

**Comments on the Operational Guidance Note on Iraq (June 2009), prepared for Still Human Still Here by Stephanie Huber and Elizabeth Williams, Research Information and Policy Unit (RIPU) of the Immigration Advisory Service (IAS)**

1. This document has been prepared by members of the Still Human, Still Here campaign. It is being published, along with the COI referred to within it, to help legal practitioners representing asylum seekers. It is meant to be used as a guide to some of the COI available. It was prepared 25 March 2010 although amendments have been made to refer to recent caselaw. The Iraq OGN was re-issued in July 2010, removing the section on gay men and lesbians and stating that this section was under review. There is, however, no guarantee that the COI referred is comprehensive and it should not be a substitute for case specific COI research.
2. **THIS DOCUMENT IS A GUIDE FOR LEGAL PRACTITIONERS OF RELEVANT COI, WITH REFERENCE TO THE OPERATIONAL GUIDANCE NOTE ON IRAQ ISSUED IN JUNE 2009. THIS DOCUMENT SHOULD NOT BE SUBMITTED TO UKBA, THE TRIBUNAL OR IN PROCEEDINGS. LEGAL PRACTITIONERS ARE WELCOME TO SUBMIT THE COI REFERRED TO IN THIS DOCUMENT.**
3. The June 2009 Iraq Operational Guidance Note (OGN) is now nine months old. Given the fast changing situation in Iraq, it is not surprising that the country of origin information (COI) contained in the OGN is out of date. Moreover, as of 21<sup>st</sup> December 2009, the following two Country Guidance cases on Iraq were determined that have a bearing on how certain claims for asylum are viewed by the judiciary:

ZQ (serving soldier) Iraq CG [2009] UKAIT 00048  
*[...] vi) NH (Iraq-Yazidis) Iraq CG [2004] UKIAT 00306 is no longer to be followed. Whilst being a Yazidi does not as such place a person at risk on return to central and southern Iraq, it is a significant risk factor and special reasons would need to exist for not finding that such a person faces a real risk of persecution or treatment contrary to Article 3 ECHR.*

SR (Iraqi Arab Christian: relocation to KRG) Iraq CG [2009] UKAIT 00038  
*An Iraqi Arab Christian at risk in his home area and throughout central and southern Iraq is likely to be able to obtain the documentation needed by a person wishing to relocate within Iraq, and is likely to be able to relocate to the KRG with the assistance of a sponsor, in particular, on the basis of the latest statistics available, in Erbil or Dohuk.*
4. The country information used throughout the June 2009 OGN is problematic both for its lack of currency today and for its lack of currency at the time of publication, with most sources referring to events occurring in 2006, 2007 and 2008. In addition to the lack of currency of the information, there is the general trend of over reliance on a limited amount of COI from a narrow range of sources. No international, regional or national news articles and reports were included despite being useful sources of COI with regards to relevance of information and currency of reporting.
5. A further general observation relates to the lack of transparency and retrievability in the referencing of the information. Many paragraphs, footnotes and sources were either not at all or

not clearly referenced, with sources having incorrect URLs, while others not being available in the public domain.

6. This review examined
  - the selected COI in relation to the policy conclusions reached
  - the current availability of COI in the public domain and the policy conclusions reached
  - omission of COI in relation to specific aspects of asylum claims

### **Inconsistencies between the selected COI and the policy conclusions reached**

7. This section specifically examines the use of COI in sections 3.10 *Honour killings* and 3.11 *De-Arabisation* of the OGN.

#### *'Honour killings'*

8. The COI provided in the subsection *Honour killings in the KRG controlled area* does not support the conclusion reached in paragraph 3.10.14 that because the Kurdish government has made amendments to the penal code and set up women's shelters "[I]t can be argued that sufficiency of protection is available to women, against the threat of honour killing, in the KRG". No information is provided on the selection and admission process nor on the capacity of these shelters. Moreover, the mere information that the Kurdish government has been a "leading voice in denouncing honour killings" (para. 3.10.9) and has made "amendments to the penal code" (para. 3.10.14) does not automatically lead to the inference that in practice the Kurdish authorities are able to provide sufficient protection to women fleeing 'honour crimes'.
9. The conclusion reached in the above mentioned paragraph 3.10.9 that the "KRG has been a leading voice in denouncing honour killings and has amended its penal code [...] It has also made significant progress in acknowledging the occurrence of honour killings and raising public awareness [...]" is not supported by the footnoted source, namely the section *Honour Killings* in the January 2009 UKBA Country of Origin Information Service (COIS) report on Iraq.<sup>1</sup> The inference made by the OGN is much stronger than what has been selected and included in the January 2009 Iraq COIS report and suggests either that the information was taken from a different source or misinterpreted.
10. The issue of protection for men fearing 'honour crimes' is hardly touched upon in the COI selected for this section, while in the conclusion (para. 3.10.13) it is left open whether the Iraqi central government would be able to provide sufficient protection. In addition, no mention is made whether men fearing 'honour crimes' in the KRI would be able to avail themselves of the protection of the Kurdish government, despite referencing the U.S. Department of State as stating that "honour killings are widespread in the KRG" (para. 3.10.3).
11. With regards to the general provision of COI, a lack of COI is noted on the prevalence of 'honour crimes' in southern and central Iraq, while the information on the availability of state protection from the Iraqi central government has been placed in the subsection *Honour killings in the KRG controlled area* (para. 3.10.8). Moreover, as mentioned already above, hardly any COI has been

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<sup>1</sup> UKBA COIS, Country of Origin Information Report: Iraq, 12/01/2009, 'Honour' killings/crime, <http://www.homeoffice.gov.uk/rds/pdfs09/iraq-130109.doc>

included on the situation of men fearing 'honour crimes' in both southern and central Iraq and in the KRI.

12. The whole section also only refers to 'honour killings' and fails to mention 'honour crimes', which include intentional burnings and other forms of physical violence perpetuated by family members against women and men for breaching the so-called 'family honour'. No COI is included on this, though a body of evidence exists in the public domain as outlined in Annex 1.<sup>2</sup>
13. The COI available in the public domain in relation to the availability of state protection in the KRI with regards to 'honour crimes' notes that legislation against 'honour crimes' has not lessened the occurrence of 'honour crimes'.<sup>3</sup> Moreover, UNHCR specifically states that "women fearing "honour killing" as well as persons fleeing tribal conflict (blood feuds)" may "not be able to find protection upon relocation in the three Northern Governorates", as "they may still be within reach of their families or communities which are the sources of the threats".<sup>4</sup>
14. Amnesty International reports that police directorates specialising in violence against women are located in main cities and thus out of reach for women in rural areas who want to report violence or threats against them.<sup>5</sup> Moreover, a lack of female staff within these directorates is noted, which may inhibit the level of reporting, even in urban areas.<sup>6</sup>
15. With regards to the availability of shelters, Amnesty International reports that the capacity of the six shelters operating in the KRI as of February 2009 "is insufficient to meet the true level of need".<sup>7</sup> The May 2009 COIS report on the Kurdistan Regional Government Area, which is

