial circumstances, health, whether the claimant has a support network. In assessing whether internal relocation would be appropriate in the individual's case, caseworkers will need to consider whether the applicant's past fear is likely to be known in another part of Iraq.¹⁵⁰

3.12.11 Case law

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

GH [2004] UKIAT 00248. The Tribunal concluded that in Sulaimaniyah "we are also satisfied that those representing the lawful authorities in his home area are currently providing a sufficiency of

¹⁴¹ COIS Iraq Country Report para 5.97

¹⁴² COIS Iraq Country Report para 6.317

¹⁴³ UNHCR Guidelines 2005 p49

¹⁴⁴ COIS Iraq Country Report para 6.319

¹⁴⁵ COIS Iraq Country Report para 6.181, 6.184

¹⁴⁶ COIS Iraq Country Report para 6.29, 6.31

¹⁴⁷ COIS Iraq Country Report para 6.183

¹⁴⁸ COIS Iraq Country Report para 6.196

¹⁴⁹ COIS Iraq Country Report para 6.270-6.272 & UNHCR COI 2005 p139

¹⁵⁰ UNHCR Guidelines 2005 p49

protection against the Islamic extremists and terrorists and we see no arguable reason why such protection would not be equally available to the appellant." (para 126).

3.12.12 Conclusion Tribes within Iraq are important informal civil authorities that can invariably mediate and dissolve a threat which will negate any element of fear the claimant had. Where tribal elders or the tribal structure can successfully mediate and subdue a particular conflict, it is likely that the threat of persecution will not materialise. The grant of asylum or humanitarian protection in such cases is unlikely to be appropriate. It is nevertheless possible that claimants unable to avail themselves of such tribal support will be able to demonstrate a continuing threat from a tribal dispute which could amount to persecution but . As those at risk do not constitute a particular social group, fear of a tribal dispute is not persecution for a 1951 UN Convention reason and a grant of asylum would not be appropriate. Where those circumstances are such that the individual has demonstrated that him/her is unable to acquire protection and that it would be unduly harsh for him/her to relocate, a grant of Humanitarian Protection will be appropriate.

3.13 Honour killings in Central and Southern Iraq

3.13.1 Claimants may claim that they are at risk of honour killing by non-State agents, as a result of having brought the honour of their family into disrepute.

3.13.2 Treatment Most victims of 'honour crimes' are women and girls who are considered to have shamed the women's families by immoral behaviour. Often the grounds for such an accusation are flimsy and no more than rumour. Women might be killed because they lost their virginity before marriage, they demanded divorce or refused marriage, had extra-marital affairs, or even because they were raped,. 'Honour crimes' are most often perpetrated by male members of the women's families in the belief that such crimes restore their and the family's honour.¹⁵¹ 'Honour killings' occur mainly in conservative Muslim families (both Shiite and Sunni, of both Arab and Kurdish backgrounds), in all areas of Iraq. 'Honour killings' cannot be justified by Islam or Sharia law, but are a 'tribal custom stemming from the patriarchal and patrilineal society's interest in keeping strict control over familial power structures'.¹⁵² A study conducted by the Ministry of Women's Affairs reported in May 2005 found that more than 400 women have been raped since the fall of the former regime and more than half of this group were later killed for honour-related reasons.¹⁵³ An Amnesty report dated February 2005 noted that for decades, violence in the family in Iraq has been under-reported. Most acts of violence in the home are carried out on women and girls by husbands, brothers, fathers or sons. The men are sometimes acting on the orders of family councils, gatherings of family or clan elders who decide the punishment for women deemed to have infringed traditional codes of honour.¹⁵⁴ The lack of a functioning judicial system during the months after the 2003 war contributed to an increase in the part played by tribal bodies in resolving conflicts, including in relation to 'honour crimes'.¹⁵⁵

3.13.3 However according to UNHCR in Oct 2005 tribal justice is also seen as sanctioning 'honour killings', forced marriages and other forms of tribal customs, seriously violating the rights of women and girls. While most cases are resolved through the payment of money, other forms of compensation such as arranged marriages are used, although to a lesser extent. This practice is known as 'exchange-for-blood marriage', in which one or two women of a tribe are given to the male relatives of another tribe as compensation for the killing of one of that tribe's members.¹⁵⁶

3.13.4 Some women try and commit suicide, particularly through self-immolation, in order to 'cleanse' the honour of the family or to escape killing or other forms of violence. In the

¹⁵¹ COIS Iraq Country Report para 6.253, 6.256 & UNHCR COI 2005 p36-37

¹⁵² UNHCR COI 2005 p37

¹⁵³ UNHCR COI 2005 p38

¹⁵⁴ COIS Iraq Country Report para 6.243

¹⁵⁵ COIS Iraq Country Report para 6.255

¹⁵⁶ UNHCR COI 2005 p124

Governorate of Sulaymaniyah, 119 cases of self-immolation were recorded by Rewan Women's Information and Cultural Centre in 2002. The practices of hymen reconstruction on girls that have lost their virginity and backstreet abortions both pose a serious health risk but appear for some girls to be the only way to escape killing.¹⁵⁷

