



# Country Guidance: Iraq

*Guidance note and common analysis*

*The country guidance represents the common assessment of the situation in the country of origin by EU Member States.*

June 2019





# Country Guidance: **Iraq**

---

## *Common analysis and guidance note*

The country guidance represents the common assessment of the situation in the country of origin by senior policy officials from EU Member States, in accordance with current EU legislation and jurisprudence of the Court of Justice of the European Union (CJEU).

This guidance note does not release Member States from the obligation to individually, objectively and impartially examine each application for international protection. Each decision should be taken on the basis of the individual circumstances of the applicant and the situation in Iraq at the moment of the decision, according to precise and up-to-date country information, obtained from various relevant sources (Article 10 of the Asylum Procedures Directive).

The analysis and guidance provided within this document are not exhaustive.

June 2019

***Europe Direct is a service to help you find answers to your questions about the European Union.***

**Freephone number (\*):  
00 800 6 7 8 9 10 11**

(\*) Certain mobile telephone operators do not allow access to 00800 numbers or these calls may be billed.

More information on the European Union is available on the Internet (<http://europa.eu>).

ISBN 978-92-9485-054-6

doi: 10.2847/80555

© European Asylum Support Office 2019

Neither EASO nor any person acting on its behalf may be held responsible for the use which may be made of the information contained herein.

## Contents

<b>Introduction</b>	8
<b>Guidance note: Iraq</b>	11
I. Actors of persecution or serious harm	12
II. Refugee status	14
Guidance on particular profiles with regard to qualification for refugee status	15
III. Subsidiary protection	26
Article 15(a) QD: death penalty or execution	26
Article 15(b) QD: torture or inhuman or degrading treatment or punishment	26
Article 15(c) QD: serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict	28
IV. Actors of protection	31
V. Internal protection alternative	32
VI. Exclusion	36
<b>Common analysis: Iraq</b>	39
General remarks	40
I. Actors of persecution or serious harm	42
The Iraqi State	43
Popular Mobilisation Units and Tribal Mobilisation Militias	43
Kurdistan Regional Government (KRG) authorities	44
The Islamic State of Iraq and the Levant (ISIL)	45
Tribes	46
Other non-State actors	46
II. Refugee status	47
Analysis of particular profiles with regard to qualification for refugee status	49
1. Persons perceived to be associated with ISIL	50
2. Sunni Arabs	52
3. Individuals approached for recruitment by armed groups	54
4. Former Baath party members	55
5. Deserters from armed forces	56
6. Political opposition activists and protesters	58
7. Journalists, media workers and human rights activists	59
8. Members of the Iraqi Security Forces (ISF), Popular Mobilisation Units (PMU), Peshmerga and local police	59
9. Individuals perceived to oppose ISIL	60
10. (Perceived) collaborators of Western armed forces, organisations, or companies	61
11. Humanitarian workers	61
12. LGBTI persons	62
13. Individuals perceived to transgress moral codes	63
14. Individuals considered to have committed blasphemy and/or apostasy	65

15. Religious and ethnic minorities, and stateless persons .....	67
a. Turkmen .....	68
b. Iraqis of African descent.....	68
c. Yazidi .....	69
d. Christians.....	70
e. Shabak .....	71
f. Kaka'i .....	72
g. Sabeen-Mandaeans .....	72
h. Baha'i.....	73
i. Zoroastrian .....	74
j. Bidoon .....	75
k. Fayli Kurds .....	75
l. Roma .....	76
m. Palestinian.....	77
16. Women .....	78
<i>COI summary and risk analysis</i> .....	79
<i>Nexus to a reason for persecution</i> .....	83
17. Children.....	84
<i>COI summary and risk analysis</i> .....	84
<i>Nexus to a reason for persecution</i> .....	89
18. Persons living with disabilities and persons with severe medical issues.....	89
19. Persons involved in and affected by blood feuds in the context of tribal conflict .....	90
20. Individuals accused of ordinary crimes.....	91
III. Subsidiary protection .....	93
Article 15(a) QD.....	93
Article 15(b) QD.....	95
Article 15(c) QD .....	97
Preliminary remarks.....	97
Reference period .....	97
Legal framework.....	97
a. Armed conflict (international or internal) .....	98
b. Qualification of a person as a 'civilian' .....	99
c. Indiscriminate violence .....	100
Indicators of indiscriminate violence .....	102
Indiscriminate violence in Iraq.....	104
Anbar .....	105
Babil/Babylon .....	105
Baghdad.....	106
Basrah.....	108
Dahuk/Dohuk .....	109

Dhi Qar/Thi-Qar .....	109
Diyala .....	110
Erbil .....	111
Kerbala .....	112
Kirkuk (Tameem) .....	113
Missan .....	114
Muthanna .....	115
Najaf .....	115
Ninewa .....	116
Qadissiya .....	117
Salah al-Din .....	118
Sulaymaniyah incl. Halabja .....	119
Wassit .....	120
d. Serious and individual threat .....	121
e. Qualification of the harm as a 'threat to (a civilian's) life or person' .....	122
f. Nexus/'by reason of' .....	122
IV. Actors of protection .....	123
The State .....	123
a. Iraqi State .....	123
b. Kurdistan Regional Government (KRG) .....	125
Parties or organisations, including international organisations .....	127
V. Internal protection alternative .....	128
Preliminary remarks .....	128
Part of the country .....	129
Safety .....	130
Travel and admittance .....	131
Reasonableness to settle .....	134
VI. Exclusion .....	139
Preliminary remarks .....	139
Applicability of the exclusion grounds .....	141
a. Crime against peace, war crime, crime against humanity .....	141
b. Serious (non-political) crime .....	145
c. Acts contrary to the purposes and principles of the United Nations .....	146
d. Danger to the community or the security of the Member State .....	147
Individual responsibility .....	147
<b>Annex I. Abbreviations and glossary .....</b>	<b>149</b>
<b>Annex II. Country of origin information references .....</b>	<b>151</b>
<b>Annex III. Relevant case law .....</b>	<b>153</b>

## Introduction

### *Why is this country guidance developed?*

On 21 April 2016, the Council of the European Union agreed on the creation of a senior-level policy network, involving all Member States and coordinated by EASO, with the task to carry out a joint assessment and interpretation of the situation in main countries of origin.<sup>1</sup> The network supports EU-level policy development based on common country of origin information (COI), by jointly interpreting such information in light of the relevant provisions of the asylum acquis and taking into account the content of the EASO training material and practical guides where appropriate. The development of common analysis and guidance notes was also included as a key area in the new mandate of the European Union Agency for Asylum proposed by the European Commission.<sup>2</sup>

The country guidance is intended as a tool for policy-makers and decision-makers in the context of the Common European Asylum System (CEAS). It aims to assist in the examination of applications for international protection by applicants from Iraq, and to foster convergence in decision practices across Member States.

### *Is this guidance binding?*

The country guidance, developed by the Member States and published by EASO, is not binding. The guidance note, accompanied by the common analysis, shall be taken into account by Member States when examining applications for international protection, without prejudice to their competence for deciding on individual applications.

### *Who was involved in the development of this country guidance?*

This document is the result of the joint assessment by the Country Guidance Network, whose work was supported by a Drafting Team of selected national experts and by EASO. The European Commission and UNHCR provided valuable input in this process.

### *What is the applicable legal framework?*

In terms of applicable legal framework, the common analysis and guidance note are based on the provisions of the Qualification Directive (QD)<sup>3</sup> and the 1951 Geneva Convention Relating to the Status of Refugees, as well as jurisprudence of the Court of Justice of the European Union (CJEU); where appropriate, the jurisprudence of the European Court of Human Rights (ECtHR) is also taken into account.

### *What guidance on qualification for international protection is taken into account?*

The horizontal guidance framework applied in this analysis is based primarily on the '[EASO Practical Guide: Qualification for international protection](#)' and the '[EASO Practical Guide: Exclusion](#)'.<sup>4</sup> It also takes into account relevant Judicial Analyses, published by EASO, and in particular those on

---

<sup>1</sup> Council of the European Union, Outcome of the 3461<sup>st</sup> Council meeting, 21 April 2016, 8065/16, available at <http://www.consilium.europa.eu/media/22682/st08065en16.pdf>.

<sup>2</sup> European Commission, Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010, 4 May 2016, 2016/0131 (COD), available at [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160504/easo\\_proposal\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160504/easo_proposal_en.pdf).

<sup>3</sup> Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted.

<sup>4</sup> EASO Practical Guides are available at <https://www.easo.europa.eu/practical-tools>.



‘Qualification for International Protection (Directive 2011/95/EU)’, ‘Article 15(c) Qualification Directive (2011/95/EU)’, and on ‘Exclusion: Articles 12 and 17 Qualification Directive (2011/95/EU)’.<sup>5</sup>

Relevant UNHCR guidelines, and in particular the recently published ‘International Protection Considerations with Regard to People Fleeing the Republic of Iraq’, are also taken into account.<sup>6,7</sup>

### *What country of origin information has been used?*

The EASO Country Guidance documents should not be considered and should not be used or referenced as sources of country of origin information (COI). The information contained herein is based on EASO COI reports<sup>8</sup> and, in some instances, other sources, as indicated. Unlike the Country Guidance, these represent COI sources and can be referenced accordingly.

The country information analysed hereby includes, in particular, the following EASO COI reports:

- COI Report: Iraq Security situation (March 2019) [EN]
  - Iraq Body Count – civilian deaths 2012, 2017-2018 (supplement) [EN]
- COI Report: Iraq Targeting of individuals (March 2019) [EN]
- COI Report: Iraq Key socio-economic indicators (February 2019) [EN]
- COI Report: Iraq Internal Mobility (February 2019) [EN]
- COI Report: Iraq Actors of protection (November 2018) [EN]

References within this document are to the respective sections of these COI reports.

In addition, a recent UNHCR report on access and residency requirements in Iraq has been used as a source on the topic.<sup>9</sup>

See [Annex II. Country of origin information references](#).

### *How does country guidance assist in the individual assessment of applications for international protection?*

The guidance note and common analysis follow the steps of the examination of an individual application for international protection. This document looks into the relevant elements according the QD and provides a general assessment of the situation in the country of origin, along with guidance on relevant individual circumstances that should be taken into account.

Its approach is consistent with, and should be read in conjunction with, the more detailed horizontal guidance. For an outline and additional guidance on qualification for international protection and exclusion, see:

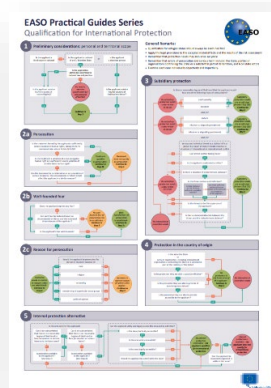
<sup>5</sup> Judicial analyses published by EASO are available at <https://www.easo.europa.eu/courts-and-tribunals>.

<sup>6</sup> UNHCR Handbook and guidelines on procedures and criteria for determining refugee status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, as well as other guidance, policy documents and UNHCR ExCom and Standing Committee conclusions are available at <https://www.refworld.org/rsd.html>.

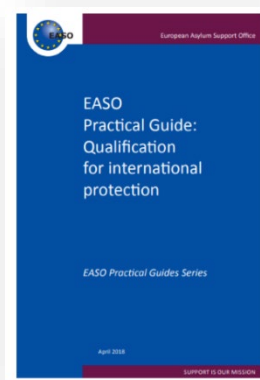
<sup>7</sup> UNHCR, International Protection Considerations with Regard to People Fleeing the Republic of Iraq, May 2019, available at: <https://www.refworld.org/docid/5cc9b20c4.html>.

<sup>8</sup> EASO COI reports are available at <https://www.easo.europa.eu/information-analysis/country-origin-information/country-reports>.

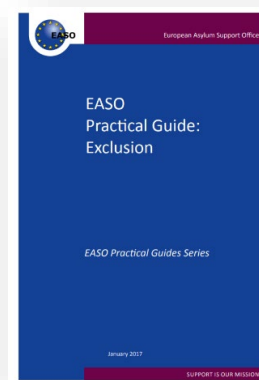
<sup>9</sup> UNHCR, Iraq: Country of Origin Information on Access and Residency Requirements in Iraq: Ability of Persons Origination from Formerly ISIS-Held or Conflict-Affected Areas to Legally Access and Remain in Proposed Areas of Relocation, 25 April 2019, available at <https://www.refworld.org/docid/5cc2c30d7.html>.



*EASO Practical Guide:  
Qualification for international  
protection, Flowchart poster  
for practitioners<sup>10</sup>*



*EASO Practical Guide:  
Qualification for international  
protection<sup>11</sup>*



*EASO Practical Guide:  
Exclusion<sup>12</sup>*

### *How is this document structured?*

The country guidance is structured into guidance note and common analysis:

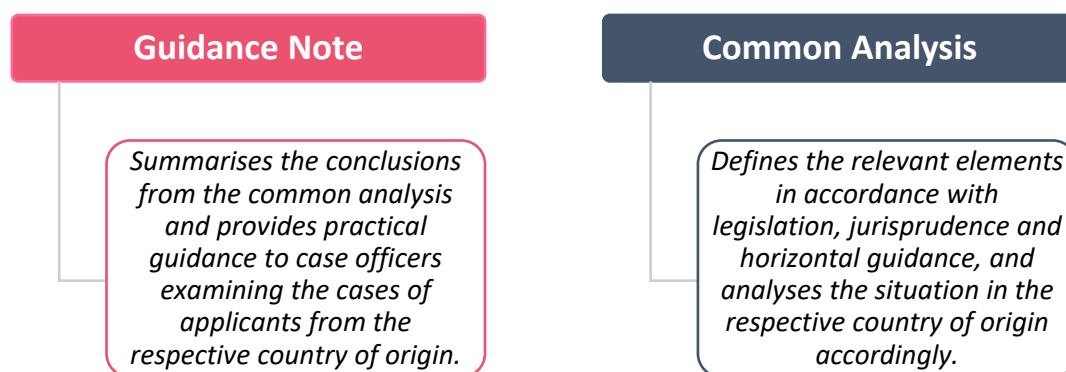


Figure 1. Country guidance elements.

For additional information and to access other available country guidance, see  
<https://www.easo.europa.eu/country-guidance>

<sup>10</sup> 'EASO Practical Guide: Qualification for international protection', Flowchart for practitioners, available at <https://www.easo.europa.eu/sites/default/files/easo-flowchart-for-practitioners-qualification-for-international-protection-2018.pdf>.

<sup>11</sup> 'EASO Practical Guide: Qualification for international protection', available at <https://www.easo.europa.eu/sites/default/files/easo-practical-guide-qualification-for-international-protection-2018.pdf>

<sup>12</sup> 'EASO Practical Guide: Exclusion', available at <https://www.easo.europa.eu/sites/default/files/EASO%20Practical%20Guide%20-%20Exclusion%20%28final%20for%20web%29.pdf>

## Guidance note: Iraq

- ▶ The guidance note summarises the conclusions of the common analysis and should be read in conjunction with it.

## I. Actors of persecution or serious harm

Risks to which a population of a country or a section of the population is generally exposed do not normally create in themselves an individual threat, which would qualify as serious harm ([Recital 35 QD](#)). Generally, persecution or serious harm must take the form of conduct on the part of a third party ([Article 6 QD](#)).

According to [Article 6 QD](#), actors of persecution or serious harm include:

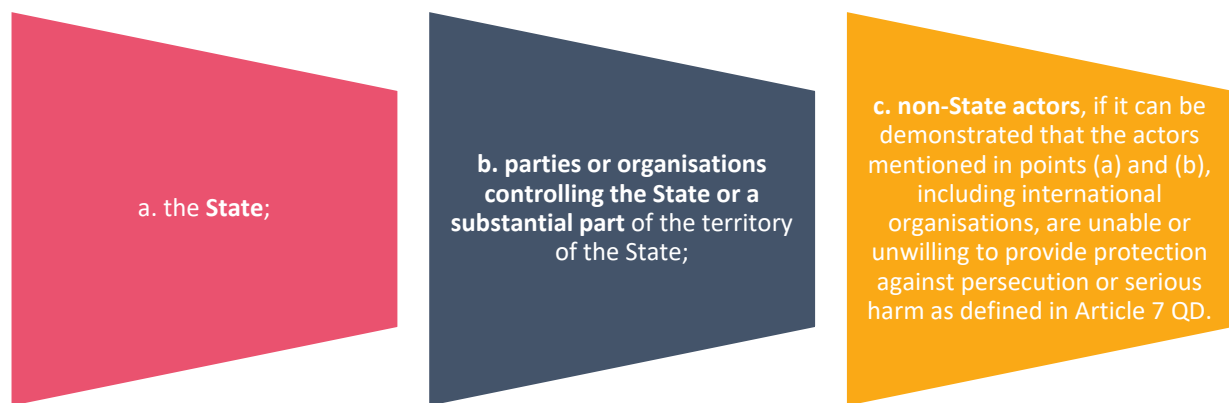


Figure 2. Actors of persecution or serious harm.

The following are the conclusions concerning some of the actors, as indicated in applications for international protection. The list of potential actors of persecution or serious harm is non-exhaustive.

- The **Iraqi State actors** include members of security forces and other authorities, such as provincial/local councils or other local officials, e.g. *mukhtars*. It should also be noted that the distinction between official State forces and non-State forces is not always clear. The Iraqi State authorities, in particular the Iraqi Security Forces (ISF) including the Iraqi army and the federal and local police, have been involved in committing a wide range of human rights violations, in particular within the course of fighting ISIL and after their defeat in December 2017.

The Iraqi State may be considered actor of persecution in specific circumstances.

- In addition to the ISF, there are also other armed groups affiliated with the Iraqi State.

The **Popular Mobilisation Units (PMU)**, also referred to as the Popular Mobilisation Forces (PMF), can be considered as complex umbrella organisation consisting of many different militias, out of which the majority are Shia militias. Although PMU are legally a State institution, in practice they retain autonomous control and influence, some of them with close links to the most important political parties.

The **Tribal Mobilisation (TM)** militias are composed of fighters from Sunni tribes. The TM are generally active locally in their own places of origin. The nature of these forces is difficult to categorise because some take orders directly from Iraqi forces and local authorities, while others strongly affiliate with and respond to orders from larger PMU.

Since 2014, elements of the PMU have been engaged in unlawful killings, disappearances, extortion and revenge attacks in the course of the fighting against ISIL. PMU have also been engaged in criminal activities and other abuses against civilians. Forced displacement, evictions, arrests, looting of homes, demolition of houses, threats, sexual abuse, harassment and discrimination by PMU and local militias were also reported.

The PMU and other militias may be considered actors of persecution or serious harm in specific circumstances. The PMU are generally considered State actors, although the State is unable to exert full control. Depending on the level of affiliation with the State in the particular case, other militias may be considered State or non-State actors.

- The **Kurdistan Regional Government (KRG) authorities**, such as the Peshmerga, the municipal police, and the Asayish, are accused of committing a wide range of human right violations such as arbitrary arrests, enforced disappearances, unlawful killings, torture and other forms of ill-treatment of ISIL-suspects, as well as retaliatory violence against Sunni Arab civilians. There are also reports of pressure and harassment by the KRG of certain ethnic minorities to declare themselves to be Kurds; as well as reports of detention of political opponents, violent suppression of demonstrations, killing of journalists and harassment of news outlets.

The KRG authorities may be considered State actors of persecution or serious harm in specific circumstances.

- The **Islamic State of Iraq and Levant (ISIL)** is a Salafi jihadist militant group, designated by the UN and internationally sanctioned as a terrorist organisation, whose goal is the establishment and expansion of a caliphate. In its campaign to 'purify' its territory according to its *takfir* doctrines, ISIL targeted Shia, as well as ethnic and religious minorities such as Christians, Yazidi, Shabaks, Kaka'i, and Kurds. It has committed violations, such as forced displacements, forced conversions, abductions, systematic and widespread killing of those not in conformity with their ideology, sexual violence, including sexual slavery, human trafficking, penalisation under its parallel justice system, etc.

ISIL was declared militarily defeated in December 2017 and it has not held territory in Iraq. However, there are an estimated 15 000 - 17 000 ISIL fighters still active in Iraq, who operate as a more traditional insurgent group and continue to carry out attacks. The remaining insurgent cells are mostly in the Hamreen mountains and other remote rural areas, mostly in areas previously controlled by ISIL in Anbar, Diyala, Kirkuk, Ninewa and Salah al-Din governorates.

ISIL is considered an actor of persecution or serious harm.

- **Tribes** in Iraq are often involved in conflicts and armed with heavy weapons. Tribal transgressions can result in violence. Tribal dispute mechanisms can involve violation of human rights, such as the practice of '*fasliya*' and 'honour' killings. It is also reported that tribes have enacted informal justice, revenge, assassinations and disappearances in tribal justice against ISIL suspects and continue to impede the return of persons perceived to have affiliation to ISIL.

Tribes may be considered a non-State actor of persecution or serious harm in specific circumstances.

- In specific situations, **other non-State actors** of persecution or serious harm may include the family (e.g. in the case of LGBTI persons, FGM, domestic violence), FGM practitioners, criminal gangs, etc.

Non-State actors, such as those mentioned above, may be considered actors of persecution or serious harm in specific situations.

## II. Refugee status

All elements of the definition of a refugee in accordance with the QD should be fulfilled for the qualification of the applicant as a refugee:

### Article 2(d) of the Qualification Directive Definitions

‘refugee’ means a third country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 [exclusion] does not apply;

[Article 9 QD](#) outlines how ‘persecution’ should be assessed.

[Article 10 QD](#) provides further clarification on the different reasons for persecution (race, religion, nationality, political opinion or membership of a particular social group). A link (nexus) between those reasons and the persecution or the absence of protection should be established in order for the applicant to qualify for refugee status.

Guidance on specific profiles of applicants, based on their personal characteristics or affiliations with a certain group (e.g. political, ethnic, religious), is provided below.

An individual assessment is required for every application. It should take into account the individual circumstances of the applicant and the relevant country of origin information. Factors to take into account in this assessment may include, for example:

- home area of the applicant and presence of the potential actor of persecution;
- nature of the applicant’s actions (whether or not they are perceived negatively and/or whether or not individuals engaged in such actions are seen as a priority target by the actor of persecution);
- visibility of the applicant (i.e. to what extent it is likely that the applicant is known to or could be identified by the potential actor of persecution); noting, however, that the applicant does not need to be individually identified by the actor of persecution, as long as his or her fear of persecution is well-founded;
- resources available to the applicant to avoid persecution (e.g. relation to powerful individuals, network);
- etc.

The fact that an applicant has already been subject to persecution or to direct threats of such persecution, is a serious indication of the applicant’s well-founded fear, unless there are good reasons to consider that such persecution will not be repeated ([Article 4\(4\) QD](#)).

## Guidance on particular profiles with regard to qualification for refugee status

This section refers to some of the profiles of Iraqi applicants, encountered in the caseload of EU Member States. It provides general conclusions on the profiles and guidance regarding additional circumstances to take into account in the individual assessment. Please note that some profiles are further split in sub-profiles and may appear in several categories.

The tables below summarise the conclusions with regard to different profiles and sub-profiles and aim at providing a practical tool to case officers. The distinction between the three categories is based on the likelihood for an applicant to qualify for refugee status. However, it should be noted that the placement of a particular profile under a certain category is not conclusive as to the individual protection needs of the applicant and each case should be examined individually. While examples are provided with regard to sub-profiles at differentiated risk and circumstances which may increase or decrease the risk, these examples are non-exhaustive and to be taken into account in light of all circumstances in the individual case.

Moreover, an individual applicant could fall under more than one profile included in this guidance note. The protection needs associated with all such circumstances should be fully examined.

Persons who belonged to a certain profile in the past or family members of an individual falling under a certain profile may have protection needs similarly to those outlined for the respective profile. This is not explicitly mentioned in the tables below, however, it should be taken into account in the individual assessment.

For relevant information and analysis, follow the [link](#) to the section on the respective profile within the common analysis. For ease of reference, the numbering of the profiles as per the common analysis is preserved herein.

The conclusions regarding each profile should be viewed without prejudice to the credibility assessment of the applicant's claims.

Based on available COI and analysis, it is concluded that individuals under the following profiles or sub-profiles would, in general, have a well-founded fear of persecution.

In these cases, nexus to a reason for persecution falling under the definition of a refugee (race, religion, nationality, membership of a particular social group or political opinion) is also, in general, substantiated.

Profiles / sub-profiles	Potential nexus
▶ (1) <b><u>Persons perceived to be associated with ISIL</u></b> (referring to ISIL suspects and 'ISIL families') *	▪ (imputed) political opinion
▶ (12) <b><u>LGBTI persons</u></b>	▪ membership of a particular social group
▶ (14) <b><u>Individuals considered to have committed blasphemy and/or apostasy</u></b>	▪ religion

However, the risk assessment should take into account the religious or non-religious practices the applicant will engage in and whether those would expose him or her to a real risk, also taking into account his or her home region (the risk is generally lower in the KRI), family and ethnic background, gender, etc.

\* Please note that exclusion considerations could be relevant to this profile.



Based on available COI and analysis, it is concluded that individuals under the following profiles or sub-profiles may have a well-founded fear of persecution in relation to certain risk-enhancing circumstances.

The table below provides examples of circumstances which may be relevant to take into account in the individual risk assessment and indicates a potential nexus to a reason for persecution (race, religion, nationality, membership of a particular social group or political opinion).

