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UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

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Date 17 January 2011

Notre/Our code [REDACTED]

**Re: Your inquiry concerning updated information on the situation for Christians
In Iraq and application of internal flight alternative to KRG**

Dear [REDACTED]

Reference is made to your inquiry in regard to UNHCR's position concerning Christians in Iraq and the application of Internal Flight Alternative (IFA) to the Kurdistan Regional Government Region (KRG) in Iraq.

In connection with your request and pursuant to UNHCR's supervisory role under its Statute and Article 35 of the 1951 Convention and 1967 Protocol relating to the Status of Refugees (1951 Refugee Convention), we would hereby like to draw your attention to the *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers*, April 2009 and its Addendum, *UNHCR Note on the Continued Applicability of the April 2009 UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers*, 28 July 2010.¹

We would also like to refer to *UNHCR's Guidelines on International protection No 4 on "Internal Flight or Relocation Alternative" Within the Context of Article 1A (2) of the 1951 Convention and/or the 1967 Protocol Relating to the Status of Refugees*.² UNHCR's Guidelines on International Protection set out UNHCR's authoritative legal position on the interpretation of the 1951 Convention and provide legal guidance to governments and practitioners.³ They are intended to be complementary to UNHCR's Handbook on Procedures and Criteria for Determining refugee Status under the 1951 Convention and the 1967 Protocol relating to the status of Refugees and should be given the same weight as the Handbook in the determination of refugee status.⁴

¹ UN High Commissioner for Refugees, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-seekers*, April 2009, available at: <http://www.unhcr.org/refworld/docid/49f569cf2.html>, UN High Commissioner for Refugees, *Note on the Continued Applicability of the April 2009 UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum seekers*, 28 July 2010 available at: <http://www.unhcr.org/refworld/docid/4c4fed282.html>.

² UN High Commissioner for Refugees, *Guidelines on International Protection No 4: "Internal Flight or relocation Alternative" Within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the status of Refugees*, 23 July, HCR/GIP/03/04, <http://www.unhcr.org/refworld/docid/3f2791a44.html>.

³ Volker Turk, *Introductory Note to UNHCR Guidelines on International Protection International Journal of Refugee Law*, 2003, 15(2): 303-306.

⁴ UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 protocol relating to the Status of Refugees, HCR/IP/4/Eng/REV.1 Reedited, Geneva, January 1992, UNHCR 1979.

It is our understanding that the Danish Immigration Service has rejected the application for protection of your client, [REDACTED] a single Chaldean Christian female originating from Mosul, and that the Danish Immigration Service is of the opinion that your client can be returned to KRG.

Situation for Christians in Iraq

In regard to the situation of Christians in Iraq, it is UNHCR's opinion that Christians belong to a group at risk. As stated in *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers*, when assessing the nexus between the feared persecution and the Convention ground, the Convention ground must be a contributing factor, although it does not need to be shown to be the sole, or dominant, cause. Christians may fall under the ground religion or particular social group, as they are perceived as a special group in society that is affluent or involved in non-Islamic activities.

In **Baghdad**, the Christian minority has long been subject to persecution and harassment. However, the 31 October attack on the Assyrian church in Karrada by members of the Al Qaeda affiliated Islamic State of Iraq, which left more than 50 people dead, has led to displacement of Christians from Baghdad and prompted fears of a renewed, targeted campaign against the Christian community.⁵ In the weeks following the incident, reports were received that many Christian families fleeing from Baghdad. In addition, sporadic incidents of attack continue, on 5 December a Christian family, including a child, were stabbed to death by an unknown assailant in Al Baladiyat, eastern Baghdad.⁶

In **Mosul**, the Christian population has in the past been subject to successive waves of displacement following targeted attacks, most notably in the run-up to provincial elections in late 2008, when some 2,000 families were displaced, and during the national parliamentary elections in March 2010, when some 850 families were displaced. In both cases Christians sought refuge, either temporarily or permanently, in the nearby Ninewa Plains regions of Hamdaniyah and Telkayf. After the attack on the church in Baghdad, and bombings and mortar attacks on Christians in the capital on November 10, small numbers of Christians from Baghdad reportedly began to arrive in the Ninewa Plains.

However, the displacement of Christians from Mosul started again following an incident on November 15, when two Christians were killed by armed gunmen in al-Zahra neighbourhood and an IED was planted in front of another house but did not detonate. In the week that followed, there were scattered reports of Christians in Mosul receiving threatening messages, including at least one informing a family to leave their house before it would be bombed.