3.13.5 UNHCR noted in October 2005 that women who have fled Iraq on their own or with their children may face additional risks. Women who do not benefit from any type of family network or tribal links to protect them are at risk and are likely to be prime targets for traffickers.¹⁵⁸

3.13.6 *Sufficiency of protection* While there has been a strong increase in the number of Iraqi security forces, there has been a far from proportional improvement in their capabilities.¹⁵⁹

3.13.7 UNHCR in their Oct 2005 Country of Origin Report noted that the *Penal Code* contains provisions that allow lenient punishments for 'honour killings' on the grounds of provocation or if the accused had 'honourable motives'. The punishment will be between 6-12 months imprisonment. Article 409 further provides that if a person surprises his wife or a female relative committing adultery and kills/injures one or both immediately, the punishment will not exceed three years. The law does not provide any guidance as to what 'honourable' motives are.¹⁶⁰

3.13.8 The HRW report, January 2004, stated that Iraqi police give a low priority to allegations of sexual violence and abduction. The victims of sexual violence confront indifference and sexism from Iraqi law enforcement personnel, and the U.S. military police are not filling the gap.¹⁶¹ There are a number of drop-in refuges and shelters run by NGO's, however more often than not women eventually return to their families.¹⁶² During the summer of 2004, the Iraqi NGO 'Organization of Women's Freedom in Iraq' (OWFI) opened two shelters – one in Baghdad and one in Kirkuk – both of which are in secret locations and have the capacity to host up to 20 women at a time. The Chairwomen of OWFI reported that they face 'extreme difficulties' of reaching out to women, who are often unable to even leave their homes. While the organisation was able to find solutions for a number of women to return to their families, other women are at such serious risk of being killed by their families that they cannot leave the shelter.¹⁶³ The extent to which the current security organisations in Iraq can offer protection to women exposed to (sexual) violence at the hands of third parties or honour crimes is unknown.¹⁶⁴ However it is generally accepted that the authorities outside of the KRG area are not effective enough to provide security to ordinary Iraqis.¹⁶⁵

3.13.9 *Internal relocation* Women have freedom of movement within Iraq however there is becoming an increased need for a male companion otherwise the woman is vulnerable. Women can leave Iraq without needing a male escort however they cannot obtain a passport without being accompanied by their guardian – this may be their father, brother, uncle or even son.¹⁶⁶ The extent to which women can avoid the threat of honour crimes through settling elsewhere in Iraq is impossible to determine with certainty.¹⁶⁷ In assessing this, caseworkers will need to take all relevant factors into account including financial circumstances, health, and whether the claimant has a support network. Dependent on the facts of the case some women may not be able to relocate.

¹⁵⁷ UNHCR COI 2005 p38

¹⁵⁸ UNHCR Guidelines 2005 p21

¹⁵⁹ COIS Iraq Country Report para 5.92

¹⁶⁰ UNHCR COI 2005 p33

¹⁶¹ COIS Iraq Country Report para 6.238

¹⁶² COIS Iraq Country Report para 6.249-6.251

¹⁶³ UNHCR COI 2005 p39

¹⁶⁴ COIS Iraq Country Report para 6.248

¹⁶⁵ COIS Iraq Country Report para 5.96

¹⁶⁶ COIS Iraq Country Report para 6.237

¹⁶⁷ COIS Iraq Country Report para 6.248

3.13.10 Conclusion Honour killings occur in all parts of the country, and both men and women could be targeted. As the targeting of those specifically at risk cannot be described as routine or systematic, they do not constitute a particular social group. Honour killing is therefore not persecution for a 1951 UN Convention reason and a grant of asylum would not be appropriate. Sufficient protection is not currently available in Central and Southern Iraq but men, and women with male partners, can safely and reasonably relocate elsewhere in Iraq. For single women, or female heads of household, the question whether internal relocation is a safe and a reasonable option will depend on individual circumstances. Moreover single women returning to Iraq from abroad are in a less favourable position compared with women travelling with their family.¹⁶⁸ If an assessment of the individual circumstances show that it would be unduly harsh for the claimant to relocate, a grant of Humanitarian Protection will be appropriate.

3.14 Honour killing in the area administered by the KRG

3.14.1 Claimants may claim that they are at risk of honour killing by non-State agents, as a result of having brought the honour of their family into disrepute.

3.14.2 Treatment Please see para 3.13.2. In addition specific to Northern Iraq Amnesty International noted in February 2005 that mutilation is another form of 'honour crime' used as a punishment for people accused of a relationship considered to be illegitimate.¹⁶⁹

3.14.3 Sufficiency of protection The PUK and KDP which took control of the north after the 1991 uprising, have built up police forces and local governments which remain in place, largely unaffected by the war.¹⁷⁰ Between 2000 and 2002 the Kurdish authorities amended the law so that courts could no longer find 'honourable motivation' a mitigating circumstance in 'honour crimes' against women.¹⁷¹ Amnesty reported in February 2005 that in recent years several organisations have been established in Northern Iraq that offer support for women at risk of violence, including survivors of attempted 'honour killings'. One of these organisations is the Sulaimaniya-based Asuda Centre for Combating Violence against Women (Asuda Centre), which in August 2002 opened a shelter for women survivors of violence at a secret location.¹⁷² Moreover women's shelters were established in Sulaymaniyah in January 1999 (*Nawa Centre*) and Erbil in April 2002 (*Khanzad Centre*). The centres provide food and accommodation, psychological treatment, social assistance, legal aid as well as a mediation programme. Since women seeking protection often have to stay for long periods of time, Asuda offers a 'home' which includes education, leisure and daily activities.¹⁷³

3.14.4 While sufficiency of protection in central and southern Iraq is not currently at a reasonable level, in the KRG area it can be argued that protection is at a reasonably effective level.