Profiles / sub-profiles	Examples of circumstances to take into account in the risk assessment	Potential nexus
<p>► (2) <u>Sunni Arabs</u></p>	<ul style="list-style-type: none"> <li>■ area of origin</li> <li>■ tribe</li> <li>■ factors related to risk of affiliation with ISIL:               <ul style="list-style-type: none"> <li>■ (perceived) family links to ISIL members</li> <li>■ place of origin and/or residency in a formerly ISIL-held area during ISIL control and time of fleeing</li> <li>■ (perceived) tribal affiliation with ISIL</li> <li>■ name</li> <li>■ etc.</li> </ul> </li> </ul> <p>See the profile <u><i>Persons perceived to be associated with ISIL</i></u>.</p> <ul style="list-style-type: none"> <li>■ etc.</li> </ul> <p>See also the profile below concerning <u><i>Former Baath party members</i></u>.</p>	<ul style="list-style-type: none"> <li>■ (imputed) political opinion (e.g. ISIL affiliation, Baath party)</li> <li>■ in individual cases, religion</li> </ul>
<p>► (3) <u>Individuals approached for recruitment by armed groups</u> *</p>	<p>The risk for an individual applicant would only be substantiated in exceptional cases. Risk - impacting circumstances may include:</p> <ul style="list-style-type: none"> <li>■ gender</li> <li>■ area of origin</li> <li>■ ethnic/religious background (e.g. Kurds for the PKK, Sunni Arabs for ISIL)</li> <li>■ age (being an adolescent)</li> <li>■ being an IDP</li> <li>■ presence/influence of armed groups</li> <li>■ poor socio-economic situation of the family</li> <li>■ etc.</li> </ul>	<ul style="list-style-type: none"> <li>■ (imputed) political opinion (with regard to consequences of refusal)</li> <li>■ in the case of child recruitment, depending on individual circumstances</li> </ul>

▶ (4) <b><u>Former Baath party members</u></b> *	<p>In general, the risk of persecution for a regular Baath party member is minimal and dependent on the specific individual circumstances, such as:</p> <ul style="list-style-type: none"> <li>■ supporting in public the ideology of the Baath party</li> <li>■ having had a high-ranking position in the party</li> <li>■ being a former Saddam-era military or police officer</li> <li>■ having served in the intelligence services during the Saddam regime</li> <li>■ potential (perceived) affiliation with ISIL</li> <li>■ etc.</li> </ul> <p>See also <i><u>Persons perceived to be associated with ISIL</u></i> and <i><u>Sunni Arabs</u></i>.</p>	■ (imputed) political opinion
▶ (5) <b><u>Deserters from armed forces</u></b> *	<p>The risk is considered very low. Risk-impacting circumstances may include:</p> <ul style="list-style-type: none"> <li>■ forces the applicant belonged to</li> <li>■ rank/position of the applicant</li> <li>■ situation during which the desertion occurred (e.g. during disturbances or state of emergency)</li> <li>■ etc.</li> </ul>	■ (imputed) political opinion
▶ (6) <b><u>Political opposition activists and protesters</u></b>	<p>Participation in protests in itself would normally not lead to a well-founded fear of persecution. Risk-impacting circumstances may include:</p> <ul style="list-style-type: none"> <li>■ nature of activities and degree of involvement</li> <li>■ leadership role</li> <li>■ being known to the authorities (e.g. previous arrest)</li> <li>■ etc.</li> </ul>	■ (Imputed) political opinion
▶ (7) <b><u>Journalists, media workers and human rights activists</u></b>	<ul style="list-style-type: none"> <li>■ nature of activities (topic they report on)</li> <li>■ political and/or sectarian background of the individual</li> <li>■ gender</li> <li>■ visibility</li> <li>■ being known to the authorities</li> <li>■ etc.</li> </ul>	■ (imputed) political opinion

<p>► (8) <b><u>Members of the Iraqi Security Forces (ISF), Popular Mobilisation Units (PMU), Peshmerga and local police</u></b> *</p>	<ul style="list-style-type: none"> <li>■ area of work and origin (proximity to areas where ISIL continues to operate)</li> <li>■ visibility of the applicant</li> <li>■ position within the organisation</li> <li>■ period since leaving the forces</li> <li>■ personal enmities</li> <li>■ etc.</li> </ul>	<ul style="list-style-type: none"> <li>■ (imputed) political opinion</li> </ul>
<p>► (9) <b><u>Individuals perceived to oppose ISIL</u></b></p>	<ul style="list-style-type: none"> <li>■ area of work and origin (areas where ISIL continues to operate)</li> <li>■ tribal affiliation and the tribe's standing vis-à-vis ISIL</li> <li>■ visibility of the applicant</li> <li>■ position within the community</li> <li>■ public expression of support for the government or condemnation of ISIL's actions</li> <li>■ personal enmities</li> <li>■ etc.</li> </ul> <p>Since ISIL's operational capabilities have diminished significantly, the threat posed by ISIL to individuals under this profile has decreased compared to previous years.</p>	<ul style="list-style-type: none"> <li>■ (imputed) political opinion</li> <li>■ religion (e.g. when they are accused as <i>takfir</i> by ISIL)</li> </ul>
<p>► (11) <b><u>Humanitarian workers</u></b></p>	<ul style="list-style-type: none"> <li>■ gender (see also <a href="#">Women in public roles</a>)</li> <li>■ nature of activities (e.g. providing assistance to women and children associated with ISIL, see also <a href="#">Persons perceived to be associated with ISIL</a>)</li> <li>■ region of work/activity</li> <li>■ etc.</li> </ul>	<ul style="list-style-type: none"> <li>■ (imputed) political opinion</li> <li>■ religion (e.g. when they are accused as <i>takfir</i> by ISIL)</li> </ul>
<p>► (13) <b><u>Individuals perceived to transgress moral codes</u></b></p>	<ul style="list-style-type: none"> <li>■ gender (the risk is higher for women)</li> <li>■ conservative environment</li> <li>■ perception of traditional gender roles by the family and society</li> <li>■ etc.</li> </ul>	<ul style="list-style-type: none"> <li>■ religion (e.g. inter-sect marriages, as well as in individual cases of persons targeted by Shia militias)</li> <li>■ membership of a particular social group (e.g. persons transgressing social norms)</li> </ul>

▶ (15 a) <b><u>Turkmen</u></b>	<ul style="list-style-type: none"> <li>area of origin (e.g. Shia Turkmen in areas where ISIL continues to operate)</li> <li>perceived affiliation with ISIL or PMU</li> <li>religion</li> <li>etc.</li> </ul>	<ul style="list-style-type: none"> <li>race (ethnicity)</li> <li>(imputed) political opinion</li> <li>religion</li> </ul>
▶ (15 b) <b><u>Iraqis of African descent</u></b>	<ul style="list-style-type: none"> <li>lack of identity documents</li> <li>age</li> <li>etc.</li> </ul>	<ul style="list-style-type: none"> <li>race</li> </ul>
▶ (15 c) <b><u>Yazidi</u></b>	<ul style="list-style-type: none"> <li>area of origin (e.g. Yazidi in areas where ISIL continues to operate)</li> <li>identity documents</li> <li>gender</li> <li>etc.</li> </ul>	<ul style="list-style-type: none"> <li>race</li> <li>religion</li> </ul>
▶ (15 d) <b><u>Christians</u></b>	<ul style="list-style-type: none"> <li>area of origin (e.g. Christians in areas where ISIL continues to operate are at a higher risk, the risk is lower in KRI)</li> <li>gender</li> <li>etc.</li> </ul>	<ul style="list-style-type: none"> <li>religion</li> </ul>
▶ (15 e) <b><u>Shabak</u></b>	<ul style="list-style-type: none"> <li>area of origin</li> <li>etc.</li> </ul>	<ul style="list-style-type: none"> <li>race</li> <li>religion (in relation to persecution by ISIL)</li> </ul>
▶ (15 f) <b><u>Kaka'i</u></b>	<ul style="list-style-type: none"> <li>area of origin (higher risk in areas where ISIL continues to operate, lower risk in KRI)</li> <li>etc.</li> </ul>	<ul style="list-style-type: none"> <li>race</li> <li>religion</li> </ul>
▶ (15 g) <b><u>Sabeen-Mandaeans</u></b>	<ul style="list-style-type: none"> <li>area of origin (the risk is lower in KRI)</li> <li>language</li> <li>etc.</li> </ul>	<ul style="list-style-type: none"> <li>religion</li> <li>race (in particular in the KRI)</li> </ul>
▶ (15 h) <b><u>Baha'i</u></b>	<ul style="list-style-type: none"> <li>statelessness</li> <li>identity documents</li> <li>area of origin</li> <li>etc.</li> </ul>	<ul style="list-style-type: none"> <li>religion</li> </ul>
▶ (15 i) <b><u>Zoroastrian</u></b>	<ul style="list-style-type: none"> <li>area of origin (lower risk in the KRI)</li> <li>conversion and original religion</li> <li>identity documents</li> <li>etc.</li> </ul>	<ul style="list-style-type: none"> <li>religion</li> </ul>

▶ (15 j) <b><u>Bidoon</u></b>	<ul style="list-style-type: none"> <li>statelessness</li> <li>area of origin</li> <li>identity documents</li> <li>etc.</li> </ul>	<ul style="list-style-type: none"> <li>race</li> <li>nationality (statelessness)</li> </ul>
▶ (15 k) <b><u>Fayli Kurd</u></b>	<ul style="list-style-type: none"> <li>statelessness</li> <li>area of origin (south of Iraq, areas where ISIL continues to operate)</li> <li>identity documents</li> <li>etc.</li> </ul>	<ul style="list-style-type: none"> <li>race</li> <li>religion</li> <li>nationality (statelessness)</li> </ul>
▶ (15 l) <b><u>Roma</u></b>	<ul style="list-style-type: none"> <li>statelessness</li> <li>identity documents</li> <li>area of origin</li> <li>religion</li> <li>gender</li> <li>etc.</li> </ul>	<ul style="list-style-type: none"> <li>race</li> <li>nationality (statelessness)</li> </ul>
▶ (15 m) <b><u>Palestinian</u></b>	<ul style="list-style-type: none"> <li>area of habitual residence</li> <li>identity documents</li> <li>etc.</li> </ul> <p>In individual cases, consider the applicability of Article 12(1)(a) QD.</p>	<ul style="list-style-type: none"> <li>nationality (statelessness)</li> <li>(imputed) political opinion (perceived support for Sunni militias or ISIL)</li> </ul>

► (16) **Women**

*Violence against women and girls, including domestic violence and sexual abuse:*

- perception of traditional gender roles in the family
- poor socio-economic situation
- area of origin
- influence of the tribe
- etc.

*Harmful traditional practices:*

- young age (in particular, under 15)
- area of origin (particularly affecting rural areas)
- ethnicity
- perception of traditional gender roles in the family
- poor socio-economic situation of the family
- living in IDP situation
- local power/influence of the (potential) husband and his family or network
- etc.

*Women in public roles:*

- area of origin
- conservative environment
- visibility of the applicant (e.g. nature of the work, public statements perceived negatively by the actor of persecution)
- perception of traditional gender roles by the family or network
- etc.

For guidance on women perceived to have transgressed moral codes, see [Individuals perceived to transgress moral codes](#)

For guidance on women perceived to be associated with ISIL, see [Persons perceived to be associated with ISIL](#)

In the case of women, the lack of male support network is considered an important risk-enhancing factor.

- (imputed) political opinion (e.g. women in public roles, perceived association with ISIL)
- membership of a particular social group (e.g. Kurdish girls and women who have not been subjected to FGM/C)

► (17) **Children**

*Child marriage:*

- See [Harmful traditional practices](#)

*FGM/C:*

- See [Harmful traditional practices](#)

*Child labour and child trafficking:*

- age
- gender
- poor socio-economic status of the child and the family
- being in an IDP situation
- etc.

*Child recruitment:*

- See [Individuals approached for recruitment by armed groups](#)

*Violence against children, including domestic violence and sexual abuse:*

- gender (boys and girls may face different risks)
- perceived affiliation with ISIL (See the profile [Persons perceived to be associated with ISIL](#))
- age
- perception of traditional gender roles in the family
- poor socio-economic situation of the child and the family
- etc.

*Education of children and girls in particular:*

- identification documents
- ethno-religious background
- gender (girls are at a higher risk)
- disabilities
- age
- perception of traditional gender roles in the family
- poor socio-economic situation of the child and the family
- area of origin
- etc.

*Children born under ISIL who lack civil documentation:*

- single or widow mother
- foreign, dead or missing father

- race (e.g. targeting by ISIL)
- religion (e.g. targeting by ISIL)
- membership of a particular social group (e.g. children born under ISIL who lack civil documentation; orphans)

	<ul style="list-style-type: none"> <li>■ etc.</li> </ul> <p><i>Children without a care-taker:</i></p> <ul style="list-style-type: none"> <li>■ identification documents</li> <li>■ whether their parentage is known</li> <li>■ being born out of illicit sexual relations</li> <li>■ area of origin</li> <li>■ religion</li> <li>■ ethnicity</li> <li>■ etc.</li> </ul>	
<p>► <b>(18) <u>Persons with disabilities</u></b></p>	<ul style="list-style-type: none"> <li>■ age</li> <li>■ nature and visibility of the mental or physical disability</li> <li>■ negative perception by the family</li> <li>■ etc.</li> </ul> <p>The lack of personnel and adequate infrastructure to appropriately address the needs of persons living with disabilities would not meet the requirement that an actor of persecution or serious harm is identified in accordance with Article 6 QD, unless there is intentional conduct on the part of a third party, in particular the intentional deprivation of the applicant of appropriate healthcare.</p>	<ul style="list-style-type: none"> <li>■ membership of a particular social group (e.g. persons living with noticeable mental disabilities)</li> </ul>
<p>► <b>(19) <u>Persons involved in and affected by blood feuds in the context of tribal conflict</u></b> *</p>	<ul style="list-style-type: none"> <li>■ intensity of the blood feud</li> <li>■ possibility of conflict resolution</li> <li>■ ethnicity and religion of the tribes</li> <li>■ social status of the tribes</li> <li>■ area of origin (area where the rule of law is weak, urban or rural area)</li> <li>■ etc.</li> </ul>	<ul style="list-style-type: none"> <li>■ race (descent, referring to members of a tribe)</li> </ul>

\* Please note that exclusion considerations could be relevant to this profile.



Based on available COI and analysis, it is concluded that, in general, the following applicants would not have a well-founded fear of persecution for reason of race, religion, nationality, membership of a particular social group or political opinion, solely due to belonging to this profile or sub-profile.

However, in certain circumstances, such individuals could have a well-founded fear of persecution and could qualify for refugee status. The table below provides some examples of such circumstances where exceptions could apply.

Profiles / sub-profiles	Examples of circumstances to take into account in the risk assessment	Potential nexus
► (10) <b><u>(Perceived) collaborators of Western armed forces, organisations, or companies</u></b>	There are no recent reports of acts of targeting of this profile, which would amount to persecution. Therefore, in general, individuals under this profile are currently not considered to have a well-founded fear of persecution.	■ (imputed) political opinion
► (18) <b><u>Persons with severe medical issues</u></b>	The lack of personnel and adequate infrastructure to appropriately address the needs of people with (severe) medical issues would not meet the requirement that an actor of persecution or serious harm is identified in accordance with Article 6 QD, unless there is intentional conduct on the part of a third party, in particular the intentional deprivation of the applicant of appropriate healthcare.	Depending on individual circumstances
► (20) <b><u>Individuals accused of ordinary crimes</u></b> *	<p>Prosecution for an ordinary crime would generally not amount to persecution. However, certain considerations may apply:</p> <ul style="list-style-type: none"> <li>■ area of origin of the applicant and the prevalent justice mechanisms</li> <li>■ nature of the crime for which the applicant is prosecuted</li> <li>■ the envisaged punishment</li> <li>■ gender</li> <li>■ etc.</li> </ul> <p>Death penalty is considered to amount to persecution. See, for example, <a href="#">Persons perceived to be associated with ISIL</a>. See also <a href="#">Article 15(a) QD: death penalty or execution</a>.</p>	■ In general, no nexus to a Convention ground

\* Please note that exclusion considerations could be relevant to this profile.

### III. Subsidiary protection

#### Article 15(a) QD: death penalty or execution

Death penalty is envisaged under the Iraqi Penal Code No.11 of 1969, the Anti-Terrorism Law, the Military Penal Code and the Iraqi Internal Security Forces Penal Code of 2008. Under the 2005 Constitution of Iraq, the President ratifies death sentences ‘issued by the competent courts’.

Crimes that carry the death penalty in Iraq include offences such as crimes against internal or external security and state institutions, acts of terrorism, kidnapping, rape, drug trafficking leading to death, prostitution, ‘aggravated’ murder and human trafficking leading to death, etc.

Iraq continues to carry out capital punishment and is among the top three countries in the Middle East that impose and carry out executions. The death penalty is executed by hanging.

In the areas under its control, ISIL impose punishment such as for refusal to join them or for transgressing the moral codes as they are set by ISIL and its strict interpretation of the Sharia Law. This includes executions, which would fall under the scope of [Article 15\(a\) QD](#).

Some profiles of applicants from Iraq may be at risk of death penalty or execution. In such cases there could be nexus to a Convention ground (see for example the profile [Persons perceived to be associated with ISIL](#)).

In cases where there is no nexus to a reason for persecution under the definition of a refugee (for example, in some cases of [Individuals accused of ordinary crimes](#)), the need for subsidiary protection under [Article 15\(a\) QD](#) should be examined.

Please note that exclusion considerations could be relevant.

#### Article 15(b) QD: torture or inhuman or degrading treatment or punishment

In the cases of applicants for whom torture or inhuman or degrading treatment or punishment may be a real risk, there would often be a nexus to a reason for persecution under the definition of a refugee, and such individuals would, therefore, qualify for refugee status. However, with reference to cases where there is no nexus to a Convention ground and the applicant would not qualify for refugee status, the need for subsidiary protection under [Article 15\(b\) QD](#) should be examined.

When examining the need for protection under [Article 15\(b\) QD](#), the following considerations should be taken into account:

- [Healthcare unavailability and socio-economic conditions](#): It is important to note that serious harm must take the form of conduct on the part of a third party ([Article 6 QD](#)). In themselves, the general unavailability of healthcare, education or other socio-economic elements (e.g. situation of IDPs, difficulties in finding livelihood opportunities, housing) are not considered to fall within the scope of inhuman or degrading treatment under [Article 15\(b\) QD](#), unless there is intentional conduct on the part of a third party, in particular the intentional deprivation of the applicant of appropriate healthcare.
- [Criminal violence](#): Criminal networks in Iraq have been exploiting children for drug trafficking and dealing purposes and migrants for forced labour. Actors such as PMU and tribes are also reported to engage in criminality. Criminal violence is usually motivated by financial gain and power struggle. Where there is no nexus to a reason for persecution under the refugee definition, the risk of crimes, such as killing, armed robbery, kidnapping, destruction of property, extortion, forced labour, child recruitment, trafficking for sexual exploitation, etc. may qualify under [Article 15\(b\) QD](#).

- Arbitrary arrests, illegal detention and prison conditions: Special attention should be paid to the phenomena of arbitrary arrests and illegal detention, as well as to prison conditions. When assessing the conditions of detention, the following elements can, for example, be taken into consideration (cumulatively): number of detained persons in a limited space, adequacy of sanitation facilities, heating, lighting, sleeping arrangements, food, recreation or contact with the outside world.

Reports mention that there are arbitrary arrests, prolonged detention, including in secret detention facilities, and widespread torture, especially of terrorism suspects. Detention facilities have been described by UNAMI as seriously overcrowded and with poor infrastructure, including the facilities for juveniles; and children are not always separated from adult detainees. Torture is reported to remain a widespread practice in police detention, interrogation cells, and in prisons. Detained ISIL suspects have been subjected to treatment such as electrocution, solitary confinement, and beatings by investigators. There were reports of deaths in custody following torture or other ill-treatment. International human rights groups documented a wide range of torture and abuses in detention facilities run by the Ministry of Interior and, to a lesser degree, in facilities of the Ministry of Defence and in facilities run by the KRG. In KRI, the access of local and international organisations to detention facilities is also severely limited, rendering monitoring of the situation almost impossible.

Furthermore, it can be assessed that in cases where the prosecution or punishment is grossly unfair or disproportionate, or where subjecting a person to prison conditions which are not compatible with respect for human dignity, a situation of serious harm under Article 15(b) QD can occur. Where there is no nexus to a reason for persecution, such treatment may qualify under Article 15(b) QD.

Please note that exclusion considerations could be relevant.

## Article 15(c) QD: serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict

The necessary elements in order to apply [Article 15\(c\) QD](#) are:



Figure 3. Article 15(c) QD: elements of the assessment.

In order to apply [Article 15\(c\) QD](#), the above elements should be established cumulatively.

The following is a summary of the relevant conclusions concerning the situation in Iraq:

- a. **Armed conflict:** There are multiple overlapping non-international (internal) armed conflicts taking place in Iraq, most prominently, the conflict between the Iraqi government and ISIL. Parts of Iraq are also affected by an international armed conflict involving Turkey, as the conflict in Turkey between Turkey and the PKK has extended to the northern Iraqi territory. The section [Indiscriminate violence](#) below provides further guidance with regard to the geographical scope of the armed conflicts taking place on the territory of Iraq.
- b. **Civilian:** [Article 15\(c\) QD](#) applies to a person who is not a member of any of the parties to the conflict and is not taking part in the hostilities, potentially including former combatants who have genuinely and permanently renounced armed activity. The applications by persons under the following profiles should be examined carefully. Based on an individual assessment, such applicants may be found not to qualify as civilians under [Article 15\(c\) QD](#). For example:
  - ISIL and associated groups
  - new militant factions of ISIL remnants: (e.g. 'White flags')
  - other militant groups, such as Jamaat Ansar Al-Islam, the Naqshbandi Order, Jaysh Al-Mujahideen and the Islamic Army of Iraq
  - ISF
  - PMU and other militia groups
  - KRG forces
  - tribes

It should be noted that actively taking part in hostilities is not limited to openly carrying arms, but could also include substantial logistical and/or administrative support to combatants.

It is important to underline that the assessment of protection needs is forward-looking. Therefore, the main issue at hand is whether the applicant will be a civilian or not upon return. The fact that the person took part in hostilities in the past would not necessarily mean that Article 15(c) QD would not be applicable to him or her.

- c. **Indiscriminate violence:** Indiscriminate violence takes place to a different degree in different parts of the territory of Iraq. The map below summarises and illustrates the assessment of indiscriminate violence per governorate in Iraq. This assessment is based on a holistic analysis, including quantitative and qualitative information for the reference period (primarily, 1 January - 31 December 2018). Up-to-date country of origin information should always inform the individual assessment.

## Iraq: Level of indiscriminate violence

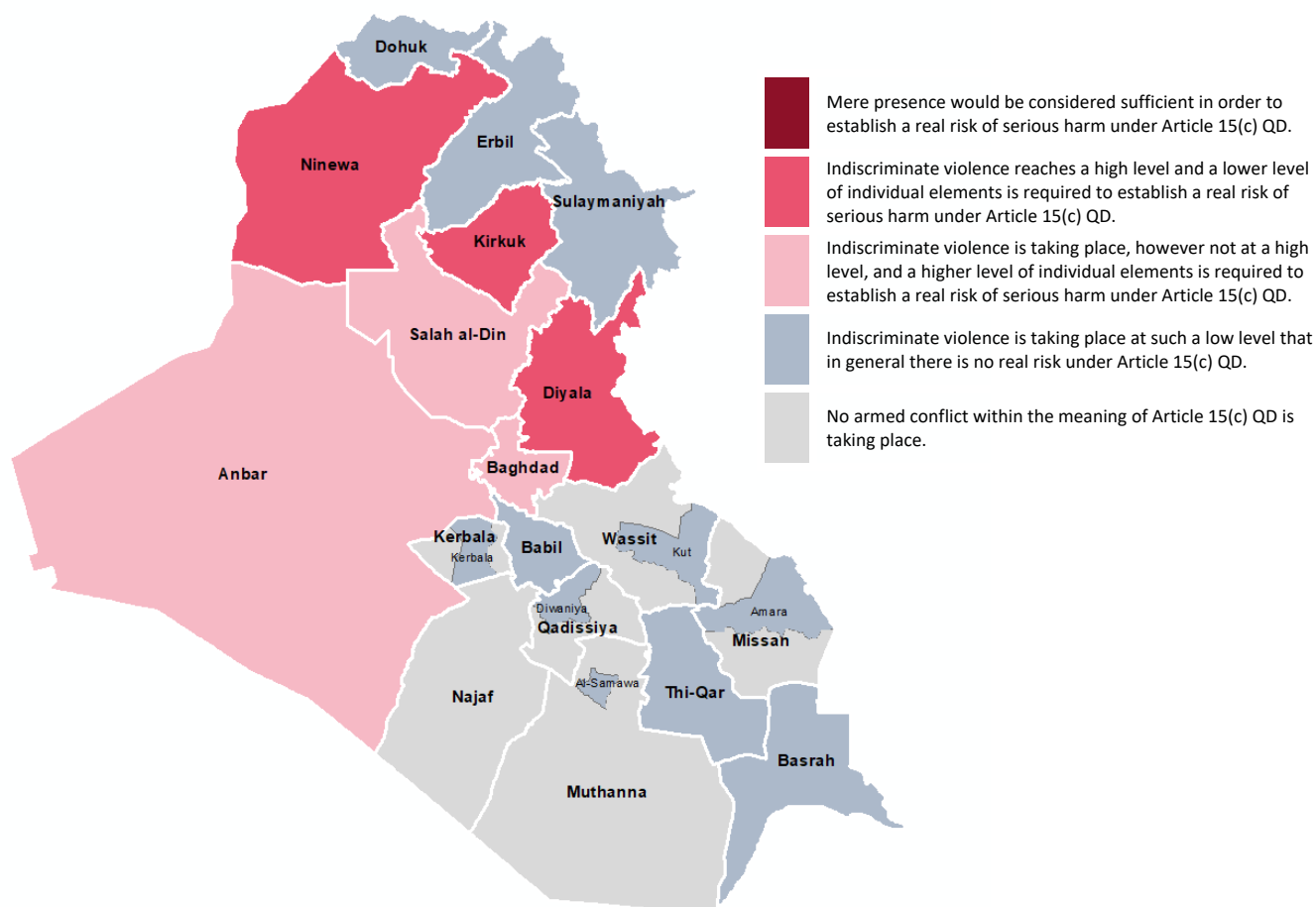


Figure 4. Level of indiscriminate violence in situations of armed conflict in Iraq (based on data as of 31 December 2018).

It should be noted that there are no governorates in Iraq where the degree of indiscriminate violence reaches such a high level that substantial grounds are shown for believing that a civilian, returned to the relevant region, would, solely on account of his or her presence on the territory of that region, face a real risk of being subject to the serious threat referred to in [Article 15\(c\) QD](#).

For the purposes of the guidance note, the governorates of Iraq are categorised as follows:

Governorates where 'mere presence' in the area would not be sufficient to establish a real risk of serious harm under Article 15(c) QD, however, indiscriminate violence reaches a high level, and, accordingly, **a lower level of individual elements** is required to show substantial grounds for believing that a civilian, returned to the territory, would face a real risk of serious harm within the meaning of Article 15(c) QD.

This includes the governorates of *Diyala, Kirkuk (Tameem), and Ninewa*.

Governorates where indiscriminate violence is taking place, however not at a high level and, accordingly, **a higher level of individual elements** is required in order to show substantial grounds for believing that a civilian, returned to the territory, would face a real risk of serious harm within the meaning of Article 15(c) QD.

This includes the governorates of: *Anbar, Baghdad and Salah al-Din*.

Territories where indiscriminate violence is taking place at such a low level that **in general there is no real risk for a civilian** to be personally affected by reason of indiscriminate violence within the meaning of Article 15(c) QD. However, individual elements always need to be taken into account as they could put the applicant in risk-enhancing situations.

This includes the governorates of *Babil/Babylon, Basrah, Dahuk/Dohuk, Dhi Qar/Thi-Qar, Erbil, Sulaymaniyah incl. Halabja*, and the districts of *Kerbala (Kerbala), Amara (Missan), Al-Samawa (Muthanna), Diwaniya (Qadissiya), and Kut (Wassit)*.

Territories where **no armed conflict is taking place**. Therefore, there is no real risk of serious harm within the meaning of Article 15(c) QD.

This includes the governorates of *Kerbala (except Kerbala district), Missan (except Amara district), Muthanna (except Al-Samawa district), Najaf, Qadissiya (except Diwaniya district), and Wassit (except Kut district)*.

- d. **Serious and individual threat:** Certain applicants may be considered at enhanced risk of indiscriminate violence, including its direct and indirect consequences due to, inter alia: geographical proximity to areas which are targeted by violence, age, gender, health condition and disabilities, lack of a social network, etc.

Profiles at enhanced risk of indiscriminate violence could include, for example:

- Civilians who lack the capacity to properly assess a situation and therefore expose themselves to risks related to indiscriminate violence (e.g. children – depending on their environment, family background, parents or guardians, and level of maturity; mentally disabled persons).
- Civilians who are less able to avoid risks of indiscriminate violence by way of seeking temporary shelter from fighting or attacks (e.g. persons with disabilities or serious illnesses; elderly; those in an extremely dire economic situation).
- Civilians who may be substantially and materially affected by violence because of their geographical proximity to a possible target (e.g. those living in proximity to known ISIL targets, such as the houses of local politicians, local administration buildings, markets, schools, hospitals, religious buildings, IDP camps, military bases).

- e. **Threat to life or person:** The risk of harm as per Article 15(c) QD is formulated as a ‘threat to a civilian’s life or person’ rather than as a (threat of) a specific act of violence. Some of the commonly reported types of harm to a civilian’s life or person in Iraq include killings, injuries, abductions, retaliatory violence by the armed forces, forced displacements, forced recruitment of minors, explosive remnants of war, etc.

- f. **Nexus:** The nexus ‘by reason of’ refers to the causal link between the indiscriminate violence and the harm (serious threat to a civilian’s life or person) and includes:

- Harm which is directly caused by the indiscriminate violence or by acts that emanate from the actors in the conflict, *and*
- Harm which is indirectly caused by the indiscriminate violence in a situation of armed conflict. Indirect effects are only considered to a certain extent and as long as there is a demonstrable link with the indiscriminate violence, for example: widespread criminal violence as a result of the collapse of State institutions in the context of the conflict with ISIL, destruction of the necessary means to survive, destruction of infrastructure.

## IV. Actors of protection

[Article 7 QD](#) stipulates that protection can only be provided by:

a. the State;

b. parties or organisations controlling the State or a substantial part of the territory of the State;

provided they are **willing and able** to offer protection, which must be:

**effective** and of a **non-temporary nature**.

Such protection is generally provided when the actors mentioned take reasonable steps to prevent the persecution or suffering of serious harm, inter alia, by **operating an effective legal system for the detection, prosecution and punishment** of acts constituting persecution or serious harm,

and when the applicant has **access to such protection**.