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<sup>2</sup> See for example: United Nations Assistance Mission for Iraq (UNAMI), UNAMI Human Rights Report, 1 January – 30 June 2009, 14/12/2009, para. 36, [http://www.uniraq.org/documents/UNAMI\\_Human\\_Rights\\_Report15\\_January\\_June\\_2009\\_EN.pdf](http://www.uniraq.org/documents/UNAMI_Human_Rights_Report15_January_June_2009_EN.pdf); United Nations, Report of the Secretary-General pursuant to paragraph 6 of resolution 1830 (2008), 02/06/2009, para. 44, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/351/80/PDF/N0935180.pdf?OpenElement>; United Nations High Commissioner for Refugees (UNHCR), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers, 27/04/2009, para. 257, <http://www.unhcr.org/refworld/docid/49f569cf2.html>; Amnesty International, Hope and Fear: Human Rights in the Kurdistan Region of Iraq, 14/04/2009, sections 1 and 8, <http://www.amnesty.org/en/library/info/MDE14/006/2009/en>; United Nations Assistance Mission for Iraq (UNAMI), Eliminating Violence against Women: Perspectives on Honor-Related Violence in the Iraqi Kurdistan Region, Sulaimaniya Governorate, 16/03/2009, sections III, IV, V and VI, <http://www.unhcr.org/refworld/type,COUNTRYREP,UNAMI,,49d07d5a2,0.html>

<sup>3</sup> See the Danish Immigration Service, Security and Human Rights Issues in Kurdistan Region of Iraq (KRI), and South/Central Iraq (S/C Iraq) - Report from the Danish Immigration Service's (DIS), the Danish Refugee Council's (DRC) and Landinfo's joint fact finding mission to Erbil and Sulaymaniyah, KRI; and Amman, Jordan, 6 to 23 March 2009, 03/07/2009, Section 7.1.2 and 7.1.2.1, <http://www.unhcr.org/refworld/type,FACTFINDING,,,4a5b17ee2,0.html>; United Nations High Commissioner for Refugees (UNHCR), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers, 27/04/2009, paras. 235, 256, 257, 332, <http://www.unhcr.org/refworld/docid/49f569cf2.html>

<sup>4</sup> United Nations High Commissioner for Refugees (UNHCR), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers, 27/04/2009, paras. 135 and 137, <http://www.unhcr.org/refworld/docid/49f569cf2.html>

<sup>5</sup> Amnesty International, Hope and Fear: Human Rights in the Kurdistan Region of Iraq, 14/04/2009, Section 8 <http://www.amnesty.org/en/library/info/MDE14/006/2009/en>

<sup>6</sup> Amnesty International, Hope and Fear: Human Rights in the Kurdistan Region of Iraq, 14/04/2009, Section 8 <http://www.amnesty.org/en/library/asset/MDE14/006/2009/en/c2e5ae23-b204-4b46-b7f5-06dc1501f62f/mde140062009en.pdf>

<sup>7</sup> Amnesty International, Hope and Fear: Human Rights in the Kurdistan Region of Iraq, 14/04/2009, Section 8

referenced in the OGN as a source, also excerpted this sentence in paragraph 21.42.<sup>8</sup> However, the OGN fails to mention it and only includes the information that precedes this sentence on the number of shelters that exist in each Northern governorate. Moreover, the January 2009 COIS report, which is referenced in the OGN as a source, includes information by the Finnish Fact Finding Mission report in paragraph 26.58 quoting a Norwegian Organisation as saying that “available shelters are full, and women cannot often return from the shelters to their families. Some women have been killed after they have returned to their families”.<sup>9</sup>

16. The Danish Immigration Service (DIS) report, quoting the UNHCR Eligibility Guidelines, states that although “‘honour killings’ are prohibited by law; they are often concealed as accidents, suicides or suicide attempts”.<sup>10</sup> Amnesty International reported a similar situation.<sup>11</sup>
17. Amnesty International reports that “some police officers [...] are unwilling or unable to respond effectively when confronted with cases of violence against women” even if some have been trained on gender issues, including ‘honour crimes’.<sup>12</sup> UNHCR reports that “[W]hile the KRG pledges to investigate and prosecute “honour killings” and other violence against women, most cases go unpunished. In the rare cases in which a person is convicted of having committed an “honour crime”, sentences are often lenient”.<sup>13</sup> Amnesty International has also reported on the criminal courts awarding “inappropriately lenient sentences for men convicted of killing a female relative”.<sup>14</sup> Similarly, the United Nations Assistance Mission for Iraq (UNAMI) reports that “despite the efforts by legislators, many crimes [honour crimes] went unpunished”.<sup>15</sup> Unreliable statistics or conflicting statistics amongst government departments seem to conflate the real numbers of reported and prosecuted cases.<sup>16</sup>

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<http://www.amnesty.org/en/library/asset/MDE14/006/2009/en/c2e5ae23-b204-4b46-b7f5-06dc1501f62f/mde140062009en.pdf>

<sup>8</sup> UKBA COIS, Country of Origin Information Report: Kurdistan Regional Government Area of Iraq, 21/05/2009, para. 21.42, <http://www.homeoffice.gov.uk/rds/pdfs09/iraq-kurdistan-220509.doc>

<sup>9</sup> UKBA COIS, Country of Origin Information Report: Iraq, 12/01/2009, para. 26.58, <http://www.homeoffice.gov.uk/rds/pdfs09/iraq-130109.doc>

<sup>10</sup> See the Danish Immigration Service, Security and Human Rights Issues in Kurdistan Region of Iraq (KRI), and South/Central Iraq (S/C Iraq) - Report from the Danish Immigration Service's (DIS), the Danish Refugee Council's (DRC) and Landinfo's joint fact finding mission to Erbil and Sulaymaniyah, KRI; and Amman, Jordan, 6 to 23 March 2009, 03/07/2009, Section 7.1.2,

<http://www.unhcr.org/refworld/type,FACTFINDING,,,4a5b17ee2,0.html> and United Nations High Commissioner for Refugees (UNHCR), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers, 27/04/2009, para. 257, <http://www.unhcr.org/refworld/docid/49f569cf2.html>

<sup>11</sup> Amnesty International, Hope and Fear: Human Rights in the Kurdistan Region of Iraq, 14/04/2009, Section 8 <http://www.amnesty.org/en/library/info/MDE14/006/2009/en>

<sup>12</sup> Amnesty International, Hope and Fear: Human Rights in the Kurdistan Region of Iraq, 14/04/2009, Section 8 <http://www.amnesty.org/en/library/info/MDE14/006/2009/en>

<sup>13</sup> United Nations High Commissioner for Refugees (UNHCR), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers, 27/04/2009, para. 257, <http://www.unhcr.org/refworld/docid/49f569cf2.html>

<sup>14</sup> Amnesty International, Hope and Fear: Human Rights in the Kurdistan Region of Iraq, 14/04/2009, Section 8 <http://www.amnesty.org/en/library/info/MDE14/006/2009/en>

<sup>15</sup> United Nations Assistance Mission for Iraq (UNAMI), UNAMI Human Rights Report, 1 January – 30 June 2009, 14/12/2009, para. 3,

[http://www.uniraq.org/documents/UNAMI\\_Human\\_Rights\\_Report15\\_January\\_June\\_2009\\_EN.pdf](http://www.uniraq.org/documents/UNAMI_Human_Rights_Report15_January_June_2009_EN.pdf)

<sup>16</sup> Danish Immigration Service, Security and Human Rights Issues in Kurdistan Region of Iraq (KRI), and South/Central Iraq (S/C Iraq) - Report from the Danish Immigration Service's (DIS), the Danish Refugee Council's (DRC) and Landinfo's joint fact finding mission to Erbil and Sulaymaniyah, KRI; and Amman, Jordan, 6 to 23 March 2009, 03/07/2009, Section 7.1.2,