3.14.5 Internal relocation The British/Danish fact-finding mission report of October 2004 observed that despite women being generally safe in the Kurdish area, if they are escaping a family problem, the family will follow them wherever they go in Iraq.¹⁷⁴ However it is also noted that the Asuda Centre has previously sent women to far away villages and places in other regions of Northern Iraq, where they are not known and can find protection.¹⁷⁵ The extent to which women can avoid the threat of honour crimes through settling elsewhere in Iraq is impossible to determine with certainty and caseworkers should consider the details of each individual case.¹⁷⁶

¹⁶⁸ COIS Iraq Country Report para 6.270

¹⁶⁹ COIS Iraq Country Report para 6.257

¹⁷⁰ COIS Iraq Country Report para 5.97

¹⁷¹ COIS Iraq Country Report para 6.257

¹⁷² COIS Iraq Country Report para 6.258

¹⁷³ UNHCR COI 2005 p38

¹⁷⁴ COIS Iraq Country Report para 6.237

¹⁷⁵ UNHCR COI 2005 p38

¹⁷⁶ COIS Iraq Country Report para 6.248

3.14.6 Women have freedom of movement within Iraq however there is becoming an increased need for a male companion otherwise the woman is vulnerable. Women can leave Iraq without needing a male escort however they cannot obtain a passport without being accompanied by their guardian – this may be their father, brother, uncle or even son.¹⁷⁷ UNHCR further noted that persons legally residing in the three Northern Governorates have access to public services such as education, employment and housing. However persons with no family, tribal or political connections may find it difficult to effectively realise these rights, for example when attempting to find employment or accommodation. This is particularly true for women, as for cultural reasons they are in need of their family/tribe to support them economically.¹⁷⁸ In assessing whether internal relocation would be unduly harsh caseworkers will need to take all relevant factors into account including financial circumstances, health, and whether the claimant has a support network. Dependent on the facts of the case some women may not be able to relocate.

3.14.7 *Caselaw*

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

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

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

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

3.14.8 Conclusion Both men and women throughout Iraq could be targeted for honour killings. As those at risk do not constitute a particular social group, honour killing is not persecution for a 1951 UN Convention reason and a grant of asylum would not be appropriate. Whether sufficiency of protection against non-State actors is available should be assessed against the particular facts of the case. Moreover subject to the facts of the case some individuals may not be able to relocate to escape a family/tribal problem. Where those circumstances are such that it would be unduly harsh for the claimant to relocate, a grant of Humanitarian Protection will be appropriate.

3.15 *De-Arabisation*

3.15.1 Arabs given Kurdish properties under the Arabisation programmes instituted by Saddam Hussein may claim that they have been forcibly evicted from their homes and face ill-treatment amounting to persecution. These forcible evictions are undertaken by Kurds returning to the area re-claiming properties they had formerly occupied.

3.15.2 Treatment Some Arabs who were given Kurdish properties in areas such as Mosul and Kirkuk as part of Saddam’s Arabisation process were evicted from those properties. Some

¹⁷⁷ COIS Iraq Country Report Para 6.237

¹⁷⁸ UNHCR Guidelines 2005 p56

have remained in the vicinity in makeshift shelters and without basic amenities.¹⁷⁹ There is no evidence of ongoing victimisation once the eviction is achieved.¹⁸⁰

3.15.3 The Iraq Property Claims Commission (IPCC) process is open to all persons or their heirs who have been wrongfully deprived of real property or an interest in real property because of actions taken by or attributed to former Iraqi Governments between 17 July 1968 and 9 April 2003. Claims can also be made by people who lost real property or an interest in real property between 18 March 2003 and 30 June 2005.¹⁸¹ The deadline to file claims was initially 30 June 2005, but it was subsequently extended to 30 June 2007.¹⁸² Article 58(2) TAL provides that in accordance with Article 10 of the IPCC *Statute* 'newly introduced' persons (Arab families settled by the former regime in Northern Iraq) may either be resettled, receive compensation, new land in their place of origin or compensation for the cost of moving to these areas. While it appears that many 'secondary displaced' Arabs do not wish to return to the areas of origin, in particular those originating from the South, there are strong calls from the Kurdish side not to allow them to remain in the formerly 'Arabized' areas, particularly in view of a popular referendum, as this would endorse the injustice of *Arabization*.¹⁸³

3.15.4 Sufficiency of protection Sufficiency of protection in Central and Southern Iraq is not currently at a reasonable level, however the Iraq authorities are, through the IPCC, attempting to right the wrongs of the Saddam Government. The process is open to all persons, or their heirs, who have been wrongfully deprived of real property.¹⁸⁴ By the end of July 2005, 126,693 claims had been received. Adjudication of claims started in October 2004 and by 27 July 2005 a total of 8,554 claims had been decided.¹⁸⁵ For those who have been forcibly evicted from their property, this is the process which assesses their or anyone else's right to the property. The IPCC has a compensation regulation for persons who have to give back property. Approximately one billion US dollars have been reserved to compensate people who have had to give up their homes and land.¹⁸⁶ Consequently there is a process whereby an Iraqi can seek reparations for a forcible eviction, however it is unlikely that an Iraqi can seek sufficient protection to prevent an eviction.