On November 22, two Christian brothers were killed by unknown gunmen at their welding workshop in the industrial al-Sinaa neighborhood. On the same

⁵ In the incident on 31 October, more than 50 persons were taken hostage during a subsequent operation to free the hostages, some 58 persons were reported to have been killed, including 7 ISI, and 7 security officers, with 75 wounded (Source: UNAMI Daily Security Update 1 November).

⁶ UNAMI Daily Security Update 6 December 2010.

day, a Christian family was reportedly attacked by 'terrorists' in al-Bakar neighborhood but escaped unharmed after receiving help from the local community. These and additional attacks resulted in further displacement and, as of November 27, there were an estimated 160 families displaced in Telkeyf (18 kms north of Mosul) and al-Hamdaniyah (20 kms south east of Mosul).

Around November 27, a number of Christian families in Mosul received threatening messages, particularly in the eastern neighbourhoods of al-Sukar, al-Bakr, al-Sideeq and al-Arabi. These threats led to an overall surge in the number of displaced, with more than 400 families now displaced in Telkeyf and Hamdaniyah. Attacks have continued since then, including an attack on a Christian family in Qadissiyah on November 29 which was foiled by Iraqi Security Forces and the killing of a Christian engineer on November 30. Most of the displaced Christians originated from neighborhoods on the left (east) bank of Mosul, such as al-Arabi, al-Bakr, al-Hadba, al-Sukar and al-Noor. Ninewa Governor Atheel Nujayfi and other local authorities have visited Christian communities in Mosul and a committee of Christian policemen, headed by the Christian police chief, was formed on November 21 to protect the Christian community. Within the city of Mosul, several roads leading to churches or Christian areas have been closed to road traffic for additional protection.

In view of the above, UNHCR recommends that states refrain from forcible returning Iraqis who originate from the five Central Governorates or who belong to the specific groups which have been identified in UNHCR's guidelines to be at risk, including Christians and who originates from the Southern Governorates and Al-Anbar until such time as there is substantial improvement in the security and human rights situation in the country.

Procedural matters of assessing internal flight alternative

UNHCR notes that the Danish Immigration Services have referred the applicants to take residence in KRG. UNHCR would in this regard like to reiterate that the criteria and the burden of proof involved in an examination of an application for asylum, by reason, should not be applied in the same manner in the context of an internal flight alternative assessment. Neither the wording nor the intended meaning of Paragraph 91 of UNHCR's Handbook give any support for such application in relation to the internal flight concept. When considering whether the asylum-seeker has a well founded fear of persecution in one part of the country one includes a determination whether the state is unable or unwilling to provide protection from the harm feared. If established, burden of proofs shifts to the one asserting existence of IFA.

Furthermore, UNHCR would also like to note that basic rules of procedural fairness require that the asylum-seeker be given clear and adequate notice that the possibility of applying IFA is under consideration. They also require that the person be given an opportunity to provide arguments why (a) the consideration of an alternative location is not relevant in the case, and (b) if deemed relevant, that the proposed area would be unreasonable⁷.

⁷ UN High Commissioner for Refugees, *Guidelines on International Protection No. 4: "Internal Flight or Relocation Alternative" Within the Context of Article 1A(2) of the 1951 Convention and/or 1967*

In view of the potential difficulties for some persons in entering and taking up legal residency in the KRG and the fact that access to certain rights may in practice be restricted on the basis of their ethnicity, religion or place of origin, any consideration of the KRG as an available IFA for persons from other parts of Iraq must be examined carefully and on a case-by-case basis

Relevance of relocation to the Kurdistan Regional Government Region

As part of the assessment whether KRG can be *relevant* as an area of relocation, an assessment must be conducted whether it is legally accessible for the individual in addition to being safe, and the individual must have the legal right to remain in the area.

UNHCR would also like to share the following observations and analysis from October 2010 by its implementing partner, the Protection Assistance Center (PAC) in Erbil, complementing the information provided in UNHCR's *Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers*, April 2009 and its Addendum, *UNHCR Note on the Continued Applicability of the April 2009 UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers*, 28 July 2010.⁸

There are three types of entry permits: tourism entry which allows an individual to remain up to 30 days, a work related entry: allowing up to 15 days stay prior to renewal, or a long-stay entry: the duration of which is unknown. According to the existing procedures, persons from other parts of the country who enter the KRG are required to register with the local authorities at the first encountered checkpoint where their basic information is collected and they are issued a document allowing entry. If an individual wishes to remain in the KRG beyond the period as outlined in this document, they are expected to approach the security department of the location they would like to stay within, and request to open a file, providing a local resident as a reference.

