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1. Introduction

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

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 in 2003, executive, legislative, and judicial authority in Iraq was vested in the Coalition Provisional Authority (CPA). On 28 June 2004, authority was transferred from the CPA to the Iraqi Interim Government.¹
- 2.2** National elections took place on 30 January 2005 to elect a 275-member Transitional National Assembly and a transitional government. The Transitional National Assembly met formally for the first time on 16 March 2005. Its first act was to elect Jalal Talabani as President of Iraq.²
- 2.3** General elections were held on 15 December 2005 to elect the first permanent government and parliament (Council of Representatives) since the overthrow of Saddam Hussein's regime. The Shi'ite-led United Alliance (UIA) won 128 seats in the 275-member parliament. The Kurdistan Coalition won 53 seats, and the Sunni-led Tawafuq Front won 44 seats. Jalal Talabani remained president and Nouri Kamel al-Maliki was sworn in as prime minister on 20 May 2006. The 37-member cabinet included representatives from all groups in society including Shi'a, Sunnis and Kurds.³
- 2.4** Constitutionally, the judiciary in Iraq is independent, but the judiciary and judges are reportedly subject to political influence. The work of the judiciary is reportedly hampered by repeated disregard of judicial orders by the police, and threats against and killings of judges. The criminal justice system is inquisitorial; cases are controlled and investigated by the judiciary.⁴
- 2.5** Shari'a is the primary source of national law and the Constitution states that "No law may be enacted that contradicts the established provisions of Islam". There are a number of extra-judicial Shari'a courts in predominantly Shi'a towns and several Shi'a neighbourhoods of Baghdad. In October 2005, the United Nations High Commissioner for Refugees (UNHCR) noted that Iraqis tended increasingly to turn to extra-judicial mechanisms for conflict resolution including tribal law. However, members of religious minorities often do not have access to such mechanisms as they do not necessarily belong to a tribal grouping.⁵
- 2.6** According to various reports, serious human rights violations continued in Iraq during 2007. These reportedly included torture and ill-treatment by government agents, the Multi-National Force (MNF) and armed groups; extra-judicial executions, targeted and indiscriminate killings by government agents, the MNF and armed groups; targeted attacks against alleged supporters or associates of the Iraqi Government, the MNF and foreign construction companies; disappearance and kidnapping; arbitrary arrest and unlawful detention; denial of fair public trial; restrictions on religious freedom (including sectarian violence); organised crime; restrictions on freedom of movement; discrimination against women, ethnic and religious minorities; restrictions on freedom of speech, press, assembly and association; and excessive use of force, mistreatment and theft during raids of private homes.⁶

¹ Home Office COI Service (COIS) Iraq Country of Origin Information Report 2008 (Background Information: History & Constitution) & Foreign and Commonwealth Office (FCO) Country Profile 2007: Iraq

² COIS Iraq Country Report 2008 (Background Information: History) & FCO Country Profile 2007: Iraq

³ COIS Iraq Country Report 2008 (Background Information: History)

⁴ COIS Iraq Country Report 2008 (Human Rights: Judiciary)

⁵ COIS Iraq Country Report 2008 (Human Rights: Judiciary)

⁶ COIS Iraq Country Report 2008 (Human Rights: Introduction)

- 2.7** The security situation in Iraq remains poor. There was a marked improvement in the latter half of 2007 and into the beginning of 2008 but this trend was reversed in February 2008 when at least 633 civilians died (up from more than 460 deaths in January but still significantly fewer than the 1,645 deaths reported in February 2007). The February 2008 increase was attributed largely to two attacks in Baghdad and one near Karbala that killed at least 150 people. The reduction in casualties in the months pre-ceding February 2008 was due to the surge in US troop numbers, a ceasefire by the Shi'a Mehdi army, and the growth of Sunni Arab neighbourhood security units.⁷
- 2.8** Attacks continued into April 2008 with more than 70 people killed in blasts in Baquba, Ramadi, Mosul and Baghdad on 15 April and at least 30 more killed in Baquba two days later. There were further bombings in May, June, and July 2008 with at least 35 people killed in the province of Diyala on 1 May 2008, at least 38 killed in attacks in Karma and Mosul on 26 June, and at least 53 more killed in attacks on crowds in Baghdad and Kirkuk on 28 July 2008. On 14 May 2008, it was reported that more than a thousand people were killed and 2,500 injured, mainly civilians, as a result of fighting between government forces and Shia militia in Baghdad during the seven previous weeks.⁸ More recent incidents included a suicide bomb attack on a mosque in Baghdad on 2 October killing 16 and a suicide bomb attack in Baquba killing 7.⁹ In addition, on 13 October 2008, the Iraqi Prime Minister was to have said that British troops were no longer needed in Southern Iraq as the security situation had changed in Southern Iraq.¹⁰

Internal travel

- 2.9** Article 44 (1) of the Constitution stipulates that each Iraqi has freedom of movement, travel, and residence inside and outside Iraq. Whilst there are no nationwide legal restrictions on freedom of movement, Iraqis are affected by the prevailing insecurity in the country (fighting, ambushes, highway robbery, roadside bombs, mines/UXO), closure of roads, curfews, airports and borders as well as frequent checkpoints on the roads that severely restrict freedom of movement.¹¹
- 2.10** In July 2004, the Iraqi Interim Government passed the Order for Safeguarding National Security allowing the Prime Minister to declare a state of emergency in any part of Iraq suffering ongoing violence, except those administered by the Kurdish Regional Government (KRG) (Erbil, Dohuk and Sulaymanyah), for up to 60 days at a time. The state of emergency allows the Prime Minister to restrict freedom of movement by imposing curfews, cordoning off certain areas, and declaring restrictions or bans on public gatherings. The emergency law was extended on 6 January 2005 for 30 days to guard against attacks in the run-up to the nation's 30 January 2005 elections. Since then, the emergency law has been renewed on a monthly basis.¹² In several cities and towns curfews are in place, restricting people's freedom of movement, mainly during the night. The UNHCR's paper of August 2007 reported that curfews were in place in all areas of Central and Southern Iraq between 11pm until 6am, but may be lengthened at short notice. In Baghdad the curfew is from

⁷ COIS Iraq Country Report 2008 (Human Rights: Security Situation) & British Broadcasting Corporation (BBC) News 'Iraq violence jumps in February' dated 1 March 2008

⁸ COIS Iraq Country Report 2008 (Background Information: Recent Developments & Human Rights: Security Situation), BBC News 'Attacks mark Baghdad anniversary' dated 9 April 2008, BBC News 'Dozens dead as Iraq cities bombed' dated 15 April 2008, BBC News 'Suicide bombs kills Iraqi mourners' dated 17 April 2008, BBC News 'Seven killed in Iraq bomb attacks' dated 26 April 2008, BBC News 'Iraq suicide bombing hits market' dated 1 May 2008, BBC News 'Bombing at Iraq funeral kills 20' dated 14 May 2008, BBC News 'Many killed in Iraqi bomb attacks' dated 26 June 2008 & BBC News 'Iraq suicide blasts cause carnage' dated 28 July 2008

⁹ Radio Free Europe/ Radio Liberty -

http://www.rferl.org/content/Suicide_Bomber_Kills_Seven_In_Iraq/1294920.html

¹⁰ BBC news – "No more need for British troops" - <http://news.bbc.co.uk/1/hi/uk/7666876.stm>

¹¹ COIS Iraq Country Report 2008 (Human Rights: Freedom of Movement) & Home Office Iraq Country Policy Bulletin 2/2007 (Travel within Iraq)

¹² COIS Iraq Country Report 2008 (Human Rights: Security Situation) & Iraq Country Policy Bulletin 2/2007 (Travel within Iraq)

10pm to 5am.¹³

- 2.11** According to the UNHCR, women's freedom of movement is further limited by the specific harassment and threats against them. This has reportedly increased the pressure on women to have a male family member to accompany them.¹⁴
- 2.12** Even though there are no legal restrictions as regards choosing one's place of residence in the country, there are a number of practical restrictions mostly based on political and security considerations. The UNHCR's paper of August 2007 noted that road travel, particularly in Central Iraq, remains highly dangerous with an increase in roadside bombings in and around Baghdad, Basra, Mosul, Kirkuk and on all main routes, including fatal attacks on both military and civilian vehicles. According to the UNHCR, travelling is often delayed by MNF and Iraqi Security Forces (ISF) checkpoints and convoys, which also increases the risk of being targeted by insurgents or criminals or being caught in armed clashes.¹⁵
- 2.13** In a letter dated 8 September 2006, however, the Foreign and Commonwealth Office (FCO) noted that ordinary Iraqis generally use roads on a daily basis, though less at night. According to the FCO, roads are used for purposes such as deliveries of goods by lorry and van, and public transport such as buses, coaches and taxis. The FCO also noted that ordinary Iraqis do not consider travel around the country by road so unsafe that they have largely curtailed travel around the country. Travel by road is more difficult and dangerous for people whose countries are participating in international coalition forces in Iraq.¹⁶ In a further letter dated 28 August 2008, the FCO corroborated their earlier position and advised that the general security threat in terms of road travel is considered to be less for Iraqi nationals than for other nationalities, particularly those from coalition countries. And despite the criminal and security threats ordinary Iraqis had not obviously curtailed their road movements.¹⁷
- 2.14** In order to relocate within Iraq, an individual must be in possession of all the following documents: the personal identification number which is issued by the General Directorate of Citizenship in accordance with Iraqi civil law number 65 (1972); the Iraqi Nationality Certificate which shows that the holder is Iraqi; a letter of confirmation from the place of work in the intended relocation town and/or the approval of the Mukhtar (civil administrator) of the intended relocation town; a declaration from the security services that the person is not involved in criminal activities.¹⁸ A person wishing to remain in, or move to, an area of Iraq other than his or her home town does not have to visit their home town to obtain the requisite documentation for a relocation application.¹⁹
- 2.15** The Iraqi Nationality Certificate and Iraqi Civil Status ID are issued by the Directorate of Travel and Nationality/Ministry of Interior. In the KRG area these documents are issued by the Directorate of Nationality and Civil Status/Ministry of Interior in Sulaymaniyah and by the Directorate of Nationality and Civil Identification in Erbil and Dohuk. These documents are obtained by applying in person as there is no reliable postal service.²⁰