3.15.5 Internal relocation The IPCC's statute has struggled to adequately address the question of where Arab settler families are to be resettled once they have vacated disputed property.¹⁸⁷ There is freedom of movement in that there are no formal restrictions within Iraq however there are limitations due to the numerous military and illegal checkpoints.¹⁸⁸ The imposition of curfews and the closure of roads as a result of the Safeguarding National Security Order limits freedom of movement.¹⁸⁹ Ease of movement within Iraq varies from place to place depending on security restrictions, and is the same for all Iraqis.¹⁹⁰ However Arab Iraqis are instantly recognised by Iraqi Kurds who view them with suspicion and would not generally welcome them into Iraqi Kurdistan.¹⁹¹

3.15.6 Generally there is freedom of movement throughout Iraq; it is unlikely that internal relocation would be unduly harsh for men, and women with male partners or relatives. As a result of the recent rise in Islamic extremism single women may be unable to move around freely if unaccompanied and may not be able to settle in areas where they have no family ties as they are unlikely to be able to access resources without support.¹⁹² Caseworkers will

¹⁷⁹ COIS Iraq Country Report para 6.349-353

¹⁸⁰ Joint British Danish Fact Finding Mission to Baghdad and Amman, 01-08/09/04, para 3.43

¹⁸¹ COIS Iraq Country Report para 6.355-6.356 & UNHCR COI 2005 p128

¹⁸² UNHCR COI 2005 p128

¹⁸³ UNHCR COI 2005 p77

¹⁸⁴ COIS Iraq Country Report para 6.355

¹⁸⁵ UNHCR COI 2005 p129

¹⁸⁶ Netherlands MFA report 2004 p.31

¹⁸⁷ COIS Iraq Country Report para 6.357

¹⁸⁸ COIS Iraq Country Report para 6.181, 6.184

¹⁸⁹ COIS Iraq Country Report para 6.29, 6.31

¹⁹⁰ COIS Iraq Country Report para 6.183

¹⁹¹ COIS Iraq Country Report para 6.196

¹⁹² COIS Iraq Country Report para 6.270-6.272 & UNHCR COI 2005 p139

also need to take all relevant factors into account including financial circumstances, health and whether the claimant has a support network.

3.15.7 Conclusion The Iraqi Property Claims Commission (IPCC) is a key part of the effort to redress the Ba'athist crimes against the Iraqi people. Movement of individuals out of towns such as Kirkuk and Mosul is being structured by the IPCC and, moreover compensation is being considered. Whilst forced eviction by non-State agents has been evident, and ethnic tension is at high levels, it is unlikely that individuals once evicted are likely to suffer persecution or inhuman or degrading treatment. A grant of asylum or HP is unlikely to be appropriate.

3.16 Christians

3.16.1 Claimants may claim they face ill-treatment or persecution from Islamic Fundamentalists. This may be as a result of their type of business or merely their membership of a non-Islamic religion in a pre-dominantly Islamic country.

3.16.2 Treatment Iraq's Christian population includes, among others, members of the Assyrian, Chaldean, Armenian and Catholic sects. Many Assyrian Christians originate from the Governorate of Ninewa, whose capital Mosul is the second largest city in Iraq. Other Assyrians originate from Baghdad and its surroundings. Many of Iraq's other Christians originate from Basrah.¹⁹³ Despite an improvement in legislative terms, there has been a deterioration in the situation for Christians in practical terms.¹⁹⁴ Iraqi Christians feel especially apprehensive about the overwhelming presence of extremist Islamic groups and armed militias, whose display of intolerance towards non-Muslims has become a nearly daily feature in Iraq.¹⁹⁵ Iraqi Christians were targeted by Islamist terrorist groups in 2004. Between August and November 2004, 12 churches were bombed in Baghdad and Mosul; at least 15 people were killed. Roughly 5 per cent of Iraq's 900,000-strong Christian community had left the country by the end of 2004.¹⁹⁶ Christians are often thought to hold a better socio-economic position than other Iraqis and as such they are frequently targeted by criminals.¹⁹⁷ Christians have been kidnapped, as they are considered to be wealthy by Iraqi standards, and have been killed if ransom was not paid (See Section 3.9 for guidance on claimants who fear kidnapping).¹⁹⁸ In the KRG areas the situation for Christians was more stable.¹⁹⁹