**The Iraqi State:** The presence and control of the Iraqi State have become stronger since the defeat of ISIL. It can be concluded that the State may, depending on the individual circumstances of the case, be considered able and willing to provide protection that meets the requirements of Article 7 QD in **Baghdad** and **southern Iraq**. In most other parts of **northern and central Iraq**, including the disputed territories, the capacity of the State is limited and the criteria under [Article 7 QD](#) would generally not be met.

When assessing the availability of State protection, **individual circumstances**, such as ethnicity, home region, gender, social status, wealth, personal connections, actor of persecution and type of human rights violation must be taken into account. The Iraqi State is in general considered able and willing to provide protection that meets the requirements of [Article 7 QD](#) for Shia Arabs in Baghdad and southern Iraq. This is without prejudice to the assessment in cases where State protection is considered not available due to individual circumstances. With regard to Sunni Arabs, the availability of state protection is considered limited, but may in individual cases be available. State protection is generally not considered available for members of minority religions and ethnicities, Palestinians, LGBTI persons and victims of domestic or honour-related violence, and gender-based violence, including harmful traditional practices.

It should be noted that if the actor of persecution is a PMU, and the group in question is considered a State actor, effective protection is presumed not to be available in accordance with [Recital 27 QD](#).

**The Kurdistan Regional Government:** In general, the KRG is considered to be an actor of protection meeting the requirements of [Article 7 QD](#). However, in certain individual circumstances, such as for persons perceived as associated with ISIL, political opponents, LGBTI individuals, in relation to harmful traditional practices, honour-based and domestic violence, the KRI may be unwilling to provide protection within the meaning of [Article 7 QD](#).

**Parties or organisations, including international organisations, controlling the State or a substantial part of the territory of the State:** No such actors are identified in Iraq.

In case protection needs have been established in the home area, and if it is established that there is no actor who can provide protection in the meaning of [Article 7 QD](#), the examination may continue with consideration of the applicability of internal protection alternative (IPA).

## V. Internal protection alternative

The required elements in order to apply [Article 8 QD](#) are:

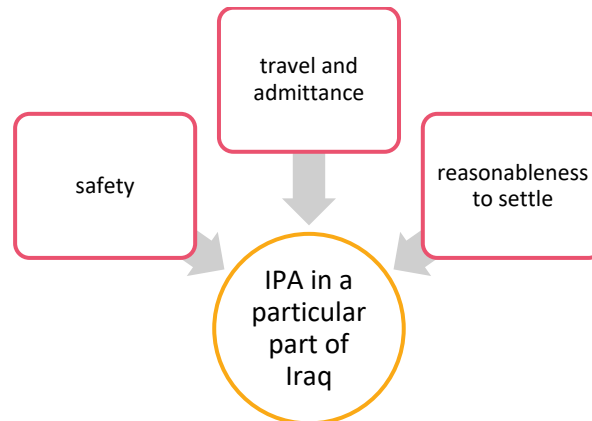


Figure 5. Internal protection alternative: elements of the assessment.

In relation to these elements, when assessing the applicability of IPA, the case officer should consider the general situation in the respective part of Iraq, as well as the individual circumstances of the applicant. The burden of proof lies with the determining authority, while the applicant remains under an obligation to cooperate. The applicant is also entitled to submit elements to indicate that IPA should not be applied to him or her.

### a. Part of the country

The guidance regarding IPA focuses on the three cities of Baghdad, Basrah and Erbil. The selection of the three cities for this joint assessment does not prevent case officers from considering the application of IPA to other areas of Iraq, provided that all criteria are met.

The ethno-religious background of the person and the region they originate from should be taken into account. In general:

- For individuals of **Kurdish ethnicity** IPA would be considered in KRI.
- For **Arab applicants**, IPA would be assessed with regard to other parts of Iraq.
- In the case of **ethno-religious minorities**, IPA should primarily be assessed with regard to the region where their communities are concentrated.

When choosing a particular part of Iraq with regard to which to examine the applicability of IPA, where relevant, existing ties with the place, such as previous experience and/or availability of a support network should, for example, be taken into account.

### b. Safety

The criterion of safety would be satisfied where there is no well-founded fear of persecution or real risk of serious harm, or where protection is available.

#### *Absence of persecution or serious harm*

The assessment should take into account:

##### ► **general security situation**

The general security situation in particular in the cities of **Baghdad, Basrah and Erbil** should be assessed in accordance with the analysis under the section on [Article 15\(c\) QD](#).



► **actor of persecution or serious harm and their reach**

In case where the person fears persecution or serious harm by State actors, there is a presumption that IPA would not be available (e.g. persons perceived to be associated with ISIL). In specific cases, where the reach of a certain State actor is clearly limited to a particular geographical area (e.g. a PMU, the KRG, the Peshmerga), the criterion of safety may be satisfied with regard to other parts of Iraq.

With regard to persecution or serious harm by ISIL, it should be noted that the operational capacity of the armed group has decreased, however, it is still active in certain regions.

In some cases, where the applicant faces persecution or serious harm for reasons related to the prevalent tribal and social norms in Iraq and the actor of persecution or serious harm is Iraqi society at large (e.g. LGBTI persons, certain ethno-religious minorities), IPA would in general not be available.

For certain particularly vulnerable individuals, such as women and children, if the actor of persecution or serious harm is the (extended) family, tribe or community (e.g. fasliya marriage, FGM), taking into account the reach of these actors and the lack of State protection, IPA would in general not be available.

See the section Actors of persecution or serious harm.

► **whether or not the profile of the applicant is considered a priority target and/or a threat by the actor of persecution or serious harm**

The profile of the applicant could make him or her a priority target for the State or for insurgent groups, increasing the likelihood that the actor of persecution or serious harm would attempt to trace the applicant in the potential IPA location.

► **personal enmity**

Some private disputes, including those based on honour and blood feuds, could strengthen the determination of the actor of persecution or serious harm to trace the applicant.

► **other risk-enhancing circumstances**

The information under the section Analysis of particular profiles with regard to qualification for refugee status should be used to assist in this assessment.

► **behaviour of the applicant**

The applicant cannot be expected to change his or her behaviour or to live in concealment, for example in relation to his or her sexual orientation or religion, in order to avoid persecution or serious harm.

### *Availability of protection against persecution or serious harm*

Alternatively, the case officer may determine that the requirement of safety is satisfied if the applicant would have access to protection against persecution or serious harm as defined in Article 7 QD in the area where IPA is considered. In the case of persecution by the State, a presumption of non-availability of State protection applies.

### c. Travel and admittance

As a next step, the case officer should establish whether the applicant can:

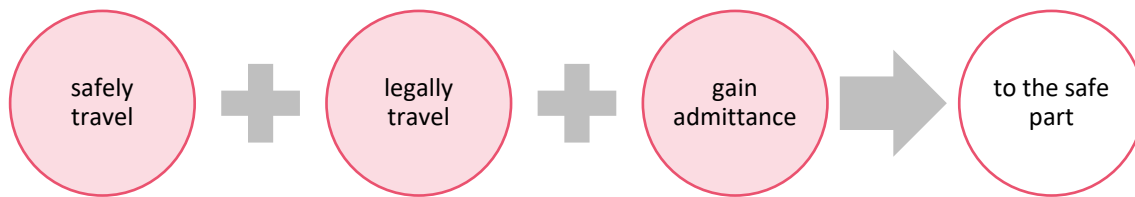


Figure 6. Travel and admittance as requirements for IPA.

- ✓ **Safely travel:** The requirement of safety of travel in the cities of Baghdad, Basrah and Erbil would in general be considered met. For some profiles, in particular for individuals who may be perceived as associated with ISIL, this requirement should be carefully assessed on an individual basis.
- ✓ **Legally travel:** There are in principle no legal restrictions for Iraqis to travel in Iraq, including in the cities of Baghdad, Basrah and Erbil.
- ✓ **Gain admittance to:** There are certain administrative restrictions or requirements for persons from previously ISIL-held or conflict-affected areas to be admitted in parts of the country, including the cities of Baghdad, Basrah and Erbil. This refers to requirements for entry to the respective governorate, in particular in the case of Basrah, and for residency, in the case of Baghdad, Basrah and Erbil. Sunni Arabs and in some cases Turkmen men are particularly affected by such requirements. The assessment of whether or not the requirement for admittance is likely to be met, should take into account the individual circumstances of the applicant (ethno-religious background, place of origin, identity documents, family status, existing social ties and having a potential sponsor, etc.). The individual case should be assessed based on the most recent COI available.

### d. Reasonableness to settle

According to [Article 8 QD](#), IPA can only apply if the applicant ‘can reasonably be expected to settle’ in the proposed area of internal protection.

#### ✓ General situation

The following elements should be examined based on available country of origin information:

- the situation with regard to food security;
- the availability of basic infrastructure and services, such as:
  - shelter and housing;
  - basic healthcare;
  - hygiene, including water and sanitation;
- the availability of basic subsistence that ensures access to food, hygiene and shelter, such as through employment, existing financial means, support by a network or humanitarian aid.

The general situation in the area in consideration should be examined in light of the criteria described above, and not in comparison with standards in Europe or other areas in the country of origin.

Based on the available COI, it is found that the general circumstances prevailing in Baghdad, Erbil and Basrah, assessed in relation to the factors above, do not preclude the reasonableness to settle in the cities. The assessment should take into account the individual circumstances of the applicant.

### ✓ Individual circumstances

In addition to the general situation in the area of potential IPA, the assessment whether it is reasonable for the applicant to settle in that part of the country should take into account the individual circumstances of the applicant, such as:

- ethno-religious and linguistic background
- civil documentation
- support network
- family status
- age
- gender
- state of health
- professional and educational background and financial means
- etc.

The individual considerations could relate to certain vulnerabilities of the applicant as well as to available coping mechanisms, which would have an impact when determining to what extent it would be reasonable for the applicant to settle in a particular area. It should be noted that these factors are not absolute and they would often intersect in the case of the particular applicant, leading to different conclusions on the reasonableness of IPA.

For further guidance on the impact of these factors on the reasonableness of IPA for a particular applicant see [Individual circumstances](#).

### *Conclusions on reasonableness*

Taking into account the ethno-religious background of the applicant, it could be substantiated that IPA in the cities of Baghdad, Basrah, Erbil would be reasonable for single able-bodied men and married couples without children, who have identification documents and have no additional vulnerabilities, including when they do not have a support network. In the case of families with children, internal protection alternative may be reasonable, including without a support network, where the best interests of the child have been duly assessed.

Although the situation related to settling in the three cities entails certain hardships, it can still be concluded that such applicants would be able to ensure their basic subsistence, housing, shelter and hygiene, and access to basic healthcare.

In order to ensure their basic needs other profiles of applicants would in general need a support network in the area of potential IPA. However, additional individual circumstances may be relevant to take into account when assessing the reasonableness of IPA.

It should be highlighted that these conclusions are without prejudice to the criteria of safety, travel and admittance and that the individual circumstances in the case at hand should be fully examined.

## VI. Exclusion

Given the serious consequences that exclusion may have for the individual, the exclusion grounds should be interpreted restrictively and applied with caution.

The examples in this chapter are non-exhaustive and non-conclusive. Each case should be examined on its own merits.

Applying the exclusion clauses, where there are serious reasons to consider that the applicant has committed any of the relevant acts, is mandatory.

Exclusion should be applied in the following cases:

Grounds for exclusion			
<b>Refugee status</b>	■	a crime against peace, a war crime, or a crime against humanity	<b>Subsidiary protection</b>
	■	a serious non-political crime outside the country of refuge prior to his or her admission as a refugee	
	■	acts contrary to the principles and purposes of the United Nations	
	■	a crime against peace, a war crime, or a crime against humanity	
	■	a serious crime	
	■	acts contrary to the principles and purposes of the United Nations	
	■	constituting a danger to the community or to the security of the Member State in which the applicant is present	
	■	other crime(s) (under certain circumstances)	

It should be underlined that the determining authority has the burden of proof to establish the elements of the respective exclusion grounds and the individual responsibility of the applicant; while the applicant remains under an obligation to cooperate in establishing all facts and circumstances relevant to his or her application.

In the context of Iraq, the need to examine possible exclusion issues may arise, for example, in cases of applicants under the following profiles. The list is non-exhaustive:

- Members of the Baath regime, such as by Baath party members of a certain rank or level, intelligence services, members of the military, judicial and administrative institutions
- Insurgent and/or extremist groups (e.g. ISIL, Al-Qaeda)
- Members of ISF and Peshmerga, intelligence services (e.g. Asayish) and other security actors
- Members of PMU
- Members of Sahwa
- Individuals involved in tribal feuds
- etc.

The Qualification Directive does not set a time limit for the application of the grounds for exclusion. Applicants may be excluded in relation to events occurring in the recent and more distant past, such as during the regime under Saddam Hussein (1968 - 2003).

The following subsections provide guidance on the potential applicability of the exclusion grounds in the context of Iraq.

### **a. Crime against peace, war crime, crime against humanity**

[Article 12\(2\)\(a\) QD](#) and [Article 17\(1\)\(a\) QD](#) refer to specific serious violations of international law, as defined in the relevant international instruments.<sup>13</sup>

According to COI, especially (former) members of insurgent groups (e.g. ISIL), security actors (e.g. ISF, PMU), as well as Baathists, can be implicated in acts that would qualify as war crimes and/or crimes against humanity.

Relevant situations, which should be considered in relation to this exclusion ground include, for example:

- Iraq - Iran war (1980 - 1988): international armed conflict;
- Al-Anfal military campaign (1986 - 1989);
- Invasion of Kuwait (1990 - 1991): international armed conflict; and subsequent uprising;
- Kurdish civil war (1995 - 1998): non-international armed conflict;
- Invasion of Iraq (2003): international armed conflict;
- Armed conflict between ISF and insurgent groups as from 2004: non-international armed conflict;
- Sectarian conflict / civil war (post 2003): non-international armed conflict;
- ISIL conflict (2014 - ongoing): non-international armed conflict;

### **b. Serious (non-political) crime**

In the context of Iraq, widespread criminality makes the exclusion ground 'serious (non-political) crime' particularly relevant. This is related to criminal activities of organised groups and gangs, as well as activities of ISIL and some militia, but the ground also applies to serious crimes committed by individuals not related to such groups.

Some particularly relevant examples of serious (non-political) crimes include kidnapping, extortion, trafficking for the purposes of sexual exploitation, etc. For example, criminal gangs in Basrah have exploited the security gap and there has been a rise in robberies, kidnapping, murder, and drug trafficking.

Violence against women and children (for example, domestic violence, honour-based violence, forced and child marriage) is widespread in Iraq and could also potentially amount to a serious (non-political) crime. FGM should also be considered a serious (non-political) crime under [Article 12\(2\)\(b\) QD/Article 17\(1\)\(b\) QD](#).

### **c. Acts contrary to the purposes and principles of the United Nations**

In order to apply this exclusion provision, the acts must have an international dimension, in the sense that they are capable of having a negative impact on international peace and security, or the friendly relations between States. Accordingly, this exclusion ground may apply to certain acts which constitute serious and sustained human rights violations and/or acts specifically designated by the international community as contrary to the purposes and principles of the UN (for example, terrorist acts in light of relevant UN Security Council and General Assembly resolutions).

(Former) membership in terrorist groups such as ISIL and Al-Qaeda could trigger relevant considerations and require an examination of the applicant's activities under [Article 12\(2\)\(c\)](#)

<sup>13</sup> The [Rome Statute of the International Criminal Court](#) is a particularly relevant instrument in this regard. See also the 'Grave Breaches' provisions of the 1949 Geneva Conventions and Additional Protocol I, common Article 3 and relevant provisions of Additional Protocol II, the Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY) and Statute of the International Criminal Tribunal for Rwanda (ICTR).

[QD/Article 17\(1\)\(c\) QD](#), in addition to the considerations under [Article 12\(2\)\(a\) QD/Article 17\(1\)\(a\) QD](#), mentioned in the sections above.

The application of exclusion should be based on an individual assessment of the specific facts in the context of the applicant's activities within that organisation. The position of the applicant within the organisation would constitute a relevant consideration and a high-ranking position could justify a (rebuttable) presumption of individual responsibility. Nevertheless, it remains necessary to examine all relevant circumstances before an exclusion decision can be made.

**d. Danger to the community or the security of the Member State**

In the examination of the application for international protection, the exclusion ground under [Article 17\(1\)\(d\) QD](#) is only applicable to persons otherwise eligible for subsidiary protection.

Unlike the other exclusion grounds, the application of this provision is based on a forward-looking assessment of risk. Nevertheless, the examination takes into account the past and/or current activities of the applicant, such as association with certain groups considered to represent a danger to the security of the Member States or criminal activities of the applicant.

Common analysis: Iraq

## General remarks

According to the UN, the population of Iraq, including the Kurdistan Region of Iraq (KRI), was estimated to be 38 375 000 people in 2017 [*Actors of protection*, 1].

Iraq is a federal republic and is administratively divided into 18 governorates, with the KRI governed as an autonomous region by the Kurdistan Regional Government (KRG) [*Actors of protection*, 1].

The three largest demographic groups in Iraq are Shia Arabs, Sunni Arabs, and Kurds. Numerous religious, ethnic, cultural and linguistic minorities live in Iraq, in particular in the North of the country. It is estimated that 75 - 80 % of the inhabitants are Arab and 15 - 20 % are Kurdish. Ethnic minorities make up to 5 % of the population. Islam is the country's official religion. According to official statistics from 2010, 97 % of the population is Muslim (approximately 55 - 60 % Shia and 40 % Sunni). Shia communities are mainly concentrated in the south and east of Iraq. Shia are also the majority in Baghdad and have communities in most parts of the country. Sunnis are mostly located in the west, north, and central parts of the country. The majority of the population of the KRI identifies ethnically as Kurdish and is of Sunni Muslim religion [*Targeting*, 3.4].

Kurdish is the most widely spoken language in the KRI, while the most widely spoken language in the rest of the country is Arabic [*Key socio-economic indicators*, 1.1; *Actors of protection*, 1].

Iraq's recent history has been characterised by a series of conflicts with political, ethnic and sectarian dimensions. In 2013, Sunni insurgent groups, together with al-Qaeda in Iraq (AQ-I) and affiliates, formed together under the Islamic State in Iraq (ISI), the precursor group to the Islamic State in Iraq and the Levant (ISIL), also known as the Islamic State of Iraq and Syria (ISIS), the Islamic State, or Daesh. This conflict culminated in 2014, when the Salafi jihadist group ISIL transformed from its predecessor groups, and conquered one third of Iraq's territory, forcing the sudden collapse of Iraq's state security forces. According to the UN Human Rights Council, between June 2014 and December 2017, in the territories it attacked and controlled, ISIL applied a 'sustained and deliberate policy of executing civilians' as a means of exerting control and instilling fear. The group committed mass killings, targeted civilians, imposed strict codes of social behaviour, killing those not in conformity with their Islamic *Takfiri* doctrines. ISIL's control in conquered territories was particularly harsh towards the Shia, and towards religious and ethnic minorities [*Security situation*, 1.1.1, 1.1.2].

In the end of 2017, the Iraqi security forces succeeded in taking back control of the territories which had been seized by ISIL in 2014. After three years of military campaigns against ISIL in different areas of Iraq, in December 2017, the Prime Minister al-Abadi declared that ISIL was militarily defeated. The level of violence in Iraq has decreased significantly since, and the country is rebuilding its institutions and all forms of civil life. However, ISIL remains active in parts of the country [*Security situation*, 1.1.2].

This country guidance is based on an assessment of the general situation in the country of origin. Where not specified otherwise, the analysis and guidance refer to Iraq in general, including the Kurdish Region in Iraq (KRI). In some sections, the analysis specifies that it refers to:

- **Kurdistan Region of Iraq (KRI):** An autonomous region of Iraq, including the governorates of Dahuk, Erbil, and Sulaymaniyah
- **Disputed territories:** Areas disputed between the Iraq central government and the KRG under Article 140 of the Constitution. These areas include Kirkuk, parts of northern Diyala, parts of Erbil (Makhmour district), Salah al-Din, and Ninewa.



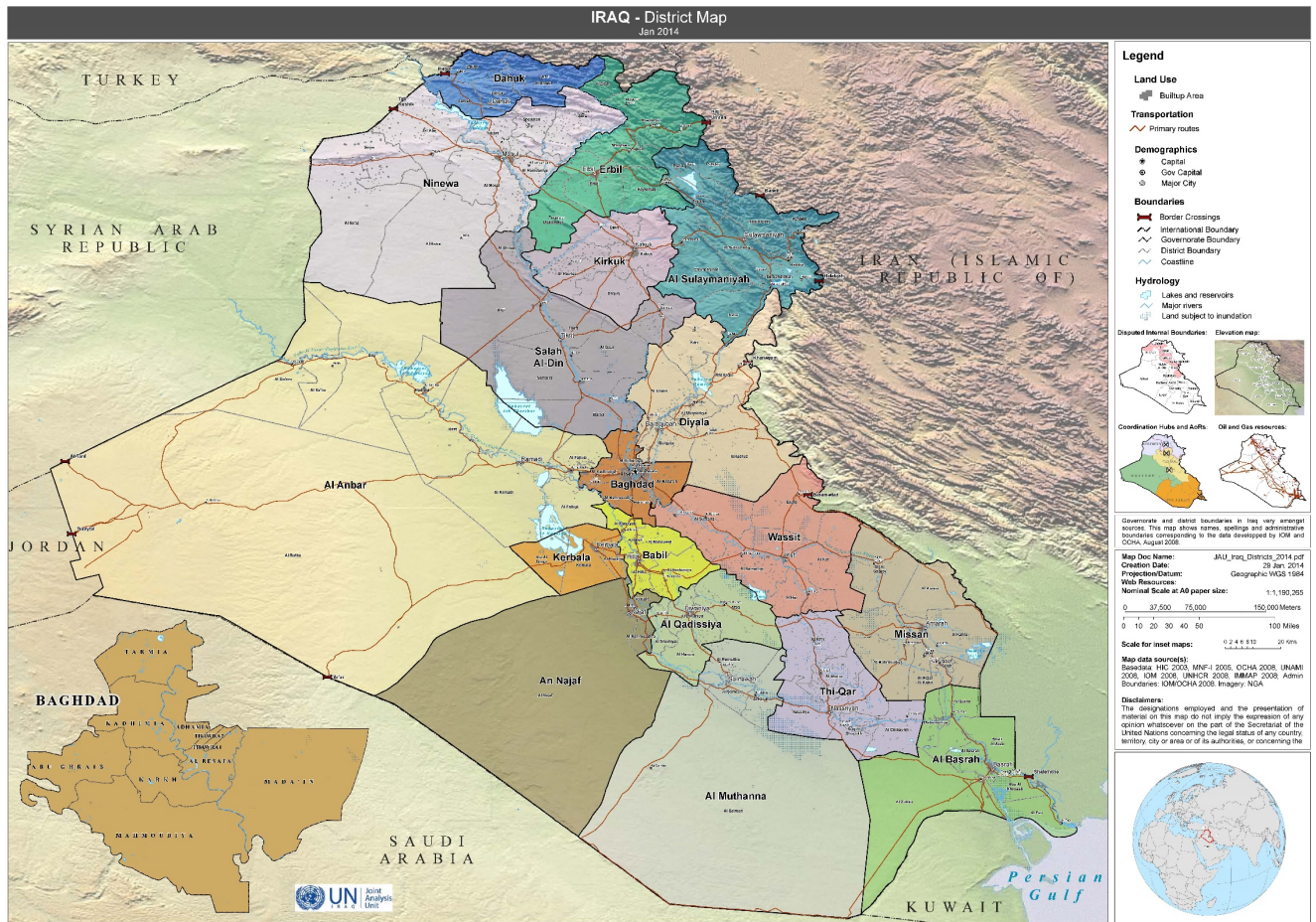


Figure 7. UN Iraq – District Map, January 2014<sup>14</sup>

<sup>14</sup> Map available at [https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/A1\\_A0\\_JAU\\_Iraq\\_Districts\\_2014\\_0.pdf](https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/A1_A0_JAU_Iraq_Districts_2014_0.pdf).

## I. Actors of persecution or serious harm

[Article 6 QD](#) defines ‘actors of persecution or serious harm’ as follows:

Article 6 of the Qualification Directive Actors of persecution or serious harm
<p>Actors of persecution or serious harm include:</p> <ul style="list-style-type: none"> <li>a) the State;</li> <li>b) parties or organisations controlling the State or a substantial part of the territory of the State;</li> <li>c) non-State actors, if it can be demonstrated that the actors mentioned in points (a) and (b), including international organisations, are unable or unwilling to provide protection against persecution or serious harm as defined in Article 7.</li> </ul>

Risks to which a population of a country or a section of the population is generally exposed do not normally create in themselves an individual threat which would qualify as serious harm ([Recital 35 QD](#)). Generally, persecution or serious harm must take the form of conduct on the part of a third party ([Article 6 QD](#)). For example, it cannot simply be the result of general shortcomings in the health system of the country of origin.<sup>15</sup>

The notion of [State](#) within the meaning of [Article 6\(a\) QD](#) should be broadly interpreted. It encompasses any organ exercising legislative, executive, judicial or any other function(s) and acting at any level, be it central, federal, regional, provincial or local. It could, for example, include the civil service, armed forces, security and police forces, etc. In some cases, private entities may also be given State powers and therefore be considered a State actor of persecution or serious harm.

[Parties or organisations controlling the State or a substantial part of the territory of the State](#) can refer to two possible scenarios:

- ▶ Parties or organisations amounting to de facto State actors because they exercise elements of governmental authority; or
- ▶ Parties or organisations controlling a substantial part of the State’s territory in the context of an armed conflict.

[Non-State actors](#) against whom protection is not effectively provided are also recognised as actors of persecution or serious harm in the meaning of [Article 6 QD](#). Non-State actors could, for example, include individuals and groups, such as clans and tribes, guerrillas and paramilitaries, militias, extremist religious groups or terrorists, criminals, political parties and family members, including members of the extended family, etc.

In Iraq, a wide range of different groups and individuals can be considered as actors of persecution or serious harm. Moreover, agents and motivations are not always clear-cut and may change given the changing security context, especially with regard to the cycles of violence in 2017 and 2018.

The following subsections highlight the main actors of persecution and serious harm in Iraq in a non-exhaustive manner.

<sup>15</sup> CJEU, *Mohamed M'Bodj v État belge*, C-542/13, Judgment of 18 December 2014, C-542/13, paras. 35-36.

## The Iraqi State

The Iraqi State actors include, for example, members of security forces and other authorities, such as provincial/local councils or other local officials, e.g. *mukhtars*. PMU are also generally considered State actors (see sub-section [Popular Mobilisation Units and Tribal Mobilisation Militias](#)). It should be noted that the distinction between official state forces and non-state forces is not always clear.

The **Iraqi Security Forces (ISF)** include the Iraqi army and the federal and local police. Moreover, numerous security, law enforcement and intelligence agencies are responsible for maintaining order in Iraq and have overlapping responsibilities that include counter-terrorism, frontline fighting and law enforcement. Legal responsibility and power to arrest and detain are split across different security forces and their respective ministries. [*Actors of protection*, 4.4, 5.1-5.3, 5.5-5.6; *Security situation*, 1.3.1.1]

The Iraqi State authorities, in particular the ISF, have been involved in committing a wide range of human rights violations within the course of fighting ISIL and after their defeat in December 2017.

Although ISIL carried out the majority of abuses, it is reported that the government forces have been involved in unlawful killings, abuse and torture during arrest, pre-trial detention and after conviction, and in a wide range of other abuses. Security forces were reportedly engaged in arrests without warrants, detention for long periods before seeing a judge and detention in secret locations. Torture and ill-treatment in detention to obtain confessions or during investigations remained a serious issue. Reported abuses by ISF also include forcing family members to pay bribes to recover bodies, as well as alleged involvement in kidnappings, assassinations, robberies and other criminal activity. It is reported that sexual violence has been used by the Iraqi army and militias with apparent impunity. Denial of return to internally displaced persons (IDPs) areas of origin and denial of access to areas of displacement were also reported, as were abuses against IDPs, committed by elements of the ISF and associated forces. [*Targeting*, 1.1.1, 1.3, 1.3.1; *Actors of protection*, 5.7.2]

The Iraqi State may be considered an actor of persecution or serious harm in specific circumstances.