However, it is important to note that these cards are not automatically renewed. IDPs are most often issued the tourist card at the check point. During the month of November and December 2010, UNHCR collected further information from the Protection Assistance Centres and no PAC has reported any IDP to have received the residence card. All PACs stated that Arabs, Turkmen and Kurds from the disputed areas or those suspected of terrorism or pose a threat to the Region's security will most likely face difficulties/rejection at the check point.

According to PAC, sponsorship cannot be provided by a private company. Although the authorities have indicated that the former "sponsorship" system has been replaced by the "reference" system, in practice the two are very similar in that they require both a Kurdish as well as a non-Kurdish Iraqi to have an Iraqi Kurd to serve as a reference. The reference cannot be another

Protocol Relating to the Status of Refugees, 23 July 2003, HCR/GIP/03/04, para 35 available at: <http://www.unhcr.org/refworld/docid/3f2791a44.html>

⁸ Since this information has been obtained, no major changes have been identified by or reported to UNHCR on access to the KRG, either in law or practise.

internally displaced person. Individuals with no links to the region may thus face difficulties in securing a reference to vouch for them. According to information obtained in November and December 2010 from IDPs and PACs, the sponsor system remains to be in place and IDPs are required to have this guarantee to enter. These are conditions for entry regardless of the new name referred to by the authorities.

Every IDP must obtain an Information card within the period given at the check point. i.e. if a family obtained a 10 day tourist card at the check point they must approach the security station before the card's expiry date to obtain their Information Card. IDPs with no Information Card are considered to be illegally residing in the KR and may face serious consequences. The Information Card is issued for a 3 month, 6 month, or a 12 month period. The Information Card provides the holder freedom of movement within the KRG. In the case that the person wishes to relocate to another neighbourhood or Governorate, he/she must go through the procedures again.

To obtain an Information Card, IDPs must provide a sponsor, present a valid ID and have a lease showing rent of a house/apartment. The Asayesh will then approve or reject the stay of the individual/family. In the case of approval, the individual/family is then able to stay in the area that they obtained the approval from. Some PACs have informed UNHCR that the IDP requires the Information Card first in order to rent a house/apartment while others stated that the security require a copy of the lease in order to issue the Information Card. IDPs who are not able to secure a sponsor and obtain an Information Card are obliged to leave the KR.

It has been observed over the past year that approval or denial of entry into the KRG is not applied systematically and may depend on a number of factors, including who the officer in charge at the time of entry. In general, single males, and to some extent single females, face difficulties in gaining entry into the KRG.

Individuals and families continue to be subjected to different procedures. Although the entry process remains the same whether it is one individual or a family, it has been observed that the issuance of longer term residence permits continues to be easier to obtain for families. Generally, for an individual to be granted a residence permit to reside in Erbil for an extended period of time, one of the following criteria should be met: the individual should be coming to study, he or she should hold an advanced diploma, he or she should own a company, or the individual should have close relatives already residing there. Individuals (mostly single men) continue to be unable to rent housing.

It has been noted that whilst the KRG authorities claim to have a unified or uniform policy for entry and staying in the KRG, it is evident that in practice this is not the case. Both checkpoints and the issuance and renewals of the information cards vary between governorates. Inconsistencies have been noted in entry procedures that are followed at the checkpoints from one day to the next. Finally, a copy of written rules and regulations governing entry and residence procedures has never been provided by the authorities. During the months of November and December 2010, UNHCR undertook efforts to obtain information and clarification from the authorities on checkpoint

practices and entry/residence in the KR, however UNHCR is still awaiting clear guidance and feedback concerning the practice and laws which are of concern.

In conclusion, UNHCR is of the view that the conditions for obtaining a legal right to remain in the area are not guaranteed and any consideration of IFA within the Kurdistan region may therefore not be relevant.

Reasonableness of relocation to the Kurdistan Regional Government Region

In regard to analysis of whether internal flight is an reasonable option, the question is what is reasonable, both subjectively and objectively, given the individual claimant and the conditions in the proposed internal flight or relocation alternative. Can the claimant, in the context of the country concerned, lead a relatively normal life without facing undue hardship? Factors that need to be taken into consideration are the applicant's personal circumstances, safety and security, respect for human rights and economic survival.