3.16.3 The FCO advised in January 2005 that whilst they are not aware of any officially sponsored discrimination against Christian communities in Iraq, reports of attacks on them are on the increase. They have seen increasing evidence of sectarian intimidation. Examples include threatening notes pushed through doors, death threats to priests and church leaders, posters in the north warning Christians to convert to Islam or leave Iraq or face death and destruction of homes and Islamist websites calling for attacks on all infidels in Iraq. As a result church attendance is falling and some families are keeping their children away from school.²⁰⁰ Insurgents are targeting Christians because they often work for the Multi National Forces or foreign contractors, both of which groups are considered 'crusaders' (See Section 3.8 for guidance on claims from perceived collaborators). Furthermore, Christians are particularly targeted by hardline Islamists. There are numerous reports about attacks directed against businesses owned by Christians such as liquor stores, hairdressing salons and shops selling Western music.²⁰¹

3.16.4 Sufficiency of protection The largely Shi'a Transitional Government routinely called for tolerance and the acceptance of all religious minorities. On 5 June 2005, Prime Minister

¹⁹³ UNHCR Guidelines p9

¹⁹⁴ COIS Iraq Country Report para

¹⁹⁵ UNHCR Guidelines p10

¹⁹⁶ COIS Iraq Country Report para 6.143

¹⁹⁷ COIS Iraq Country Report para 6.149

¹⁹⁸ UNHCR COI 2005 p161

¹⁹⁹ COIS Iraq Country Report para 6.149

²⁰⁰ COIS Iraq Country Report para 6.150

²⁰¹ UNHCR COI 2005 p161

Jafari met with Armenian Christian leaders to discuss the problems they faced. The Prime Minister agreed to provide security for all mosques and churches in the country and reaffirmed his commitment to protecting the right of all citizens to freedom of religion.²⁰² Whilst there is clear political intentions to protect all Iraqis and there has been a strong increase in the number of Iraqi security forces, there has been a far from proportional improvement in the security forces capabilities.²⁰³ It is accepted that the police force outside of the KRG area is not effective enough to provide security to ordinary Iraqis.²⁰⁴

3.16.5 The PUK and KDP which took control of the north after the 1991 uprising, have built up police forces and local governments which remain in place, largely unaffected by the war.²⁰⁵ Although it is quite likely that insurgents are once again living in Kurdish towns and cities in small numbers, and they would use opportunities as they present themselves to exact revenge for their ejection, the peshmerga presence and vigilance within Iraqi Kurdistan would make this difficult. Successful attacks are rare.²⁰⁶

3.16.6 Sufficiency of protection in central and southern Iraq is not currently at a reasonable level, however in the KRG area it can be argued that protection is at a reasonably effective level.

3.16.7 *Internal relocation* There is freedom of movement in that there are no formal restrictions within Iraq however there are limitations due to the numerous military and illegal checkpoints.²⁰⁷ The imposition of curfews and the closure of roads as a result of the Safeguarding National Security Order limits freedom of movement.²⁰⁸ Ease of movement within Iraq varies from place to place depending on security restrictions, and is the same for all Iraqis.²⁰⁹ However Arab Iraqis are instantly recognised by Iraqi Kurds who view them with suspicion and would not generally welcome them into Iraqi Kurdistan.²¹⁰

3.16.8 Generally there is freedom of movement throughout Iraq; it is unlikely that internal relocation would be unduly harsh for men, and women with male partners or relatives. As a result of the recent rise in Islamic extremism single women may be unable to move around freely if unaccompanied and may not be able to settle in areas where they have no family ties as they are unlikely to be able to access resources without support.²¹¹ Caseworkers will need to take all relevant factors into account including financial circumstances, health and whether the claimant has a support network.

3.16.9 The FCO noted on 25 January 2005 that Christians are relocating to Suleimaniya, Arbil and Dohuk provinces. Many of the Christians in Basra and Baghdad originally came from the North (Suleimaniya, Arbil and Dohuk as well as Mosul). Under a separate scheme run by the Kurdistan Regional Governments, around 150 families have relocated from Baghdad to Faysh Habur.²¹² It is not considered unduly harsh for Christians to relocate to areas where there are numerous other Christians, or where they are well respected.

3.16.10 *Caselaw*

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)

²⁰² USIRF report 2005 p8

²⁰³ COIS Iraq Country Report para 5.92

²⁰⁴ COIS Iraq Country Report para 5.96

²⁰⁵ COIS Iraq Country Report para 5.97

²⁰⁶ COIS Iraq Country Report para 6.37

²⁰⁷ COIS Iraq Country Report para 6.181, 6.184

²⁰⁸ COIS Iraq Country Report para 6.29, 6.31

²⁰⁹ COIS Iraq Country Report para 6.183

²¹⁰ COIS Iraq Country Report para 6.196

²¹¹ COIS Iraq Country Report para 6.270- 6.272 & UNHCR COI Iraq p139

²¹² COIS Iraq Country Report para 6.153

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

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

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

3.16.11 Conclusion A claimant who has a localised threat on the basis that they are a Christian and is unable to acquire protection in their local area, may be able to relocate to an area where that localised threat does not exist. The caseworker will need to take into consideration the nature of the threat and how far it would extend to, and whether it would be unduly harsh to expect the claimant to relocate. Most Christian Iraqis from the KRG area would be able to seek protection however for a Central or Southern Iraqi where internal relocation would be unduly harsh a claim made on these grounds may be well founded and a grant of refugee status may be appropriate. Caseworkers should cross reference to sections on perceived collaboration, fear of Islamic militants, and fear of kidnapping where appropriate.