## Popular Mobilisation Units and Tribal Mobilisation Militias

The **Popular Mobilisation Units (PMU)**, also referred to as the Popular Mobilisation Forces (PMF) and al-Hashd al Shaabi, can be considered as complex umbrella organisation, consisting of many different militias, the majority of which are Shia militias. Sources from 2016 and 2017 reported that PMU include from 60 000 to 140 000 fighters, registered in about 60 - 70 groups. [*Targeting*, 1.1.2]

Since 2016, under the Popular Mobilisation Law, the PMU are formally and legally part of the State's security apparatus. They are defined as an 'independent military formation' and not part of the Ministry of Defence or the Ministry of Interior. They are not subordinate to the ISF and nominally report to the Prime Minister as the Commander in Chief, through the PMF Commission and the National Security Council. Although PMU are legally a State institution, in practice they retain autonomous control and influence, some of them with close links to the most important political parties. Therefore, government control over the militias is limited and PMU often act outside of the State's command and control structures. [*Actors of protection*, 5.4; *Targeting*, 1.1.2, Annex I; *Security situation*, 1.3.1.2]

The Shia PMU largely fall into three main groups, with varying political agendas:

- Iran-backed militias with strong relations to Iran and its security apparatus, particularly the Iranian Revolutionary Guard Corps. These militias are considered the most active and most capable in Iraq. The militias mainly include influential groups like the Badr Organisation, Asaib Ahl al-Haq, Kataib Hezbollah and Saraya Talia al-Khorasan.

- Other politically affiliated militias linked with Shia political parties, but not aligned with Iran, such as populist Shia cleric Moqtada al-Sadr's Saraya al-Salam (Peace Brigades) and the Islamic Supreme Council.
- Hawza militias, which are smaller groups affiliated with the Najaf-based Grand Ayatollah Ali al-Sistani (Iraq's supreme Shia cleric) and not connected to political parties.

Although the most prominent groups are Shia forces, the PMU also include sizeable Sunni forces. [Security situation, 1.3.1.2]

There are also a number of **minority militias**, such as Yazidi and Christian militias, Turkmen brigades and Shabak forces linked to the PMU. However, the link to the PMU might not always be clear-cut and may be loosely based on financial, legal or political incentives. [Targeting, Annex I; Security situation, 1.3.1.2]

The **Tribal Mobilisation (TM)** militias, or Hashd al-Asha'iri, are composed of fighters from Sunni tribes. The TM are generally active locally in their own places of origin and have played an increasing role during the fight against ISIL and in securing the areas once they were recaptured. The nature of these forces is difficult to categorise because some take orders directly from Iraqi forces and local authorities while others strongly affiliate with and respond to orders from larger PMU militias. [Targeting, Annex I; Security situation, 1.3.1.2]

Since 2014, elements of the PMU have been engaged in unlawful killings, disappearances, extortion and revenge attacks in the course of the fighting against ISIL. Sources report that PMU make arrests and detain suspects in 'secret prisons'. PMU have also regularly forcibly disappeared men with perceived ISIL ties directly from IDP camps. Sexual exploitation of women in IDP camps by members of the PMU was also reported. Forced evictions, abductions, destruction of property and summary executions were also reported. It is reported that militia members enforce public morals, punishing, for example, persons who drink alcohol, gamble or hire prostitutes. PMU have also been engaged in criminal activities and other abuses against civilians. Forced displacement, evictions, arrests, looting of homes, demolition of houses, threats, sexual abuse, harassment and discrimination by PMU and local militias were also reported. [Targeting, 1.1.2, 1.2.2, 1.4, 3.1.2]

During the Iraqi takeover of the disputed territories from the KRG in October 2017, members of the Peshmerga and Asayish from the disputed territories have been targeted by the PMU and ISF forces. Especially in Kirkuk, denial of returns of Kurds was also reported [Targeting, 1.1.2; Security situation, 2.4].

The PMU and other militias may be considered actors of persecution or serious harm in specific circumstances. The PMU are generally considered State actors, although the State is unable to exert full control. Depending on the level of affiliation with the State in the particular case, other militias may be considered State or non-State actors.

## Kurdistan Regional Government (KRG) authorities

In KRI, the Peshmerga, the municipal police and the Asayish are the main security actors of the KRG.

The **Peshmerga** are the Kurdish armed forces overseen by the KRG Ministry of Peshmerga Affairs and are responsible for maintaining order in the KRI. Militias of the Kurdistan Democratic Party (KDP) and the Patriotic Union of Kurdistan (PUK) are (de facto) also part of the Peshmerga. However, they report to the Ministry of Interior, thereby having both a civilian policing and military function. [Actors of protection, 8.1.2; Security situation, 1.3.1.3]

**Municipal police** are responsible for traditional civil and traffic enforcement, environmental policing, immigration enforcement and facilities protection. Routine policing, patrols, first response and



investigation of minor felonies fall within their responsibilities, along with a range of administrative functions. Emergency police handle major felonies. It is reported that the municipal police remain politically divided along party lines. [*Actors of protection*, 8.1.3]

The **Asayish** is the intelligence agency of the KRG, responsible for 'domestic security throughout the region'. Within Asayish there are political allegiances between the KDP and PUK but the parties also maintained their own intelligence services (KDP: Parastin, PUK: Zanyari). These were unified under the law in 2011, however, they continue to work closely with the Asayish on intelligence gathering operations. [*Actors of protection*, 8.1.4; *Security situation*, 1.3.1.3]

Given that persons with an (perceived) affiliation to ISIL are primary targets for all security actors in Iraq, such persons have also been victims of human rights violations by KRG security actors. The Peshmerga and Asayish are accused of arbitrary arrests and carrying out unlawful killings of ISIL suspects. Other reported violations include enforced disappearances, retaliatory violence against Sunni Arab civilians during territorial recapture, intentional demolition of houses. There were also reports that PMU and KRG forces detained children accused of terrorism and subjected them to torture and other forms of ill-treatment. According to available information, abusive interrogations occurred in some detention facilities of the Asayish and the intelligence services of the major political parties. There have been reports that ISIL suspects have been subjected to torture and other forms of ill-treatment in order to extract confessions. [*Targeting*, 1.1, 1.2.3, 1.18.2]

There have also been reports of pressure and harassment by the KRG of certain ethnic minorities, such as the Shabak and the Yazidi to declare themselves to be Kurds [*Targeting*, 3.4.3, 3.4.6]. Other allegations against Kurdish authorities refer to the detention of political opponents, the violent suppression of demonstrations, and the harassment of news outlets critical of the KRG leadership, and the killing of journalists [*Targeting*, 1.1.3; 1.2.3; 1.3.4; 1.11.2; *Actors of protection*, 8.3].

The KRG authorities may be considered State actors of persecution or serious harm in specific circumstances.

## The Islamic State of Iraq and the Levant (ISIL)

The Islamic State of Iraq and the Levant (ISIL) is a successor of Al-Qaeda in Iraq, the Sunni resistance movement against US-occupation after 2003. It is a Salafi jihadist militant group, designated by the UN and internationally sanctioned as a terrorist organisation, whose goal is the establishment and expansion of a caliphate. ISIL is strongly rooted in a strictly conservative interpretation of Sunni Islam, with a literal reading of the Quran and the Sharia as penal system, and a complete rejection of any other interpretation of Islam, like Shia or Sufi. *Takfirism* is ISIL's ideological basis for their attitudes and actions towards other Muslims, for example in order to eliminate political opponents or others not conforming with their rigid interpretation of Islam. In its campaign to 'purify' its territory according to its *takfir* doctrines, ISIL targeted Shia, as well as ethnic and religious minorities such as Christians, Yazidi, Shabaks, Kaka'i, and Kurds. [*Targeting*, 2.1, 2.2; *Security situation*, 1.1.2]

ISIL controlled significant territory in Iraq, but was declared militarily defeated in December 2017. The military campaign to eliminate ISIL has significantly reduced the group's operational capabilities and ISIL has not held territory in Iraq since its military defeat. However, it continues to operate as a more traditional insurgent group. Its activities have been reduced to operating insurgent cells in the Hamreen mountains and other remote rural areas, most of which are located in areas previously controlled by ISIL in Anbar, Diyala, Kirkuk, Ninewa and Salah al-Din governorates. There are an estimated 15 000 - 17 000 ISIL fighters still active in Iraq as of August 2018. The activities of ISIL in Iraq reportedly include small arms attacks, targeted assassinations, kidnappings, suicide vest attacks and other types of bombings, and attacks on villages, including those inhabited by religious and ethnic minorities.

In regions under its control ISIL introduced its own judicial system based on a strict interpretation of the Sharia. Penalisation under this judicial system also resulted in severe human rights violations. [Targeting, Context, 2.1, 2.2; Security situation, 1.3.2, 1.4.1.1]

ISIL is held responsible for a wide range of human rights violations, inter alia:

- forced displacements
- forced conversions
- abductions
- systematic and widespread killing of those not in conformity with their ideology
- sexual violence, including sexual slavery
- human trafficking
- penalisation under ISIL's parallel justice system
- etc.

ISIL is considered an actor of persecution or serious harm.

## Tribes

According to available information, Iraq is home to approximately 150 tribes. Between 75 % - 80 % of the total Iraqi population are members of a tribe or have kinship to one.

Tribes are often involved in conflicts and armed with heavy weapons. Tribal transgressions can result in violence. It is also reported that tribes have enacted informal justice, revenge, assassinations and disappearances in tribal justice against ISIL suspects and continue to impede the return of persons perceived to have an affiliation to ISIL.

Tribal dispute mechanisms can involve violations of human rights such as the practice of 'fasliya' (family members, including women and children, are traded to settle tribal disputes) or 'honour' killings; it may also include retributive killings or banishment.

Persons who do not comply with the will of their tribe can also be subjected to human rights violations such as being ostracised, disowned and expelled or even being killed [Targeting, 3.6; Actors of protection, 6.6, Security situation, 3.5].

Tribes may be considered a non-State actor of persecution or serious harm in specific circumstances.

## Other non-State actors

Human rights violations, which could amount to persecution or serious harm, are also committed by other non-State actors, such as family members or criminal groups.

Some examples include domestic violence by family members, violence against LGBTI individuals, FGM/C, mostly practiced in some regions of the KRG, etc. See the profiles of [LGBTI persons](#), [Women](#), etc.

A range of armed actors are involved in criminality in Iraq and the actor may not always be identifiable. Often, it may involve militias or criminal gangs. According to available information, organised and street-level crime appear to have increased and 'kidnapping for political and monetary gain' was common in Iraq. It is also reported that criminal groups can operate with relative impunity given the pervasive corruption in institutions at all levels. [Actors of protection, 5.3.1.2; Targeting, 3.1.2, Security situation, 1.3.6]

Non-State actors, such as those mentioned above, may be considered actors of persecution or serious harm in specific situations.

## II. Refugee status

All elements of the definition of a refugee in accordance with the QD should be fulfilled for the qualification of the applicant as a refugee:

### Article 2(d) of the Qualification Directive Definitions

‘refugee’ means a third country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 [exclusion] does not apply;

According to [Article 9\(1\) QD](#):

### Article 9(1) of the Qualification Directive Acts of persecution

In order to be regarded as an act of persecution within the meaning of Article 1(A) of the Geneva Convention, an act must:

- a) be sufficiently serious by its nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms; or
- b) be an accumulation of various measures, including violations of human rights which is sufficiently severe as to affect an individual in a similar manner as mentioned in point (a).

In order for a person to qualify as a refugee, there must be a connection (nexus) between one or more of the specific reasons for persecution (race, religion, nationality, political opinion or membership of a particular social group), on the one hand, and the acts of persecution under [Article 9\(1\) QD](#) or the absence of protection against such acts ([Article 9\(3\) QD](#)), on the other.

The applicability of the respective reason(s) should be assessed in relation to [Article 10 QD](#).

Common analysis on specific profiles of applicants, based on their personal characteristics or affiliations with a certain group (e.g. political, ethnic, religious), is provided below.

An individual assessment is required for every application. It should take into account the individual circumstances of the applicant and the relevant country of origin information. Factors to take into account in this assessment may include, for example:

- home area<sup>16</sup> of the applicant and presence of the potential actor of persecution;
- nature of the applicant’s actions (whether or not they are perceived negatively and/or whether or not individuals engaged in such actions are seen as a priority target by the actor of persecution);
- visibility of the applicant (i.e. to what extent it is likely that the applicant is known to or could be identified by the potential actor of persecution); noting, however, that the applicant does not need to be individually identified by the actor of persecution, as long as his or her fear of persecution is well-founded;

<sup>16</sup> Protection needs are firstly assessed with regard to the applicant’s home area in the country of origin. The ‘home area’ in the country of origin is identified on the basis of the strength of the applicant’s connections with a particular area in that country. The home area may be the area of birth or upbringing or a different area where the applicant settled and lived, therefore having close connections to it.

- resources available to the applicant to avoid persecution (e.g. relation to powerful individuals, network);
- etc.

The fact that an applicant has already been subject to persecution or to direct threats of such persecution, is a serious indication of the applicant's well-founded fear, unless there are good reasons to consider that such persecution will not be repeated ([Article 4\(4\) QD](#)). On the other hand, it should be noted that in order to establish well-founded fear of persecution there is no requirement of past persecution or threats. The risk assessment should be forward-looking.

A well-founded fear of being persecuted may also be based on events which have taken place and/or on activities which the applicant has engaged in since he or she left the country of origin, in particular where it is established that the activities relied upon constitute the expression and continuation of convictions or orientations held in the country of origin ([Article 5 QD](#)).

Once the required level of persecution as well as nexus have been established in relation to the home area of the applicant, the availability of protection in accordance with [Article 7 QD](#) should be explored (see the chapter [Actors of protection](#)). Where such protection is not available, the examination may continue with consideration of the applicability of internal protection alternative under [Article 8 QD](#), if applicable according to national legislation and practice (see the chapter [Internal protection alternative](#)).

In some cases, where the applicant would otherwise qualify for refugee status, exclusion grounds would be applicable (see the chapter [Exclusion](#)). The sections below make specific references to the relevance of exclusion considerations for certain profiles.

Where the applicant does not qualify for refugee status, in particular where the requirement of nexus is not satisfied, the examination should proceed in order to determine his or her eligibility for subsidiary protection (see the chapter [Subsidiary protection](#)).



## Analysis of particular profiles with regard to qualification for refugee status

This chapter refers to some of the profiles of applicants from Iraq, encountered in the caseload of EU Member States. **It represents a non-exhaustive list and the fact that a certain profile is included in it or not is without prejudice to the determination of their protection needs.**

While the conclusions under this common analysis could provide general guidance, the protection needs of each applicant should be examined individually. The non-exhaustive lists of examples with regard to sub-profiles at a differentiated risk and to circumstances, which would normally increase or decrease the risk, are to be taken into account in light of all circumstances in the individual case.

In some cases, even if the applicant no longer belongs to a certain profile, they may still be targeted and have a well-founded fear of persecution related to their past belonging to such a profile.

Family members, merely due to their relation to the refugee, may be at risk of persecution in such a manner that could be the basis for refugee status. It should also be noted that individuals belonging to the family of a person qualifying for international protection could have their own protection needs.

It should be highlighted that an individual applicant could fall under more than one profile included in this common analysis. The protection needs associated with all such circumstances should be fully examined.

**The considerations under each profile should, furthermore, be viewed without prejudice to the credibility assessment of the applicant's claims. This common analysis deals solely with issues of risk analysis and qualification.**

For each profile, the sections below provide:

- ▶ **COI summary:** brief summary and analysis of the available common COI, as referenced.
- ▶ **Risk analysis:** analysis whether the treatment of individuals under this profile may amount to persecution; and assessment of the level of risk, which highlights some of the risk-impacting circumstances, where relevant.
- ▶ **Nexus to a reason for persecution:** where individuals under the respective profile may have a well-founded fear of persecution, this sub-section analyses the presence of nexus to a reason for persecution in general. However, it should be underlined that more and/or different grounds may apply depending on the actor of persecution and/or the individual circumstances of the applicant.

## 1. Persons perceived to be associated with ISIL

This profile refers to persons perceived to be associated with ISIL, including suspected ISIL members, and family members of ISIL suspects.

### *COI summary*

The primary profile that is targeted by all security actors present in Iraq (including KRI) is people who have or are perceived to have some affiliation to ISIL. Accusations of ISIL affiliation are often unfounded, speculative or arbitrary. [*Targeting*, 1.2, 1.4]

#### **a. ISIL suspects (including people working in the ISIL administration)**

[*Targeting*, 1.1.1, 1.1.2, 1.2, 1.4, 1.17, 1.18; *Actors of protection*, 4.2]

Suspicion of affiliation with ISIL can arise out of a broad range of circumstances, related to religion, ethnicity, area of origin and time of fleeing, tribe, name, etc. In this regard, see in particular the profiles *Sunni Arabs* and *Turkmen*, as well as the profile *Former Baath party members*.

The 2005 Anti-Terrorism Law covers a wide variety of crimes, including membership in a terrorist organisation, as well as committing terrorist acts or inciting or otherwise participating in the commission of these acts, whereby e.g. the possession or use of explosives, torture and kidnapping are, under specific conditions, classified as acts of terrorism. Crimes under the Anti-Terrorism Law generally carry the death penalty or life imprisonment.

Due to the 2017 amendment of the General Amnesty Law of August 2016, amnesty can no longer be granted to any ISIL members, including those who joined against their will and did not commit any serious crimes associated with the group.

It is estimated that, between 2014 and January 2018 at least 19 000 ISIL suspects have been detained or imprisoned by Iraqi government forces under the 2005 Anti-Terrorism Law. Since the summer of 2017, more than 10 000 cases have been referred to the courts and approximately 2 900 trials have been completed, with a conviction rate of about 98 %. Due to threats and harassment, lawyers have become very reluctant to defend ISIL suspects, especially those they believed were indeed affiliated with ISIL, unless they are assigned by the court.

The Government has not responded to the request by the UN Assistance Mission for Iraq (UNAMI) for information on terrorism-related indictments, convictions and death penalty sentences and on where and when executions have been carried out. However, it has been reported that thousands of death penalty sentences have been issued. At the end of 2017, it was reported that at least 1 036 children up to the age of 18 (1 024 boys and 12 girls) remained in juvenile detention facilities on charges related to national security, in most cases for alleged association with ISIL. Children detained on terrorism charges reportedly suffer ill-treatment and acts amounting to torture while in detention. The detention conditions are very poor, and children are frequently detained along with adults.

Many of the arrests and the subsequent detentions for terror-related accusations do not comply with the procedural rules laid down in the law of criminal procedure. The conditions in pre-trial detention facilities are precarious (e.g. extreme overcrowding) and torture and other forms of ill-treatment during interrogation are reportedly widespread. It is reported that allegations of confessions extracted through torture are not being investigated and that such confessions are frequently used as a basis for convicting ISIL suspects.

Targeting for prosecution under the Anti-Terrorism Law, with the risk of death penalty or life in prison, is not limited to individuals who are suspected to be involved in the commission of crimes, or who have had a relevant position in the terrorist organisation, but also those providing basic services under the ISIL administration, such as electricity, food (e.g. cooks preparing meals for ISIL fighters) or medical care (e.g. doctors working in ISIL-run hospitals).

The KRG has enacted its own anti-terrorism legislation, under which ISIL suspects are prosecuted. The Kurdistan anti-terrorism law also permits the death penalty. There are reports of people being detained with little evidence or grounds, as well as numerous allegations of torture in the course of interrogations, including reports of torture of children suspects by the Asayish. In the KRI, there is no amnesty law applying to ISIL-related crimes.

#### **b. 'ISIL families'**

[*Targeting*, 1.4]

People with direct or indirect family relations to an ISIL suspect, or belonging to a tribe (parts of) which supported ISIL, may be targeted by security actors and subjected to human rights violations and 'collective punishment', such as forced displacement and destruction of property. Primarily women and children, whose husbands, fathers, sons or brothers were members of ISIL and are either killed or detained, are affected. People with a distant relative who is a member of ISIL, not only as a fighter or commander, but likewise if the relative worked in a non-combatant role, can also be perceived to be associated with ISIL.

Furthermore, not only those with actual family links to ISIL suspects, but female-headed IDP households who originate from former ISIL territories in general, are often perceived to be affiliated to ISIL, and the women are met with allegations of being 'ISIL widows'.

Local authorities and Iraqi security forces have forcibly displaced hundreds of families of ISIL suspects in Anbar, Babil, Diyala, Salah al-Din and Ninewa governorates, forcing them out of their homes and bringing them into camps. There are also reports of houses belonging to ISIL families being destroyed.

IDPs with perceived ISIL affiliation are banned from returning to their home communities in Anbar, Babil, Diyala, Kirkuk, Ninewa and Salah al-Din governorates.

Wives and children of ISIL suspects are discriminated against, segregated within IDP camps and denied humanitarian aid (e.g. access to food, water and healthcare). They are exposed to harassment, threats, abuse and sexual violence and exploitation. Female-headed IDP households are met with the same treatment, as the women are considered to be 'ISIL widows'.

Furthermore, such persons are unable to obtain missing or expired civil documentation. The lack of valid documentation affects access to education and employment, freedom of movement, and their ability to apply for welfare benefits, inherit property or remarry.

See also the section on [Children born under ISIL who lack civil documentation](#) under the profile [Children](#).

#### **Risk analysis**

The acts to which individuals under these sub-profiles could be exposed are of such severe nature that they would amount to persecution (e.g. arbitrary arrest, death penalty, torture).

As persons perceived to be associated with ISIL are a priority target of all security actors, in their case, in general, a well-founded fear of persecution would be substantiated.

#### **Nexus to a reason for persecution**

Available information indicates that persecution of this profile is for reasons of (imputed) political opinion.



Exclusion considerations could be relevant to the sub-profile of ISIL suspects (see the chapter on [Exclusion](#) below).

## 2. Sunni Arabs

This profile refers to Sunni Arabs from Iraq.

For Sunni Arabs who may be perceived to be associated with ISIL, see [\*Persons perceived to be associated with ISIL\*](#).

For Sunni Arabs who may be affected by the de-Baathification process, see [\*Former Baath party members\*](#).

### COI summary

[*Targeting*, 1.15, 1.2, 1.21, 1.2.1, 1.2.2, 1.2.3, 1.3, 1.3.1, 1.4, 1.5, 1.7.2, 2.1; *Security situation*, 1.1.1, 1.5.2, 2.1, 2.2, 2.3-2.6; *Internal mobility*, 3.3.1; *Actors of protection*, 5.7.2]

There is a long history of tensions between Sunni and Shia Arabs. Sectarianism rapidly increased in violent waves after the 2003 US invasion.

AQ-I, the Sunni resistance movement against US occupation after the 2003 removal of Saddam Hussein, targeted not only US and foreign occupation forces, but also the local Shia population, thus fuelling sectarian tension that culminated in a civil war in 2006-2007.

#### a. Perceived affiliation with ISIL

In the period after the retreat of the US troops in 2011, the Salafi jihadist group ISIL, the successor of AQ-I, took advantage of the growing sentiments of disenfranchisement within the Iraqi Sunni population. ISIL's expansion and military operations against the group since 2014 sparked an internal displacement crisis in Iraq and created further distrust in the population.

Sunni Arabs may be perceived to be affiliated with ISIL based on certain individual factors, such as (perceived) family links to ISIL members, area of origin and time of fleeing, tribe, name, etc.

Potential indicators for being associated with ISIL include, for example, if a Sunni Arab lived in a former ISIL territory and fled the area at a late stage in the fighting; or had a family member arrested as an ISIL suspect.

If a person belongs to a tribe, which (or parts of which) is known to have supported ISIL, he or she may also be seen as an ISIL sympathiser. Many Sunni tribes split into pro and anti-ISIL factions, exacerbating divisions among the Sunni population and leaving hardly any tribes without members affiliated with or supportive of ISIL.

Further, the origin from a village or town known to have supported ISIL may heighten suspicion of ISIL affiliation (e.g. Baaj, Hawija).

It can even raise serious suspicion to have a name – or a family member with a name – similar to that of an ISIL suspect, even though many Iraqi citizens have identical names. There are numerous cases of people in detention only because their name is similar to that of a terror suspect.

Sunni Arabs perceived as ISIL affiliates are at risk of arrest and prosecution under the 2005 Anti-Terrorism Law. In addition, earlier reporting makes note of retaliatory violence against them, perpetrated by elements of the ISF and forces associated with the ISF, including PMU and minority militias. PMU were engaged in extrajudicial executions and other unlawful killings, torture, enforced disappearances, kidnapping and extortion of (male) Sunni civilians, seemingly in revenge for ISIL attacks against the Shia community. Despite the considerable freedom of action militias maintain in Iraq, as the military battle against ISIL wound down, there were fewer reports of such abuses. Acts of revenge in the form of interceptions, enforced disappearances and killings of Sunnis committed by ISF and affiliated forces were recorded during 2014-2017, with the majority of reported incidents taking place in 2014-2016. Reports of human rights abuses committed by PMU and/or government forces have become less prevalent, especially after Grand Ayatollah al-Sistani cautioned that non-

combatants should not be harmed in June 2016, and Badr leader Hadi al-Ameri vowed to hold those responsible for abuse accountable.

There were also reports of arbitrary arrest and some cases of enforced disappearances by the Kurdish security forces and Yazidi armed groups, as well as retaliatory attacks against Sunni Arabs and their property in the course of operations to recapture ISIL territory.

Some Sunni IDPs have been prevented from returning to their towns and villages through a mix of complicated bureaucratic procedures and requirements, and intimidation tactics, including abductions, arbitrary detention and, in the case of Diyala, extrajudicial executions. Security actors, tribal leaders and local communities have subjected Sunni Arab IDPs perceived to have links with ISIL to denied returns, forced relocations and evictions from camps and informal settlements, as well as forced and premature returns, often resulting in secondary displacement.

See the profile [\*Persons perceived to be associated with ISIL\*](#).

#### **b. Treatment in relation to the de-Baathification process**

Sunnis report that they face discrimination in public sector employment as a result of the de-Baathification process, a process originally intended to target loyalists of the former regime. According to Sunnis and local NGOs, the government continues the selective use of the de-Baathification provisions of the law to render many Sunnis ineligible for government employment, but did not do so to render former Shia Baathists ineligible.

See the profile below concerning [\*Former Baath party members\*](#).

#### **c. Situation of Sunni Arab in Baghdad**

Militias in Baghdad are frequently accused by Sunnis of directing violence against them. Sunnis primarily fear being targeted for extortion, kidnapping, or having their property taken away by Shia militias in Baghdad. Sources reported that attribution of responsibility for attacks to specific perpetrators in Baghdad is difficult, and explosives are used for both political and criminal purposes to attack and intimidate targets. Determining actors can be difficult, though most likely they primarily involve militias and gangs; due to the strong links between the two, distinguishing between them is not always possible.

#### **Risk analysis**

The acts to which Sunni Arabs perceived to be affiliated with ISIL could be exposed to are of such severe nature that they would amount to persecution (e.g. arbitrary arrest, death penalty, torture). When the acts in question are (solely) discriminatory measures, the individual assessment of whether or not discrimination could amount to persecution should take into account the severity and/or repetitiveness of the acts or whether they occur as an accumulation of various measures.

Available information indicates that the mere fact that an individual is a Sunni Arab would normally not lead to a well-founded fear of persecution. The individual assessment of whether or not there is a reasonable degree of likelihood for the applicant to face persecution should take into account risk-impacting circumstances, such as: area of origin, tribe, etc.

In case of perceived affiliation with ISIL, in general, a well-founded fear of persecution would be substantiated (see [\*Persons perceived to be associated with ISIL\*](#)). The assessment of whether the applicant would be perceived to be affiliated with ISIL would depend on individual circumstances, such as (perceived) family links to ISIL members, place of origin and/or residency in a formerly ISIL-held area during ISIL control and time of fleeing, (perceived) tribal affiliation with ISIL, name, etc.

#### **Nexus to a reason for persecution**

Available information indicates that, depending on the individual circumstances, persecution of this profile may be for reasons of (imputed) political opinion (e.g. ISIL affiliation, Baath party), and in individual cases, religion.