The KRG controlled area

¹³ COIS Iraq Country Report 2008 (Human Rights: Freedom of Movement) & Iraq Country Policy Bulletin 2/2007 (Travel within Iraq)

¹⁴ COIS Iraq Country Report 2008 (Human Rights: Freedom of Movement) & Iraq Country Policy Bulletin 2/2007 (Travel within Iraq)

¹⁵ COIS Iraq Country Report 2008 (Human Rights: Freedom of Movement) & Iraq Country Policy Bulletin 1/2007 (Travel within Iraq)

¹⁶ FCO Letter dated 8 September 2006 & Iraq Country Policy Bulletin 2/2007 (Travel within Iraq)

¹⁷ FCO letter dated 28 August 2008 (Road Safety in Iraq)

¹⁸ FCO Letter dated 6 November 2006 & Iraq Country Policy Bulletin 2/2007 (Availability of Documents)

¹⁹ FCO Letter dated 6 November 2006 & Iraq Country Policy Bulletin 2/2007 (Availability of Documents)

²⁰ FCO Letter dated 6 November 2006 & Iraq Country Policy Bulletin 2/2007 (Availability of Documents)

- 2.16** The Iraqi Constitution recognises the region of Kurdistan, with its existing authorities, as a federal region. The Kurdish parliament has jurisdiction on all matters except foreign policy, diplomatic representation, security (but see below), defence, and fiscal matters including currency, which are the responsibility of Iraq's national government. Elections were held on 30 January 2005 to elect the 111 seat Kurdistan National Assembly. Massoud Barzani (head of the Kurdistan Democratic Party) is the president of the KRG with Nechirvan Barzani serving as prime minister. The Kurdish Democratic Party (KDP) and the Patriotic Union of Kurdistan (PUK) are the two major political parties in the region and each have 14 ministers in the unified government. The KDP's influence is to the centre and west of the Kurdish region, whereas the PUK stronghold is in the south and east.²¹
- 2.17** Law enforcement and basic police functions in the KRG area are handled by local police and the Peshmerga - the militia of the main Kurdish political parties. In a letter dated 6 December 2006, the FCO reported that the Peshmerga is disciplined, has an organised structure, and is more effective than other parts of the Iraqi armed forces. While their allegiance is to the Kurdish leadership, they are integrating into the Iraqi Army. The FCO also noted that the Kurdish police are not driven by the same ethnic tensions as in other parts of Iraq and do a reasonable job in providing security and public order. According to the FCO, the public is generally not afraid of the Kurdish police although there may be cases where individuals designated as either 'troublemakers' or in opposition to the local political/economic power are treated less than appropriately or violently.²²
- 2.18** Those in power in the KRG can and do sometimes act with impunity. There is no specific organisation which investigates complaints against the police - the Ministry of Human Rights monitors police activities, but has limited influence. Corruption is reportedly a feature of life in the Kurdish Region. Tribal and family dynasties underpin much of this, as well as the problem caused by poor access to a range of services. The KRG has declared its determination to address corruption and is engaged in anti-corruption work in cooperation with the UK Defence Academy.²³
- 2.19** The UNHCR's paper of August 2007 noted that the availability of an internal flight or relocation alternative in the three Northern Governorates needs to be assessed individually based on the specific Governorate to be entered, as well as the circumstances, background and profile of the individual concerned, including whether the individual originates from Central and Southern Iraq or from within the three Northern Governorates. According to the UNHCR, consideration should be given to the underlying policies of the authorities to keep the three Governorates 'Kurdish' and the implications this has for determining the political and ethnic profile of those who may be permitted to enter and reside. For example, those from Arabised areas are not permitted, whilst former members of the Ba'ath Party, persons suspected of links to the insurgency, and those with a criminal record are unlikely to be admitted. Whether the agents of persecution could pursue their targets would also need to be assessed. The security risks entailed in travelling to the three Northern Governorates, whether from Central and Southern Iraq or from within the three Northern Governorates are also relevant factors in assessing the relevance of the internal flight or relocation alternative.²⁴

2.20 Humanitarian conditions

UNHCR in December 2007 noted that Iraqis were suffering from a growing lack of food, shelter, water and sanitation, health care, education and employment. 15% of Iraqis were food insecure; 70% without adequate water supplies; 80% without effective sanitation and 28% of children malnourished. The Women for Women's institute also reported that one of the biggest problems in Iraq was the availability of affordable housing especially in Central

²¹ COIS Iraq Country Report 2008 (Background Information: Political System & Annexes: Annex B)

²² COIS Iraq Country Report 2008 (Human Rights: Security Forces)

²³ COIS Iraq Country Report 2008 (Human Rights: Security Forces)

²⁴ The UNHCR's Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers dated August 2007

and Southern Iraq; food was priced out of reach and many farmers had been forced to abandon their farms because water, electricity, gasoline and basic agricultural outputs like seed and fertiliser were either too expensive or altogether unavailable. Furthermore, many Iraqis could no longer rely on public services for clean water because of the cost of drinking water and were forced to rely on unsafe water sources. Sewage systems had deteriorated to the point that there was a real danger of drinking water becoming contaminated.²⁵

3. Main categories of claims

- 3.1** This Section sets out the main type of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in Iraq. It also contains any common claims that may raise issues covered by the Asylum Instruction on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant Asylum Instructions, but how these affect particular categories of claim are set out in the guidance 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 to be given to the material provided in support of the claim (see the Asylum Instruction on Considering the Asylum Claim).
- 3.3** If the claimant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the claimant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.
- 3.4** This guidance is **not** designed to cover issues of credibility. Case owners will need to consider credibility issues based on all the information available to them. (For guidance on credibility see the Asylum Instructions on 'Considering the Asylum' and 'Assessing Credibility in Asylum and Human Rights Claims').
- 3.5** All Asylum Instructions can be accessed on the Horizon intranet site. The instructions are also published externally on the Home Office internet site at:
<http://www.ukba.homeoffice.gov.uk/documents/asylumpolicyinstructions/>
- 3.6 Claims based on the poor security conditions in Iraq**
- 3.6.1** Many applicants will make an asylum and/or human rights claim based on the poor security situation in Iraq, stating that it is unsafe for them to return as they may be caught up and injured or killed in a violent incident.
- 3.6.2 *Treatment.*** The security situation for civilians in Iraq remains poor. There was a marked improvement in the latter half of 2007 and into the beginning of 2008 but this trend was interrupted in February 2008 when at least 633 civilians died (up from more than 460 deaths in January but still significantly fewer than the 1,645 deaths in February 2007). The February 2008 increase was attributed largely to two attacks in Baghdad and one near Karbala that killed at least 150 people.

²⁵ COIS Iraq Country Report 2008 (Humanitarian issues)

- 3.6.3** Bombings and shootings have continued to occur. More than 70 people were killed in blasts in Baquba, Ramadi, Mosul and Baghdad on 15 April 2008 and at least 30 more were killed as a result of a suicide bomb in Baquba two days later. There were further bombings in May, June, and July 2008 with at least 35 people killed in the province of Diyala on 1 May 2008, at least 38 killed in attacks in Karma and Mosul on 26 June, and at least 53 people killed in attacks on crowds in Baghdad and Kirkuk on 28 July 2008. On 14 May 2008, it was reported that more than a thousand people were killed and 2,500 injured, mainly civilians, as a result of fighting between government forces and Shia militia in Baghdad during the seven previous weeks.²⁶
- 3.6.4** The reduction in casualties in the months pre-ceding February 2008 was variously attributed to the rise in U.S. troop numbers, the February 2007 U.S. and Iraq troop surge in and around Baghdad, the halt in operations by Shia cleric Moqtada Sadr, the turning against al-Qaeda by some western Sunni tribes, and the growth of Sunni Arab neighbourhood security units. In December 2007, the International Organization for Migration reported that the return home of many families from neighbouring countries such as Syria and from within Iraq was in part due to the improved security conditions, especially in Baghdad. Other reports, however, have suggested that Iraqis were being forced to return home because they were running out of money and because of visa restrictions. The United Nations has warned returning Iraqi refugees that it still may not be safe to return because the situation remains insecure.²⁷
- 3.6.5** ***Sufficiency of protection.*** Despite efforts by the Government to address the situation, institutional and legislative weaknesses mean most human rights violations in Iraq are committed with impunity. Protection is generally unavailable from national law enforcement or security bodies. Despite efforts to reform and rebuild, the Iraqi Police Force (ISF) is widely believed to have been infiltrated by Shi'a militia and still relies on the continued support of the Multi National Forces (MNF) to provide internal security against insurgent, terrorist attacks, and extralegal militia crimes. According to the U.S. Department of State, the ISF often did not prevent or respond effectively to societal violence during 2007. The Iraqi Police Service (IPS) is responsible for daily patrolling of cities and towns in Iraq. The IPS has reportedly come some way in its capability to maintain public order, investigate crimes, and arrest suspects, but there remain problems in relation to the culture of abuse and ensuring adequate training.²⁸
- 3.6.6** The security situation in the KRG administered northern Governorates of Dahuk, Erbil and Sulaymaniyah remains largely unaffected by the fall of the Saddam regime and relatively stable in comparison to the centre and the Governorates of Kirkuk and Mosul. A large, well-trained and well-organised security force, known as the peshmerga, is present in the KRG administered Governorates to control the security situation.²⁹
- 3.6.7** In Central and Southern Iraq the authorities are willing to offer protection, however, due to the high level of insurgent attacks they are unable to provide sufficiency of protection. In the KRG, where there are markedly fewer insurgent attacks, it can be argued that protection is at a reasonably effective level and there is sufficiency of protection.