3.17 Fear of Islamic Militants

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

3.17.2 Treatment In June 2004 Amnesty noted that in different parts of Iraq, Islamic fundamentalists have put pressure on women and girls to wear the hijab or the strict Islamic dress.²¹³ Those who put on makeup or choose not to wear the veil fall victim to militants. Many women in Mosul say insurgent groups are trying to impose Taleban-style restrictions on them and make the city a more conservative place.²¹⁴ Other people have been targeted by these groups, including members of religious minorities such as Christians and Sabeen/Mandeans, alcohol sellers, well-known secularists, Ba'athists, former civil servants and former members of the old security services.²¹⁵ Acts of violence reported by Christians and/or which appear to target Christians include bombings and other attacks on churches, the forcible closure of Christian-owned liquor shops by armed militias, serious or fatal attacks on shop owners and/or business persons involved in trading and selling alcohol, harassment, extortion, kidnapping and even torture of persons perceived as not respecting

²¹³ COIS Iraq Country Report para 6.101

²¹⁴ COIS Iraq Country Report para 6.241

²¹⁵ COIS Iraq Country Report para 6.101

Islam (e.g. women who appear in public without a *hijab*, persons accused of not respecting the teachings of the Koran and persons refusing to convert to Islam).²¹⁶

3.17.3 The Guardian newspaper noted on 2 August 2004 that in Baghdad Islamic radicals have warned Christians running liquor stores to shut up shop. Some store owners have been beaten or suffered worse violence.²¹⁷ The Foreign and Commonwealth Office stated in a letter dated 22 October 2004 that "Such attacks are thought to be the work of local Iraqi Islamists, aiming to enforce a strict Islamic code, including a ban on alcohol."²¹⁸

3.17.4 Sufficiency of protection. While there has been a strong increase in the number of Iraqi security forces, there has been a far from proportional improvement in their capabilities.²¹⁹ It is accepted that the police force outside of the KRG area is not effective enough to provide security to ordinary Iraqis.²²⁰

3.17.5 The PUK and KDP which took control of the north after the 1991 uprising, have built up police forces and local governments which remain in place, largely unaffected by the war.²²¹ Although it is quite likely that insurgents are once again living in Kurdish towns and cities in small numbers, and they would use opportunities as they present themselves to exact revenge for their ejection, the peshmerga presence and vigilance within Iraqi Kurdistan would make this difficult. Successful attacks are rare.²²²

3.17.6 Sufficiency of protection in Central and Southern Iraq is not currently at a reasonable level, however in the KRG area it can be argued that protection is at a reasonably effective level.

3.17.7 Internal Relocation There is freedom of movement in that there are no formal restrictions within Iraq however there are limitations due to the numerous military and illegal checkpoints.²²³ The imposition of curfews and the closure of roads as a result of the Safeguarding National Security Order limits freedom of movement.²²⁴ Ease of movement within Iraq varies from place to place depending on security restrictions, and is the same for all Iraqis.²²⁵ However Arab Iraqis are instantly recognised by Iraqi Kurds who view them with suspicion and would not generally welcome them into Iraqi Kurdistan.²²⁶

3.17.8 Generally there is freedom of movement throughout Iraq; it is unlikely that internal relocation would be unduly harsh for men, and women with male partners or relatives. As a result of the recent rise in Islamic extremism single women may be unable to move around freely if unaccompanied and may not be able to settle in areas where they have no family ties as they are unlikely to be able to access resources without support.²²⁷ Caseworkers will need to take all relevant factors into account including financial circumstances, health and whether the claimant has a support network.

3.17.9 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

²¹⁶ UNHCR Guidelines p10

²¹⁷ The Guardian, 2 August 2004

²¹⁸ FCO letter 22 October 2004

²¹⁹ COIS Iraq Country Report para 5.92

²²⁰ COIS Iraq Country Report para 5.96

²²¹ COIS Iraq Country Report para 5.97

²²² COIS Iraq Country Report para 6.37

²²³ COIS Iraq Country Report para 6.181, 6.184

²²⁴ COIS Iraq Country Report para 6.29, 6.31

²²⁵ COIS Iraq Country Report para 6.183

²²⁶ COIS Iraq Country Report para 6.196

²²⁷ COIS Iraq Country Report para's 6.270 – 6.272 & UNHCR COI 2005 p.139

Kurds living outside the KAA (para 273). In addition to internal relocation not being unduly harsh within the KAA, they also considered that relocation to the south would not be considered unduly harsh. (para 279)

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

3.17.10 Conclusion A general fear of Islamic militants does not of itself give rise to a well-founded fear of persecution, and no Government can be expected to guarantee the safety of all its citizens. However there will be individuals whose fear is over and above the common population because of aspects of their nature that they cannot or should not be expected to change. This assessment will need to be based on the merits of the individual case. Moreover the caseworker will need to take into consideration the nature of the threat and how far it would extend to, and whether it would be unduly harsh to expect the claimant to relocate. For claimants who can demonstrate a well-founded fear of persecution due to a 1951 UN Convention reason (e.g. their religion or their political opinion, imputed or otherwise), are unable to acquire protection or relocate internally, a grant of asylum will be appropriate.