### 3. Individuals approached for recruitment by armed groups

This section addresses the issue of recruitment by different armed groups, including child recruitment.

#### COI summary

##### a. Recruitment by ISIL and affiliated groups

[*Targeting*, 2.3, 3.8.1]

During the rise of ISIL, the group had no shortage of volunteers, however forced recruitment of young professionals whose skills were needed did occur. Such recruitment particularly affected doctors. Pressure and coercion to join ISIL could be violent, but could also be exercised through the family, clan or religious network, depending on the local circumstances.

##### b. Recruitment by the PMU

[*Targeting*, 1.1.2, 1.3.1, 1.6, 3.8.1; *Actors of protection*, 5.4; *Security situation*, 1.4.3, 2.3]

The recruitment to the PMU is entirely on a voluntary basis. Many join the PMU for economic reasons, because the salaries are attractive, compared to the rest of Iraq. The PMU are very influential and they are popular among the majority of the population for their effort to defeat ISIL. Forced recruitment of fighters did not occur in the PMU, but there have been small scale reports that men might have faced social pressure to join a militia, including after the downfall of ISIL; and in some cases returns are conditioned on the commitment of families to enlist one or more male family member into government-affiliated armed groups.

##### c. Recruitment by the Peshmerga

[*Actors of protection*, 8.1.2; *Targeting*, 1.6.1, 1.8.3, 3.8.1]

Recruitment by the Peshmerga is on voluntary contractual basis and there are no reports of forced recruitment. However, pressure from family and surroundings is possible.

##### d. Child recruitment

[*Targeting*, 1.6, 3.8.1, *Actors of protection* 5.4.4; *Security situation* 1.4.3]

Child recruitment by multiple armed groups operating in Iraq has been reported. According to the USDOS assessment of 2018, ‘children remain highly vulnerable to forced recruitment and use by multiple armed groups operating in Iraq, including—but not limited to—ISIS, the PMF, tribal forces, the Kurdistan Worker’s Party (PKK), and Iran-backed militias’.

**ISIL** heavily recruited children. In its recruitment, the group used a biological rather than a numerical definition of adulthood that is based on perceptions of an individual’s strength and physical maturity. The Monitoring and Reporting Mechanism established by the UN documented ISIL’s recruitment of children as young as seven for combat roles. Many of the recruited children have been dispatched to the front, while others have been reported to work as spies, bomb-makers, cooks or prison guards. Thousands more have been exposed to the ideology of ISIL in ISIL-sponsored schools.

The **PMU** have reportedly recruited few children. There have been reports that PMU recruited, trained and used children in militia activities and to man checkpoints or provide support at checkpoints. There have been reports that Sunni tribal militias have recruited young men, sometimes minors, in camps for displaced persons through tribal leaders.

In 2017 it was reported that 9 children were recruited by the People’s Defence Forces — the armed wing of **PKK**.

#### Risk analysis


Forced recruitment and child recruitment are of such severe nature that they would amount to persecution.

Given that the intensity of armed confrontations and military operations has declined significantly, and based on the COI that forced recruitment at the moment seldom occurs, it can be concluded that well-founded fear of persecution would only be substantiated in exceptional cases.

The individual assessment of whether or not there is a reasonable degree of likelihood to face persecution should take into account risk-impacting circumstances, such as: gender, area of origin, ethnic/religious background (e.g. Kurds for the PKK, Sunni Arabs for ISIL), age (being an adolescent), being an IDP, the presence/influence of armed groups, poor socio-economic situation of the family, etc.

### *Nexus to a reason for persecution*

While the risk of forced recruitment as such may not generally imply a nexus to a reason for persecution, the consequences of refusal, could, depending on individual circumstances, substantiate such a nexus, among other reasons, to (imputed) political opinion. In the case of child recruitment, the individual circumstances of the applicant need to be taken into account to determine whether or not a nexus to a reason for persecution can be substantiated.

 Exclusion considerations could be relevant to this profile (see the chapter on [Exclusion](#) below).

## 4. Former Baath party members

This profile includes persons that were and/or are members of the banned Baath party, including those that have collaborated with ISIL or other armed groups.

### *COI summary*

[*Targeting*, 1.7, *Security situation*, 1.1.1, 1.3.4]

The Arab Socialist Baath party, which ruled Iraq from 1968 to 2003, since 1979 under Saddam Hussein, has been described as a brutal authoritarian regime. During the 1980s, approximately 10 % of the Iraqi population were members of the Baath party. Saddam Hussein and the Baath party used violence, killing, torture, execution, and various forms of repression to control the population.

Shortly after the collapse of Saddam Hussein's regime in 2003, a series of legal and administrative measures were introduced with the objective of preventing the Baath party from returning to power. The de-Baathification process consisted of a broad policy aiming to eliminate senior Baath party members from the civil service and disbanding the Iraqi armed forces and security services. In May 2003, 400 000 military conscripts, officers and government officials were made unemployed by the de-Baathification order. The de-Baathification proved to polarise Iraqi politics; whilst Shia political parties supported the process, Sunnis eventually considered it as a sectarian instrument wielded to prevent Sunnis from participating in public life. It is reported that the government continues the selective use of the de-Baathification provisions of the law to render many Sunnis ineligible for government employment, without affecting former Shia Baathists in the same way.

It should be taken into account that the new constitution implemented in 2005 effectively banned the Baath party. In addition to that, a Bill passed by the Iraqi Parliament in July 2016 formally banned the Arab Socialist Baath Party from exercising any political or cultural or intellectual or social activity under any name and by any means of communication or media.

In 2018, it was revealed that 14 former officials from the Saddam-era are still in prison in Iraq. The Iraqi government also ordered the seizure of assets which previously belonged more than 4 200 former Baathist officials, including their spouses and relatives.

Despite the constitutional ban, some remnants of the former Baath party remained active, including during the ISIL conflict.



Even though not all former Baathists were enthusiastic about ISIL, the remnants of the party generally shared relations with the Islamic State. There has been a close cooperation between the remnants of the former Baath Party and ISIL not least because of the shared hatred of the Shia-led government in Iraq. Saddam-era Baathist military and police officers were recruited by ISIL. It was also reported that former Saddam-regime officers ran three of the most crucial of ISIL's 23 portfolios: security, military and finance. The list of the most wanted ISIL members published by Iraqi authorities in February 2018 contained several high-ranking former Baath party members.

On the one hand, ISIL recruited former Saddam-era Baathist military and police officers who have been a powerful factor in the rise of ISIL and were instrumental in the survival of its self-proclaimed caliphate. On the other hand, former Baathists had their own political goals in mind and were aiming for the establishment of a Sunni-dominated tribal nation from Damascus to Fallujah to Mosul, thus covertly undermining ISIL's caliphate.

The former Baathists were not able to compete with ISIL. In fact, many former Baathists were arrested and killed by ISIL due to rivalry. To tame any opposition, ISIL arrested a number of local Baath party leaders and members in 2014, suggesting fractures in the local Baathist-ISIL alliance.

Former Baathists and their properties, particularly those belonging to former officers of the Iraqi Army under Saddam Hussein, were also targeted in the military operations against ISIL by the pro-government forces, including militia groups.

### *Risk analysis*


Some actions to which individuals under this profile could be exposed are of such severe nature that they would amount to persecution (e.g. killing, arrest by ISIL). When the acts in question are (solely) discriminatory measures, the individual assessment of whether or not discrimination could amount to persecution should take into account the severity and/or repetitiveness of the acts or whether they occur as an accumulation of various measures.

In general, the risk of persecution for a regular Baath party member is minimal and dependent on the specific individual circumstances. The individual assessment of whether or not there is a reasonable degree of likelihood for the applicant to face persecution should take into account risk-impacting circumstances, such as: supporting in public the ideology of the Baath party, having had a high-ranking position in the party, being a former Saddam-era military or police officer, having served in the intelligence services during the Saddam regime, potential (perceived) affiliation with ISIL, etc.

See also the profiles above concerning [Persons perceived to be associated with ISIL](#) and [Sunni Arabs](#).

### *Nexus to a reason for persecution*

Available information indicates that persecution of this profile is for reasons of (imputed) political opinion.

 Exclusion considerations could be relevant to this profile (see the chapter on [Exclusion](#) below).

## **5. Deserters from armed forces**

This profile addresses the issue of desertion from the army, PMU, ISF, and the Peshmerga.

### *COI summary*

#### **a. Army**

[*Targeting*, 1.8.1]

According to the Military Penal Code, 'Whoever is absent without proper legal justification from his unit or place of duty or exceeds the duration of his leave at time of peace for more than (15) fifteen



days for lower ranks and (10) ten days for officers, shall be punishable with imprisonment not exceeding (3) three years’.

Certain offences which incorporate an element of desertion are punishable by the death penalty. The most important ones being:

- desertion to join the enemy;
- relating to failure of personnel to perform their duty in the circumstances leading to the surrender of themselves or other members of the armed forces and surrender of military installations and military objects or territory;
- passing of secret documentation or information to hostile powers during peace or wartime;
- inciting revolt, desertion, or defection of members of the armed forces to the enemy;
- inciting insubordination or disobedience among other members of the armed forces;
- disclosing military operations and military secrets to the enemy;
- spreading panic within the armed forces through misinformation; and
- communicating secretly with enemy forces.

During the rise of ISIL, many military staff deserted and were threatened with harsh punishments.

A 2016 decision halted the legal pursuit of security officers and granted them amnesty. The gathered information suggests that the Military Penal Code is not strictly enforced to its full extent and no court cases against deserters are known.

#### **b. PMU**

*[Targeting, 1.8.1; Actors of protection, 5.4.2]*

PMU are voluntary forces and no draft applies. There is no information on consequences for deserters; however, some sources noted that ‘desertion of low-level members of the PMU would have no consequence or retribution whereas for high-level members there would be repercussions’.

#### **c. Iraqi Security Forces**

*[Targeting, 1.8.2]*

The Internal Security Forces Penal Code applies to all officers and enlisted ranks of the Internal Security Forces who are in service, students at facilities in training with ISF, and retirees or those out of ISF service who committed applicable crimes while in service. Special Internal Security Forces Criminal Courts have been set in five cities.

The Internal Security Forces Penal Code does not contain any provisions relating to ‘desertion’, however, it addresses ‘the crime of absence’. The punishment varies depending on the position of the individual, including, for example, deduction of salary for a policeman who has been absent for less than 15 days during ordinary circumstances, and ‘at least one year’ for Internal Security Forces personnel who have been absent for more than 10 days during disturbances or states of emergency.

A report from 2014 notes that a general amnesty was issued for members of the Internal Security Forces who had been absentee or left without permission. In accordance with it, civilians who left their jobs without permission were deemed to have resigned after ten days.

#### **d. Peshmerga**

*[Targeting, 1.8.3]*

The Peshmerga recruits sign a contract for a fixed period, after which the individual is free to leave. Several sources have noted that ‘it can be more difficult for high-ranking Peshmerga to leave, and there can be repercussions, but not for low-ranking Peshmerga.’ One source has observed that ‘the punishment for desertion, depending on the circumstances, goes from cancellation of contract and all the way up to death sentence’; however, no such cases had been brought before a court of law before 2015 or become known in more recent reports.

### *Risk analysis*


Prosecution and punishment for desertion in itself, when proportionate, is not considered persecution, except if [Article 9\(2\)\(e\) QD](#) applies.

The death penalty would amount to persecution. Desertion is only punishable by the death penalty where certain additional circumstances apply (e.g. being perceived as escaping to join or communicate with the enemy).

Based on the fact that there are no reports of the death penalty being imposed by courts for desertion-related offences, the risk is considered very low. The individual assessment of whether or not there is a reasonable degree of likelihood for the applicant to face persecution should take into account risk-impacting circumstances, such as: which forces the applicant belongs to, rank/position of the applicant, situation during which the desertion occurred (e.g. during disturbances or state of emergency), etc.

### *Nexus to a reason for persecution*

According to available information, if well-founded fear of persecution could be substantiated in the individual case, such persecution would be for reasons of (imputed) political opinion.

 Exclusion considerations could be relevant to this profile (see the chapter on [Exclusion](#) below).

## 6. Political opposition activists and protesters

This profile refers to political opposition activists and protesters. For guidance on human rights activists see the profile [Journalists, media workers and human rights activists](#).

### *COI summary*

[*Targeting*, 1.10, 1.11; *Security situation*, 2.7]

In the **areas of Iraq under the control of the central government**, protests are mainly directed against government corruption, unemployment and poor services (e.g. lack of water and electricity). Though many protests have remained peaceful, there have been reports of violence at the hands of security actors in southern Iraq and Baghdad. The use of excessive force by the security forces includes beating, arrests and killing of protesters and activists.

Protests in the **KRI** are mainly directed against the government of the KRG, corruption, the Iraqi military action after the referendum vote, lapses in civil servant pay and worsening economic conditions. Protests require a permit, they are heavily monitored by the Kurdish police and security services and generally remain peaceful. Nevertheless, there have been incidents of police violence, including beating, arrests and killing of protesters and activists.

### *Risk analysis*

Legitimate actions of law enforcement would not amount to persecution.

The acts to which individuals under this profile could be exposed are of such severe nature that they would amount to persecution (e.g. killing, detention, beatings).

Participation in protests in itself would normally not lead to a well-founded fear of persecution. The individual assessment of whether or not there is a reasonable degree of likelihood for the applicant to face persecution should take into account risk-impacting circumstances, such as: nature of activities and degree of involvement, leadership role, being known to the authorities (e.g. previous arrest), etc.

### *Nexus to a reason for persecution*

Available information indicates that persecution of this profile is for reasons of (imputed) political opinion.

## 7. Journalists, media workers and human rights activists

This profile refers to journalists, media workers, and human rights activists. For guidance on political opposition activists, see the profile [Political opposition activists and protesters](#).

### *COI summary*

[*Targeting*, 1.11, 1.12; *Actors of protection*, 8.3]

Iraq is regarded as one of the world's most dangerous countries for journalists.

Journalists targeted in Iraq are particularly those who engage in critical reporting on controversial political or other sensitive issues (e.g. corruption, abuse of authority, weak government capacity) or are seen as criticising government officials. According to relevant sources, media workers, journalists and human rights activists who are particularly critical of PMU or militias have been targeted for their work. The attacks included intimidation, abductions, and killings. However, the perpetrators are not always clearly identifiable. Media workers and journalists may also be targeted by militant opposition groups including ISIL. Their murders go unpunished and investigations generally yield no results.

In **the areas under the central government of Iraq**, there are reports of ill-treatment of human rights activists, such as women human rights defenders, LGBTI activists, etc. Those who are working on issues of enforced disappearances have reportedly faced intimidation and reprisal, such as arbitrary arrests, ill-treatment, death threats and killings.

In the **KRI**, human rights activists, media workers and journalists face frequent harassment, this especially affects Yazidi activists. They may be subject to arbitrary arrests, assault, intimidation, death threats and killings. Investigations into killings have not been carried out with due diligence in the past and there has been little to no accountability in recent years.

Despite legal protections, which prohibits imprisonment, harassment, or physical abuse of reporters, journalists critical to the KRG leadership have claimed harassment by the authorities.

### *Risk analysis*

The acts to which individuals under this profile could be exposed are of such severe nature that they would amount to persecution (e.g. killings, detention, ill-treatment, kidnapping).

Not all individuals under this profile would face the level of risk required to establish well-founded fear of persecution. The individual assessment of whether or not there is a reasonable degree of likelihood for the applicant to face persecution should take into account risk-impacting circumstances, such as: nature of activities (topic they report on), political and/or sectarian background of the individual, gender, visibility, being known to the authorities, etc.

### *Nexus to a reason for persecution*

Available information indicates that persecution of this profile is for reasons of (imputed) political opinion.

## 8. Members of the Iraqi Security Forces (ISF), Popular Mobilisation Units (PMU), Peshmerga and local police

This profile refers to members and former members of the Iraqi Security Forces (ISF), Popular Mobilisation Units (PMU), the Peshmerga and local police.

### COI summary

[*Targeting*, 2.1, 2.3.1, 2.3.2; *Security situation*, 1.4.1.1]

When ISIL took control over large parts of Iraq in 2014, it immediately started targeting a broad array of opponents to their rule, including members of security personnel, who risked being assassinated or abducted by ISIL.

Members of the ISF, the PMU, the Peshmerga and the Iraqi police continue to be primary targets for ISIL and to be targeted by the organisation. During 2018, ISIL continued to carry out asymmetric attacks against Iraqi security forces in northern and north-central Iraq (Ninewa, Salah al-Din and Kirkuk) and in the central region (Diyala, Anbar and Baghdad). For additional information, see [The Islamic State of Iraq and the Levant \(ISIL\)](#).

Instances of targeting of former members of the aforementioned forces were also reported.

### Risk analysis


The acts to which individuals under this profile could be exposed are of such severe nature that they would amount to persecution (e.g. killing and abduction).

Members of the ISF, PMU, Peshmerga and local police continue to be primary targets for ISIL. However, since ISIL's operational capabilities have diminished significantly, the threat posed by ISIL to individuals under this profile has decreased compared to previous years.

Accordingly, not all individuals under this profile would face the level of risk required to establish a well-founded fear of persecution. The individual assessment of whether or not there is a reasonable degree of likelihood for the applicant to face persecution should take into account risk-impacting circumstances, such as: area of work and origin (proximity to areas where ISIL continues to operate), visibility of the applicant, position within the organisation, period since leaving the forces, personal enmities, etc.

### Nexus to a reason for persecution

Available information indicates that the persecution of this profile is for reasons of (imputed) political opinion.

 Exclusion considerations could be relevant to this profile (see the chapter on [Exclusion](#) below).

## 9. Individuals perceived to oppose ISIL

This profile refers to individuals perceived to oppose ISIL, such as local politicians and tribal leaders.

See also the profile above concerning [Members of the Iraqi Security Forces \(ISF\), Popular Mobilisation Units \(PMU\), Peshmerga and local police](#).

### COI summary

[*Targeting*, 2.3.3, 2.3.4; *Security situation*, 1.4, 1.4.2.2, 2.3.1, 2.3.4, 2.4, 2.5]

In 2018, ISIL's focus increasingly shifted towards targeting local authorities. Targeting village chiefs was part of a strategy to depopulate strategic areas by driving out pro-government tribal leaders.

Local authorities, tribal elders, village chiefs and others were abducted and killed by ISIL in 2018. It is estimated that in the first ten months of 2018, ISIL killed 148 village *mukhtars* and tribal leaders, district council members and security forces leaders. ISIL targeted local *mukhtars*, particularly in Ninewa, accusing them of providing information on their movements. Between 1 January and 18 August 2018, seven *mukhtars* were killed and two others were wounded by ISIL in Ninewa governorate.

In the context of the May 2018 elections, ISIL targeted parliamentary candidates, as well as tribal leaders who supported the elections.

Such direct attacks, including assassinations of *mukhtars*, civil authorities, tribal mobilisation force members, and civilians who are branded as ‘collaborators’, are usually for intimidation and reprisal purposes. There are also reports of targeting of the relatives of tribal leaders.

### *Risk analysis*

The acts to which individuals under this profile could be exposed are of such severe nature that they would amount to persecution (e.g. killing and abduction).

Since ISIL’s operational capabilities have diminished significantly, the threat posed by ISIL to individuals under this profile has decreased compared to previous years.

Accordingly, not all individuals under this profile would face the level of risk required to establish a well-founded fear of persecution. The individual assessment of whether or not there is a reasonable degree of likelihood for the applicant to face persecution should take into account risk-impacting circumstances, such as: area of work and origin (areas where ISIL continues to operate), tribal affiliation and the tribe’s standing vis-à-vis ISIL, visibility of the applicant, position within the community, public expression of support for the government or condemnation of ISIL’s actions, personal enmities, etc.

### *Nexus to a reason for persecution*

Available information indicates that the persecution of this profile is for reasons of (imputed) political opinion and/or religion (e.g. when they are accused as *takfir* by ISIL).

## 10. (Perceived) collaborators of Western armed forces, organisations, or companies

This profile includes, in particular, individuals who are or were associated with the US forces and foreign oil companies, such as interpreters, engineers and drivers.

### *COI summary*

[*Targeting*, 1.9]

Personnel who worked for the United States between 2003 and 2011 often did so at great risk to themselves and their families. Targeting of this profile, in particular by Shia militias, was prevalent in the period before the US troops were pulled out of Iraq in December 2011, and especially in the most violent period between 2005 and 2008.

There are no recent reports of targeting of individuals for reasons of their connection to Western armed forces, organisations, or companies.

### *Risk analysis*

There are no recent reports of acts of targeting of this profile, which would amount to persecution.

Therefore, in general, individuals under this profile are currently not considered to have a well-founded fear of persecution.

### *Nexus to a reason for persecution*

According to available information, if well-founded fear of persecution could be substantiated in exceptional cases, such persecution would be for reasons of (imputed) political opinion.

## 11. Humanitarian workers

This profile includes those working for national and international NGOs.

### COI summary

[Targeting, 1.16]

It is reported that armed groups in Iraq, including official armed groups, pose a threat to humanitarian workers. There are reports of access restrictions and detention, and there have been targeted attacks against humanitarian workers. According to INSO's data, during the period between January and October 2018, there have been 66 reported incidents targeting NGOs in Iraq, the majority being cases of assault (40), followed by arrest and detention (9), direct fire (9), intimidation (4), robbery (3), IED ordnance (1). Two NGO workers died as a result of these incidents during the stated period.

### Risk analysis

The acts to which individuals under this profile could be exposed are of such severe nature that they would amount to persecution (e.g. assault, killing).

Not all individuals under this profile would face the level of risk required to establish well-founded fear of persecution. The individual assessment of whether or not there is a reasonable degree of likelihood for the applicant to face persecution should take into account risk-impacting circumstances, such as: gender (see also [Women in public roles](#)), nature of activities (e.g. providing assistance to women and children associated with ISIL, see also [Persons perceived to be associated with ISIL](#)), region of work/activity, etc.

### Nexus to a reason for persecution

Available information indicates that persecution of this profile is for reasons of (imputed) political opinion and/or religion (e.g. when they are accused as *takfir* by ISIL).

## 12. LGBTI persons

This profile refers to persons who are perceived as not conforming to social and religious norms because of their sexual orientation and/or gender identity.

### COI summary

[Targeting, 3.3; Actors of protection, 9.4]

Iraq has no laws explicitly criminalising consensual same-sex conduct. Nevertheless, there are reports that 'public indecency' and 'prostitution' provisions are used to prosecute same-sex sexual activity.

Members of the LGBTI community generally face severe discrimination in society. There are reports of threats, physical attacks, kidnappings, killings. LGBTI individuals have been targeted by ISIL and by some PMU, as well as by the police.

Threats are often by the family of the affected person and by the community. The government generally fails to identify, arrest, or prosecute attackers and to protect targeted individuals.

### Risk analysis

The acts to which (perceived) LGBTI individuals could be exposed are of such severe nature that they would amount to persecution (e.g. kidnappings, physical assaults, killings).

Generally, a well-founded fear of persecution would be substantiated for (perceived) LGBTI individuals.

It has to be noted that an applicant cannot be expected to conceal their sexual orientation or gender identity to avoid persecution.<sup>17</sup>

---

<sup>17</sup> CJEU, *Minister voor Immigratie en Asiel v X and Y and Z v Minister voor Immigratie en Asiel*, joined cases C-199/12 to C-201/12 judgment of 7 November 2013, paras. 70-76.

### *Nexus to a reason for persecution*

Available information indicates that the persecution of this profile is for reasons of membership of a particular social group, based on a shared characteristic which is so fundamental to their identity that they should not be forced to renounce it; and based on a distinct identity of LGBTI persons in Iraq, because they are perceived as being different by the surrounding society.<sup>18</sup>

## 13. Individuals perceived to transgress moral codes

This profile includes individuals at risk of honour-based violence, persons transgressing cultural, social or religious norms, persons in inter-sect marriages, and persons displaying westernised behaviour.

### *COI summary*

#### **a. Honour-based violence and tribal sanctions**

[*Targeting*, 3.1.1, 3.5.3, 3.6; *Key socio-economic indicators*, 10.5.3; *Actors of protection*, 6.4, 9.1.]

Transgressions of family honour, linked to cultural beliefs about women's virginity or purity, have led to families and tribes carrying out honour-based violence against family members, usually females. Perpetrators are often male relatives or family members, who carry out honour killings for a range of 'crimes', such as sexual relations outside marriage, including instances of rape or other forms of sexual violence, to inappropriate appearances or unacceptable contact with males outside the family, among others.

Although the scale of honour killings in Iraq is unknown due to severe underreporting, the estimates are that several hundreds of girls and women become victims of honour killings each year. In 2017, there were 272 honour crimes reported to police and sent to court; up from 224 in 2016. Honour killings are rarely investigated and punished.

This issue affects all parts of the country, cutting through religious and ethnic divides, with a strong tribal element and linked with the strong patriarchal society.

Iraq lacks comprehensive legislation to protect from and punish violence against women, and it allows for honour as a mitigating circumstance. The Iraqi Penal Code of 1969 states, under Article 409, '[a]ny person who surprises his wife in the act of adultery or finds his girlfriend in bed with her lover and kills them immediately or one of them or assaults one of them so that he or she dies or is left permanently disabled is punishable by a period of detention not exceeding 3 years. It is not permissible to exercise the right of legal defence against any person who uses this excuse nor do the rules of aggravating circumstance apply against him'. This article was suspended in the KRI in 2000. However, implementation of the laws regulating honour crimes in KRI is impeded by the patriarchal mentality of the society, as well as the discriminatory mindset of the judiciary towards women.

There are reports that persons who transgress cultural, social or religious norms face harsh punishment by their tribes. It has, for example, been reported that behaviour on social media, such as clicking on a 'like' button of an 'objectionable' Facebook page, could lead to tribal sanctions, including significant financial compensation; according to the source, there is agreement amongst various tribes in southern Iraq on the subject.

Tribes in a number of governorates have also forcibly evicted families associated with ISIL and confiscated their property (see the profile [Persons perceived to be associated with ISIL](#)).

---

<sup>18</sup> CJEU, X, Y and Z, paras. 45-49.



Persons who do not comply with the will of their tribe may be killed, ostracised or disowned and expelled from the tribe and be forbidden to reside in specific areas.

With regard to tribal feuds and conflict resolution, see the profile [\*Persons involved in and affected by blood feuds in the context of tribal conflict\*](#).

#### **b. Persons in inter-sect marriages**

[*Targeting*, 3.10, 3.11]

Inter-sect marriages between **Sunni and Shia** were and continue to be common in Iraq. Due to the politicisation of sectarian differences since 2006, there has been a decrease in Sunni-Shia marriages. However, they are still not unusual. There are incidents of violence due to inter-sect marriages, although the reasons for it are often intertwined with other causes, such as honour-based violence.

Marriages between **Arabs and Kurds** are very rare, especially in northern Iraq, where sectarian and ethnic tensions are high. Arab-Kurdish couples are stigmatised by both Arabs and Kurds. Nevertheless, due to displacement in the context of the ISIL crisis, it has become slightly more common.

In the **KRI**, especially women may be victims of honour killing due to being in a mixed marriage.

#### **c. Persons displaying westernised behaviour**

[*Targeting*, 1.1.2, 1.14, 3.12]

Persons who are seen as not conforming with the local social and cultural norms by displaying 'westernised' behaviour have been subjected to threats and attacks by individuals in society, as well as by militia groups. PMU are targeting people that show signs of deviating morality according to their interpretation of Shia norms, sometimes with the support of the Shia community. LGBT persons, Christians, alcohol sellers and artists are among those reportedly targeted.

Men and especially women face pressure to conform to conservative standards on personal appearances. Shia militias in Baghdad and Basrah seek to enforce strict dress codes and are responsible for violent attacks on women whose dress styles are considered inappropriate. Women have been targeted for assassination by militias, for example, due to wearing the "wrong" clothes, or (allegedly) being connected to prostitution. According to a 2017 report, 'some Muslims continued to threaten women and girls, regardless of their religious affiliation, for refusing to wear the hijab, for dressing in Western-style clothing, or for not adhering to strict interpretations of Islamic norms governing public behaviour'.

Alcohol vendors in particular may be subject to assassination, death threats or forced out of their community. Yazidis and Christians, being the main importers and sellers of alcohol, are mostly affected.