<http://www.unhcr.org/refworld/type,FACTFINDING,,,4a5b17ee2,0.html>

18. Amnesty International also report that “many perpetrators have not been brought to justice – often because investigations have failed to identify the perpetrators or because suspects remain at large”.<sup>17</sup> A similar situation is reported in the DIS report, where an international organisation in Erbil interviewed by the DIS states that “[...] the police does not always deal with and report all cases as prescribed by the Government”.<sup>18</sup> The Guardian reported that “[...] disputes over such murders [‘honour crimes’] are resolved between families or tribes by the payment of a forfeit, or the gift of another woman, which the manager of an Iraqi organisation based in the KRI that works to combat violence against children confirmed by stating “[T]he authorities say such agreements are necessary for social stability, to prevent revenge killings”.<sup>19</sup> The International Crisis Group quoted a Yazidi as saying that the Kurdish government, in order to “contain” Kurdish Islamists, “[...] tend to give them free rein in matters such as honour crime in order to bolster their Islamic credentials and overall legitimacy”.<sup>20</sup> Amnesty International documents several cases where suspects of ‘honour crimes’ remain at large or where the Kurdish authorities failed to take the necessary “preventative or restraining measures” against men posing a threat to women although “they had been alerted to the threat”.<sup>21</sup>

#### *De-Arabisation*

19. The COI provided in the OGN, though not replicated or cross-referenced in the *De-Arabisation* section, does not necessarily support the conclusion reached in paragraph 3.11.9 and at the very least should be included in this section for clarity and information purposes.
20. The above mentioned COI as found in the section on *Former members of the Ba’ath Party* mentions the “threats, harassment and arbitrary detention, often in facilities of the Kurdish security and intelligence services in the region” Arabs face in areas of “Mosul and Kirkuk under de facto control of the KRG and the Region of Kurdistan” because of their “perceived association with the former regime” (para. 3.9.5). Moreover, Arab IDPs in the KRI reportedly “suffer discrimination and are given little assistance by the Kurdish authorities due to security fears” (para. 3.9.5).
21. The OGN lacks any mention on the treatment of ethnic or religious minorities<sup>22</sup>, apart from Christians in section 3.12.

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<sup>17</sup> Amnesty International, Hope and Fear: Human Rights in the Kurdistan Region of Iraq, 14/04/2009, Section 1 <http://www.amnesty.org/en/library/info/MDE14/006/2009/en>

<sup>18</sup> Danish Immigration Service, Security and Human Rights Issues in Kurdistan Region of Iraq (KRI), and South/Central Iraq (S/C Iraq) - Report from the Danish Immigration Service's (DIS), the Danish Refugee Council's (DRC) and Landinfo's joint fact finding mission to Erbil and Sulaymaniyah, KRI; and Amman, Jordan, 6 to 23 March 2009, 03/07/2009, Section 7.1.2, <http://www.unhcr.org/refworld/type,FACTFINDING,,4a5b17ee2,0.html>

<sup>19</sup> The Guardian, Freedom Lost, 13/12/2007, <http://www.guardian.co.uk/world/2007/dec/13/gender.iraq>

<sup>20</sup> International Crisis Group, Iraq's New Battlefield: The Struggle over Ninewa, 28/09/2009, section V, B, 3, <http://www.crisisgroup.org/home/index.cfm?id=6318>

<sup>21</sup> Amnesty International, Hope and Fear: Human Rights in the Kurdistan Region of Iraq, 14/04/2009, Section 8 <http://www.amnesty.org/en/library/info/MDE14/006/2009/en>

<sup>22</sup> See also information provided further below under the heading *Omission of important COI in relation to Freedom of movement, Family members of former Baath party members and ethnic and religious minorities.*

22. The latest U.S. Department of State annual human rights report<sup>23</sup> and Human Rights Watch annual report<sup>24</sup>, both covering events in 2008, report the ongoing discrimination ethnic minorities face, amongst others Arabs, especially in the KRI and the KRI administered areas.
23. Reviewing the accuracy of the selected information in this section, one instance of misrepresentation was observed. In the last sentence of paragraph 3.11.6 the U.S. Department of State is footnoted as reporting that “At the end of 2008, 16500 people had received compensation”, when actually the source states “Approval for compensation has been given to 16,500, and 8,602 wafadin have received compensation, and in theory, have returned to their original provinces” (emphasis added).<sup>25</sup>

### **Inconsistencies between the COI available in the public domain and the policy conclusions reached**

24. This section specifically examines the use of COI in sections 3.12 *Christians* and 3.16 *Prison Conditions* of the OGN.

#### *Relocation possibility for Christians from South and Central Iraq to the KRG*

25. Despite the recent determination in *SR (Iraqi Arab Christian: relocation to KRG) Iraq CG [2009] UKAIT 00038*, the available COI suggests that additional factors might impede an Iraqi Arab Christian from South and Central Iraq of relocating to the KRI, as outlined further below under the section *Omission of important COI in relation to freedom of movement*.

#### *Prison conditions*

26. Extremely limited COI is presented in the section that begins at paragraph 3.16 on Prison Conditions. In fact, only the 2007 and 2008 U.S. Department of State (USSD) annual Iraq reports on Human Rights are cited. It is not clear why no additional or corroborative information has been included in the OGN, especially given that prison conditions and the treatment of detainees has been so widely reported on. Given that the most recent USSD report available at the time of publication of the July 2009 Iraq OGN was the report covering the events of 2008, in addition to being one-dimensional, the information in the OGN is also out-dated.
27. At paragraph 3.16.8 the OGN concludes that “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.”
28. The only information that is included in the OGN on the incidence of torture and ill-treatment that is reported to occur in detention facilities in Iraq is information from the 2008 USSD at paragraphs 3.16.4 and 3.16.6, which details the number of cases of torture and abuse confirmed by the Ministry of Human Rights following its inspection of Iraqi detention facilities:

<sup>23</sup> U.S. Department of State, 2009 Human Rights Report: Iraq, 11/03/2010, Section 6, <http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136069.htm>

<sup>24</sup> Human Rights Watch, World Report 2010: Iraq, 20/01/2010, *Violence against Minorities*, <http://www.hrw.org/en/node/87714>

<sup>25</sup> U.S. Department of State, 2008 Human Rights Report: Iraq, 25/02/2009, Section 1 (e) *Property Restitution*, <http://www.state.gov/g/drl/rls/hrrpt/2008/nea/119116.htm>

3.16.4 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. [130]

3.16.6 The Ministry of Human Rights in central and southern Iraq and in the KRG following its inspection of national detention facilities in 2008 reported that there were 112 confirmed cases of torture and abuse in MOI facilities, 69 within MOD facilities, 107 in KRG facilities and no cases in MOJ facilities.