3.18 Member/Supporter of the PKK/KADEK

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

3.19 Prison conditions

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

3.19.2 Treatment. Iraq's prison system is twofold. On the one hand, detainees are held by the Iraqi authorities (including the Kurdish authorities); on the other hand the MNF is authorised by UN Security Council Resolution 1546 and also 1637 to carry out activities 'necessary to counter ongoing security threats posed by forces seeking to influence Iraq's political future through violence', including the 'internment' of members of these forces 'where it is necessary for imperative reasons of security'. The ICRC has visited prison and detention facilities both under the control of the Iraqi authorities and the MNF in order to monitor conditions of detention and treatment of detainees and to help prisoners establish contact with their families.²²⁸

3.19.3 In addition to the official prisons, the Ministry of Interior runs a number of unofficial detention facilities outside the control of the Ministry of Justice. There have been numerous reports on serious human rights violations in these facilities, including the widespread use of torture.²²⁹

3.19.4 The United States State Department (USSD) report 2004 observed that “Overcrowding was a problem. Inmate disturbances and riots reduced available prison beds by approximately one-third, and pre-trial detention facilities were often overcrowded.” The HRW report January 2005 added that “Detainees reported receiving little or no food or water for several days at a stretch, and being held in severely overcrowded cells with no room for lying down to sleep, without air conditioning, and in unhygienic conditions.”²³⁰

3.19.5 An IRIN News article dated 6 July 2005 noted that a new prison called Al-Mina was built in Basra to ease overcrowding at the nearby al-Ma'aqal jail. Al-Mina prison, which has a total

²²⁸ UNHCR COI 2005 p52-53

²²⁹ UNHCR COI 2005 p53

²³⁰ COIS Iraq Country Report para 5.107

capacity for 600 inmates, has running water, electrical and sewage facilities.²³¹ Moreover USSD 2004 noted that renovation and construction on an additional 6 prisons, totalling 6,000 beds, was underway by the end of 2004.²³² UNHCR stated in October 2005 that reportedly, prison conditions have significantly improved but often do not yet meet international standards.²³³

3.19.6 In a HRW article dated 25 January 2005 "Human Rights Watch conducted interviews in Iraq with 90 detainees, 72 of whom alleged having been tortured or ill-treated, particularly under interrogation."²³⁴ Torture and ill-treatment reportedly occurred mainly in unofficial detention facilities run by the Ministry of Interior, but also in prisons and detention facilities under the control of the Iraqi Correctional Service of the Ministry of Justice.²³⁵

3.19.7 In Northern Iraq with its two distinct judicial systems, there are separate prison and detention facilities in the KDP-administered area and the PUK-administered area. In the Governorates of Erbil and Dohuk, the main regular prison is called *Mohata*, located in Erbil, and has separate sections for men and women. In the Governorate of Sulaymaniyah, the major prison complex is called Ma'askar Salam.²³⁶ In addition, the Kurdish security (*Asayish*) and intelligence (KDP: *Parastin*, PUK: *Dazgay Zaniary*) agencies run special detention facilities which are not under the control of the authorities but rather of political parties (the KDP and PUK respectively). These detention facilities (mainly known are the *Akre* Prison, run by the *Asayish* and the *Salaheddin* Prison run by the *Parastin* in the Governorate of Erbil as well as the *Dazgay Zaniary* Prison in Qalachwalan, with others in secret locations) hold political and security cases (e.g. suspected members of Islamic groups, PKK members and critics of the ruling parties). It is reported that the rules of due process are systematically violated in these unofficial detention facilities. Human rights organisations and the ICRC have access to the *Akre*, the *Mohata* and the *Ma'askar Salam* prisons, while detention facilities run by the *Parastin* and the *Dazgay Zaniary* are apparently off limits to international observers.²³⁷

3.19.8 Conclusion. Whilst prison conditions in Iraq are poor with overcrowding being a particular problem conditions are unlikely to reach the Article 3 threshold. 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.

4. Discretionary Leave

4.1 Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. Since 16 June 2003 the policy on Iraqi claims has been to grant Discretionary Leave for a period of 6 months where it was accepted that the medical/humanitarian conditions in Iraq would breach Article 3. With effect from 30 August 2005 Discretionary Leave should be granted for the standard period as set out in the API on Discretionary Leave.

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

²³¹ COIS Iraq Country Report para 5.110

²³² COIS Iraq Country Report para 5.109

²³³ UNHCR COI 2005 p153

²³⁴ COIS Iraq Country Report para 5.116

²³⁵ UNHCR COI 2005 p146

²³⁶ UNHCR COI 2005 p53-54

²³⁷ UNHCR COI 2005 p54

covered by the categories below which warrant a grant of DL - see the API on Discretionary Leave.