#### **Risk analysis**

The acts to which individuals under this profile could be exposed are of such severe nature that they would amount to persecution (e.g. violent attacks, killings).

Not all individuals under this profile would face the level of risk required to establish well-founded fear of persecution. The individual assessment of whether or not there is a reasonable degree of likelihood for the applicant to face persecution should take into account risk-impacting circumstances, such as: gender (the risk is higher for women), conservative environment, perception of traditional gender roles by the family and society, etc.

#### **Nexus to a reason for persecution**

Available information indicates that for this profile, the individual circumstances of the applicant need to be taken into account to determine whether or not a nexus to a reason for persecution can be substantiated.



In the cases of inter-sect marriages, as well as in individual cases of persons targeted by Shia militias, persecution may be for reasons of religion.

In the case of persons transgressing social norms, persecution may also be for reasons of membership of a particular social group, based on their common background which cannot be changed (perceived past behaviour) and/or a shared characteristic or belief that is so fundamental to identity or conscience that they should not be forced to renounce it (opposition to cultural, social or religious norms and the unwillingness to comply with them). In relation to the latter, a thorough individual assessment should consider whether the particular characteristic or belief is fundamental to the identity or conscience of the applicant. They are also considered to have a distinct identity in the context of Iraq, because they are perceived as being different by the surrounding society.

#### 14. Individuals considered to have committed blasphemy and/or apostasy

This profile refers to persons who are considered to have abandoned or renounced the religious belief or principles of Islam (apostasy), individuals who have converted from Islam to a new faith, based on their genuine inner belief (converts), those who disbelieve or lack belief in the existence of God or gods (atheists), as well as persons considered to have spoken sacrilegiously about God or Islam (blasphemy). It can be noted that, often, the grounds related to conversion and atheism would be invoked *sur place* ([Article 5 QD](#)).

##### *COI summary*

*[Targeting, 3.2; COI query on atheism and conversion in the KRI]*

Islam is the official state religion of Iraq. According to the Iraqi Constitution, no law may be enacted that contradicts the provisions of Islam. The Iraqi Constitution also guarantees freedom of religious belief and practices for Muslims, Christians, Yazidis, and Sabeen-Mandaeans, but not for followers of other religious or atheists. The Constitution further guarantees freedom from religious coercion, and states that all citizens are equal before the law without regard to religion, sect, or belief.

##### **a. Conversion and apostasy**

Apostasy is uncommon in Iraq and is generally seen as unnatural. Despite its acknowledgment of religious diversity, the Personal status laws and regulations prohibit the conversion of Muslims to other religions. Whilst civil laws provide a simple process for a non-Muslim to convert to Islam, conversion of a Muslim to another religion is forbidden by law. Article 26 of the National Identity Card Law affirms the right of non-Muslims to convert to Islam, but does not grant the same rights to Muslims. Converts from Islam to other religions cannot change their religion on their identity cards after conversion and must continue to be registered as Muslims. Children born to a Muslim and a non-Muslim parents are legally deemed Muslim.

According to COI sources, people who convert from Islam to Christianity may be at risk of being killed in Iraq. While converts may encounter difficulties with the authorities, the main source of problems is usually the community and family, with reactions varying from one family to another. In some cases, family members are open-minded and do not react to the conversion in any way. In others, the convert may be disowned, receive death threats or even be killed. According to some sources, problems typically arise within the extended family. The treatment of female converts is reportedly much worse than the treatment of men. The situation of the convert may also vary somewhat depending on the person's social status and tribal background. Kurdish tribes could be more permissive towards the convert compared to Arab tribes. There are also regional differences, with reactions being generally harsher in the countryside.

The situation for converts is reportedly worse in other parts of Iraq as compared to the KRI. In 2015, the KRG passed a law to protect the rights of different religious groups. There are no reported cases of anyone being tried in the KRI for changing religion. Although the KRG supports the Christian

converts residing in the KRI, state authorities cannot provide the converts constant protection against the possible threat posed by their own tribe. Kurdish authorities are fairly tolerant of the Christian converts but it has not been possible for converts to e.g. change the official status of religion for their children. Some years ago Kurdish authorities did, however, register a Kurdish Christian group that had converted from Islam. The number of Christian converts in the KRI is generally thought to be around a few hundreds.

#### **b. Atheism**

Atheism is not illegal in Iraq, but State actors typically equate atheism with blasphemy. Although there are not any articles in the Iraqi Penal Code that provide for a direct punishment for atheism, the desecration of religions is penalised. In March 2018, arrest warrants were issued in Dhi Qar against four Iraqis on charges of atheism. According to COI sources, no recent examples of prosecution of atheists in the KRI have been reported.

In Iraq, atheists are reportedly viewed with disdain and face threats. It is reported that persons who openly admit they are not religious would risk arrest in, for example, Baghdad and the South, whereas in the KRI there would be more freedom of expression with regards to religious beliefs. According to COI sources, Kurds primarily identify themselves in terms of their ethnicity and not their religious affiliation.

While atheism is rare in Iraq, the number of atheists is reportedly growing. Secularism is also on the rise amongst Iraq's youth. A poll released in 2011 recorded that 67 % of Iraq's population answered that they believe in God, 21 % answered probably, whilst 7 % answered that they did not believe in God. There are many Iraqi websites and blogs that cater to atheists, but membership lists are kept secret for fear of persecution by extremist religious groups or the surrounding society.

Atheism is in general not well perceived in the KRI. However, according to some sources, it is somewhat more acceptable to be an atheist than an apostate. Criticism of religious functionaries in general is quite widespread in KRI and is not looked upon as something scandalous. Criticising Islam on social media, particularly on Facebook, has become something of a social trend in the KRI, whereas up until recently it was not acceptable. However, proclaiming oneself as an atheist publicly could cause problems. There have reportedly been cases in which atheists have been physically threatened, harassed or rejected by their families. According to COI sources, atheists who suffer harassment due to their beliefs prefer to hide than to report to the police. Although the Kurdish government is secular, society in general, especially in Erbil, is conservative and people are generally expected to respect Islamic norms.

#### **Risk analysis**

The acts to which individuals under this profile could be exposed are of such severe nature that they would amount to persecution (e.g. killing, violent attacks).

When considering such applications, the case officer should take into account that it cannot reasonably be expected that an applicant will abstain from his or her religious practices in order to avoid persecution.<sup>19</sup> It should be noted that the concept of religion shall in particular include the holding of theistic, non-theistic and atheistic beliefs ([Article 10\(1\)\(b\) QD](#)).

In the case of those perceived as apostates (e.g. for reason of conversion to Christianity or due to atheism) or blasphemers, in general, a well-founded fear of persecution would be substantiated. However, the risk assessment should take into account the religious or non-religious practices the applicant will engage in and whether those would expose him or her to a real risk,<sup>20</sup> also taking into

---

<sup>19</sup> CJEU, *Bundesrepublik Deutschland v Y and Z*, joined cases C-71/11 and C-99/11, judgment of 5 September 2012, para 80.

<sup>20</sup> *Ibid.*

account his or her home region (the risk is generally lower in the KRI), family and ethnic background, gender, etc.

See also [\*Religious and ethnic minorities, and stateless persons\*](#).

### *Nexus to a reason for persecution*

Available information indicates that persecution of this profile is for reasons of religion.

## 15. Religious and ethnic minorities, and stateless persons

This profile focuses on the following minorities: Turkmen, Iraqis of African descent (referred to as 'black Iraqis'), Yazidi, Christians, Shabak, Kaka'i, Sabeen-Mandaeen, Baha'i, Zoroastrian, Bidoon, Fayli Kurds, Roma and Palestinians.

### *COI overview*

[*Targeting*, 3.4; *Internal mobility*, 2.4.2]

The three largest demographic groups in Iraq are Shia Arabs, Sunni Arabs, and Kurds. It is estimated that 75 - 80 % of the inhabitants are Arab and 15 - 20 % are Kurdish. Ethnic minorities make up to 5 % of the population. Islam is the country's official religion. According to official statistics from 2010, 97 % of the population is Muslim (approximately 55 - 60 % Shia and 40 % Sunni). Numerous religious, ethnic, cultural and linguistic minorities live in Iraq, in particular in the North of the country, such as Turkmen, Iraqis of African descent, Yazidi, Christians, Shabak, Kaka'i, Sabeen-Mandaeen, Baha'i, Zoroastrian, Bidoon, Fayli Kurds, Roma, Palestinians, Assyrians, Jews, etc..

Some general aspects can be highlighted before looking into the different ethnic and/or religious minorities in the following sub-sections.

The Iraqi constitution guarantees freedom of religious belief and practices for Muslims, Christians, Yazidis, and Sabeen-Mandaeen, but not followers of other religions or atheists. In addition, the Constitution guarantees freedom from religious coercion, and states that all citizens are equal before the law, without regard to religion, sect, or belief.

The Personal Status Law recognises the following religious groups: Islam, Chaldean, Assyrian, Assyrian Catholic, Syriac Orthodox, Syriac Catholic, Armenian Apostolic, Armenian Catholic, Roman Orthodox, Roman Catholic, Latin-Dominican Rite, National Protestant, Anglican, Evangelical Protestant Assyrian, Adventist, Coptic Orthodox, Yazidi, Sabeen-Mandaeen, and Jewish. There is no distinction between Shia and Sunni Muslim, nor a designation of Christian denominations.

Individuals practicing other faiths may only receive identity cards if they self-identify as Muslim, Yazidi, Sabeen-Mandaeen, or Christian. The ID card is described as the most important personal document for Iraqis, because it is required for all contact with authorities, and to obtain services, such as healthcare, social welfare, education, and when buying and selling property, including houses or vehicles. It is also necessary for the issuance of other official legal documentation, such as passports. Without an official identity card, non-Muslims and those who convert to faiths other than Islam may not register their marriages, enrol their children in public school, acquire passports, etc. The 2015 National Identity Card Law also requires children from mixed religion marriages to be registered as Muslim and reinforces restrictions that Muslims cannot change their religious identification on their identity cards after conversion to any other religion. A new electronic and biometric ID card system is being introduced in Iraq, where information about the person's religion is stored on the chip, but does not appear on the ID card.

## **a. Turkmen**

### *COI summary*

[*Targeting*, 1.3.4, 2.2.1, 3.4.1]

Turkmen are the third largest ethnic group in Iraq after Arabs and Kurds. They comprise of both Sunni and Shia, and a small group of Christian Turkmen.

There are reports from 2017 of KRG authorities discriminating against Turkmen in the disputed territories. There are reports of harassment, arbitrary arrests, forced evictions of displaced Turkmen at the hands of KRG authorities up until the Iraqi takeover of the disputed territories in October 2017.

Turkmen in Kirkuk seem to be the most targeted group among all ethnic and religious groups living in the city.

There were reports of abductions and killings of Shia Turkmen by ISIL. For example, when the organisation seized the area around the town of Amerli in Salah al-Din, placing its 13 000 inhabitants under siege. Residents were suffering from severe shortages of food, medicine and drinking water. Some residents died from lack of access to medical services.

Based on suspicion of being affiliated with ISIL, Sunni Turkmen, along with Sunni Arabs, are targeted by the PMU and subjected to discrimination, forms of collective punishment, and killings (see [\*Persons perceived to be associated with ISIL\*](#)).

A large group of Turkmen are IDPs. There have been reports that Sunni Turkmen IDPs were prevented by the Peshmerga and PMU from returning to their homes in areas liberated from ISIL.

### *Risk analysis*

The acts to which individuals under this profile could be exposed are of such severe nature that they would amount to persecution (e.g. killing, collective abuses). When the acts in question are (solely) discriminatory measures, the individual assessment of whether or not discrimination could amount to persecution should take into account the severity and/or repetitiveness of the acts or whether they occur as an accumulation of various measures.

Not all individuals under this profile would face the level of risk required to establish well-founded fear of persecution. The individual assessment of whether or not there is a reasonable degree of likelihood for the applicant to face persecution should take into account risk-impacting circumstances, such as: area of origin (e.g. Shia Turkmen in areas where ISIL continues to operate), perceived affiliation with ISIL or PMU, religion, etc.

### *Nexus to a reason for persecution*

Available information indicates that persecution of this profile is for reasons of race (ethnicity) and in some cases (imputed) political opinion and/or religion.

## **b. Iraqis of African descent**

### *COI summary*

[*Targeting*, 3.4.2]

Iraqis of African descent (also referred to as 'black Iraqis') are thought to have emigrated to Iraq around the seventh century, largely trafficked as slaves from east Africa. The community consists of an estimated 2 million persons and is predominantly located in southern Iraq, with the largest community residing in Basrah.

Prejudice against Iraqis of African descent has made them subject to social and cultural discrimination and political exclusion in Iraq. They are considered to be among the poorest and most marginalised communities in Iraq. Many live in informal settlements, lacking access to clean water, proper sewage

and electricity. Poverty and the ongoing near-feudal structure of some community groups have prevented some Iraqis of African descent from obtaining identity documents. This further prevents them from school enrolment, employment, travel, and access to services. Nearly 80 % of the Iraqis of African descent are illiterate and the rate of unemployment is reportedly higher than 80 %.

The Special Rapporteur on minority issues to the UN Human Rights Council notes a disturbing lack of information on the circumstances of 'black Iraqis'.

### *Risk analysis*

The individual assessment of whether or not the treatment of individuals under this profile could amount to persecution should take into account the severity and/or repetitiveness of the acts or whether they occur as an accumulation of various measures.

Not all individuals under this profile would face the level of risk required to establish well-founded fear of persecution. The individual assessment of whether or not there is a reasonable degree of likelihood for the applicant to face persecution should take into account risk-impacting circumstances such as: lack of identity documents, age, etc.

### *Nexus to a reason for persecution*

Available information indicates that persecution of this profile is for reasons of race.

## **c. Yazidi**

### *COI summary*

[*Targeting, 2.2.4, 3.4.3*]

The Yazidi are one of Iraq's oldest minorities. There used to be around 700 000 Yazidis in Iraq, however, currently the number is estimated to around 500 000. The vast majority were concentrated in northern Iraq around the town of Sinjar and in areas south of and bordering the KRI, including the Ninewa plains.

ISIL justified the attacks against Yazidis by labelling them as heretics and 'devil worshippers'. ISIL's attacks on the Yazidi community in and around Sinjar were 'without mercy' and entailed mass killings, forced conversions, kidnapping young children and sexually enslaving thousands of women and girls. As of October 2018, around 3 000 Yazidi women and children remained in ISIL captivity or were missing. No men remained in ISIL captivity; those abducted have either escaped or been freed, or have been executed by ISIL. The Special Rapporteur on minority issues of the UN considered that, 'While further detailed investigation is required, information provided to the Special Rapporteur, including public videos and statements by ISIL itself, strongly supports allegations that the threshold required for a finding of genocide has been surpassed in the case of the Yazidis.'

Even before ISIL's offensive, numerous incidents of arbitrary arrest, discrimination and other abuses against the Yazidi community were reported. Yazidis were and are widely discriminated against in Iraqi society and they likely constitute Iraq's poorest community, aside from the Iraqis of African descent in the south. The Yazidi remain highly vulnerable, as they are in a precarious displacement situation and cut off from their traditional lands and livelihoods.

Kurdish officials frequently put pressure on Yazidis to identify as Kurds or Muslims, and those who refuse risk harassment, detention, or deportation from KRI or are prevented from entering the KRI. Some sources report that the relationship between the KRG and the Yazidi has been seriously damaged because of the controversial withdrawal of the Peshmerga preceding ISIL's attack on the Yazidi community. Yazidis in KRI also report facing hostility from the wider population. On a number of occasions tensions between Kurds and Yazidis have boiled over, resulting in violence.

Representatives of the Yazidi community indicated that many Yazidis are leaving Iraq, having little hope for a return to normal life in the Ninewa plains and Sinjar. Close to 200 000 Yazidi remain displaced.

### *Risk analysis*

The acts to which individuals under this profile could be exposed are of such severe nature that they would amount to persecution (e.g. harassment, detention, deportation, physical assaults, sexual abuse, killings). When the acts in question are (solely) discriminatory measures, the individual assessment of whether or not discrimination could amount to persecution should take into account the severity and/or repetitiveness of the acts or whether they occur as an accumulation of various measures.

Not all individuals under this profile would face the level of risk required to establish well-founded fear of persecution. The individual assessment of whether or not there is a reasonable degree of likelihood for the applicant to face persecution should take into account risk-impacting circumstances, such as: area of origin (e.g. Yazidi in areas where ISIL continues to operate), identity documents, gender, etc.

### *Nexus to a reason for persecution*

Available information indicates that persecution of this profile is for reasons of race and/or religion.

## **d. Christians**

### *COI summary*

[*Targeting*, 1.13, 2.2.3, 3.4.4; *Security situation*, 2.2]

It is estimated that approximately 250 000 Christians are living in Iraq: Christian groups include Chaldean Catholics (67 % of all Christians) and the Assyrian Church of the East (a further 20 %). Less numerous denominations include Syrian Orthodox, Syriac Catholic, Armenian Catholic, Armenian Orthodox, Anglican, Evangelical and other Protestants.

Most Christians in Iraq had already fled before the 2014 ISIL advance. The majority of the Christians remaining in Iraq live in Baghdad, Mosul, the Ninewa plains, Kirkuk, Basrah, and the KRI.

Following the eruption of violence in the years after the US invasion, Christians were targeted for their religious affiliation as well as for their perceived ties with the West.

Under ISIL, Christians suffered killings, kidnapping, rape, enslavement, forced marriage, and sexual violence. ISIL subjected Christians to high levels of violence and discrimination in the areas under its control, forcing Christians to convert to Islam, pay *jizya* or face death or expulsion.

Violence against Christians in the KRI is less common, but Christians in the region continue to face discrimination in the form of intimidation and denial of access to services. Christian NGOs have reported that some Muslims threaten and harass women and girls for refusing to wear the hijab or not adhering to strict interpretations of Islamic norms regarding public behaviour.

Assyrian Christians have complained of land appropriations by ethnic Kurds, which may have occurred with the 'blessing, or tacit consent' of Kurdish officials. Complaints about appropriation of Christian land by ethnic Kurds are long-standing and originate mainly from Dahuk and Erbil governorates. A law was issued in 2015 by the Kurdistan parliament to address the issue, however sources report that the law has not yet been enforced.

There are some reports that PMU may target Christians that display behaviour deviating from Muslim moral codes, such as selling alcohol and celebrating Christian holidays, or women not covering up.

In Baghdad, Christians reported that they fear being targeted for extortion, kidnapping, and having their property taken away by Shia militias. According to reports from 2017, criminal networks and some militia groups have seized the property of Christians with relative impunity, particularly in Baghdad, but also in areas of Anbar, Babil, Basrah, Diyala, and Wassit.

With regard to conversion, see [\*Individuals considered to have committed blasphemy and/or apostasy\*](#).

### *Risk analysis*

The acts to which individuals under this profile could be exposed are of such severe nature that they would amount to persecution (e.g. killing, rape, abduction). When the acts in question are (solely) discriminatory measures, the individual assessment of whether or not discrimination could amount to persecution should take into account the severity and/or repetitiveness of the acts or whether they occur as an accumulation of various measures.

Not all individuals under this profile would face the level of risk required to establish well-founded fear of persecution. The individual assessment of whether or not there is a reasonable degree of likelihood for the applicant to face persecution should take into account risk-impacting circumstances such as: area of origin (e.g. Christians in areas where ISIL continues to operate are at higher risk; risk is lower in KRI), gender, etc.

### *Nexus to a reason for persecution*

Available information indicates that persecution of this profile is for reasons of religion.

## **e. Shabak**

### *COI summary*

[*Targeting*, 2.2.1; 3.4.6]

The Shabak form an ethnic group consisting of three tribes: Hariri, Gergeri and Mawsili. Approximately 70 % identify as Shia. The Shabak are largely living in the Ninewa plains.

ISIL's advance resulted in kidnappings and executions for Shabak who refused to comply with ISIL's orders.

Besides facing violence from ISIL, the Shabak have been victims of efforts to forcibly alter the demographic balance in their areas of origin in favour of either Arabs or Kurds. The Shabak community is located in an area that is disputed between Erbil and Baghdad. The power struggles between the two governments have affected the Shabak detrimentally and they have faced enormous pressure and harassment from the KRG to assimilate and declare themselves as Kurds.

### *Risk analysis*

The individual assessment of whether or not the treatment of individuals under this profile could amount to persecution should take into account the severity and/or repetitiveness of the acts or whether they occur as an accumulation of various measures.

Not all individuals under this profile would face the level of risk required to establish well-founded fear of persecution. The individual assessment of whether or not there is a reasonable degree of likelihood for the applicant to face persecution should take into account risk-impacting circumstances, such as their area of origin, etc.

### *Nexus to a reason for persecution*

Available information indicates that persecution of this profile is for reasons of race and/or religion (in relation to persecution by ISIL).



## **f. Kaka'i**

### *COI summary*

[*Targeting, 2.2.5, 3.4.7*]

The Kaka'i are a religious minority consisting of between 110 000 and 200 000 persons and located mainly in the southeast of Kirkuk and in the Ninewa plains near Daquq and Hamdaniya, and in Diyala and the KRI. The Kaka'i are followers of a syncretic religion, which contains elements of Zoroastrianism and Shia Islam. According to the Special Rapporteur on minority issues to the UN Human Rights Council, the Kaka'i are ethnically associated with the Kurds while maintaining a distinct religious identity.

The Kaka'i had suffered historic persecution, including under the Saddam Hussein regime, with their lands and villages confiscated. USDOS reported that outside the KRI, the Kaka'i are an unrecognised religious group, noting that the law does not prescribe penalties for practicing it, but that contracts signed by unrecognised religious groups are not legal or permissible as evidence in court.

According to the 2015 Report on International Religious Freedom of the USDOS, more than 2 500 Kaka'i families had fled to the KRI as a result of the ISIL incursion, and thousands remained displaced. In 2018, Kaka'i community activists stated that only a limited number of community members had returned to liberated Ninewa.

As of September 2018, members of the Kaka'i community in Kirkuk governorate (mainly in Daquq district, south of Kirkuk) continued to be displaced, because of security concerns. Kaka'i villages have been targeted by ISIL because of perceived cooperation with ISF, with several reported attacks. Some villages have been deserted, others are defended by the local communities, but the local population expressed its concern that it would not be possible to secure the communities without substantial help from the outside.

### *Risk analysis*

The acts to which individuals under this profile could be exposed are of such severe nature that they would amount to persecution (e.g. killing). When the acts in question are (solely) discriminatory measures, the individual assessment of whether or not discrimination could amount to persecution should take into account the severity and/or repetitiveness of the acts or whether they occur as an accumulation of various measures.

Not all individuals under this profile would face the level of risk required to establish well-founded fear of persecution. The individual assessment of whether or not there is a reasonable degree of likelihood for the applicant to face persecution should take into account risk-impacting circumstances, such as their area of origin (higher risk in areas where ISIL continues to operate, lower risk in KRI), etc.

### *Nexus to a reason for persecution*

Available information indicates that persecution of this profile is for reasons of race and/or religion.

## **g. Sabeen-Mandaeans**

### *COI summary*

[*Targeting, 3.4.8*]

The Sabeen-Mandaeans are the smallest ethno-religious minority in Iraq, with estimated numbers less than 5 000. Their area is in southern Iraq, including Basrah and the southern governorates of Dhi Qar and Maysan, but small numbers also live in Baghdad and the KRI. According to the Special Rapporteur on minority issues to the UN Human Rights Council, 'their language, culture and religion are thought to be at risk of extinction in Iraq'.



Sabeen-Mandaeans have fled ISIL-controlled areas and have become internally displaced, while many are said to have departed the country.

They have also faced violence by both Shia and Sunni Islamic groups and continue to be actively targeted. Numerous attacks have taken place against community members, their property and places of worship, including targeted killings of individuals. They have been extorted and pressured to conform to Islamic principles by financially supporting Shia rituals, parades and public events, especially during Islamic holidays. Not participating in such societal displays is considered to put Sabeen-Mandaeans at risk of becoming disenfranchised from the local community.

Sabeen-Mandaeans were perceived as rich because they were associated with the jewellery trade. Because of this, they became a target for extortion by extremist groups and criminal gangs. Especially in Baghdad, members of the Sabeen-Mandaean community are often associated with wealth since many of its members work within the jewellery and gold/silversmith businesses. In addition, the Sabeen-Mandaeans are by their religion prohibited to resort to arms, even in self-defence. Thus, community members were especially exposed to face robberies of their goldsmith, silversmith and jewellery stores.

Being Arabic speakers, Sabeen-Mandaeans who fled to KRI faced a language barrier when interacting with the Kurdish majority, experiencing racism and sometimes discrimination or verbal abuse on account of being perceived as 'Arabs from the south'. Being displaced into the KRI with a weak social network, the community lacks access to employment and economic opportunities.

Sabeen-Mandaeans experience discrimination and negative stereotyping in all aspects of public life.

### *Risk analysis*

The acts to which applicants could be exposed are of such severe nature that they would amount to persecution (e.g. harassment, physical assaults, killings). When the acts in question are (solely) discriminatory measures, the individual assessment of whether or not discrimination could amount to persecution should take into account the severity and/or repetitiveness of the acts or whether they occur as an accumulation of various measures.

Not all individuals under this profile would face the level of risk required to establish well-founded fear of persecution. The individual assessment of whether or not there is a reasonable degree of likelihood for the applicant to face persecution should take into account risk-impacting circumstances such as: area of origin (the risk is lower in KRI), language, etc.

### *Nexus to a reason for persecution*

Available information indicates that persecution of this profile is for reasons of religion and/or race (in particular in the KRI).

## **h. Baha'i**

### *COI summary*

*[Targeting, 3.4.9]*

The number of Baha'i currently in Iraq are believed to be less than 2 000. The Baha'i religion was banned under the Baath party and members have been particularly oppressed in Iraq from the early 1970s, Baha'i property was confiscated and members of the community ultimately faced prison or execution.

According to Regulation 258 from 1975, Baha'i were denied access to birth and marriage registration, passports, employment, entry into university, and the possibility to buy and sell housing and property. Although this regulation was revoked in 2008, the Baha'i still cannot register their faith on their ID cards and Baha'i people are at risk of statelessness. In order to be issued an ID, Baha'i have to list 'Muslim' on identity documents. Without identity documentation, the Baha'i cannot access rights and

services related to citizenship, such as education, property ownership and medical care. The majority of Baha'i marriages are not registered officially, so the children of such marriages cannot obtain identification.

Baha'i do not benefit from any recognition or special measures under the Iraqi Constitution, but they are recognised as a religious minority by the KRG.

### *Risk analysis*

The individual assessment of whether or not the treatment of individuals under this profile could amount to persecution should take into account the severity and/or repetitiveness of the acts or whether they occur as an accumulation of various measures.

Not all individuals under this profile would face the level of risk required to establish well-founded fear of persecution. The individual assessment of whether or not there is a reasonable degree of likelihood for the applicant to face persecution should take into account risk-impacting circumstances, such as: statelessness, identity documents, area of origin, etc.

### *Nexus to a reason for persecution*

Available information indicates that persecution of this profile is for reasons of religion.

## *i. Zoroastrian*

### *COI summary*

[Targeting, 3.4.10]

Zoroastrianism is one of the world's oldest religions, which had disappeared from Iraq for centuries. There is reportedly a growing trend amongst Kurds converting to Zoroastrianism, particularly since the KRG passed legislation officially recognising the Zoroastrian religion. Zoroastrians are mainly located in Dahuk and Sulaymaniyah. In 2015, it was estimated that there were around 100 000 Zoroastrians living in the KRI. According to reports from the political representative of Kurdish Zoroastrians from December 2017, around 4 000 persons in Erbil governorate have filled out forms expressing their desire to convert to Zoroastrianism.

Zoroastrianism is recognised under Law No. 5 of Protecting Components of Iraqi Kurdistan of 2015, which allowed for the official establishment of the Zoroastrian Cultural and Heritage Centre and for an official representative with the Ministry of Endowments and Religious Affairs in KRI.