29. It is inaccurate to describe these incidents of torture reported to the Ministry of Human Rights (MOHR) as solely “mistreatment” (see conclusion in para. 3.16.8). Furthermore the MOHR figures only relate to “confirmed cases of torture” and are thus not necessarily indicative of the level of abuse committed in detention facilities. The following country information details the widespread incidents of torture and ill treatment committed in both South and Central Iraq and in the Kurdistan Region of Iraq respectively:

*Torture and Ill-treatment in detention facilities in South and Central Iraq*

30. The recently published USSD report that covers the events of 2009, notes that “reports of abuse at the point of arrest and during the investigation period, particularly by the MOI’s Federal Police and the MOD’s battalion-level forces, continued to be common. Allegations of abuse included beatings, sexual assault, and death threats.”<sup>26</sup>
31. Amnesty International describes that torture and other ill-treatment of detainees in detention centres controlled by the Iraqi security forces are “widespread”.<sup>27</sup> Methods of torture are reported to include “beating with cables and hosepipes, prolonged suspension by the limbs, administration of electric shocks to sensitive parts of the body, breaking of limbs, and removal of toenails with pliers. Some detainees have been forced to sit on sharp objects such as broken bottles. Others have been raped or threatened with rape”.<sup>28</sup>
32. Amnesty International also describes the climate of impunity that exists in Iraq, reporting that whilst the Iraqi authorities have set up investigations into incidents of torture and deaths in custody, the outcomes of such investigations have never been made public.<sup>29</sup> Similarly Human Rights Watch reported in February 2010 that “torture and ill-treatment remain a serious problem in Iraqi detention facilities and jails” and that the government has not provided any information as to the progress of the special committee set up to investigate allegations of torture in Iraq’s prisons.<sup>30</sup>

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<sup>26</sup> U.S. Department of State, 2009 Human Rights Report: Iraq, 11/03/2010, section c

<http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136069.htm>

<sup>27</sup> Amnesty International, Document - Iraq: Human rights briefing, March 2010, 01/03/2010, Section 2

<http://www.amnesty.org/en/library/info/MDE14/004/2010/en>

<sup>28</sup> Amnesty International, Document - Iraq: Human rights briefing, March 2010, 01/03/2010, Section 2

<http://www.amnesty.org/en/library/info/MDE14/004/2010/en>

<sup>29</sup> Amnesty International, Document - Iraq: Human rights briefing, March 2010, 01/03/2010, Section 6

<http://www.amnesty.org/en/library/info/MDE14/004/2010/en>

<sup>30</sup> Human Rights Watch, Iraq's 2010 National Elections: A Human Rights Platform for Candidates, 25/02/2010, Section 3, <http://www.hrw.org/en/news/2010/02/25/iraq-s-2010-national-elections>

33. The United Nations Assistance Mission for Iraq, in its Human Rights Report covering 1 January to 30 June 2009 expressed concern that it continued to receive reports of the use of torture or physical abuse against detainees to extract confessions, and that in a number of detention facilities, many detainees had complained of being physically abused by security forces.<sup>31</sup>

*Torture and ill-treatment in detention facilities in the Kurdistan Region of Iraq*

34. The 2009 USSD report notes that the KRI's anti-terrorist Law allows for abusive interrogation and that practices reportedly occurred in some detention centres.<sup>32</sup> According to a MOHR report, signs of "systemic torture" were observed in Asayish detention facilities, although cases in prisons run by KRG social welfare authorities were described as "isolated instances".<sup>33</sup> One international organisation interviewed for the March 2009 Danish Fact Finding Mission to the KRI reported that torture occurs in KRI detention centres, especially in centres run by the Asayish.<sup>34</sup> Amnesty International noted in April 2009 that it had received numerous reports of torture and other ill-treatment of political suspects in detention centres both under the control of the Asayish and other security agencies.<sup>35</sup>

35. Methods of torture are reported to include "the application of electric shocks to different parts of the body; beatings with fists and with a cable and/or metal or wooden baton; suspension by the wrists or ankles; beating on the soles of the feet (falaqa); sleep deprivation; and kicking. In a few cases, detainees are alleged to have died as a result."<sup>36</sup> The same source reports that the Asayish appears to operate in climate of impunity, stating that the KRG authorities have failed to establish "prompt, impartial and independent investigations" into the allegations.<sup>37</sup> Another source interviewed by the Danish Immigration Service stated that "new secret detention facilities keep emerging".<sup>38</sup> The United Nations Assistance Mission for Iraq, in its Human Rights Report covering 1 January to 30 June 2009 also reported that whilst many inmates interviewed by UNAMI made no serious complaints about their treatment "serious violations of the rights of detainees by the KRG authorities have been documented [...] including beatings during interrogation, torture by electric shocks, forced confessions, and the lack of medical attention.

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<sup>31</sup> United Nations Assistance Mission for Iraq (UNAMI), UNAMI Human Rights Report, 1 January – 30 June 2009, 14/12/2009, para. 74, [http://www.uniraq.org/documents/UNAMI\\_Human\\_Rights\\_Report15\\_January\\_June\\_2009\\_EN.pdf](http://www.uniraq.org/documents/UNAMI_Human_Rights_Report15_January_June_2009_EN.pdf)

<sup>32</sup> U.S. Department of State, 2009 Human Rights Report: Iraq, 11/03/2010, section c <http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136069.htm>

<sup>33</sup> U.S. Department of State, 2009 Human Rights Report: Iraq, 11/03/2010, section c <http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136069.htm>

<sup>34</sup> Danish Immigration Service, Security and Human Rights Issues in Kurdistan Region of Iraq (KRI), and South/Central Iraq (S/C Iraq) - Report from the Danish Immigration Service's (DIS), the Danish Refugee Council's (DRC) and Landinfo's joint fact finding mission to Erbil and Sulaymaniyah, KRI; and Amman, Jordan, 6 to 23 March 2009, 03/07/2009, Section 4.5 <http://www.nyidanmark.dk/NR/ronlyres/5EAE4A3C-B13E-4D7F-99D6-8F62EA3B2888/0/Iraqreport09FINAL.pdf>

<sup>35</sup> Amnesty International, Hope and Fear: Human Rights in the Kurdistan Region of Iraq, 14/04/2009, Section 6 <http://www.amnesty.org/en/library/info/MDE14/006/2009/en>

<sup>36</sup> Amnesty International, Hope and Fear: Human Rights in the Kurdistan Region of Iraq, 14/04/2009, Section 6 <http://www.amnesty.org/en/library/info/MDE14/006/2009/en>

<sup>37</sup> Amnesty International, Hope and Fear: Human Rights in the Kurdistan Region of Iraq, 14/04/2009, Section 3 <http://www.amnesty.org/en/library/info/MDE14/006/2009/en>

<sup>38</sup> Danish Immigration Service, Security and Human Rights Issues in Kurdistan Region of Iraq (KRI), and South/Central Iraq (S/C Iraq) - Report from the Danish Immigration Service's (DIS), the Danish Refugee Council's (DRC) and Landinfo's joint fact finding mission to Erbil and Sulaymaniyah, KRI; and Amman, Jordan, 6 to 23 March 2009, 03/07/2009, Section 4.5 <http://www.nyidanmark.dk/NR/ronlyres/5EAE4A3C-B13E-4D7F-99D6-8F62EA3B2888/0/Iraqreport09FINAL.pdf>

Ill-treatment and abuse are often reported to be committed while detainees are blindfolded".<sup>39</sup> UNAMI had also received reports of rape committed against female detainees.<sup>40</sup>

### **Omission of important COI in relation to family members of former Ba'ath party members, ethnic and religious minorities, and freedom of movement**

36. This section specifically examines COI that needs to be included for specific asylum claims and more generally in relation to a possible internal relocation option.

#### *Family members of former Baath party members*

37. The OGN fails to include any information on the treatment and situation of family members of former Baath party members.

38. Despite the lack of recent reports on this issue, this is more likely due to underreporting since in the context of Iraq, certain individuals can fall into different categories of claims due to multiple (perceived) identities and cumulative methods of and reasons for persecution. Therefore, news articles reporting on murders having taken place might not be able to establish the motivation for such an event to occur.