²⁶ COIS Iraq Country Report 2008 (Background Information: Recent Developments & Human Rights: Security Situation), BBC News 'Iraq violence jumps in February' dated 1 March 2008, BBC News 'Attacks mark Baghdad anniversary' dated 9 April 2008, BBC News 'Dozens dead as Iraq cities bombed' dated 15 April 2008, BBC News 'Suicide bombs kills Iraqi mourners' dated 17 April 2008, BBC News 'Seven killed in Iraq bomb attacks' dated 26 April 2008, BBC News 'Iraq suicide bombing hits market' dated 1 May 2008, BBC News 'Bombing at Iraq funeral kills 20' dated 14 May 2008, BBC News 'Many killed in Iraqi bomb attacks' dated 26 June 2008 & BBC News 'Iraq suicide blasts cause carnage' dated 28 July 2008

²⁷ COIS Iraq Country Report 2008 (Human Rights: Security Situation) & BBC News 'Iraq violence jumps in February' dated 1 March 2008

²⁸ COIS Iraq Country Report 2008 (Human Rights: Introduction, Security Situation & Security Forces)

²⁹ COIS Iraq Country Report 2008 (Human Rights: Security Forces)

3.6.8 Internal relocation. Please refer to section 2.9-2.16 for information on freedom of movement within Iraq. UNHCR in their paper of August 2007 advised that internal relocation for individuals in Central and Southern Iraq is on the whole not available because of the overall ability of agents of persecution to perpetrate acts of violence with impunity, widespread violence and prevalent human rights violations giving rise to new risk of persecution, risks associated with travel and undue hardship faced in areas of relocation due to lack of basic facilities (food, water, shelter).³⁰ However, asylum and human rights claims are not decided on the basis of a general approach rather the individual circumstances of a particular individual and the specific risk to that individual.

3.6.9 Notwithstanding some of the practical restrictions identified in the UNHCR paper of August 2007 and registration requirements for Iraqis seeking to internally relocate with Iraq, freedom of movement is not generally precluded. Whilst travel by road is sometimes not without incident, FCO has advised that ordinary Iraqis travel on a daily basis using many of the major routes. Similarly whilst unaccompanied women may not be able to settle in areas where they have no family ties and therefore access to support, women with male partners or relatives are able to internally relocate within Iraq

3.6.10 Caselaw

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

GH [2004] UKIAT 00248, promulgated 10 Sept 2004 CG. 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.

KH [2008] UKAIT 00023 (Article 15(c) Qualification Directive) Iraq CG. The Tribunal concluded that whilst Iraq was considered to be in a state of internal armed conflict, it did not consider that there were significantly high levels of indiscriminate violence throughout Iraq nor that the levels of violence meant that all civilians were at risk of serious harm. Even in the cities where the levels of violence were at their highest (including Baghdad) the evidence did not demonstrate that it was on such a

³⁰ UNHCR guidelines for assessing the international protection needs of Iraqi asylum seekers

scale or at such a level of frequency that it could be said that merely being there as a civilian placed an individual at real risk of suffering serious harm caused by the threat of such violence.

3.6.11 Conclusion A state of general insecurity does not of itself give rise to a well-founded fear of persecution for a Refugee Convention reason unless the claimant is at serious risk of adverse treatment over and above others. If an appellant can demonstrate that they have been individually targeted, and that internal relocation would be unduly harsh, a grant of asylum might be appropriate. However, see other common categories of claim in this OGN for further guidance on those claims. Generally the reports of tension and security breaches in Iraq do not demonstrate that there would be a consistent pattern of gross and systematic violation of rights under Article 3 ECHR.

3.6.12 The current evidence also does not suggest that the level of violence and insecurity in Iraq amounts to a serious risk of unlawful killing. Moreover, as highlighted in the country guidance case of **KH [2008] UKAIT 00023**, in no part of Iraq are levels of indiscriminate violence such that they place all civilians at individual risk. Therefore in the absence of a heightened risk specific to the individual, an ordinary Iraqi civilian from any part of Iraq will generally not be able to show that they qualify for humanitarian protection on the basis of indiscriminate violence 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.

3.7 Perceived collaborators

3.7.1 Some claimants will make an asylum or human rights claim due to a fear of persecution at the hands of insurgents or armed groups on account of their perceived collaboration with the Iraqi transitional government.

3.7.2 Treatment. A range of people involved in the political process or perceived as supporting the democratisation of Iraq have been targeted by extremists practicing conformist ideology or armed groups intent on spreading fear and intimidation because they are considered to be collaborators or traitors. These have included: politicians; members/ employees of the Iraqi government; employees of the UN, ICRC or humanitarian aid organisations; journalists; media workers; Kurds; Shias; translators; contractors, and drivers.³¹ Other factors such as an individual's religion, ethnicity or gender may also constitute additional criteria for targeting specific individuals.³²

3.7.3 According to UNHCR insurgent groups have repeatedly threatened Sunnis who take part in the political process and in September 2006, the outlawed Baath party distributed a hit list of prominent political, military and judicial leaders. Similarly, in December 2007, the BBC reported that 40 Iraqi interpreters working for the British were targeted and murdered by militias and that Shia militias (the Mahdi Army) had targeted thousands of interpreters who had worked for the British army in the last four years. Further, the NGO Coordination Committee in Iraq (NCCI) reported at least 82 aid workers had been killed in Iraq since 2005 and 86 kidnapped. While these figures include foreign and Iraqi workers, the majority of incidents involved Iraqis.³³

3.7.4 Sufficiency of protection. Despite efforts by the Government to address the situation, institutional and legislative weaknesses mean most human rights violations in Iraq are committed with impunity. Protection is generally unavailable from national law enforcement or security bodies. Despite efforts to reform and rebuild, the Iraqi Police Force (ISF) is widely believed to have been infiltrated by Shi'a militia and still relies on the continued

³¹ COIS Iraq Country Report 2008 (Perceived collaborators and "soft targets")

³² UNHCR guidelines for assessing the international protection needs of Iraqi asylum seekers

³³ UNHCR guidelines for assessing the international protection needs of Iraqi asylum seekers

support of the Multi National Forces (MNF) to provide internal security against insurgent, terrorist attacks, and extralegal militia crimes. According to the U.S. Department of State, the ISF often did not prevent or respond effectively to societal violence during 2007. The Iraqi Police Service (IPS) is responsible for daily patrolling of cities and towns in Iraq. The IPS has reportedly come some way in its capability to maintain public order, investigate crimes, and arrest suspects, but there remain problems in relation to the culture of abuse and ensuring adequate training.³⁴

3.7.5 The security situation in the KRG administered northern Governorates of Dahuk, Erbil and Sulaymaniyah remains largely unaffected by the fall of the Saddam regime and relatively stable in comparison to the centre and the Governorates of Kirkuk and Mosul. A large, well-trained and well-organised security force, known as the peshmerga, is present in the KRG administered Governorates to control the security situation.³⁵

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

3.7.7 ***Internal relocation.*** Please refer to section 2.9-2.16 for information on freedom of movement within Iraq. UNHCR in their paper of August 2007 advised that internal relocation for individuals in Central and Southern Iraq is on the whole not available because of the overall ability of agents of persecution to perpetrate acts of violence with impunity, widespread violence and prevalent human rights violations giving rise to new risk of persecution, risks associated with travel and undue hardship faced in areas of relocation due to lack of basic facilities (food, water, shelter).³⁶ However, asylum and human rights claims are not decided on the basis of a general approach rather the individual circumstances of a particular individual and the specific risk to that individual.

3.7.8 Notwithstanding some of the practical restrictions identified in the UNHCR paper of August 2007 and registration requirements for Iraqis seeking to internally relocate within Iraq, freedom of movement is not generally precluded. Whilst travel by road is sometimes not without incident, FCO has advised that ordinary Iraqis travel on a daily basis using many of the major routes. Similarly whilst unaccompanied women may not be able to settle in areas where they have no family ties and therefore access to support, women with male partners or relatives are able to internally relocate within Iraq. In assessing whether it is possible to internally relocate, case owners should also consider whether an applicant perceived collaboration would be apparent in another part of Iraq. For example, those targeted because of their particular job may be unable to escape the perceived threat of collaboration wherever they relocate to within Iraq.

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)

³⁴ COIS Iraq Country Report 2008 (Human Rights: Introduction, Security Situation & Security Forces)

³⁵ COIS Iraq Country Report 2008 (Human Rights: Security Forces)

³⁶ UNHCR guidelines for assessing the international protection needs of Iraqi asylum seekers

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).

NS [2007] UKAIT 00046 CG Iraq. 1) An Iraqi who is perceived as a collaborator as a consequence of his work for the UN, an NGO, the Multi-National Force, the Coalition Provisional Authority or a foreign contractor, and who has attracted the hostility of an armed group, faces a real risk of persecution on return to his home area.