4.3 Claims based on the poor humanitarian conditions in Iraq

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

4.4 Minors claiming in their own right

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

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

4.5 Medical Treatment in Iraq

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

4.5.2 Hospitals usually support both in-patient and out-patient pharmacies and provide medicine free of charge or at minimal cost. The Medicine For Peace study dated 7 February 2005, showed that all surveyed hospitals in Baghdad experienced either sporadic or persistent deficiencies in essential drug categories, and most hospitals suffered from shortages of medical supplies such as sterile needles, intravenous tubing, cannulas, sterile gloves, masks, antiseptics and soap in hospitals with surgical services.²³⁸ The MFP survey shows that most medical and surgical sub-specialty services are available in the health care system in Baghdad, however a number are seriously deficient. There are inadequate surgical support services, a lack of competent anaesthetists and nurses and shortages of antibiotics for surgical procedures. In addition, Iraq's health system lacks services in a number of areas of chronic disease care, such as dialysis, adult and paediatric medical oncology and radiation oncology.²³⁹

4.5.3 The Private Health sector is strong and powerful and has the capacity to supplement the weakness of the public sector especially in curative services. A high number of private clinics are distributed nationwide. In addition there are private hospitals run by specialists mostly located in Baghdad and to a lesser extent in the centres of provinces. Those clinics, in addition to its curative duties, handle a system of distribution of drugs to patients with a long list of chronic diseases through subsidised prices.²⁴⁰

4.5.4 Where a caseworker considers that the circumstances of the individual claimant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

²³⁸ UNHCR COI 2005 p103

²³⁹ UNHCR COI 2005 p104

²⁴⁰ COIS Iraq Country Report para 5.140

4.5.5 Caselaw

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

5. Returns

- 5.1** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim.
- 5.2** By 31 July 2005, UNHCR had facilitated the return of 21,851 Iraqis, mainly from Iran but also from Saudi Arabia, Lebanon, Jordan and countries further afield. Most of the returnees returned to the South – in particular Basrah, Thi-Qar, Missan and Najaf Governorates – and to the Northern Governorates of Sulaymaniyah and Erbil, with almost no returns to Baghdad, the Upper South or the Governorates of Mosul and Kirkuk.²⁴¹ Iraqi nationals may return voluntarily to Iraq at any time by way of the Voluntary Assisted Return and Reintegration Programme run by the International Organization for Migration (IOM) and co-funded by the European Refugee Fund. Direct flights are now available to Erbil, whereas previously voluntary returns went along a land route from Jordan. IOM will provide advice and help with obtaining travel documents and booking flights, as well as organising reintegration assistance in Iraq (although currently reintegration assistance is not possible, and returnees will receive a small "bridging" grant instead). The programme was established in 2001, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Iraqi nationals wishing to avail themselves of this opportunity for assisted return to Iraq should be put in contact with the IOM offices in London on 020 7233 0001 or www.iomlondon.org

6. Entry clearance facilities

- 6.1** The designated post for applications for long-term entry clearance for Iraqis is Amman in Jordan. Iraqis are free to enter Jordan to make such applications on GV3's in conjunction with Iraqi passports. British Embassy Amman will issue both visit visas and settlement visas on Iraqi Interim Travel Documents. Iraqis who do not have travel documents to return to Iraq have the option to register with the International Organization for Migration's Voluntary Assisted Return and Reintegration Programme.
- 6.2** UNHCR in its advisory dated 11 April 2005 stated that, "In travelling between Amman and Baghdad the risks to date have included: insurgent attacks, mainly against drivers suspected transporting goods for multinational forces, and contractors; also, vehicles ambushes carried out by armed groups aimed not only at coalition forces, but also at regular travellers who often carry valuables and money in absence of a functioning banking system; as well as, road checkpoints set up by armed groups."²⁴² The FCO stated in a letter, dated 25 May 2005, that "The threat level on Highway 10 has to be considered as being very high. The threat can be broken down into three main areas, general criminality, insurgent activity and possible mistaken identity by MNFI (Multi National Force Iraq)."²⁴³

²⁴¹ UNHCR COI 2005 p29

²⁴² UNHCR 'safety of routes into Iraq'

²⁴³ COIS Iraq Country Report para 6.185

- 6.3** Road travel between Baghdad and Amman, Damascus and Beirut remains uninterrupted and the most common way of travel for Iraqi nationals. Royal Jordanian and Syrian Airways fly regular services into Baghdad, and Gulf Airways also operates regularly into Dubai. Those travelling from northern Iraq would usually travel across into Syria as the fastest and most convenient route down to Amman. It is also easier for Iraqi nationals holding UK travel documents to enter Syria than Jordan.²⁴⁴
- 6.4** Iraqis regularly make visa applications at the consular section in Amman, and it is considered not disproportionate to travel to Amman to seek entry clearance. The route to Amman could be via Highway 10, or alternatively it is open to the claimant to travel a different route to Amman, or to travel to another UK issuing post. It is reasonable to require that claimants who have established family ties in the UK return to Iraq and apply for a settlement visa in the normal way.

7. List of source documents

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