39. UNHCR<sup>41</sup>, the U.S. Commission on International Religious Freedom<sup>42</sup> and Human Rights Watch<sup>43</sup> note that family members of individuals associated with *the former Ba'ath party may be targets* of reprisals. UNHCR specifically notes that whilst former Ba'ath party members and associates are no longer systematically targeted, they or their families may become the subject of individually targeted revenge attacks, especially if they were responsible for human rights abuses.<sup>44</sup> It is important to note that even the families of former lower level party members have been targets of abuse.<sup>45</sup>

#### *Ethnic and religious minorities*

45. It is assumed that no information and guidance on ethnic and religious minorities, apart from section 3.12 *Christians* and to a limited extent Arabs in section 3.11, is included since they are not

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<sup>39</sup> United Nations Assistance Mission for Iraq (UNAMI), UNAMI Human Rights Report, 1 January – 30 June 2009, 14/12/2009, para. 83,

[http://www.uniraq.org/documents/UNAMI\\_Human\\_Rights\\_Report15\\_January\\_June\\_2009\\_EN.pdf](http://www.uniraq.org/documents/UNAMI_Human_Rights_Report15_January_June_2009_EN.pdf)

<sup>40</sup> United Nations Assistance Mission for Iraq (UNAMI), UNAMI Human Rights Report, 1 January – 30 June 2009, 14/12/2009, para. 88,

[http://www.uniraq.org/documents/UNAMI\\_Human\\_Rights\\_Report15\\_January\\_June\\_2009\\_EN.pdf](http://www.uniraq.org/documents/UNAMI_Human_Rights_Report15_January_June_2009_EN.pdf)

<sup>41</sup> United Nations High Commissioner for Refugees (UNHCR), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers, 27/04/2009, para. 296,

<http://www.unhcr.org/refworld/docid/49f569cf2.html>

<sup>42</sup> U.S. Commission on International Religious Freedom, Iraq Report – 2008, 16/12/2009,

<http://www.uscirf.gov/images/iraq%20report%20final.pdf>

<sup>43</sup> Human Rights Watch, "The Silent Treatment": Fleeing Iraq, Surviving in Jordan, 28/11/2006, section VII,

<http://www.hrw.org/en/node/11107/section/8>

<sup>44</sup> United Nations High Commissioner for Refugees (UNHCR), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers, 27/04/2009, para. 296,

<http://www.unhcr.org/refworld/docid/49f569cf2.html>

<sup>45</sup> Human Rights Watch, "The Silent Treatment": Fleeing Iraq, Surviving in Jordan, 28/11/2006, section VII,

<http://www.hrw.org/en/node/11107/section/8>

the “most common types of claims received”<sup>46</sup> from Iraq. However, if Yazidis would fall into this category, the recent Country Guidance determination in ZQ (serving soldier) Iraq CG [2009] UKAIT 00048 would need to be included, as well as current and accurate COI:

[...] vi) NH (Iraq-Yazidis) Iraq CG [2004] UKIAT 00306 is no longer to be followed. Whilst being a Yazidi does not as such place a person at risk on return to central and southern Iraq, it is a significant risk factor and special reasons would need to exist for not finding that such a person faces a real risk of persecution or treatment contrary to Article 3 ECHR,

*Freedom of movement, with special reference to Iraqi governorates’ entry requirements*

46. The standard paragraphs that are referred to throughout the OGN with regards to the availability of internal relocation are found in section 2 *Country assessment, Internal travel*.

47. Paragraphs 2.10-2.16 cover the possible dangers faced *en route*, the possibility of curfews, the limitations for unaccompanied women to travel freely and without harassment, and the documents needed in order to relocate within Iraq.

48. However, no mention is made about the difficulties Iraqis face in internally relocating due to each governorate’s different, specific and even sporadic entry requirements.

➤ *Entry conditions to the Kurdistan Region of Iraq*

49. According to COI available in the public domain, the entry conditions to the KRI for someone who originates from Southern or Central Iraq are not straightforward. Ethnic affiliation, religious orientation, identity and security concerns, as well as whether the person in question has a sponsor or any other family/ tribal links in the KRI are determinative factors.<sup>47</sup> The Institute for War and Peace Reporting describes relocating to the KRI as “similar to moving to a foreign country” with the KRG strict about who it lets in.<sup>48</sup>

50. Entry requirements are reported to vary across the three Northern governorates:

Entry to Dahuk Governorate: According to UNHCR, single persons not originating from the three Northern Governorates “need to have an acquaintance for security reasons”, ie to check their security credentials, and also have to obtain a permit to stay from the Residency Section in the

<sup>46</sup> As per paragraph 1.1 of the June 2009 Iraq OGN.

<sup>47</sup> See amongst others United Nations High Commissioner for Refugees (UNHCR), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers, 27/04/2009, Section IV (C) (2), <http://www.unhcr.org/refworld/docid/49f569cf2.html>; IOM, Dahuk, Erbil & Sulaymaniyah Governorate Profiles Post February 2006 IDP Needs Assessments, December 2008, Section I (2), [http://www.iom-iraq.net/Library/idp\\_gov\\_profiles/2008/Governorate\\_Profiles\\_Dahuk\\_Erbil\\_Sulaymaniyah\\_Dec08.pdf](http://www.iom-iraq.net/Library/idp_gov_profiles/2008/Governorate_Profiles_Dahuk_Erbil_Sulaymaniyah_Dec08.pdf); Kurdish Human Rights Project / Bar Human Rights Committee, A Fact-Finding Mission in Kurdistan, Iraq: Gaps in the Human Rights Infrastructure, 30/07/2008, Section 2 (2.3), <http://www.ein.org.uk/members/country/full.shtml?x=244567> (Subscription only, but report can also be bought here:

[http://www.khrp.org/component/page,shop.product\\_details/flypage,shop.flypage/product\\_id,147/category\\_id,18/manufacture\\_id,0/option,com\\_virtuemart/Itemid,36/vmcchk,1/](http://www.khrp.org/component/page,shop.product_details/flypage,shop.flypage/product_id,147/category_id,18/manufacture_id,0/option,com_virtuemart/Itemid,36/vmcchk,1/)).

<sup>48</sup> Institute for War and Peace Reporting, Iraqi Crisis Report Arab IDPs Seek New Lives in Erbil, 09/12/2009, [http://www.iwpr.net/?p=icr&s=f&o=358117&apc\\_state=henpicr](http://www.iwpr.net/?p=icr&s=f&o=358117&apc_state=henpicr)

Security Department.<sup>49</sup> It seems that the authorities of the Governorate of Dahuk are making a distinction between people wanting to relocate to Dahuk (without any specific reasons it appears) and IDPs.<sup>50</sup> For the latter, UNHCR reports that they need to either establish political links to Dahuk or have fled violence or persecution.<sup>51</sup>

Entry to Erbil Governorate: According to UNHCR, a person not originating from the three Northern Governorates needs to have an acquaintance if wishing to relocate to Erbil and also needs to obtain a permit to stay from the Residency Section in the Security Department.<sup>52</sup> It appears that (s)he also needs to establish a reason to remain though UNHCR does not further explain what exactly is meant by this.<sup>53</sup> Once all these criteria are met the person is issued with an information card that needs to be renewed every three months according to the previously mentioned criteria.<sup>54</sup>

Entry to Sulaymaniyah Governorate: According to UNHCR, a person not originating from the three Northern Governorates must have a sponsor.<sup>55</sup> Once s(he) has established the reasons for stay and passed the security screening, the person is granted a permit to stay for six months, which is subject to renewal.<sup>56</sup> UNHCR further reports that “persons originating from Kirkuk [...], including Kurds [...], are not able to stay for demographic and political reasons”.<sup>57</sup>