2) Ability to relocate in Iraq to an area other than the KRG for such a person would depend on the circumstances of the case, including such matters as the reach of the group which has targeted him.

3) Relocation to the KRG for any Iraqi is in general only feasible if the person concerned would be allowed to enter and legally reside in the area of relocation, and has family, community and/or political links there enabling them to survive.

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

3.7.10 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 case owner will need to take into consideration the nature of the threat and how far it would extend, and whether it would be unduly harsh to expect the claimant to relocate. A claim made on these grounds may be well founded and a grant of refugee status due to political opinion or imputed political opinion may be appropriate depending on the facts of the case.

3.8 Claims based on fear of kidnapping

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

3.8.2 Treatment. Kidnappings continue to be a serious problem in Iraq and have become a tool for armed groups to finance their activities and to intimidate and eliminate their opponents. Abductions have been used by both Sunni insurgents and Shiite militias as well as other criminal gangs.³⁷ Much of the Shiite militia activity has been attributed to two rival Shiite militias, the Badr Organization and the Mehdi Army. Sunni insurgent activity appears to consist of a number of groups, including former Baathists, former army and intelligence officers, indigenous and foreign Islamists, and nationalists fighting foreign occupation.³⁸

3.8.3 In addition, there have been frequent accusations that rogue police elements have conducted kidnappings. For example, many Baghdad residents have complained that rogue neighbourhood police officers often arrested family members without an arrest warrant and would then later call for a ransom. Shiite militia members have increasingly entered the ISF, such as the Facilities Protection Services (FPS) and the Special Commando Units / Iraqi National Police, and reportedly conducted kidnappings, torture and summary executions of mainly Sunni Arabs. On the Sunni side, insurgents are reported to have infiltrated parts of the ISF and carried out attacks in this capacity. The Sunni groups are mainly active in the “Sunni triangle”, as well as in mixed areas of the Governorates of Diyala, Babel and Kirkuk.³⁹

³⁷ COIS Iraq Country Report 2008 (Kidnapping/hostage taking)

³⁸ UNHCR guidelines for assessing the international protection needs of Iraqi asylum seekers

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

- 3.8.4** There are no collated statistics on the number of kidnappings conducted within Iraq and it is the case that kidnappings that have taken place are not reported to the authorities. Victims are often targeted because of their sect (e.g, kidnappings for sale to sectarian groups), (perceived) role in public life and/or perceived lack of State or tribal protection and un-Islamic behaviour (women/ gay men/ lesbians/ Roma). Targeted kidnappings, attacks and assassinations against certain professionals have increased throughout Central and Southern Iraq. Those targeted have included, academics, journalists and media workers, artists, doctors and other medical personnel, judges and lawyers and athletes and sports officials. Individuals in these professions have been singled out for a variety of reasons, including their public status, (perceived) political views, sectarian identity, engagement in “Western” activities or other alleged “un-Islamic” behaviour, and perceived wealth.⁴⁰ Whilst many victims of kidnappings are released, many also disappear or in some cases are killed or sold as hostages to other gangs. Some victims are also not released even if their families expressed their willingness to pay a ransom.⁴¹
- 3.8.4 *Sufficiency of protection.*** Despite efforts by the Government to address the situation, institutional and legislative weaknesses mean most human rights violations in Iraq are committed with impunity. Protection is generally unavailable from national law enforcement or security bodies. Despite efforts to reform and rebuild, the Iraqi Police Force (ISF) is widely believed to have been infiltrated by Shi’a militia and still relies on the continued support of the Multi National Forces (MNF) to provide internal security against insurgent, terrorist attacks, and extralegal militia crimes. According to the U.S. Department of State, the ISF often did not prevent or respond effectively to societal violence during 2007. The Iraqi Police Service (IPS) is responsible for daily patrolling of cities and towns in Iraq. The IPS has reportedly come some way in its capability to maintain public order, investigate crimes, and arrest suspects, but there remain problems in relation to the culture of abuse and ensuring adequate training.⁴²
- 3.8.5** The security situation in the KRG administered northern Governorates of Dahuk, Erbil and Sulaymaniyah remains largely unaffected by the fall of the Saddam regime and relatively stable in comparison to the centre and the Governorates of Kirkuk and Mosul. A large, well-trained and well-organised security force, known as the peshmerga, is present in the KRG administered Governorates to control the security situation.⁴³
- 3.8.6** In Central and Southern Iraq the authorities are willing to offer protection, however, due to the high level of insurgent attacks they are unable to provide sufficiency of protection. In the KRG, where there are markedly fewer insurgent attacks, it can be argued that protection is at a reasonably effective level and there is sufficiency of protection.
- 3.8.7 *Internal relocation.*** Please refer to section 2.9-2.16 for information on freedom of movement within Iraq. UNHCR in their paper of August 2007 advised that internal relocation for individuals in Central and Southern Iraq is on the whole not available because of the overall ability of agents of persecution to perpetrate acts of violence with impunity, widespread violence and prevalent human rights violations giving rise to new risk of persecution, risks associated with travel and undue hardship faced in areas of relocation due to lack of basic facilities (food, water, shelter).⁴⁴ However, asylum and human rights claims are not decided on the basis of a general approach rather the individual circumstances of a particular individual and the specific risk to that individual.
- 3.8.8** Notwithstanding some of the practical restrictions identified in the UNHCR paper of August 2007 and registration requirements for Iraqis seeking to internally relocate with Iraq,

⁴⁰ UNHCR guidelines for assessing the international protection needs of Iraqi asylum seekers

⁴¹ COIS Iraq Country Report 2008 (Kidnapping/hostage taking)

⁴² COIS Iraq Country Report 2008 (Human Rights: Introduction, Security Situation & Security Forces)

⁴³ COIS Iraq Country Report 2008 (Human Rights: Security Forces)

⁴⁴ UNHCR guidelines for assessing the international protection needs of Iraqi asylum seekers

freedom of movement is not generally precluded. Whilst travel by road is sometimes not without incident, FCO has advised that ordinary Iraqis travel on a daily basis using many of the major routes. Similarly whilst unaccompanied women may not be able to settle in areas where they have no family ties and therefore access to support, women with male partners or relatives are able to internally relocate within Iraq. In assessing whether it is possible to internally relocate, case owners should also consider whether an applicant's perceived fear of kidnap would be apparent in another part of Iraq. For example, those targeted because of their particular job or religion may be unable to escape the perceived threat of kidnapping wherever they relocate to within Iraq.

3.8.9 *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 be a target for kidnap and who is unable to acquire protection in their local area may be able to relocate to an area where that localised threat does not exist. However, for claimants who can demonstrate a well-founded fear of persecution due to a Convention reason, and are unable to acquire protection or relocate internally a grant of asylum will be appropriate. Kidnapping motivated by economic reasons does not engage the UK's obligations under the 1951 UN Convention and therefore a grant of asylum would not be appropriate, however, in some circumstances it may be that grounds for fear of kidnapping due to economic reasons may be well founded and a grant of Humanitarian Protection appropriate depending on the facts of the case.

3.9 **Former members of the Ba'ath Party**

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

3.9.2 *Treatment* Although the total is unknown, it is estimated that between one and 2.5 million Iraqis were members of the former Baath Party, many of whom joined the party out of necessity than ideological conviction. In May 2003, an order was signed which dissolved the Baath Party and removed senior party members from their positions and future employment in the public sector. In addition, all individuals in the top three layers of management in every government ministry, corporation or institution (including universities and hospitals) were investigated for criminal conduct and removed from employment if found to be full party members. However, in February 2008, BBC news reported that a measure had been passed to allow former Baath party members to return to public life.⁴⁵

3.9.3 UNHCR has reported that persons associated with the former Government of Iraq through

⁴⁵ COIS Iraq Country Report 2008 (Former Members Associates of the Baath Party/ Former Regime)

membership of the Baath Party have been the subject of attacks since the early days of the regime change and continue to face serious human rights violations. The degree to which persons are at risk is, according to UNHCR, dependent on the extent of association with Baath ideology, the human rights violations committed during the Saddam era, the rank or position previously held and whether or not the person is known to have been involved in political activities. Both high level and low level members of the party have been targeted as well as a number of low level bureaucrats including teachers and journalists.