There is a risk that the applicant may become internally displaced if relocated to KRG. While internally displaced persons in theory can engage in casual labour or be employed by the private sector, they face difficulty in accessing the labour market because of high rates of unemployment and also because they are not eligible for employment with the government, the region's largest employer, with about 70% of the government budget allocated to government salaries. It should be noted that the presence of some 35,000 internally displaced families in the KRG places a strain on both infrastructure and the local economy. Internally displaced persons compete for low paid daily hire manual work, competing with local residents or third country nationals.

Internally displaced persons have access to courts, and free legal aid and representation from NGOs. In practice, however, limitations have been noted on the capacity to follow up and obtain concrete results on a number of legal cases due to the different orders or policies of the government. For example, PDS cards (Public Distribution System) can not be transferred from one Governorate to the other. Internally displaced persons must, renew their ID in person in their place of origin and not in the place of displacement, etc. It has been observed that such obstacles lead to many legal issues left unresolved and pending indefinitely.

In addition, internally displaced persons need to obtain clearance from the Ministry of Interior in order to purchase immoveable property. In Erbil and Dohuk, only professionals, such as university professors, doctors, engineers, businessmen etc can purchase immoveable and moveable property whereas non-professionals can only purchase moveable property. In Suleimaniah, these restrictions do not apply and anyone can purchase moveable and immoveable property. UNHCR has not been able to obtain written guidelines regarding property rights and administration in the KR. As noted in Danish Immigration Service's *Entry Procedures and Residence in Kurdistan Region of Iraq for Iraqi Nationals*, it has been observed that in practice, authorization for persons from outside the KRG to purchase property appears to be linked directly to their religious, ethnic, or geographic origin. UNHCR has received

reports that persons of Kurdish origin from the disputed territories may not purchase real estate. Kurds and **Christians** from the disputed territories may only purchase property if they hold a national ID card registered in Erbil prior to 2003.

Walter Kaelin, the Representative of the Secretary-General on the Human Rights of internally displaced persons (RSG), expressed his concern in a press release of 3 October 2010 about “chronic poverty among displaced communities,” difficulties for IDPs in securing employment, and continued challenges in securing benefits or status IDPs may otherwise be eligible for in their places of origin, such as pensions or PDS cards. It has been observed that **IDP women** without a financial support network, who are widows or heads of households, cannot easily find employment. Female IDPs without a network in KR, and who additionally do not speak Kurdish language, face difficult living conditions and are particularly vulnerable to trafficking networks.

Some IDPs are also unaware of their rights and options, including where they may be able to seek assistance and protection against being trafficked and forced into prostitution. Kurdish Human Rights Watch reported that IDPs who cannot speak the Kurdish language in particular remain “blind” to their options and recourses. Following his mission, the RSG likewise stressed that vulnerable groups such as female-headed households, separated children and children who have taken on the role of bread winners, may be exposed to the risk of trafficking and other abuses.

In view of the potential difficulties for some persons in entering and taking up legal residency in the KRG, as well as the reported lack of adequate services, budget, infrastructure and reports that for some individuals, access to certain rights may in practice be restricted on the basis of their ethnicity, religion or place of origin, any consideration of the KRG as an available IFA for persons for other parts of Iraq should thoroughly address its relevance and reasonableness taking into account the applicant's personal circumstances and links to the proposed area to ensure that such a relocation would not amount to undue hardship.

Special considerations in assessing internal flight alternative for women

An assessment on the availability of internal flight alternative for an unaccompanied woman require a gender-sensitive assessment taking into account certain additional factors. In regard to the relevance analysis, it is important to consider what are the possibilities for transportation, are there risks for the personal safety of women, travelling alone, how are women travelling alone treated?, are there legal obstacles for women to travel alone, do they need permission by a man, how is the risk assessment or the proposed area, can the persecutor follow, is there risk for new persecution and, finally, is there risk for other serious harm (security, human rights) that can lead to flight or return to the place of origin?

In regard to the reasonableness analysis, factors to be taken into account are the personal circumstances of the woman, including her level of education, and whether she is traveling with children. Of particular importance for a woman is whether she has a social network in the proposed area of relocation and if not, what are her opportunities for economic survival in the new location,

can unaccompanied women rent apartments, can women get employment, what are the risks that her vulnerable position leads to exploitation or abuse, are there shelters available for unaccompanied women, if needed.

We hope this information can be of use to you and stand ready to assist you or the Appeal Board further.

Yours sincerely,



Liv Feijen

Senior Regional Legal Officer