51. One respondent interviewed by the Danish Immigration Service responsible for checkpoints in the KRI confirmed that anyone who is not on a list of suspected persons will have access to the KRI, but will still have to pass security checks and a body search at the checkpoints registering for

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<sup>49</sup> United Nations High Commissioner for Refugees (UNHCR), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers, 27/04/2009, Section IV (C) (2), paras. 116 and 117, <http://www.unhcr.org/refworld/docid/49f569cf2.html>

<sup>50</sup> United Nations High Commissioner for Refugees (UNHCR), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers, 27/04/2009, Section IV (C) (2), paras. 116 and 117, <http://www.unhcr.org/refworld/docid/49f569cf2.html>

<sup>51</sup> United Nations High Commissioner for Refugees (UNHCR), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers, 27/04/2009, Section IV (C) (2), paras. 116 and 117, <http://www.unhcr.org/refworld/docid/49f569cf2.html>

<sup>52</sup> United Nations High Commissioner for Refugees (UNHCR), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers, 27/04/2009, Section IV (C) (2), paras. 118 and 119, <http://www.unhcr.org/refworld/docid/49f569cf2.html>

<sup>53</sup> United Nations High Commissioner for Refugees (UNHCR), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers, 27/04/2009, Section IV (C) (2), paras. 118 and 119, <http://www.unhcr.org/refworld/docid/49f569cf2.html>

<sup>54</sup> United Nations High Commissioner for Refugees (UNHCR), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers, 27/04/2009, Section IV (C) (2), paras. 118 and 119, <http://www.unhcr.org/refworld/docid/49f569cf2.html>

<sup>55</sup> United Nations High Commissioner for Refugees (UNHCR), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers, 27/04/2009, Section IV (C) (2), paras. 120 and 121, <http://www.unhcr.org/refworld/docid/49f569cf2.html>

<sup>56</sup> United Nations High Commissioner for Refugees (UNHCR), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers, 27/04/2009, Section IV (C) (2), paras. 120 and 121, <http://www.unhcr.org/refworld/docid/49f569cf2.html>

<sup>57</sup> United Nations High Commissioner for Refugees (UNHCR), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers, 27/04/2009, Section IV (C) (2), paras. 120 and 121, <http://www.unhcr.org/refworld/docid/49f569cf2.html>

residency in the KRG and gaining access.<sup>58</sup> Once the person has gained access, (s)he can collect their residence permit within a few days at a local office.<sup>59</sup> If (s)he decided to move governorate within the KRI, the person will have to register again in the new location.<sup>60</sup> It needs to be noted though that these statements were made about the KRI as a whole and no distinction was made on potential different approaches by the three Northern Governorates.<sup>61</sup>

52. The Institute for War and Peace Reporting corroborates that Iraqis relocating to Erbil, Sulaimaniyah or Dahuk must receive security clearance and obtain a residency permit through a local sponsor which is typically an employer or a local resident.<sup>62</sup> The same source states that most sponsors are civil servants who can easily be tracked by the Kurdish authorities.<sup>63</sup> The International Rescue Committee on Iraqi Refugees further reports that Iraqis relocating to the KRI “must be sponsored by local citizen in order to acquire a residence or public sector work permit”.<sup>64</sup>
53. Notwithstanding the above, UNHCR notes that entry/ residency requirements “[...] may be subject to sudden changes” and “are not applied uniformly across the three Governorates”.<sup>65</sup> Additionally, UNHCR Amman, who was also interviewed by the Danish Immigration Service, does not consider “IFA to KRI to be reasonable” due to many refugees lacking strong links to the area and the high cost of living they will experience in the KRI.<sup>66</sup>

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<sup>58</sup> Danish Immigration Service, Security and Human Rights Issues in Kurdistan Region of Iraq (KRI), and South/Central Iraq (S/C Iraq) - Report from the Danish Immigration Service's (DIS), the Danish Refugee Council's (DRC) and Landinfo's joint fact finding mission to Erbil and Sulaymaniyah, KRI; and Amman, Jordan, 6 to 23 March 2009, 03/07/2009, Section 1.5.1,

<http://www.unhcr.org/refworld/type,FACTFINDING,,,4a5b17ee2,0.html>

<sup>59</sup> Danish Immigration Service, Security and Human Rights Issues in Kurdistan Region of Iraq (KRI), and South/Central Iraq (S/C Iraq) - Report from the Danish Immigration Service's (DIS), the Danish Refugee Council's (DRC) and Landinfo's joint fact finding mission to Erbil and Sulaymaniyah, KRI; and Amman, Jordan, 6 to 23 March 2009, 03/07/2009, Section 1.5.1,

<http://www.unhcr.org/refworld/type,FACTFINDING,,,4a5b17ee2,0.html>

<sup>60</sup> Danish Immigration Service, Security and Human Rights Issues in Kurdistan Region of Iraq (KRI), and South/Central Iraq (S/C Iraq) - Report from the Danish Immigration Service's (DIS), the Danish Refugee Council's (DRC) and Landinfo's joint fact finding mission to Erbil and Sulaymaniyah, KRI; and Amman, Jordan, 6 to 23 March 2009, 03/07/2009, Section 1.5.1,

<http://www.unhcr.org/refworld/type,FACTFINDING,,,4a5b17ee2,0.html>

<sup>61</sup> Danish Immigration Service, Security and Human Rights Issues in Kurdistan Region of Iraq (KRI), and South/Central Iraq (S/C Iraq) - Report from the Danish Immigration Service's (DIS), the Danish Refugee Council's (DRC) and Landinfo's joint fact finding mission to Erbil and Sulaymaniyah, KRI; and Amman, Jordan, 6 to 23 March 2009, 03/07/2009, Section 1.5.1,

<http://www.unhcr.org/refworld/type,FACTFINDING,,,4a5b17ee2,0.html>

<sup>62</sup> Institute for War and Peace Reporting, Iraqi Crisis Report Arab IDPs Seek New Lives in Erbil, 09/12/2009,

[http://www.iwpr.net/?p=icr&s=f&o=358117&apc\\_state=henpicr](http://www.iwpr.net/?p=icr&s=f&o=358117&apc_state=henpicr)

<sup>63</sup> Institute for War and Peace Reporting, Iraqi Crisis Report Arab IDPs Seek New Lives in Erbil, 09/12/2009,

[http://www.iwpr.net/?p=icr&s=f&o=358117&apc\\_state=henpicr](http://www.iwpr.net/?p=icr&s=f&o=358117&apc_state=henpicr)

<sup>64</sup> International Rescue Committee (USA), A Tough Road Home: Uprooted Iraqis in Jordan, Syria and Iraq, 17/02/2010, Section II,

[http://www.theirc.org/sites/default/files/resource-file/IRC\\_Report\\_02\\_18\\_ToughRoad.pdf](http://www.theirc.org/sites/default/files/resource-file/IRC_Report_02_18_ToughRoad.pdf)

<sup>65</sup> United Nations High Commissioner for Refugees (UNHCR), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers, 27/04/2009, Section IV (C) (2), para. 115,

<http://www.unhcr.org/refworld/docid/49f569cf2.html>

<sup>66</sup> Danish Immigration Service, Security and Human Rights Issues in Kurdistan Region of Iraq (KRI), and South/Central Iraq (S/C Iraq) - Report from the Danish Immigration Service's (DIS), the Danish Refugee Council's (DRC) and Landinfo's joint fact finding mission to Erbil and Sulaymaniyah, KRI; and Amman, Jordan, 6 to 23 March 2009, 03/07/2009, Section 3,