- 3.9.4** Despite fatwas issued by Shiite clerics not to carry out revenge attacks against former Baath party members, a wave of killings did take place at the end of the former regime. Attacks increased following the elections in 2005 when Shiite parties came to power and when reportedly Shiite militants issued death threats listing former Baathists including Sunnis and Shiites. These attacks have continued in particular in cities in the South. As at November 2006, the number of Baathists killed since the start of 2006 was reported to be 1556.⁴⁶

The KRG controlled area

- 3.9.5** Arabs in the areas of Mosul and Kirkuk under de facto control of the KRG and the Region of Kurdistan have also become victims of threats, harassment and arbitrary detention, often in facilities of the Kurdish security and intelligence services in the region because of their perceived association with the former regime. Arab IDPs in the three Northern Governorates reportedly suffer discrimination and are given little assistance by the Kurdish authorities due to security fears,⁴⁷
- 3.9.6** ***Sufficiency of protection.*** Despite efforts by the Government to address the situation, institutional and legislative weaknesses mean most human rights violations in Iraq are committed with impunity. Protection is generally unavailable from national law enforcement or security bodies. Despite efforts to reform and rebuild, the Iraqi Police Force (ISF) is widely believed to have been infiltrated by Shi'a militia and still relies on the continued support of the Multi National Forces (MNF) to provide internal security against insurgent, terrorist attacks, and extralegal militia crimes. According to the U.S. Department of State, the ISF often did not prevent or respond effectively to societal violence during 2007. The Iraqi Police Service (IPS) is responsible for daily patrolling of cities and towns in Iraq. The IPS has reportedly come some way in its capability to maintain public order, investigate crimes, and arrest suspects, but there remain problems in relation to the culture of abuse and ensuring adequate training.⁴⁸
- 3.9.7** The security situation in the KRG administered northern Governorates of Dahuk, Erbil and Sulaymaniyah remains largely unaffected by the fall of the Saddam regime and relatively stable in comparison to the centre and the Governorates of Kirkuk and Mosul. A large, well-trained and well-organised security force, known as the peshmerga, is present in the KRG administered Governorates to control the security situation.⁴⁹
- 3.9.8** In Central and Southern Iraq the authorities are willing to offer protection, however, due to the high level of insurgent attacks they are unable to provide sufficiency of protection. In the KRG, where there are markedly fewer insurgent attacks, it can be argued that protection is at a reasonably effective level and there is sufficiency of protection.
- 3.9.9** ***Internal relocation*** Please refer to section 2.9-2.16 for information on freedom of movement within Iraq. UNHCR in their paper of August 2007 advised that internal relocation for individuals in Central and Southern Iraq is on the whole not available because of the overall ability of agents of persecution to perpetrate acts of violence with impunity,

⁴⁶ UNHCR guidelines for assessing the international protection needs of Iraqi asylum seekers

⁴⁷ COIS Iraq Country Report 2008 (Opposition in the KRG)

⁴⁸ COIS Iraq Country Report 2008 (Human Rights: Introduction, Security Situation & Security Forces)

⁴⁹ COIS Iraq Country Report 2008 (Human Rights: Security Forces)

widespread violence and prevalent human rights violations giving rise to new risk of persecution, risks associated with travel and undue hardship faced in areas of relocation due to lack of basic facilities (food, water, shelter).⁵⁰ However, asylum and human rights claims are not decided on the basis of a general approach rather the individual circumstances of a particular individual and the specific risk to that individual.

3.9.10 Notwithstanding some of the practical restrictions identified in the UNHCR paper of August 2007 and registration requirements for Iraqis seeking to internally relocate within Iraq, freedom of movement is not generally precluded. Whilst travel by road is sometimes not without incident, FCO has advised that ordinary Iraqis travel on a daily basis using many of the major routes. Similarly whilst unaccompanied women may not be able to settle in areas where they have no family ties and therefore access to support, women with male partners or relatives are able to internally relocate within Iraq. Case owners will also need to consider whether the applicant's Ba'ath party involvement would be apparent in another part of Iraq. For example those targeted because of their job may be unable to escape the threat of repercussions wherever they relocate in southern or central Iraq.

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

3.9.12 Caselaw

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

3.9.13 Conclusion In establishing whether a claimant has a well founded fear of persecution on account of membership of the former Baath Party, a claimant will need to show that their activities for the Baath party have brought them to the adverse attention of those they fear, whether locally through their direct actions or on a wider stage because they are inextricably associated with the abuses of the former regime. In the event that a local threat from non-State agents is established, it would not be unduly harsh for the claimant to relocate elsewhere in Iraq and neither asylum nor Humanitarian Protection would be appropriate.

3.9.14 Internal relocation would not be an option for nationally known figures. Where a claimant is able to establish a well-founded fear on the grounds that they are nationally known and associated with the activities of the former regime, the activities that brought them to national attention would generally mean they would be of interest to the authorities in Iraq. Therefore a grant of asylum might be appropriate in these cases, if one of the exclusion clauses is not applicable (see section 3.9.15 below).

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

3.10 Honour killings

3.10.1 Some claimants will make an asylum or human rights claim due to ill treatment amounting

⁵⁰ UNHCR guidelines for assessing the international protection needs of Iraqi asylum seekers

to persecution at the hands of non state agents on the basis of allegedly bringing the honour of the family into disrepute.

3.10.2 *Treatment.* Honour killing is the term used to describe a murder committed by a family member to protect the family's honour. Many women and girls are at risk of death if they are accused of behaviour believed to have brought shame on the family such as a loss of virginity (even by rape), infidelity, demand for a divorce or a refusal of marriage. Many women are killed on the basis of suspicion of a family member and are not given the chance to defend themselves. Honour killings have generally been on the rise in Iraq including in the KRG area and crimes are infrequently reported.⁵¹

Honour killings in the KRG controlled area

3.10.4 During 2007, honour killings were widespread in the Kurdish region. In the first six months of 2007 alone, 255 honour killings were reported including 195 cases of deaths by burning. In addition, 200 to 250 women in the KRG were reported to have self immolated (deliberate burning) each year and in Erbil most unnatural deaths of women were honour killings with at least one or two deaths reported daily. Furthermore, because honour killings are prohibited by law in the KRG, incidents were often concealed as accidents, suicides or suicide attempts and most cases investigated as such.⁵²

3.10.5 *Sufficiency of Protection.* The Iraqi Penal Code as is applicable in Central and Southern Iraq contains provisions that allow lenient punishments for honour killings on the grounds of provocation or if the accused had honourable motives. The punishment is between 6-12 months. The law does not provide any guidance about what honourable motives are and therefore leaves the door open for wide interpretation and abuse.

3.10.6 Despite efforts by the Government to address the situation, institutional and legislative weaknesses mean most human rights violations in Iraq are committed with impunity. Protection is generally unavailable from national law enforcement or security bodies. Despite efforts to reform and rebuild, the Iraqi Police Force (ISF) is widely believed to have been infiltrated by Shi'a militia and still relies on the continued support of the Multi National Forces (MNF) to provide internal security against insurgent, terrorist attacks, and extralegal militia crimes. According to the U.S. Department of State, the ISF often did not prevent or respond effectively to societal violence during 2007. The Iraqi Police Service (IPS) is responsible for daily patrolling of cities and towns in Iraq. The IPS has reportedly come some way in its capability to maintain public order, investigate crimes, and arrest suspects, but there remain problems in relation to the culture of abuse and ensuring adequate training.⁵³ In relation to honour killings in particular, UNAMI has reported that much work remains to be done to ensure that the IPS considers honour crimes as serious crimes and investigates them accordingly. FCO has also said that where honour killings are concerned, the police may turn a blind eye to what are considered locally acceptable cultural practices espoused by traditional community leaders.

3.10.7 The security situation in the KRG administered northern Governorates of Dahuk, Erbil and Sulaymaniyah remains largely unaffected by the fall of the Saddam regime and relatively stable in comparison to the centre and the Governorates of Kirkuk and Mosul. A large, well-trained and well-organised security force, known as the peshmerga, is present in the KRG administered Governorates to control the security situation.⁵⁴ The Kurdish regional government has been a leading voice in denouncing honour killings and has amended its penal code to consider honour killings as ordinary crimes. It has also made significant progress in acknowledging the occurrence of honour killings and raising public awareness

⁵¹ COIS Iraq Country Report 2008 (honour killings)

⁵² USSD 2007

⁵³ COIS Iraq Country Report 2008 (Human Rights: Introduction, Security Situation & Security Forces)

⁵⁴ COIS Iraq Country Report 2008 (Human Rights: Security Forces)

about the matter.⁵⁵

3.10.8 Private shelters for women suffering from domestic violence exist in Central and Southern Iraq and the KRG however space is limited and information regarding their locations closely held.⁵⁶ Women's shelters were established in Sulaymaniyah in January 1999 (Nawa Centre) and Erbil in April 2002 (Khanzad Centre). A third centre, opened by the German NGO Wadi in Mosul at the end of January 2004, was forced to stop working due to the continuous violence and threats by Islamists. The centres provide food and accommodation, psychological treatment, social assistance, legal aid as well as a mediation programme. Asuda, the first protection centre for women endangered by 'honour killings', was opened in a hidden place in Sulaymaniyah in 2000. Since women seeking protection often have to stay for long periods of time, Asuda offers a 'home' which includes education, leisure and daily activities. Mediation between the women and their families aims at enabling the women's return, but this may not always be possible and there have been cases of fathers assuring their daughters that they have forgiven them, only to murder them once they are back in the family home. Sometimes, Asuda sends women to far away villages and places in other regions of Northern Iraq, where they are not known and can find protection. However, in some cases there are no alternatives other than remaining in the protection centre or finding solutions outside Iraq.

3.10.10 Internal relocation Please refer to section 2.9-2.16 for information on freedom of movement within Iraq. UNHCR in their paper of August 2007 advised that internal relocation for individuals in Central and Southern Iraq is on the whole not available because of the overall ability of agents of persecution to perpetrate acts of violence with impunity, widespread violence and prevalent human rights violations giving rise to new risk of persecution, risks associated with travel and undue hardship faced in areas of relocation due to lack of basic facilities (food, water, shelter).⁵⁷ However, asylum and human rights claims are not decided on the basis of a general approach rather the individual circumstances of a particular individual and the specific risk to that individual.

3.10.11 Notwithstanding some of the practical restrictions identified in the UNHCR paper of August 2007 and registration requirements for Iraqis seeking to internally relocate with Iraq, freedom of movement is not generally precluded. Whilst travel by road is sometimes not without incident, FCO has advised that ordinary Iraqis travel on a daily basis using many of the major routes. Similarly whilst unaccompanied women may not be able to settle in areas where they have no family ties and therefore access to support, women with relatives/ a support network are able to internally relocate within Iraq, for example, Asuda sends women to far away villages and places in other regions of Northern Iraq, where they are not known and can find protection. In assessing whether women can avoid the threat of honour crimes through settling elsewhere in Iraq, case owners will need to take all the relevant factors into account including financial circumstances, health and whether the claimant has a support network. Dependent on the facts of the case some women may not be able to relocate.