Zoroastrians have reportedly not been subjected to mistreatment by the authorities, however some have been harassed and threatened by non-State actors. According to some reports, conversions to Zoroastrianism have resulted in incitement of hatred and defamation by some Sunni clerics and discrimination and (death) threats. Prominent followers of Zoroastrianism have reported threats and harassment from Islamic groups.

### *Risk analysis*

The individual assessment of whether or not the treatment of individuals under this profile could amount to persecution should take into account the severity and/or repetitiveness of the acts or whether they occur as an accumulation of various measures.

Not all individuals under this profile would face the level of risk required to establish well-founded fear of persecution. The individual assessment of whether or not there is a reasonable degree of likelihood for the applicant to face persecution should take into account risk-impacting circumstances, such as: area of origin (lower risk in the KRI), conversion and original religion, identity documents, etc.

### *Nexus to a reason for persecution*

Available information indicates that persecution of this profile is for reasons of religion.

## j. Bidoon

### *COI summary*

[*Targeting*, 3.4.11]

Bidoon (short for ‘bidoon jinsiya’, meaning ‘without nationality’ in Arabic, and alternately spelt as Bedoon, Bidun and Bedun) are a stateless Arab minority in Iraq. They are descendants of individuals who never received Iraqi citizenship upon the state’s founding, living as nomads in the desert near or in the southern governorates of Basrah, Dhi Qar, and Qadissiya. After the Iraq invasion of Kuwait, many Bidoon fled from Kuwait to Iraq and were later denied re-entry. In 2006 the number of Bidoon was estimated to be 54 500, while in 1997, a government census, assessed as unreliable, estimated their number at 100 000.

It is reported that the majority of Bidoon remain undocumented and stateless and do not have access to many services and public sector job opportunities, nor can they register land in their own names, sign rental contracts or inherit property. The births and deaths of stateless Bidoons are not usually registered by the government. However, according to a report of the Institute for International Law and Human Rights (IILHR) from 2013, ‘the community does not appear to face de jure barriers to accessing citizenship, identity, or other documentation.’

The Bidoon community faces high rates of poverty and a precarious living situation, limited access to education and services, such as clean water, electricity, and adequate shelter. Community members commonly earn money by selling garbage and tending other people’s livestock.

The IILHR and the Special Rapporteur on minority issues to the UN Human Rights Council have noted a disturbing lack of information on the circumstances of the Bidoon community in Iraq.

### *Risk analysis*

The individual assessment of whether or not the treatment of individuals under this profile could amount to persecution should take into account the severity and/or repetitiveness of the acts or whether they occur as an accumulation of various measures.

Not all individuals under this profile would face the level of risk required to establish well-founded fear of persecution. The individual assessment of whether or not there is a reasonable degree of likelihood for the applicant to face persecution should take into account risk-impacting circumstances such as: statelessness, area of origin, identity documents, etc.

### *Nexus to a reason for persecution*

Available information indicates that, if well-founded fear of persecution could be substantiated in a specific individual context, it could be for reasons of race and/or nationality (statelessness).

## k. Fayli Kurds

### *COI summary*

[*Targeting*, 3.4.12]

Fayli Kurds are an ethno-religious group historically inhabiting both sides of the Zagros mountain range along the Iraq-Iran border, and can be considered a cross-border population. Fayli Kurds in Iraq live mainly in Baghdad, as well as the eastern parts of Diyala, Wassit, Missan and Basrah governorates. A sizeable population can also be found in the KRI. Estimations of the numbers of Fayli Kurds in Iraq vary from 1.5 to 2.5 million.

Fayli Kurds are Shia Muslims. Under the former Baath regime, the Fayli Kurds reportedly faced systematic marginalisation and targeted discrimination from the State. Accused of being agents of Iran, Fayli Kurds were stripped of their citizenship and 300 000 were expelled to Iran. Sources report

that the persecution of Fayli Kurds largely decreased since 2003, resulting in the return of many Fayli Kurds to Iraq.

Although their right to nationality was restored in 2006, the process to obtain nationality documentation and reclaim lost property is reportedly cumbersome and a lot of Fayli Kurds are still stateless.

Societal discrimination against Fayli Kurds occurs, and communities that are dominated by other ethnic or religious groups tend to not welcome Fayli Kurds.

The Fayli Kurds have been targeted by ISIL, including the destruction of their places of worship. Thousands of Fayli Kurds have been displaced and have sought refuge in Dahuk, Erbil, Najaf and Kerbala.

Harassment of Fayli Kurds in Baghdad intensified after the KRI set a date for its independence referendum and a number of them moved to the KRI. Reports have noted that in 2016, some Fayli Kurds joined a Shia militia that is often in conflict with the Peshmerga forces. As a consequence, the Peshmerga did not protect Fayli Kurds.

### *Risk analysis*

The individual assessment of whether or not the treatment of individuals under this profile could amount to persecution should take into account the severity and/or repetitiveness of the acts or whether they occur as an accumulation of various measures.

Not all individuals under this profile would face the level of risk required to establish well-founded fear of persecution. The individual assessment of whether or not there is a reasonable degree of likelihood for the applicant to face persecution should take into account risk-impacting circumstances such as: statelessness, area of origin (south of Iraq, areas where ISIL continues to operate), identity documents, etc.

### *Nexus to a reason for persecution*

Available information indicates that, if well-founded fear of persecution could be substantiated in a specific individual context, it could be for reasons of race, religion and nationality (statelessness).

## **I. Roma**

### *COI summary*

*[Targeting, 3.4.13]*

There is no accurate demographic data on the Roma community in Iraq, with estimates ranging between 50 000 and 200 000. According to 2017 estimates, the Roma population was approximately 100 000, the majority living in Diwaniya City and Al Zuhour Village in Qadissiya governorate. They are also reported to be living in isolated villages and neighbourhoods around major cities, including Baghdad, Mosul, Basrah, and elsewhere in southern Iraq.

The Roma, also known under the highly derogatory term 'Kawliyah', are considered by IILHR to be 'among the most vulnerable, disfavoured and at-risk of all the marginalized groups in Iraq'.

Under the Saddam Hussein regime, many Roma were reportedly forced to work as entertainers and in prostitution. Because of this, they have come under targeted attack by Islamic militias since 2003. The association of Roma with 'immoral' acts is a source of stigmatisation for the entire community, even for those who do not engage in such practices.

The Roma suffer from discrimination and exclusion by the public authorities and society. There are also high rates of illiteracy within the community. According to the IILHR, the group faces 'extreme poverty, lack of education and access to basic services, eviction, and exploitation'. They have

experienced targeted violence, harassment, assault and exploitation from Islamic groups and tribal groups, forcing many Roma to leave their places of origin. Many Roma remain internally displaced and live on squatted land without access to clean water, electricity, adequate shelter, healthcare, adequate food, education and other basic services. Roma women face a high risk of sexual assault; few Roma children are enrolled in school.

Sources have also noted that the Roma are vulnerable to statelessness.

### *Risk analysis*

The acts to which individuals under this profile could be exposed are of such severe nature that they would amount to persecution (e.g. violence, assault). When the acts in question are (solely) discriminatory measures, the individual assessment of whether or not discrimination could amount to persecution should take into account the severity and/or repetitiveness of the acts or whether they occur as an accumulation of various measures.

Not all individuals under this profile would face the level of risk required to establish well-founded fear of persecution. The individual assessment of whether or not there is a reasonable degree of likelihood for the applicant to face persecution should take into account risk-impacting circumstances, such as: statelessness, identity documents, area of origin, religion, gender, etc.

### *Nexus to a reason for persecution*

Available information indicates that persecution of this profile is for reasons of race and/or nationality (statelessness).

## **m. Palestinian**

### *COI summary*

[*Targeting*, 3.4.15]

The Palestinian population in Iraq is estimated between 10 000 to 15 000 people, with the majority residing in the districts of al-Baladiyat and Zafarania in Baghdad, and smaller numbers located near Mosul, Basrah and Sulaymaniyah.

Pursuant to a decree from 2001, Palestinians who arrived in Iraq in 1948 were to be ‘treated as Iraqi citizens in rights and duties’, with the exception of the right to obtain Iraqi nationality. Palestinians nevertheless enjoyed an otherwise broad range of rights in Iraq, including the right to work, own property, obtain travel documents and access public healthcare and education. Palestinians who arrived in Iraq in 1967 or later do not have the same rights; however, they have access to public services and work in the private sector.

Despite the legal rights outlined, in practice Palestinians have since often been prevented from accessing or enjoying these rights.

After the fall of the government of Saddam Hussein in April 2003, the Palestinians became the target of hostility and harassment, particularly by armed militia, on account of their perceived association with and preferential treatment by the former regime, as well as their perceived support for Sunni militant groups. The situation of Palestinians reportedly improved between 2008 and 2012 but the escalation of violence since 2014 as a result of ISIL advances and the rise of Shia militias has brought a deterioration of the security and human rights situation for Palestinians.

Due to their nationality and perceived support of ISIL and other Sunni armed groups, Palestinians in Baghdad have been subjected to illegal detention, kidnapping, killings, disappearances, ill treatment and threats.

The Iraqi government does not recognise Palestinians as refugees, although legislation does provide protections for Palestinians, including the right to access the same services as other refugee communities.


### *Risk analysis*

The acts to which individuals under this profile could be exposed are of such severe nature that they would amount to persecution (e.g. militia violence, illegal detention, kidnapping, killings, disappearances). When the acts in question are (solely) discriminatory measures, the individual assessment of whether or not discrimination could amount to persecution should take into account the severity and/or repetitiveness of the acts or whether they occur as an accumulation of various measures.

Not all individuals under this profile would face the level of risk required to establish well-founded fear of persecution. The individual assessment of whether or not there is a reasonable degree of likelihood for the applicant to face persecution should take into account risk-impacting circumstances such as: area of habitual residence, identity documents, etc.

### *Nexus to a reason for persecution*

Available information indicates that persecution of this profile is for reasons of nationality (statelessness). In some cases, it may also be for reasons of (imputed) political opinion, due to perceived support for Sunni militias or ISIL (see [Persons perceived to be associated with ISIL](#)).

 In individual cases, where the person received protection from organs or agencies of the UN other than UNHCR and ‘when such protection or assistance has ceased for any reason, without the position of such persons being definitely settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, those persons shall ipso facto be entitled to the benefits of [the QD]’ ([Article 12\(1\)\(a\) QD](#)). It should be noted, however, that the mere absence from an UNRWA area or operation or a voluntary decision to leave it cannot be regarded as cessation of assistance.<sup>21</sup>

## 16. Women

The position of women and girls in Iraq is characterised by deeply engrained attitudes, strong cultural beliefs and societal structures that reinforce discrimination; gender-based human rights violations are common.

This profile refers to specific human rights violations Iraqi women may be exposed to, particularly:

- a. violence against women and girls, including domestic violence and sexual abuse
- b. harmful traditional practices, such as forced or child marriage and female genital mutilation or cutting (FGM/C)

This profile also includes women with further risk-enhancing elements, such as:

- c. women perceived to have transgressed moral codes
- d. women perceived as associated to ISIL
- e. women in public roles

With regard to additional protection needs of Iraqi women, particular consideration is given to the following risk-enhancing circumstance:

- f. lack of a male support network.

---

<sup>21</sup> See also CJEU, *Mostafa Abed El Karem El Kott and Others v. Bevándorlási és Állampolgársági Hivatal*, C-364/11, Judgment of 19 December 2012 (El-Kott); CJEU, *Bolbol v. Bevándorlási és Állampolgársági Hivatal*, C-31/09, Judgment of 17 June 2010 (Bolbol).

The COI summaries and the risk analysis are presented below by subsection. The analysis of potential nexus in the case of women is provided at the end of the profile section.

## *COI summary and risk analysis*

### **a. Violence against women and girls, including domestic violence and sexual abuse**

#### *COI summary*

[*Targeting*, 3.5; *Actors of protection*, 8.2, 9.1; *Key socio-economic Indicators*, 10.5; *Internal mobility*, 4.3]

Violence against women and girls is a pervasive problem in Iraq.

In particular, Iraq lacks comprehensive legislation to protect and punish violence against women; it allows for honour as a mitigating circumstance, and although it criminalises sexual assault, it allows charges to be dropped if the sexual assault perpetrator marry the victim. Several hundred women and girls are killed every year in honour crimes in Iraq, and such crimes are underreported to the authorities. See also [\*Individuals perceived to transgress moral codes\*](#).

Article 41 of the Penal Code gives a husband the legal right to resort to physical violence against his wife within certain limits prescribed by law or by custom. Sources report that around 1 000 women are killed every year in Iraq due to domestic violence.

Due to a reliance on traditional non-State justice mechanisms in areas of Iraq that are less developed, 'justice systems can lead to poor outcomes for women'. Domestic violence and honour killings are rarely punished and spousal rape is not criminalised.

There are no effective shelters for women in Iraq, and women who leave their homes due to abuse, are vulnerable and may end up taking shelter in prisons or resort to prostitution. Shelters in Iraq are significantly lacking and are run by volunteers. As most of them are located in the cities, it is very difficult for rural women to access them. The women that reside there are in an especially vulnerable situation, often having no male support network.

In the absence of shelters, authorities often detained victims for their own protection. Communities often viewed shelters for victims of gender-based crimes as brothels and demanded their closure. To appease these concerns, the government regularly closed these shelters while allowing them to reopen later in another location. Shelters have also been attacked.

Women face particular difficulties accessing justice due to the discriminatory attitudes of police and government officials towards women, and a lack of awareness of their rights. Women face broad discriminatory treatment in society and under the law; marriage and divorce law tend to favour men. Legal protections for women against domestic violence in Iraq are insufficient and violence in the family has been underreported due to shame, fear of family or community reprisals, or harassment and abuse from police and security forces.

In addition, women cannot obtain civil status documentation without the consent of a male relative.

Unlike the rest of Iraq, in **KRI**, domestic violence is criminalised. This is under the Kurdistan Region Act (Act No. 8) of 2011 on domestic violence. KRI has three domestic violence shelters. However, in some cases, the police will send the woman back to her family, or they will tell her that this is a family issue, or try to calm the woman down and ask her to talk to her family. Furthermore, women risk being harassed by some staff at the police stations and their intentions will be questioned. Moreover, a husband may threaten to take the children if the wife reports a violent act.



Other barriers for the implementation of the KRI law on domestic violence include the patriarchal mentality of the society, as well as the discriminatory mindset of the judges towards women. The rate of domestic violence has increased in the KRI and, especially in the tribal areas, domestic violence is common.

Shelter space is also insufficient in KRI and shelters are attacked because they are considered as places of immorality and the government has to close them and reopen them in a new secret place. Moreover, admission to shelters in KRI requires a judicial order, which is reportedly a deterrent for women to use them. In the KRI, organisations are permitted to run shelters, although the authorities have reportedly denied licenses to establish them under accusations of fostering prostitution. Many hotels refuse to permit single women to stay alone.

### *Risk analysis*

Sexual assault and rape amount to persecution. In case of other forms of violence, the assessment should take into account the severity and repetitiveness of the violence.

Not all women face the level of risk required to establish well-founded fear of persecution in relation to gender-based violence, including domestic violence and sexual abuse. The individual assessment of whether or not there is a reasonable degree of likelihood for the applicant to face persecution should take into account risk-impacting circumstances, such as: perception of traditional gender roles in the family, poor socio-economic situation, area of origin, influence of the tribe, etc.

### *Nexus to a reason for persecution*

See [below](#).

## **b. Harmful traditional practices**

### *COI summary*

[*Targeting*, 3.5.2, 3.5.4, 3.5.6; *Actors of protection*, 6.6, 9.1; *COI query on FGM*]

Some harmful traditional practices are common in Iraq and can often create or lead to situations of forced marriage and violence against women. Such practices include:

#### ■ **Forced marriage and child marriage**

In general, people in Iraq have little opportunity to make their own choices with regard to marriage. Early marriage is another concern in Iraq. The legal marriage age is 15 with parental permission, and 18 without. The number of girls that are married at the age of 15 or below is around 10 % in areas outside KRI.

There is also a growing trend of marrying younger women as a measure of family security. There are reports that displaced families sometimes sell their children to other families in order to secure them a better future. The report continues by stating that among IDPs and refugees, child marriages are practiced as a way to reduce the family's economic hardship. There are also reports of cases where girls are forced into a 'temporary marriage', practiced as an instrument to facilitate prostitution.

In general, women in the **KRI** cannot choose whom to marry and usually will have to agree to marry a man chosen by their family. Especially in rural areas, forced and early marriages continue to take place in the KRI in large numbers.

In some cases, forced marriages consist of a 'trade' in which two brothers marry two sisters or an exchange marriage where a female is married in exchange of a bride for a male in her family. The practice finds sanction in tribal traditions, such as the tradition of '*jin be jin*' (a woman for a woman), in which brides are exchanged between tribes in order to avoid the payment of dowries. The tradition of forced marriage as a method of resolving tribal disputes is also practiced.



In some cases, forced marriages result in the woman committing suicide.

■ **Trading in of women and children to settle tribal disputes (fasliya)**

The traditional practice of 'fasliya', whereby family members, including women and children, are traded to settle tribal disputes, remained a problem, particularly in southern governorates. *Fasliya* marriages, or exchange marriages for compensation, have reportedly grown in recent years due to weak rule of law. In 2015 for example, one tribal dispute was resolved by giving away 50 women in compensation.

■ **Female genital mutilation/cutting (FGM/C)**

After studies revealed startlingly high rates of FGM in the KRI, public debate ensued and efforts of activists culminated in the criminalisation of FGM in 2011 in KRI. However, the implementation of this legislation remains a challenge and FGM continues to be practiced on substantial numbers of girls and women. Outside of the KRI, the extent of the practice remains unclear.

According to a 2013 UNICEF report, an estimated 3.8 million women and girls, or 8 %, have undergone FGM in Iraq. The latest survey on the issue of FGM in Iraq is the 2018 Multiple Indicator Cluster Survey Iraq, conducted by the Iraqi Central Statistical organisation, the Kurdistan Regional Statistics Office, together with UNICEF and the Iraqi Ministry of Health. Key findings of this survey showed that 7.4 % of women aged between 15 and 49 underwent FGM in Iraq. The majority of FGM procedures occur in the KRI (37.5 %), compared with 0.4 % in central and southern Iraq. It is reported that FGM/C is particularly found in the part of KRI bordering Iran, but is practiced across KRI. In KRI, sources indicate that the main areas where FGM still prevails are villages in northern Sulaymaniyah, the Garmian district, and in villages in Erbil; Rania is also one of the places where FGM still takes place. According to the 2013 UNHCR study, the percentage of girls and women aged 15-29 years, who have undergone FGM/C in the KRI, was 58 % (Erbil), 54 % (Sulaymaniyah) and 2 % in Dahuk.

Sources note that, generally, Arab girls do not undergo FGM, however, some studies have shown that women living in Kurdish dominated areas in Kirkuk and Garmian to a certain extent suffer the practice as well. A 2012 study indicated that the practice is most common among Sunni Muslims, but also practiced by Shia and Kaka'i. No information on FGM among Christians and Yazidi was available. It is also reported that the level of education is a relevant factor that influences the practice of FGM/C.

Tradition and religion were mentioned as the main reasons for practicing FGM. The purpose of the practice is to ensure the girl's marriageability and honour in the eyes of the Kurdish community.

2015 studies revealed a significant decrease in the practice, mainly attributed to awareness campaigns by NGOs and the 2011 law. NGOs engaged in such activities, note that some areas have not been reached by their advocacy efforts, including villages in northern Sulaymaniyah, the Garmian district and villages in Erbil.

Women, mostly midwives and elderly women, are the ones who carry out FGM. According to UNICEF, the majority of FGM/C operations are performed on minors. There are cases where FGM takes place at birth, but there are also reports of FGM performed on the mother during delivery.

The procedure had been decided on by the woman's husband in 14 % of the cases, by the husband's family in 28 %, by the woman's parents in 32 %, by the woman herself in 15 % of the cases, and by someone else in 11 %. According to a 2016 survey, 24 % of mothers who forced their daughters to undergo FGM reported that they carried out the procedure out of family pressure.

The procedure causes both immediate and long-term health problems for the women subjected to it. They also suffer from psychological trauma for years afterwards.

### *Risk analysis*

Traditional practices could amount to persecution, depending on the specific practice and the individual circumstances of the applicant (e.g. child marriage, FGM/C). They could, furthermore, be linked to other forms of violence, such as domestic violence, sexual abuse and honour-based violence.

Not all women and girls would face the level of risk required to establish well-founded fear of persecution in relation to harmful traditional practices. The individual assessment of whether or not there is a reasonable degree of likelihood for the applicant to face persecution should take into account risk-impacting circumstances, such as: young age (in particular, under 15), area of origin (particularly affecting rural areas), ethnicity, perception of traditional gender roles in the family, poor socio-economic situation of the family, living in IDP situation, local power/influence of the (potential) husband and his family or network, etc.

### *Nexus to a reason for persecution*

See [below](#).

### **c. Women in public roles**

This subsection refers to women who are considered to have a public role in Iraq and KRI, such as a position as a candidate in elections, a position in healthcare, in NGOs, in media, in the transportation sector or in entertainment.

### *COI summary*

[*Targeting*, 3.5.7; *Actors of protection*, 3.2, 3.4, 3.6]

The Council of Representatives allocates 25 % of the seats to women, whereas KRG's regional legislative assembly allocates 30 % of the seats to women.

Over 2 000 female candidates ran in the 2018 election. During the campaign for the parliamentary elections, posters of female candidates were vandalised and photographs allegedly showing candidates wearing revealing clothing were posted online. Some women candidates withdrew due to threats and intimidation. Women candidates gained 84 seats in the 2018 parliament following the national elections.

Sources report that the targeting of well-known women in Iraq has increased significantly. In August – September 2018, a number of prominent women were murdered in Iraq. One victim was a former beauty queen popular on social media (killed in Baghdad), another victim was a women's rights activist (killed in Basrah). Two other victims worked in beauty parlours. Women and girls who work in shops, cafes, entertainment, nursing or the transportation sector (taxi/truck drivers) are frowned upon.

### *Risk analysis*

The acts to which women in public roles could be exposed are of such severe nature that they would amount to persecution (e.g. violence and killings).

Not all women in public roles would face the level of risk required to establish well-founded fear of persecution in relation to being in a public role. The individual assessment of whether or not there is a reasonable degree of likelihood for the applicant to face persecution should take into account risk-impacting circumstances, such as: area of origin, conservative environment, visibility of the applicant (e.g. nature of the work, public statements perceived negatively by the actor of persecution), perception of traditional gender roles by the family or network, etc.

### *Nexus to a reason for persecution*

See [below](#).

**d. Women perceived to have transgressed moral codes**

See the profile [\*Individuals perceived to transgress moral codes\*](#).

**e. Women perceived to be associated with ISIL**

See the profile [\*Persons perceived to be associated with ISIL\*](#).

**f. Lack of a male support network****COI summary**

[*Targeting*, 3.5.5; *Key socio-economic indicators*, 3.1.1, 4.1.1, 10.3, 10.5]

Living alone as a woman is not generally accepted in Iraq because it is considered inappropriate behaviour. Women living on their own will often encounter negative attitudes from society and are at a particularly high risk of violence. It is also difficult for a single person to rent housing in Iraq because Iraqi society does not accept single people living alone or with non-relative families, particularly women. In the KRI, single people, especially women, are unable for cultural reasons to rent properties on their own and in most hotels women are not allowed to stay alone.

For women, there are many societal and family restrictions and any woman living outside a family community is at risk. In addition to that, to be a divorced woman in the Kurdish society is still considered to be tough and stigmatising. Erbil and Dahuk are both known as conservative regions with strict control of women. The USDOS annual human rights report, covering 2017, states that single women and widows in KRI but also in the rest of the country, often faced problems registering their children's births, leading to problems accessing public services like food distribution, healthcare and education.

It is customary for divorced women to return to the care of their families, widowed women may be harboured by their own family or by their in-laws. In those circumstances, male relatives will act as their custodian. Women who have been repudiated by their family and lack a social support network, are considerably worse off.

Women experience economic discrimination in access to employment, credit and pay equality.

Women in female-headed households, divorced women and widows are in a vulnerable position economically and in terms of exposure to harassment, and have difficulty finding employment, especially if they lack the protection of a male relative and necessary connections to find employment and sustain dependent children.

**Risk analysis**

The lack of a male support network in itself would not substantiate a well-founded fear of persecution. However, it considerably enhances the risk for such women to be exposed to acts, which due to their severity, repetitiveness or accumulation could amount to persecution.

**Nexus to a reason for persecution**

Available information indicates that in the case of women, the individual circumstances of the applicant need to be taken into account to determine whether or not a nexus to a reason for persecution can be substantiated.

In individual cases, persecution may be for reasons of (imputed) political opinion (e.g. women in public roles, [\*Persons perceived to be associated with ISIL\*](#)) or membership of a particular social group (e.g. Kurdish girls and women who have not been subjected to FGM/C, based on their innate characteristic

(intact genitalia); and their distinct identity in the KRI, because they are perceived as being different by the surrounding society).

## 17. Children

This profile refers to nationals of Iraq and KRI under the age of 18.

In the following subsections, the focus is on certain child-specific circumstances of increased vulnerability and risks that those children in Iraq may be exposed to, including:

- a. child marriage
- b. FGM/C
- c. child labour and child trafficking
- d. child recruitment
- e. violence against children, including domestic violence and sexual abuse
- f. education of children and girls in particular
- g. children born under ISIL who lack civil documentation
- h. children without a care-taker

The COI summaries and the risk analysis are presented below by subsection. The analysis of potential nexus in the case of children is provided at the end of the profile section.

### *COI summary and risk analysis*

#### a. Child marriage

See the section on [Harmful traditional practices](#) under the profile [Women](#).

#### b. FGM/C

See the section on [Harmful traditional practices](#) under the profile [Women](#).

#### c. Child labour and child trafficking

##### *COI summary*

[*Targeting*, 3.8.2, 3.8.5; *Actors of protection*, 9.1; *Key socio-economic indicators*, 4.1.2, 4.2, 4.3]

The Iraqi government has established laws and regulations related to child labour. However, gaps exist in Iraq's legal framework to adequately protect children from child labour, including the prohibition of child trafficking.

In a report from June 2016, UNICEF noted that 5 % of the children aged 5 to 14 years were engaged in child labour and that half a million Iraqi children were estimated to be at work rather than at school.

In a September 2018 report that examines the findings from 2017, the US Department of Labour reported that 'children in Iraq engage in the worst forms of child labour, including in armed conflict and commercial sexual exploitation, each sometimes as a result of human trafficking'. The same report notes that 'child labourers were also exposed to sexual violence and abuse'.

In big cities, such as Baghdad, Basrah and Erbil, working children are most often involved in street vending, begging, scavenging, making them particularly vulnerable to abuse. In Basrah, for example, it is reported that child street vendors were subjected to daily beatings by people in the street and by the police, and were frequently arrested or extorted. There are also reported cases of children forced by gangs to sell drugs.

It is reported that child labour especially affects minor IDPs. In 2016, the number of underage workers has increased in KRI's larger cities, partly due to the influx of displaced families and refugees. The KRG has announced legal action to curb the trend.

Child prostitution occurs in Iraq. Authorities often treat sexually exploited children as criminals instead of victims. Among IDP families, there are reported cases of girls sold in 'temporary marriages', practiced as an instrument to facilitate prostitution.

In relation to trafficking, it is reported that Iraq has failed to prosecute or convict officials involved in sex trafficking and that victims remained vulnerable to arrest, imprisonment or prosecution.

### *Risk analysis*

Child trafficking would amount to persecution. Not all forms of child labour would amount to persecution. An assessment should be made in light of the nature of the work and the age of the child. Work that is likely to harm the health, safety or morals of children could be considered to reach the severity of persecution.<sup>22</sup> The impact of child labour on access to education should also be taken into account (see the subsection *Education of children and girls in particular*). Other risks, such as involvement in criminal activities and trafficking should also be considered.

Not all children would face the level of risk required to establish well-founded fear of persecution in relation to child labour and/or child trafficking. The individual assessment of whether or not there is a reasonable degree of likelihood for the applicant to face persecution should take into account risk-impacting circumstances, such as: age, gender, poor socio-economic status of the child and his or her family, being in an IDP situation, etc.

### *Nexus to a reason for persecution*

See *below*.