<http://www.unhcr.org/refworld/type,FACTFINDING,,,4a5b17ee2,0.html>

54. UNHCR further states that protection by the KRG authorities will only be provided if
- The person is admitted and allowed to legally remain in the KRI
  - The KRG authorities are able and willing to provide protection.<sup>67</sup>
55. UNHCR further states that the following might be considered to pose a security risk, amongst others, by the KRG authorities and might not be able to avail themselves of the protection need, may still be targeted by the perpetrators and/ or may have difficulties accessing basic services:
- Single men (might be considered to pose a security risk)
  - Persons with no family, community, political or business links (might not be admitted)
  - Kurds from Kirkuk (might not be admitted to Governorates of Sulaymaniyah and Dahuk for political and demographic reasons and even if admitted, may face obstacles to access services in all three governorates)
  - Women fearing "honour killing" as well as persons fleeing tribal conflict (blood feuds), as they may still be within reach of their families or communities which are the sources of the threats.<sup>68</sup>
56. Inferring from the above, the country information suggests that several factors need to be taken into account before establishing whether internal relocation for someone originating from South or Central Iraq to the KRI is possible, due to her/ his place of habitual residence (this relates specifically to Sulaymaniyah and Dahuk), lack of sponsor/ acquaintance (this relates to all three Governorates), gender and family situation (this relates to all three Governorates).
- *Entry conditions to South and Central Iraq*
57. The UNHCR Guidelines assert that in general, no internal flight alternative is available in South and Central Iraq owing to the possibility of renewed violence, impunity of non-state actors, restrictions on accessibility to districts, and hardships in areas of relocation.<sup>69</sup> The findings and conclusions of the April 2009 Guidelines were reinforced in a December 2009 statement, where UNHCR urged states to "refrain from forcibly returning Iraqis originating from the region of Central Iraq back to those governorates deemed to be unsafe, namely – Baghdad, Ninewa, Salah al Din, Diyala, Tameem (Kirkuk)".<sup>70</sup> In that same statement, UNHCR advises "against involuntary returns to Iraq of persons originating from Central Iraq".<sup>71</sup>
58. In terms of eligibility for entry, the documents excerpted in Annex 1 contain information from the December 2008 IOM Governorate Profiles on the eligibility of IDP registration and entry

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<sup>67</sup> United Nations High Commissioner for Refugees (UNHCR), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers, 27/04/2009, Section IV (C) (2), para. 122, <http://www.unhcr.org/refworld/docid/49f569cf2.html>

<sup>68</sup> United Nations High Commissioner for Refugees (UNHCR), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers, 27/04/2009, Section IV (C) (2), para. 135, <http://www.unhcr.org/refworld/docid/49f569cf2.html>

<sup>69</sup> United Nations High Commissioner for Refugees (UNHCR), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers, 27/04/2009, Section IV (C), para. 90, <http://www.unhcr.org/refworld/docid/49f569cf2.html>

<sup>70</sup> United Nations High Commissioner for Refugees (UNHCR), UNHCR reiterates concern about involuntary returns to Iraq amid violence, 11/12/2009, <http://www.unhcr.org/4b222efe9.html>

<sup>71</sup> United Nations High Commissioner for Refugees (UNHCR), UNHCR reiterates concern about involuntary returns to Iraq amid violence, 11/12/2009, <http://www.unhcr.org/4b222efe9.html>

to each governorate.<sup>72</sup> No restrictions for IDP entry were reported for any of the governorates in South and Central Iraq, with the exception of Kirkuk.<sup>73</sup>

59. The IOM asserts in February 2009 that registration has been able to reach 25% of returning IDP families, but had stopped in most of the governorates by early 2009.<sup>74</sup> It states “IDP registration has currently stopped in the majority of governorates across Iraq. This is due to both lack of new displacements and the current focus on return, integration, and reintegration for IDP families”.<sup>75</sup>
60. The UNHCR also described the bureaucratic and logistical difficulties in registering as an IDP, noting that “unregistered IDPs are at risk of harassment by the police and the local authorities and hampers access to assistance and basic services”.<sup>76</sup> Problems faced by being unable to register included “inability to transfer PDS cards, no access to social welfare grants and emergency assistance as well as inability to rent or buy properties” (UNHCR 27/04/2009).<sup>77</sup>
61. Inferring from the above, the country information suggests that several factors need to be taken into account before establishing whether internal relocation is possible within South and Central

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<sup>72</sup> See IOM, Kirkuk, Ninewa & Salah Al-Din Governorate Profiles Post February 2006 IDP Needs Assessments, December 2008, [http://www.iom-iraq.net/Library/idp\\_gov\\_profiles/2008/Governorate\\_Profiles\\_Kirkuk\\_Ninewa\\_Salah\\_Al-Din\\_Dec08.pdf](http://www.iom-iraq.net/Library/idp_gov_profiles/2008/Governorate_Profiles_Kirkuk_Ninewa_Salah_Al-Din_Dec08.pdf); IOM, Anbar, Baghdad & Diyala Governorate Profiles Post February 2006 IDP Needs Assessments, December 2008, [http://www.iom-iraq.net/Library/idp\\_gov\\_profiles/2008/Governorate\\_Profiles\\_Anbar\\_Baghdad\\_Diyala\\_Dec08.pdf](http://www.iom-iraq.net/Library/idp_gov_profiles/2008/Governorate_Profiles_Anbar_Baghdad_Diyala_Dec08.pdf); IOM, Basrah, Muthanna & Thi-Qar Governorate Profiles Post February 2006 IDP Needs Assessments, December 2008, [http://www.iom-iraq.net/Library/idp\\_gov\\_profiles/2008/Governorate\\_Profiles\\_Basrah\\_Muthanna\\_Thi-Qar\\_Dec08.pdf](http://www.iom-iraq.net/Library/idp_gov_profiles/2008/Governorate_Profiles_Basrah_Muthanna_Thi-Qar_Dec08.pdf); IOM, Missan, Wassit & Qadissiya Governorate Profiles Post February 2006 IDP Needs Assessments, December 2008, [http://www.iom-iraq.net/Library/idp\\_gov\\_profiles/2008/Governorate\\_Profiles\\_Missan\\_Qadissiya\\_Wassit\\_Dec08.pdf](http://www.iom-iraq.net/Library/idp_gov_profiles/2008/Governorate_Profiles_Missan_Qadissiya_Wassit_Dec08.pdf); IOM, Babylon, Kerbala, Najaf Governorate Profiles Post February 2006 IDP Needs Assessments, December 2008, [http://www.iom-iraq.net/Library/idp\\_gov\\_profiles/2008/Governorate\\_Profiles\\_Babylon\\_Kerbala\\_Najaf\\_Dec08.pdf](http://www.iom-iraq.net/Library/idp_gov_profiles/2008/Governorate_Profiles_Babylon_Kerbala_Najaf_Dec08.pdf).