3.10.12 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)

⁵⁵ COIS Iraq Country Report 2008 (honour killings)

⁵⁶ USSD 2007

⁵⁷ UNHCR guidelines for assessing the international protection needs of Iraqi asylum seekers

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"*.

3.10.13 Conclusion. If a woman can show the threat of honour killing (or other forms of serious harm); that protection is denied; and, internal relocation is not available, they could qualify for asylum on grounds of a particular social group. This is likely to be most relevant when women come from male-dominated tribes or religious groups that impose strict rules on the conduct of women. Honour killings might not always be gender-related and there might be cases where men are as likely as women to be killed for committing certain indiscretions which have brought shame on their family. If in such a case sufficient protection is not available and internal relocation is considered unduly harsh then Humanitarian Protection might be appropriate.

The situation for women in the KRG is significantly different to the rest of Iraq, with amendments to the penal code and women's shelters improving conditions for women in the region. It can be argued that sufficiency of protection is available to women, against the threat of honour killing, in the KRG and therefore, in the majority of cases, a grant of asylum or humanitarian protection would not be appropriate.

3.11 De-Arabisation

3.11.1 Some Arab claimants will make an asylum or human rights claim due to a fear of ill treatment amounting to persecution due to being forcibly evicted from the Kurdish properties given to them under the Arabisation programmes instituted by Saddam Hussein. These forcible evictions have been undertaken by the Kurdish authorities and sometimes the Peshmerga.

3.11.2 Treatment In the 1990s the regime of Sadaam Hussein initiated an aggressive anti Kurdish Arabisation campaign that relocated, often forcibly, tens of thousands of Arabs both Sunni and Shia to Kurdish areas in Northern and North Eastern Iraq. After the fall of the regime, many of these settlers were reported to have fled back to the Centre and the South of Iraq, or were forced out by the Kurdish authorities or the Peshmerga who exerted pressure and intimidation on them to leave. However, some still occupy deserted governmental buildings or military compounds and others have built houses on land that is not theirs.⁵⁸

3.11.3 The Iraq Property Claims Commission (IPCC) was set up to reinstate people's property rights that were taken away by widespread property confiscations by the former Iraqi government. All persons wrongly deprived of property/ land because of actions taken by the former Iraqi government between 17 July 1968 and 9 April 2003 are able to go apply to go through the IPCC process. Claims could also be made by people who lost real property or an interest in real property between 18 March 2003 and 30 June 2005 as a result of ethnicity, religion or sect or for purposes of ethnic cleansing or by individuals previously dispossessed of their property as a result of the former regime's policy of property confiscation. The deadline to file claims was initially 30 June 2005 but was subsequently extended to 30 June 2007.

3.11.4 Sufficiency of Protection Despite efforts by the Government to address the situation, institutional and legislative weaknesses mean most human rights violations in Iraq are committed with impunity. Protection is generally unavailable from national law enforcement

⁵⁸ COIS Iraq Country Report 2008 (Arabisation and De-Arabisation)

or security bodies. The Iraqi Police Service (IPS) has reportedly come some way in its capability to maintain public order, investigate crimes, and arrest suspects, but there remain problems in relation to the culture of abuse and ensuring adequate training.⁵⁹

3.11.5 Whilst the security situation in the KRG administered northern Governorates of Dahuk, Erbil and Sulaymaniyah remains largely unaffected by the fall of the Saddam regime and relatively stable in comparison to the centre and the Governorates of Kirkuk and Mosul. And, whilst a large, well-trained and well-organised security force, known as the peshmerga, is present in the KRG administered Governorates to control the security situation, the peshmerga is sometimes involved in the forcible eviction of Arabs from the Kurdish area.⁶⁰

3.11.6 Article 140 of the new Iraqi constitution provides for the reversal of the Arabisation policy and the IPCC provides the formal avenue of redress for property disputes. As at April 2006, 132,607 claims had been received by the IPCC. Adjudication of claims started in October 2004 and by April 2006, 21,730 claims had been decided.⁶¹

3.11.7 *Internal relocation* Please refer to section 2.9-2.16 for information on freedom of movement within Iraq. UNHCR in their paper of August 2007 advised that internal relocation for individuals in Central and Southern Iraq is on the whole not available because of the overall ability of agents of persecution to perpetrate acts of violence with impunity, widespread violence and prevalent human rights violations giving rise to new risk of persecution, risks associated with travel and undue hardship faced in areas of relocation due to lack of basic facilities (food, water, shelter).⁶² However, asylum and human rights claims are not decided on the basis of a general approach rather the individual circumstances of a particular individual and the specific risk to that individual.

3.11.8 Notwithstanding some of the practical restrictions identified in the UNHCR paper of August 2007 and registration requirements for Iraqis seeking to internally relocate within Iraq, freedom of movement is not generally precluded. Whilst travel by road is sometimes not without incident, FCO has advised that ordinary Iraqis travel on a daily basis using many of the major routes. Similarly whilst unaccompanied women may not be able to settle in areas where they have no family ties and therefore access to support, women with male partners or relatives are able to internally relocate within Iraq. Case owners will need to consider all of the relevant factors into account including the applicant's financial circumstances and health and whether the applicant has a support network.

3.11.9 *Conclusion.* Article 140 of the new Iraqi constitution provides for the reversal of the Arabisation policy and the creation of the IPCC, a formal avenue of redress for property disputes. Whilst forced eviction by state agents in the KRG has been evident, it is unlikely that once evicted an applicant will suffer ill treatment amounting to persecution. A grant of asylum or humanitarian protection is therefore unlikely to be appropriate for this category of claim.

3.12 Christians

3.12.1 Some claimants will make an asylum or human rights claim due to a fear of ill treatment amounting to persecution at the hands of Islamic Fundamentalists because they are Christian.

3.12.2 *Treatment.* A number of Christian groups live in Iraq, namely, Chaldean, Assyrian, Syriac, Armenian and Protestant Christians. Figures indicate that the size of the pre war Christian

⁵⁹COIS Iraq Country Report 2008 (Human Rights: Introduction, Security Situation & Security Forces)

⁶⁰COIS Iraq Country Report 2008 (Human Rights: Security Forces)

⁶¹ COIS Iraq Country Report 2008 (Land and property rights)

⁶² UNHCR guidelines for assessing the international protection needs of Iraqi asylum seekers

population in Iraq was between 800,000 and 1.2 million. However, current figures show that the population size has now shrunk to between 500,000 and 700,000.⁶³ An estimated 30% of Iraq's Christians reside in the Northern Governorates of Dahuk, Erbil and Sulaymaniyah (the KRG). The remainder is principally located in Baghdad, Mosul, Basrah and Kirkuk.⁶⁴

- 3.12.3** While the constitution of Iraq proclaims Islam to be the official religion of the state, it also provides full religious rights for religious minorities including Christians. The Iraqi government generally respects the right of individuals to individual thought, conscience and belief, however, private conservative and radical Islamic elements continue to exert tremendous pressure on other groups to conform to extremist interpretations of Islam's precepts.⁶⁵ According to the UNHCR, since the fall of the Bathist regime, a number of religious edicts (fatwas) and letters have been issued by Muslim clerics in Iraq calling Christians "infidels" (kuffur).⁶⁶
- 3.12.4** In recent years, there have been a number of targeted attacks on Christian places of worship and religious figures which have reportedly intensified since September 2006.⁶⁷ Acts of violence against Christians have included harassment and intimidation, killings, kidnappings, armed robbery, forced closure, destruction or confiscation of property, forced conversion to Islam, and rape and forced marriage of Christian women.⁶⁸ Christian women have also faced increasing pressure to adhere to strict Islamic dress codes and to cover their hair with a veil.⁶⁹ Further, Christians perceived to be engaging in professions proscribed under Islam such as hairdressing, public entertainment and the sale of alcohol or music have been subject to threats and attacks including killings due to their vocations and their businesses looted, burned or forcibly closed down.⁷⁰ Christians are also usually considered to be better educated and therefore to have a better income than others which has put them at a higher risk or added to other factors for which they are targeted.⁷¹

Situation for Christians in the KRG controlled area

- 3.12.5** In their Fact Finding Mission Report of 2007, the Finnish Government reported that the KRG had become a safe haven for internally displaced persons including Christians. Christians were welcomed by the local population in the northern governorates and respected by their moderate Muslim neighbours.⁷² UNHCR has corroborated this position. According to the UNHCR, the rights of Christians in the KRG are generally respected and a significant number of Christians have sought refuge in the region.⁷³ In addition, in an interview for Newsmax in Erbil in April 2008, the Deputy Prime Minister Omar Fattah, said that Christians who were suffering in other areas of Central and Southern Iraq were welcome in the Kurdistan area of Iraq and unlike other groups, were not subject to the practical restrictions on travel within/ entry into the KRG area. The same article reported that the KRG provided a safe haven for Iraqi Christians who had fled other parts of the country.⁷⁴
- 3.12.6 Sufficiency of protection.** Despite efforts by the Government to address the situation, institutional and legislative weaknesses mean most human rights violations in Iraq are committed with impunity. Protection is generally unavailable from national law enforcement

⁶³ COIS Iraq Country Report 2008 (Christians)