<sup>73</sup> See IOM, Kirkuk, Ninewa & Salah Al-Din Governorate Profiles Post February 2006 IDP Needs Assessments, December 2008, [http://www.iom-iraq.net/Library/idp\\_gov\\_profiles/2008/Governorate\\_Profiles\\_Kirkuk\\_Ninewa\\_Salah\\_Al-Din\\_Dec08.pdf](http://www.iom-iraq.net/Library/idp_gov_profiles/2008/Governorate_Profiles_Kirkuk_Ninewa_Salah_Al-Din_Dec08.pdf); IOM, Anbar, Baghdad & Diyala Governorate Profiles Post February 2006 IDP Needs Assessments, December 2008, [http://www.iom-iraq.net/Library/idp\\_gov\\_profiles/2008/Governorate\\_Profiles\\_Anbar\\_Baghdad\\_Diyala\\_Dec08.pdf](http://www.iom-iraq.net/Library/idp_gov_profiles/2008/Governorate_Profiles_Anbar_Baghdad_Diyala_Dec08.pdf); IOM, Basrah, Muthanna & Thi-Qar Governorate Profiles Post February 2006 IDP Needs Assessments, December 2008, [http://www.iom-iraq.net/Library/idp\\_gov\\_profiles/2008/Governorate\\_Profiles\\_Basrah\\_Muthanna\\_Thi-Qar\\_Dec08.pdf](http://www.iom-iraq.net/Library/idp_gov_profiles/2008/Governorate_Profiles_Basrah_Muthanna_Thi-Qar_Dec08.pdf); IOM, Missan, Wassit & Qadissiya Governorate Profiles Post February 2006 IDP Needs Assessments, December 2008, [http://www.iom-iraq.net/Library/idp\\_gov\\_profiles/2008/Governorate\\_Profiles\\_Missan\\_Qadissiya\\_Wassit\\_Dec08.pdf](http://www.iom-iraq.net/Library/idp_gov_profiles/2008/Governorate_Profiles_Missan_Qadissiya_Wassit_Dec08.pdf); IOM, Babylon, Kerbala, Najaf Governorate Profiles Post February 2006 IDP Needs Assessments, December 2008, [http://www.iom-iraq.net/Library/idp\\_gov\\_profiles/2008/Governorate\\_Profiles\\_Babylon\\_Kerbala\\_Najaf\\_Dec08.pdf](http://www.iom-iraq.net/Library/idp_gov_profiles/2008/Governorate_Profiles_Babylon_Kerbala_Najaf_Dec08.pdf).

<sup>74</sup> IOM Emergency Needs Assessments, Three Years of Post-Samarra Displacement in Iraq, 22/02/2009, [http://www.iom-iraq.net/Library/IOM\\_Displacement\\_Reports\\_3\\_Years\\_of\\_Post-Samarra\\_Displacement.pdf](http://www.iom-iraq.net/Library/IOM_Displacement_Reports_3_Years_of_Post-Samarra_Displacement.pdf)

<sup>75</sup> IOM Emergency Needs Assessments, Three Years of Post-Samarra Displacement in Iraq, 22/02/2009, [http://www.iom-iraq.net/Library/IOM\\_Displacement\\_Reports\\_3\\_Years\\_of\\_Post-Samarra\\_Displacement.pdf](http://www.iom-iraq.net/Library/IOM_Displacement_Reports_3_Years_of_Post-Samarra_Displacement.pdf)

<sup>76</sup> United Nations High Commissioner for Refugees (UNHCR), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers, 27/04/2009, Section IV (C), para. 100, <http://www.unhcr.org/refworld/docid/49f569cf2.html>

<sup>77</sup> United Nations High Commissioner for Refugees (UNHCR), UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers, 27/04/2009, Section IV (C), para. 100, <http://www.unhcr.org/refworld/docid/49f569cf2.html>

Iraq, depending on existing family ties and the possibility of gaining protection in specific ethnically homogenous neighbourhoods. In addition, owing to the cessation of the IDP registration system, it seems that Iraqis will face serious difficulties in accessing grants, shelter, ration distributions, and healthcare.

62. A last point of contention is the inference reached in paragraph 2.14 based on a FCO letter not available in the public domain and dated August 2008. It relates to dangers by road travel as being “less for Iraqi nationals than for other nationalities [...] And despite the criminal and security threats ordinary Iraqis had not obviously curtailed their road movements”. No additional or corroborating COI is included. It is unclear and not corroborated how roadside bombings and mines/ UXO - information on their existence is included in the same paragraph and in paragraph 2.10 - can differentiate between nationalities. Moreover, the mere fact that Iraqis have to continue living, earn a living and thus travel around the country should not be used to infer that the “criminal and security threats” for “ordinary Iraqis” is less real and problematic.

**Special concern: Standard *Internal Relocation* paragraphs**

63. Throughout the OGN, standard paragraphs are used that contain COI on internal relocation. Despite the above mentioned limitation of these paragraphs with regards to lack of information on freedom of movement, in four instances additional information was included in these standard paragraphs. This information, which is important for the particular claim, can easily be overlooked given its situation in a standard paragraph.

**Special concern: Section 3.15 *Gay men and Lesbians***

64. As a point of special concern are the last two paragraphs that form part of the *Conclusion* of Section 3.15 in relation to claims raised by Gay men and Lesbians. These refer to the issue of ‘discretion’ that often arises in LGBT asylum/ human rights applications and which the judiciary took a view on in *HJ (Homosexuality: Reasonably Tolerating Living Discreetly) Iran [2008] UKAIT 00044*.
65. Recently, the Supreme Court unanimously<sup>78</sup> held that to pretend that one’s sexual orientation or sexuality does not exist or that the behaviour by which it manifests itself can be suppressed is to deny that person’s fundamental right to be who they are. Lord Hope said that the Court of Appeal in the case of *J v Secretary of State for the Home Department* should have considered that it was “wrong to say that an applicant for protection was “expected” to live discreetly if it was intended as a statement of what the applicant must do”. Lord Hope clearly stated that it was a fundamental error to refuse asylum to an applicant on the basis that it would be reasonable to expect him to be discreet even if s/he is unwilling or unable to do so. The Lords accepted the proposition put forward by the appellants that what should be considered is not what the applicant could do if returned but what he would do. The Supreme Court thereby rejected the ‘reasonably tolerable’ test established by the Court of Appeal in *J v Secretary of State for the Home Department*.

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<sup>78</sup> *HJ (Iran) v Secretary of State for the Home Department (Rev 1) [2010] UKSC 31 (07 July 2010)*.

66. The Lords set out a two stage process to be considered when examining a claim for asylum based on fear of persecution due to one's sexual identity. The first stage is to consider whether the applicant is gay. The second stage includes a series of questions related to what the situation will be on return. The questions in the second stage relate to how the applicant will behave if returned and how others will react to that behaviour.

More specifically:

- 1) Is there a risk of persecution for gays who live openly in the country of origin?
- 2) What would the applicant do if returned to his country of origin? In assessing how the applicant will behave on return, "he cannot and must not be expected to conceal aspects of his sexual orientation which he is unwilling to conceal, even from those whom he knows may disapprove of it". What is reasonably tolerable to conceal is not part of this test. If the applicant would live openly and thereby be exposed to a real risk of persecution, s/he has a well-founded fear of persecution.
- 3) If the applicant would in fact live discreetly, the decision-maker must consider *why* he would do so.
- 4) If the applicant chooses to conceal part of his sexual identity on return in response to social pressures or for cultural or religious reasons and not due to a fear of persecution then s/he will not be granted asylum. Lord Hope expressly stated that the applicant should not expect to live a life as openly as s/he does in the UK as the purpose of the Refugee Convention is not to guarantee to everyone the same human rights standards as in the country of refuge.
- 5) If the applicant is likely to conceal his/her sexual identity due to a fear of persecution, or because the fear of persecution is a material reason for living discreetly, it will be necessary to assess whether the fear is well-founded and if it is asylum must be granted.

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