⁶⁴ UNHCR guidelines for assessing the international protection needs of Iraqi asylum seekers

⁶⁵ USSD 2007

⁶⁶ UNHCR guidelines for assessing the international protection needs of Iraqi asylum seekers

⁶⁷ UNAMI – Human Rights Report 1 July to 31 December 2007

⁶⁸ UNHCR guidelines for assessing the international protection needs of Iraqi asylum seekers

⁶⁹ USSD 2007 – Freedom of Religion

⁷⁰ UNHCR guidelines for assessing the international protection needs of Iraqi asylum seekers

⁷¹ COIS Iraq Country Report 2008 (Christians)

⁷² COIS Iraq Country Report 2008 (Christians)

⁷³ COIS Iraq Country Report 2008 (Christians)

⁷⁴ Newsmax – 30 April 2008 –Kurds provide a safe haven for Christians

or security bodies. Despite efforts to reform and rebuild, the Iraqi Police Force (ISF) is widely believed to have been infiltrated by Shi'a militia and still relies on the continued support of the Multi National Forces (MNF) to provide internal security against insurgent, terrorist attacks, and extralegal militia crimes. According to the U.S. Department of State, the ISF often did not prevent or respond effectively to societal violence during 2007. The Iraqi Police Service (IPS) is responsible for daily patrolling of cities and towns in Iraq. The IPS has reportedly come some way in its capability to maintain public order, investigate crimes, and arrest suspects, but there remain problems in relation to the culture of abuse and ensuring adequate training.⁷⁵

3.12.7 The security situation in the KRG administered northern Governorates of Dahuk, Erbil and Sulaymaniyah remains largely unaffected by the fall of the Saddam regime and relatively stable in comparison to the centre and the Governorates of Kirkuk and Mosul. A large, well-trained and well-organised security force, known as the peshmerga, is present in the KRG administered Governorates to control the security situation.⁷⁶

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

3.12.9 *Internal relocation.* Please refer to section 2.9-2.16 for information on freedom of movement within Iraq. UNHCR in their paper of August 2007 advised that internal relocation for individuals in Central and Southern Iraq is on the whole not available because of the overall ability of agents of persecution to perpetrate acts of violence with impunity, widespread violence and prevalent human rights violations giving rise to new risk of persecution, risks associated with travel and undue hardship faced in areas of relocation due to lack of basic facilities (food, water, shelter).⁷⁷ However, asylum and human rights claims are not decided on the basis of a general approach rather the individual circumstances of a particular individual and the specific risk to that individual.

3.12.10 Notwithstanding some of the practical restrictions identified in the UNHCR paper of August 2007 and registration requirements for Iraqis seeking to internally relocate with Iraq, freedom of movement is not generally precluded. Whilst travel by road is sometimes not without incident, FCO has advised that ordinary Iraqis travel on a daily basis using many of the major routes. Similarly whilst unaccompanied women may not be able to settle in areas where they have no family ties and therefore access to support, women with male partners or relatives are able to internally relocate within Iraq. Moreover, it is clear that Christians are able to relocate to the KRG area of Iraq where they are well respected, where there are numerous other Christians and where they can generally peacefully coexist alongside the Kurds.

3.12.11 *Caselaw*

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

RA [2005] UKIAT 00091 CG. The Tribunal concluded that "The evidence is not such at this stage as

⁷⁵ COIS Iraq Country Report 2008 (Human Rights: Introduction, Security Situation & Security Forces)

⁷⁶ COIS Iraq Country Report 2008 (Human Rights: Security Forces)

⁷⁷ UNHCR guidelines for assessing the international protection needs of Iraqi asylum seekers

to indicate problems for a person relocating to the north such as to render this unduly harsh or, in the case of Article 3 of the Human Rights Convention to indicate a real risk of breach of their human rights in effecting such relocation and living in the north." (para 73)

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

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

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

3.12.12 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. Case owners should 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. The KRG area of Iraq has and continues to provide a safe haven to Iraqi Christians fleeing other parts of the country and most Christian Iraqis from the KRG area would be able to seek protection from the KRG security forces who are generally willing and able to offer protection. However, if on the circumstances of an individual case from central or southern Iraq it is found that internal relocation is unduly harsh, it may be appropriate to grant refugee status in those circumstances.

3.13 Fear of Islamic Militants

3.13.1 Some claimants will make an asylum or human rights claim based on ill treatment amounting to persecution at the hands of Islamic militants because of "un-Islamic behaviour".

3.13.2 Treatment. Whilst the Iraqi government generally respects the rights of freedom of thought and religion, the rise of Islamic fundamentalism has had a serious impact on these rights in practice. Many reports suggest that Iraqis have been targeted by extremists because of their religious identity (members of other religions as well as liberal Muslims) or secular leanings and have become regular victims of discrimination, harassment and at times persecution with incidents ranging from intimidation and threats to the destruction of property, kidnapping and murder.⁷⁸

3.13.3 Members of non Muslim religious groups were targeted for not adhering to strict Islamic law. Women and girls were threatened, attacked and sometimes killed for not wearing the hijab, dressing in western style clothing or for showing too much skin for not wearing socks. The same applied to men whose clothes or even haircuts were deemed too western.⁷⁹

⁷⁸ COIS Iraq Country Report 2008 (Non-Muslim Religious Groups)

⁷⁹ COIS Iraq Country Report 2008 (Non-Muslim Religious Groups)

Women driving cars, working outside of the house or playing sports were also targeted and violent campaigns were launched against gay men, those deemed to have had sex outside of marriage and engaged in drug abuse.⁸⁰

3.13.4 There were also continued reports of targeting of members of certain professions. Barbers were threatened, forced to close their businesses or even killed for giving men western style haircuts or shaving off their beards. Male doctors were killed for treating female patients and stores that sold un-Islamic goods such as alcohol were bombed, looted and defaced. Iraqi artists, actors and singers were targeted on the basis that music, theatre and television encouraged immoral behaviour as were shops selling DVDs/ CDs or musical instruments.⁸¹

3.13.5 *Sufficiency of protection.* Despite efforts by the Government to address the situation, institutional and legislative weaknesses mean most human rights violations in Iraq are committed with impunity. Protection is generally unavailable from national law enforcement or security bodies. Despite efforts to reform and rebuild, the Iraqi Police Force (ISF) is widely believed to have been infiltrated by Shi'a militia and still relies on the continued support of the Multi National Forces (MNF) to provide internal security against insurgent, terrorist attacks, and extralegal militia crimes. According to the U.S. Department of State, the ISF often did not prevent or respond effectively to societal violence during 2007. The Iraqi Police Service (IPS) is responsible for daily patrolling of cities and towns in Iraq. The IPS has reportedly come some way in its capability to maintain public order, investigate crimes, and arrest suspects, but there remain problems in relation to the culture of abuse and ensuring adequate training.⁸²

3.13.6 The security situation in the KRG administered northern Governorates of Dahuk, Erbil and Sulaymaniyah remains largely unaffected by the fall of the Saddam regime and relatively stable in comparison to the centre and the Governorates of Kirkuk and Mosul. A large, well-trained and well-organised security force, known as the peshmerga, is present in the KRG administered Governorates to control the security situation.⁸³

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

3.13.8 *Internal relocation.* Please refer to section 2.9-2.16 for information on freedom of movement within Iraq. UNHCR in their paper of August 2007 advised that internal relocation for individuals in Central and Southern Iraq is on the whole not available because of the overall ability of agents of persecution to perpetrate acts of violence with impunity, widespread violence and prevalent human rights violations giving rise to new risk of persecution, risks associated with travel and undue hardship faced in areas of relocation due to lack of basic facilities (food, water, shelter).⁸⁴ However, asylum and human rights claims are not decided on the basis of a general approach rather the individual circumstances of a particular individual and the specific risk to that individual.

3.13.9 Notwithstanding some of the practical restrictions identified in the UNHCR paper of August 2007 and registration requirements for Iraqis seeking to internally relocate with Iraq, freedom of movement is not generally precluded. Whilst travel by road is sometimes not without incident, FCO has advised that ordinary Iraqis travel on a daily basis using many of the major routes. Similarly whilst unaccompanied women may not be able to settle in areas

⁸⁰ UNHCR guidelines for assessing the international protection needs of Iraqi asylum seekers

⁸¹ UNHCR guidelines for assessing the international protection needs of Iraqi asylum seekers

⁸² COIS Iraq Country Report 2008 (Human Rights: Introduction, Security Situation & Security Forces)

⁸³ COIS Iraq Country Report 2008 (Human Rights: Security Forces)

⁸⁴ UNHCR guidelines for assessing the international protection needs of Iraqi asylum seekers

where they have no family ties and therefore access to support, women with male partners or relatives are able to internally relocate within Iraq.

3.13.10 Case law

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

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

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

3.14 Member/ Supporter of the PKK/ KADEK

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

3.15 Prison conditions

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

3.15.2 Despite a law mandating that detention facilities under the sole control of the Ministry of Justice (MOJ) detention facilities in Iraq were operated by four separate ministries: Justice; Interior; Defence and the Ministry of Labour and Social Affairs. Additionally, the KRG Ministry of Labour and Social Affairs operated its own detention facilities. The KRG internal security (Asayish) forces and the KRG intelligence services operated separate detention facilities outside the control of the KRG MOI.⁸⁵

3.15.3 As at end of 2007, there were reported to be 9 MOJ prisons, more than 1000 MOI detention locations, 30 MOD detention facilities as well unofficial detention centres throughout the country. The Kurdish authorities operated 8 detention facilities and an additional 8 Asayish

⁸⁵ USSD 2007

detention facilities.⁸⁶

- 3.15.4** Treatment of detainees was reported to be poor in many cases. MOJ prison and detention facilities generally attempted to meet internationally accepted standards for basic prisoner needs. However, most detention facilities under the MOI and MOD did not meet international standards. There was continued overcrowding and many detainees lacked adequate food, exercise facilities, medical care and family visitation and access to water and electricity. Medical care in MOI and MOD detention facilities was also not consistently provided and rape, torture and abuse sometimes leading to death reportedly occurred in some facilities.⁸⁷
- 3.15.5** The law mandates that women and juveniles be held separately from men. Generally women were housed separately from men but there were reported instances where they were not. Juveniles were also sometimes held with adults and a number of juveniles were reported to have alleged sexual abuse at the hands of the MOI and MOD personnel and adult prisoners. Additionally, pre-trial detainees and convicted prisoners were often held in the same facilities due to lack of space.⁸⁸
- 3.15.6** Visits to inspect prison facilities by both the national and the KRG Ministries of Human Rights (MOHR) and UNAMI were permitted. However, reports of the visits were not publicly available. Domestic and international human rights groups did not generally have access to prisons/ detention facilities. However, the ICRC in its December report said that it had access to 1500 to 2000 KRG detainees some of whom were held in Asayish facilities. There were no reports available about KRG intelligence service detention facilities.⁸⁹
- 3.15.7 Conclusion.** Whilst prison conditions in Iraq are reportedly poor (hygiene conditions and over crowding being a particular problem) and despite reports that officials sometimes mistreat inmates, conditions are not generally severe enough to meet the high Article 3 threshold and there is no information to suggest that particular groups of inmates are more at risk of such mistreatment than others. Therefore, even where claimants can demonstrate a real risk of imprisonment on return to Iraq a grant of Humanitarian Protection will not generally be appropriate. However, the individual factors of each case should be considered to determine whether detention will cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3, relevant factors being the likely length of detention the likely type of detention facility and the individual's age and state of health. Where in an individual case treatment does reach the Article 3 threshold a grant of Humanitarian Protection will be appropriate.

4. Discretionary Leave

- 4.1** Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See Asylum Instructions on Discretionary Leave) Where the claim includes dependent family members consideration must also be given to the particular situation of those dependants in accordance with the Asylum Instructions on Article 8 ECHR.
- 4.2** With particular reference to Iraq the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the Asylum Instructions on Discretionary Leave and the Asylum Instructions on Article 8 ECHR.

⁸⁶ USSD 2007

⁸⁷ USSD 2007

⁸⁸ USSD 2007

⁸⁹ USSD 2007

4.3 Claims based on the poor humanitarian conditions in Iraq

- 4.3.1** Whilst humanitarian conditions in Iraq are difficult 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 case owners will of course need to consider whether the individual circumstances of a particular case might dictate a different outcome.

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 and support arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, care and support arrangements in place for minors with no family in Iraq.
- 4.4.2** Minors claiming in their own right without a family to return to, or where there are no adequate reception, care and support arrangements, should if they do not qualify for leave on any more favorable grounds be granted Discretionary Leave for a period as set out in the relevant Asylum Instructions.

4.5 Medical treatment

- 4.5.1** Applicants may claim they cannot return to Iraq due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 and/or 8 to be engaged.
- 4.5.2** The Iraqi constitution stipulates that every citizen has the right to healthcare and that the State shall maintain public health and provide the means of prevention and treatment by building different types of hospitals and health institutions. As at August 2006, some 240 hospitals and 1200 primary health centres were functioning under substantial international funds in Iraq. Nevertheless, there was a shortage of medical supplies and providers had to deal with limited water and electricity in Iraqi hospitals making it difficult to carry out their work. The ICRC in its March 2008 report said that there was a general shortage of hospital beds and that medical facilities everywhere needed repairing and upgrading except in the Northern part of the country. There was also a general shortage of medical staff, doctors in Iraq having faced targeted harassment, violent attacks, abductions and pressure to emigrate at the hands of insurgents. According to UNHCR, as at August 2007, more than a half of Iraq's 34000 physicians who had been registered prior to 2003 had left the country.⁹⁰
- 4.5.3** Anti retroviral treatment was freely available at the AIDs centre in Baghdad where most AIDs cases were diagnosed. Patients under anti retroviral treatment also received supplies from the Ministry of Health which was supported by the World Health Organisation and \$50 for extra expenses.⁹¹
- 4.5.4** There were 23 hospital based mental health facilities in Baghdad and three other cities. Services in psychiatric clinics were often basic and involved only physical treatment and there was a lack of drugs to treat the most severe cases of mental health. The stigma often associated with mental health problems in Iraq often meant that families kept their ill relatives hidden or sought treatment from traditional sources. However, according to a BBC report of August 2005, a national commission for mental health services had been appointed within Iraq and was working with the British Royal College of Psychiatrists. Training programmes were being organised and a small number of mental health

⁹⁰ COIS Iraq Country Report 2008 (Medical issues)

⁹¹ COIS Iraq Country Report 2008 (Medical issues)

practitioners were being trained in Jordan and the UK.⁹²

The KRG

4.5.5 According to the FCO there are 3 major hospitals in Erbil, 4 in Sulimaniyah and 3 in Dohuk province as well as numerous health care centres and privately run clinics across the Kurdish region. However, health care in the KRG was poor by Western standards. The health care structure was inadequate (hospitals, equipment, drug supply, electricity) and most doctors moonlighted in order to top up their meagre salaries. Although some improvements had been made to health services in the KRG, the population still had no access to free, safe, high quality health services. Hospitals were overcrowded, there was no working referral system from local practitioner to specialist and new technology was not maintained. Some hospitals had been renovated but others had not and there was no policy for health care development. HIV/ AIDs treatment was not available and problems of identifying and treating HIV/ AIDs in the KRG were compounded by a lack of coordination between health authorities in the region and Baghdad clinics dealing with people living with HIV/ AIDs.⁹³

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

5. Returns

5.1 Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.

5.2 Iraqi nationals may return voluntarily to any region of Iraq at any time by way of the Voluntary Assisted Return and Reintegration Programme (VARRP) implemented on behalf of the Border and Immigration Agency by the International Organization for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining travel documents and booking flights, as well as organising reintegration assistance in Iraq. The programme was established in 1999, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Iraqi nationals wishing to avail themselves of this opportunity for assisted return to Iraq should be put in contact with the IOM offices in London on 0800 783 2332 or www.iomlondon.org.

6 Entry Clearance

6.1 The designated posts for applications for visa applications for Iraqis are Amman in Jordan and Beirut in Lebanon. Iraqis are free to enter Jordan and Lebanon to make such applications on GV3's in conjunction with Iraqi passports. G-series passports are available for issue to Iraqi citizens who qualify for them in Baghdad. 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 The main Baghdad Western South route leading out of Baghdad to Jordan and the Syrian

⁹² COIS Iraq Country Report 2008 (Medical issues)

⁹³ COIS Iraq Country Report 2008 (Medical issues)

borders (Highway No 10) passing through Fallujah and Ramadi has seen armed conflict and crime occurring on a daily basis. According to UNHCR security incidents also occurred on this route after sunset and increased during Shiite religious festivities when Sunni insurgents target Shiite pilgrims on their way to the holy cities of Najaf and Kerbala. Car jackings and car accidents have also been reported to occur on the route.⁹⁴ However, FCO has advised that ordinary Iraqis generally use roads in Iraq on a daily basis.⁹⁵

6.3 Road travel between Baghdad and Amman, 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.⁹⁶

6.4 Caselaw

SA Iraq CG [2006] UKAIT 00011. In the light of evidence now available the Tribunal is satisfied that generally it is not disproportionate to a legitimate aim within article 8 (2) to require an Iraqi national to return to Iraq and travel to Jordan to make an application for entry clearance.

SM Iraq CG [2007] UKAIT 00077. Further evidence since the Tribunal's decision in SA (Entry clearance application in Jordan – proportionality) Iraq CG [2006] UKAIT 00011 concerning the procedures and general difficulties facing an Iraqi in returning to Iraq and travelling to Jordan to make an application for entry clearance does not lead to a conclusion different from that in SA that generally it is not disproportionate to a legitimate aim within Article 8(2) to require an Iraqi to return and apply in that way.

6.5 Iraqis regularly make visa applications at the consular section in Amman, and it is possible to travel to Amman to seek entry clearance. The route to Amman and Beirut could be via Highway 10, or alternatively it is open to a claimant to travel a different route to Amman or Beirut.

6.6 Three recent judgments handed down from the House of Lords, most notably *Chikwamba v The Secretary of State for the Home Department [2008]*, have had an impact on the way the UK Border Agency must consider human rights claims under Article 8 of the European Convention on Human Rights (ECHR). All cases should be considered on their own merits taking full account of the Article 8 Casework Instructions, the current absence of entry clearance facilities in Iraq, and the difficulties involved for Iraqis in travelling to the designated entry clearance posts in neighbouring countries. In most cases it is likely to be disproportionate to expect Iraqis who have established family ties in the UK, and for whom there are insurmountable obstacles' to family life in its entirety being exercised abroad, to return to Iraq and apply for entry clearance.

7. List of source documents

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⁹⁴ UNHCR guidelines for assessing the international protection needs of Iraqi asylum seekers

⁹⁵ FCO Letter dated 8 September 2006 and 28 August 2008

⁹⁶ CIPU Country Bulletin 2005 para 4.2

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