### **d. Child recruitment**

See the subsection *Child recruitment* under the profile *Individuals approached for recruitment by armed groups*.

### **e. Violence against children, including domestic violence and sexual abuse**

#### *COI summary*

[*Targeting*, 3.8.4; *Actors of protection*, 4.1, 5.3.1.2, 8.2, 9.1]

According to a May 2018 report of the UN Secretary-General which examines findings of 2017, killing and maiming remained the most prevalent violations against children witnessed in Iraq. Of the total number of verified cases of killing and maiming, 424 were attributed to ISIL, 109 to ISF and the international counter-ISIL coalition, 34 to Peshmerga and 150 to unknown parties to the conflict.

Sexual enslavement of children by ISIL and sexual exploitation and abuse of children were prevalent, according to the UN's 2015 report.

Children were reportedly subjected to arbitrary arrests, torture and cruel punishment by police in detention and there were reports of children being held in pre-trial detention for long periods, in particular in case of perceived affiliation to ISIL. Children in detention were subjected to poor

---

<sup>22</sup> International Labour Organization (ILO), Minimum Age Convention, C138, 26 June 1973, available at [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C138](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C138); Worst Forms of Child Labour Convention, C182, 17 June 1999, available at [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C182](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182).

conditions, overcrowding, physical and sexual abuse. See also [Persons perceived to be associated with ISIL](#).

UNAMI writes that in Iraq due to the ‘honour’ mitigation, fighting crime against women and children ‘remains problematic’. Police in Iraq lacked sufficient capacity to respond to violence against women and children via its 16 family protection units. According to the UN Human Rights Council, the police’s family protection units are understaffed and ‘remain inaccessible to most victims’ of domestic violence.

Legal protections for children and women against domestic violence in Iraq and KRI were described as ‘insufficient’ by the UN, which has also noted that the existing legal and policy frameworks in Iraq for criminal justice ‘largely fail’ to protect women and children who have been subjected to sexual violence. Violence in the family was underreported due to shame, fear of family or community reprisals, or of harassment and abuse from police and security forces.

See also [Violence against women and girls, including domestic violence and sexual abuse](#).

### *Risk analysis*

Sexual assault and rape amount to persecution. The acts to which children associated with ISIL could be exposed also amount to persecution (e.g. arbitrary arrest, torture). In case of other forms of violence, the assessment should take into account the severity and repetitiveness of the violence.

Not all children face the level of risk required to establish well-founded fear of persecution. The individual assessment of whether or not there is a reasonable degree of likelihood for the applicant to face persecution should take into account risk-impacting circumstances, such as: gender (boys and girls may face different risks), perceived affiliation with ISIL (see [Persons perceived to be associated with ISIL](#)), age, perception of traditional gender roles in the family, poor socio-economic situation of the child and the family, etc.

### *Nexus to a reason for persecution*

See [below](#).

## **f. Education of children and girls in particular**

### *COI summary*

[*Targeting*, 3.4.2, 3.4.13, 3.8.6; *Key socio-economic indicators*, 4.2, 6.3.1, 7.4, 8]

The Constitution provides that primary education is mandatory in Iraq. In a May 2017 report, UNICEF noted that education in Iraq had progressed remarkably over the last decade, with enrolment in primary education increasing at about 4.1 % per year. In November 2018, UNICEF presented the results of a survey on children’s wellbeing in Iraq, according to which 92 % of children are enrolled in primary school. Over half of the children from poorer backgrounds complete their primary education. Less than a quarter of children from poorer backgrounds complete secondary education. The lowest enrolment rates are found in the southern governorates. In spite of the progress made, half of the public schools need rehabilitation and one in three schools run multiple shifts to accommodate for the demand in education.

Although girls’ enrolment grew at all levels, UNICEF still notes a large gender gap. Factors like early marriage, family concerns and traditional views on the role of women in society play a role in explaining this difference. Equal access for girls has been a particular challenge in rural areas.

In conflict-affected governorates, such as Salah al-Din and Diyala, more than 90 % of school-age children were left out of the education system as of 2017. Children faced numerous barriers to accessing education, including attacks on schools and specific targeting of teachers and school personnel. Other barriers included the lack of schools nearby, the use of schools as shelters by IDPs,

and as detention centres by ISIL, the costs of transportation and of school supplies, and IDPs' and refugees' lack of identification documents.

UNOCHA reported in December 2018, that 32 % of IDP children who live in camps were not in school; 26 % of those out of camps had no access to formal education.

Compared to rural areas and small towns, general requirements for quality education are often met in Baghdad. According to IOM, writing in 2016 for the governorate of Basrah, 80 % of IDPs had access to education and the rest said it was too expensive. In addition to that, fewer girls attend schools in southern rural areas due to poverty and the strength of traditional attitudes toward education.

In the KRI, education is compulsory until the age of 15. The inflow of IDPs has put pressure on the KRI educational system, especially in urban areas, in some cases leading schools to operate in two or three shifts. A 2015 World Bank publication stated that a large majority of IDP children in the KRI remained out of school because of economic considerations; the language barrier; the lack of school infrastructure, teachers and school materials; complex administrative procedures for school enrolment and other socio-economic reasons.

As identity card is needed to enrol in public school, this prevented many children from accessing education. In general, access to education of certain minority groups, especially Roma and Iraqi of African descent, is limited.

In addition, UNICEF remarked that children most at risk of being excluded from school were girls, poor children, children with uneducated mothers, and children with disabilities.

### *Risk analysis*

The general deficiencies in the educational system, and the limited opportunities for education cannot as such be considered persecution, as they are not the result of a third party's deliberate actions.<sup>23</sup> However, in the case of deliberate restrictions on access to education, it should be assessed whether it amounts to persecution.

The denial of documentation, which also leads to no access to basic education, may be linked to belonging to a minority (see [Religious and ethnic minorities, and stateless persons](#)) or perceived link to ISIL (see [Persons perceived to be associated with ISIL](#)). See also [Children born under ISIL who lack civil documentation](#).

Not all children would face the level of risk required to establish well-founded fear of persecution in relation to deliberate restrictions on access to education. The individual assessment of whether or not there is a reasonable degree of likelihood for the applicant to face persecution should take into account risk-impacting circumstances, such as: identification documents, ethno-religious background, gender (girls are at a higher risk), disabilities, age, perception of traditional gender roles in the family, poor socio-economic situation of the child and the family, area of origin, etc.

### *Nexus to a reason for persecution*

See [below](#).

## **g. Children born under ISIL who lack civil documentation**

### *COI summary*

[*Internal mobility*, 4.2, 4.3]

Hundreds to thousands of children born under ISIL rule or to foreign fathers were not registered at birth and lack civil documentation. Children born to foreign fighters and children whose paternity

<sup>23</sup> CJEU, *M'Bodj*, paras. 35-36.



cannot be confirmed, such as those who were born under ISIL and lack documentation or who have ISIL-issued documentation, children born to women whose husbands are dead or missing, face the risk of growing up without civil identification or being stateless, because conferring nationality requires a birth certificate. Without access to documentation, children are unable to enrol in school.

Concerning the children that were born of sexual violence, UNICEF states that although there is a legal framework in place to allow these children to obtain identity documents, ‘in practice obtaining such documents is exceptionally difficult and requires women to publicly expose what they have survived – experiences that their families, culture, tribe and religion consider to be deeply shameful’.

See also [\*Persons perceived to be associated with ISIL\*](#).

### *Risk analysis*

The individual assessment of whether or not the treatment of individuals under this profile could amount to persecution should take into account the severity and/or repetitiveness of the acts. Often, they occur as an accumulation of various measures and may reach the level of persecution.

Not all children under this profile would face the level of risk required to establish well-founded fear of persecution. The individual assessment of whether or not there is a reasonable degree of likelihood for the applicant to face persecution should take into account risk-enhancing circumstances, such as: single or widow mother and/or a foreign, dead or missing father, etc.

### *Nexus to a reason for persecution*

See [\*below\*](#).

## **h. Children without a care-taker**

This subsection concerns children who do not have a parent or other adult family member who can take care of them in Iraq.

### *COI summary*

[*Targeting*, 3.8.7; *Key socio-economic indicators*, 4.1.1, 10.6; *Internal mobility*, 4.3]

The Iraqi State has few resources for such children, and the country’s communities are too overwhelmed to handle the orphans’ needs. Most of these children have been placed in the care of their extended families.

There are no accurate statistics on the number of abandoned babies in Iraq. Abandoned babies are perceived as disgraceful or the product of illicit sexual relations, and therefore, ‘alienated and despised’ who later become socially outcast; the mothers are at risk of being killed in honour killings by their families. Children of unknown parentage are not easily accepted in Iraq.

Adoption is not possible under Iraqi law, which permits only ‘guardianship’; that can only be granted to extended family or friends ‘who can provide for the child’. Adoption and orphanages are seen as ‘last resorts’ in Iraq.

Iraq lacks enough orphanages to host the large number of children who have lost both parents. In 2014, it was reported that Iraq has 23 orphanages. It was reported that they did not provide sufficient care and education to orphans. Media reports have observed an increasing number of children of ISIL members and foreign jihadists who have been left orphans and abandoned in Baghdad.

### *Risk analysis*

The individual assessment of whether or not the treatment of individuals under this profile could amount to persecution should take into account the severity and/or repetitiveness of the acts or whether they occur as an accumulation of various measures.



The individual assessment of whether or not there is a reasonable degree of likelihood for the applicant to face persecution should take into account risk-impacting circumstances, such as: identification documents, whether their parentage is known, being born out of illicit sexual relations, area of origin, religion, ethnicity, etc.

### *Nexus to a reason for persecution*

See [below](#).

### *Nexus to a reason for persecution*

Available information indicates that in the case of children, the individual circumstances of the applicant need to be taken into account to determine whether or not a nexus to a reason for persecution can be substantiated.

In the case of targeting by ISIL, nexus could be to race and/or religion. In individual cases, persecution may be for reasons of membership of a particular social group. Specific examples could include children born under ISIL who lack civil documentation and orphans, based, respectively, on their common background which cannot be changed; and due to their distinct identity in the context of Iraq, because they are perceived as being different by the surrounding society.

## **18. Persons living with disabilities and persons with severe medical issues**

This profile refers to people with disabilities, including mental disabilities, as well as those who have severe medical issues, including mental health issues.

### *COI summary*

[*Targeting*, 3.7; *Actors of protection*, 9.3; *Key socio-economic indicators*, 7.1.3, 7.2; *Internal mobility*, 3.5]

The Government of Iraq has ratified the UN Convention on the Rights of Persons with Disabilities and has adopted the Law No. 38 on the Care of Persons with Disabilities and Special Needs, including the establishment of a Commission for the promotion of respect and protection of the rights of people living with disabilities. However, people with disabilities are among the most vulnerable communities and often neglected in public discourse, according to the UN.

Persons with disabilities face a wide array of societal discrimination. The prevailing perception among the public is to treat persons with disabilities as charity. According to UNAMI, persons with disabilities ‘face common experiences of often multiple, intersecting and aggravated forms of discrimination which hinder, prevent or impair their full enjoyment of their rights and their full and equal participation in all aspects of society’. This often leads to isolation of persons with disabilities and exacerbates negative psychological effects. Adults and children with disabilities are at a higher risk of violence than non-disabled, and those with mental illnesses could be particularly vulnerable.

Hospitals and other health services in Iraq are heavily concentrated in urban areas. Such facilities are either scarcely or not at all available for inhabitants of the poorer governorates. Both health services and medication are available in a public and a private sector system. There is no public health insurance system.

The lack of materials and specialised staff create difficulties in treating high numbers of patients. In addition, the system lacks doctors and medical staff who have reportedly left the country over the past years due to the conflict, lack of payment of salaries and corruption.

Following the conflict against ISIL, many civilians and members of the security forces have been left with injuries and disabilities, which require aftercare, prosthetics, and support equipment.

Government and public health facilities that provide secondary treatments to emergency care, especially those treating long-term disabilities, have difficulty providing free treatment.

With regard to mental health, it has been reported that there are huge needs and the available services do not meet the demand. Challenges to the mental health system in Iraq include the lack of funding and infrastructure, limited number of mental health professionals, location of services, as they are often too far away for people to travel, as well as stigma.

Concerning the access of disabled persons to the educational system, USDOS has noted reports that persons with disabilities experienced discrimination due to social stigma and ‘many children with disabilities dropped out of public school due to insufficient physical access to school buildings, a lack of appropriate learning materials in schools, and a shortage of teachers qualified to work with children with developmental or intellectual disabilities’.

### *Risk analysis*

The lack of personnel and adequate infrastructure to appropriately address the needs of individuals under this profile would not meet the requirement that an actor of persecution or serious harm is identified in accordance with Article 6 QD, unless there is intentional conduct on the part of a third party, in particular the intentional deprivation of the applicant of appropriate healthcare.<sup>24</sup>

In the case of persons living with mental and physical disabilities, the individual assessment whether or not discrimination and mistreatment by society and/or by the family could amount to persecution should take into account the severity and/or repetitiveness of the acts or whether they occur as an accumulation of various measures.

Not all individuals under this profile would face the level of risk required to establish well-founded fear of persecution. The individual assessment of whether or not there is a reasonable degree of likelihood for the applicant to face persecution should take into account risk-impacting circumstances, such as: age, nature and visibility of the mental or physical disability, negative perception by the family, etc.

### *Nexus to a reason for persecution*

According to available information, if well-founded fear of persecution could be substantiated in the individual case, such persecution could be for reasons of membership of a particular social group (e.g. persons with noticeable mental disabilities, due to their innate characteristic (disability); and distinct identity linked to their stigmatisation by the surrounding society).

## **19. Persons involved in and affected by blood feuds in the context of tribal conflict**

This profile refers to individuals who are involved in and affected by blood feuds in the context of tribal conflicts.

### *COI summary*

*[Targeting, 3.6.1; Actors of protection, 6.6]*

Blood feuds are conflicts between tribes involving cycles of retaliatory killings. Intertribal killings may be triggered by a number of reasons, including honour-related questions and historic intertribal animosities. It has been reported that the current instability has increased the onset of tribal conflicts, particularly in southern Iraq.

Killing members of another tribe will put a target on the perpetrator, as well as his tribe. In order to avoid continuous cycles of revenge killings among tribes, tribal conflict is often settled by paying compensation in the form of ‘blood money’. The ultimate goal of tribal mediation is to restore peace

---

<sup>24</sup> CJEU, *M'Bodj*, paras. 35-36.

through restoring honour, thus avoiding feuds. Conflict resolution between different ethnic or religious tribes, such as a Shia tribe and a Sunni tribe, is usually considered more difficult.

Particularly in the southern governorates, women and children may also be traded to settle tribal disputes through the traditional practice of *fasliya*. Women who enter *fasliya* marriages are stripped from all of their rights, even the right to divorce or separate from their husband. See the profiles [Women](#) and [Children](#).

Due to the societal importance of tribal custom, powerful tribal affiliation can interfere with the police in upholding respect for the law. Judicial authorities do not follow up on tribal incidents and judges must seek tribal protection themselves in case of threats against them.

### *Risk analysis*

The acts to which individuals under this profile could be exposed are of such severe nature that they would amount to persecution (e.g. killing).

Not all individuals under this profile would face the level of risk required to establish a well-founded fear of persecution. The individual assessment of whether or not there is a reasonable degree of likelihood for the applicant to face persecution should take into account risk-impacting circumstances, such as: intensity of the blood feud, possibility of conflict resolution, ethnicity and religion of the tribes, social status of the tribes, area of origin (area where the rule of law is weak, urban or rural area), etc.

### *Nexus to a reason for persecution*

Available information indicates that persecution of this profile may be for reasons of race (descent, referring to members of a tribe).



Exclusion considerations could be relevant to this profile (see the chapter on [Exclusion](#) below).

## 20. Individuals accused of ordinary crimes

This profile refers to people who are accused of ordinary crimes in Iraq, such as crimes against property, life, physical integrity, etc.

### *COI summary*

[*Actors of protection*, 4, 4.1, 6.5.2, 6.6; *Targeting*, 1.17]

The Republic of Iraq has a mixed legal system of both civil and Islamic law. The Iraqi Constitution provides guarantees for fundamental rights, rule of law, equal treatment before the law, equal participation, and judicial independence, as well as prohibition of discrimination on various grounds. Corruption and lack of independence and impartiality of the judiciary have, however, been reported. Furthermore, large-scale problems related to the lack of due process, fair trial rights and violation of the right to life, especially in relation to the application of the death penalty, have been reported.

Capital punishment is usually imposed under the Penal Code and Anti-Terrorism Law. It can be imposed for a range of crimes. Crimes that carry the death penalty in Iraq include offences, such as crimes against the internal or external security and state institutions, acts of terrorism, kidnapping, rape, drug trafficking leading to death, prostitution, ‘aggravated’ murder and human trafficking leading to death. The death penalty is executed by hanging.

In Iraq, the death penalty was reportedly used to execute 250 convicted ISIL members since 2014, with 100 of those executions occurring in 2017. Amnesty International recorded at least 125 executions in 2017 for offences that included mostly terrorism-related acts, in addition to others related to murder, kidnapping and drugs. In April 2018, the Iraqi Ministry of Justice announced 13 executions had been carried out during the year, 11 of which for terrorism. In October 2018, the UN

Security Council noted that the total number of executions publicly announced in 2018 by the Ministry of Justice was 32, although more details regarding the death sentences and executions had not been provided.

Tribal customary law (*urf*) is a longstanding, important and common mechanism for dispute resolution and preservation of order in Iraq. Tribal justice has reportedly become increasingly popular and preferred to courts and police for a wide range of issues including criminal matters such as murder, assault and theft, particularly in central and southern Iraq.

Tribal law is described as filling gaps not addressed by the state and where state institutions are weak. Tribal structures are sanctioned in practice by the State, but do not have an official status. Enforcement officials may also encourage conflicting parties to use the tribal justice system, while state courts sometimes also refer cases for tribal settlement.

Although Article 45(2) of the Iraqi Constitution prohibits tribal traditions that contradict human rights, tribal dispute mechanisms can involve violations of human rights, such as giving away female relatives as compensation, honour killings, retributive killings or banishment. Women are particularly vulnerable regarding tribal justice and can encounter harsh treatment for transgression of tribal customs. See also the profile [Individuals perceived to transgress moral codes](#).

### *Risk analysis*


Death penalty, irrespective of the nature of the crime, is considered to amount to persecution. See, for example, [Persons perceived to be associated with ISIL](#). See also [Article 15\(a\) QD](#).

Prosecution for an ordinary crime by the State does not normally amount to persecution. However, violations of the due process of law and/or disproportionate or discriminatory punishments could amount to such severe violations of basic human rights. Certain tribal dispute mechanisms can involve violations of human rights amounting to persecution (giving away female relatives as compensation, honour killings, retributive killings).

Not all individuals under this profile would face the level of risk required to establish well-founded fear of persecution. The individual assessment of whether or not there is a reasonable degree of likelihood for the applicant to face persecution should take into account individual risk-impacting circumstances, such as: area of origin of the applicant and the prevalent justice mechanisms, the nature of the crime for which he or she is prosecuted, the envisaged punishment, the applicant's gender, etc.

### *Nexus to a reason for persecution*

Available information indicates that in the case of individuals accused of ordinary crimes, there is in general no nexus to a Convention reason for persecution. This is without prejudice to the assessment in cases where the prosecution is motivated by a Convention ground, or initiated or conducted on a discriminatory basis related to a Convention ground.

 Exclusion considerations could be relevant to this profile (see the chapter on [Exclusion](#) below).

### III. Subsidiary protection

#### Article 15(a) QD

As noted in the chapter above, some profiles of applicants from Iraq may be at risk of death penalty or execution. In such cases, there could be a nexus to a reason for persecution falling under the definition of a refugee (see for example the profile [Persons perceived to be associated with ISIL](#)), and those individuals would qualify for refugee status. In cases where there is no nexus to a Convention ground (for example, some cases of [Individuals accused of ordinary crimes](#)), the need for subsidiary protection under [Article 15\(a\) QD](#) should be examined.

Under Article 15(a) QD, serious harm consists of **the death penalty or execution**.

The **death penalty** is as such, and under any circumstances, considered as a serious harm under [Article 15\(a\) QD](#). The sentence does not need to have already been imposed. The mere existence of a real risk that on return a death penalty may be imposed on an applicant could be considered sufficient to substantiate the need of subsidiary protection.

As the addition of the term ‘**execution**’ suggests, [Article 15\(a\) QD](#) also encompasses the intentional killing of a person by non-State actors exercising some kind of authority. It may also include extrajudicial killings, but an element of intentional and formalised punishment needs to be present.


Under the 2005 Constitution of Iraq, the President ratifies death sentences ‘issued by the competent courts’. The death penalty is prescribed under Article 86 of the Iraqi Penal Code No.11 of 1969. Crimes that carry the death penalty include a variety of offences, such as crimes against internal or external security and state institutions, acts of terrorism, kidnapping, rape, drug trafficking leading to death, prostitution, ‘aggravated’ murder, human trafficking leading to death, etc. The definition of ‘terrorism’ crimes under the Anti-Terrorism Law is broad and susceptible to wide interpretation. The death penalty is also provided for under the Military Penal Code, Articles 27 and 28, and the Iraqi Internal Security Forces Penal Code of 2008, for example, for offences relating to failures to perform one’s duties or surrendering military installations. The death penalty is executed by hanging. [[Targeting, 1.17](#)]

Iraq continues to carry out capital punishment, being among the top three countries in the Middle East that impose and carry out executions according to Amnesty International’s 2017 report. Amnesty International recorded at least 125 executions in 2017 for offences that included mostly terrorism-related acts, in addition to others related to murder, kidnapping and drugs. The Ministry of Justice also reported in 2017 that 3 to 4 executions occur per week in Baghdad and Nasiriya prisons, noting that 15-20 % of the 6 000 prisoners in Nasiriya Central Prison have a death sentence. In April 2018, the Ministry of Justice announced that 13 executions had been carried out in 2018, 11 for terrorism. In October 2018, the UN Security Council noted that the total number of executions in 2018, publicly announced by the Ministry of Justice, was 42, although more details about the death sentences and executions had not been provided. [[Targeting, 1.17](#)]

KRG has maintained the capital punishment, however, a *de facto* moratorium on executions had been reportedly established since 2008. This was breached on two occasions in 2015 and 2016. Both the federal and regional governments cited popular pressure as a reason to continue to apply or resume the death penalty in particular in response to crimes committed by ISIL. [[Targeting, 1.17.2](#)]

In areas under its control, ISIL committed executions and some of them may be considered as ‘punishment’, such as for refusal to join them or for transgressing the moral codes as they are set by ISIL and its strict interpretation of the Sharia law. [[Targeting, 2.2.1](#)]

If there is a reasonable degree of likelihood of death penalty or execution, subsidiary protection under [Article 15\(a\) QD](#) shall be granted, unless the applicant is to be excluded in accordance with [Article 17 QD](#).

 In some cases, the death penalty would have been imposed for a serious crime committed by the applicant, or for other acts falling within the exclusion grounds under [Article 17 QD](#). Therefore, although the criteria of [Article 15\(a\) QD](#) would be met, exclusion considerations should be examined (see the chapter on [Exclusion](#) below).

## Article 15(b) QD

As noted in the chapter on [Refugee status](#), some profiles of applicants from Iraq may be at risk of torture or inhuman or degrading treatment or punishment. In such cases, there would often be a nexus to a reason for persecution falling under the definition of a refugee, and those individuals would qualify for refugee status. However, with reference to cases where there is no nexus to a Convention ground, the need for subsidiary protection under [Article 15\(b\) QD](#) should be examined.

Under Article 15(b) QD, serious harm consists of **torture or inhuman or degrading treatment or punishment of an applicant in the country of origin**.

[Article 15\(b\) QD](#) corresponds in general to [Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms \(ECHR\)](#). The jurisprudence of the European Court of Human Rights (ECtHR), therefore, provides relevant guidance in order to assess whether a treatment may qualify under [Article 15\(b\) QD](#).

Torture is an aggravated and deliberate form of cruel, inhuman or degrading treatment to which a special stigma is attached.

According to relevant international instruments, such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), torture is understood as:

- ✓ an intentional act
- ✓ that inflicts severe pain or suffering, whether physical or mental
- ✓ for such purposes as obtaining from the person subjected to torture or from a third person information or a confession, punishing the former for an act he or she or a third person has committed or is suspected of having committed, or intimidating or coercing him or her or a third person, or for any reason based on discrimination of any kind.

The distinction between torture and inhuman or degrading treatment or punishment is more a difference of degree than of nature. These terms cover a wide range of ill-treatment that reach a certain level of severity.

- Inhuman: refers to treatment or punishment which deliberately causes intense mental or physical suffering (which does not reach the threshold of torture).
- Degrading: refers to treatment or punishment which arouses in the victim feelings of fear, anguish and inferiority capable of humiliating or debasing them.

The assessment whether a treatment or punishment is inhuman or degrading further implies a subjective consideration by the person who suffers such treatment or punishment. No specific purpose on the part of the perpetrator (e.g. obtaining information or a confession, punishing, intimidating) is required in this regard.

When examining the need for protection under [Article 15\(b\) QD](#), the following considerations should be taken into account:

- **Healthcare unavailability and socio-economic conditions:** It is important to note that serious harm must take the form of conduct on the part of a third party ([Article 6 QD](#)). In themselves, the general unavailability of healthcare, education or other socio-economic elements (e.g. situation of IDPs, difficulties in finding livelihood opportunities, housing) are not considered to fall within the scope of inhuman or degrading treatment under [Article 15\(b\) QD](#), unless there is intentional



conduct on the part of a third party, in particular the intentional deprivation of the applicant of appropriate healthcare.<sup>25, 26</sup>


See also the profile [Persons living with disabilities and persons with severe medical issues](#).

- **Criminal violence:** Criminal networks in Iraq have been exploiting children for drug trafficking and dealing purposes and migrants for forced labour. Actors such as PMU and tribes are also reported to engage in criminality [*Targeting*, 3.1.2; *Security situation*, 1.3.4, 1.4.2.2, 1.4.3, 2.8]. Criminal violence is usually motivated by financial gain and power struggle. Where there is no nexus to a reason for persecution under the refugee definition, the risk of crimes, such as killing, armed robbery, kidnapping, destruction of property, extortion, forced labour, child recruitment, trafficking for sexual exploitation, etc. may qualify under Article 15(b) QD.
- **Arbitrary arrests, illegal detention and prison conditions:** Special attention should be paid to the phenomena of arbitrary arrests and illegal detention, as well as to prison conditions. When assessing the conditions of detention, the following elements can, for example, be taken into consideration (cumulatively): number of detained persons in a limited space, adequacy of sanitation facilities, heating, lighting, sleeping arrangements, food, recreation or contact with the outside world.

Reports mention that there are arbitrary arrests, prolonged detention, including in secret detention facilities, and widespread torture, especially of terrorism suspects. Detention facilities have been described by UNAMI as seriously overcrowded and with poor infrastructure, including the facilities for juveniles; and children are not always separated from adult detainees. Torture is reported to remain a widespread practice in police detention, interrogation cells, and in prisons. Detained ISIL suspects have been subjected to treatment such as electrocution, solitary confinement, and beatings by investigators. There were reports of deaths in custody following torture or other ill-treatment. International human rights groups documented a wide range of torture and abuses in detention facilities run by the Ministry of Interior and, to a lesser degree, in facilities of the Ministry of Defence and in facilities run by the KRG. In KRI, the access of local and international organisations to detention facilities is also severely limited, rendering monitoring of the situation almost impossible. [*Targeting*, 1.18; *Actors of protection*, 6.5.3; 6.5.4]

Furthermore, it can be assessed that in cases where the prosecution or punishment is grossly unfair or disproportionate, or where subjecting a person to prison conditions which are not compatible with respect for human dignity, a situation of serious harm under Article 15(b) QD can occur. Where there is no nexus to a reason for persecution, such treatment may qualify under Article 15(b) QD.

See also the profile of [Individuals accused of ordinary crimes](#).

 In some cases, those at risk of torture or inhuman or degrading treatment or punishment (for example, because of mistreatment in prisons) may also have committed or contributed to excludable acts as defined in [Article 17 QD](#). Therefore, although the criteria of [Article 15\(b\) QD](#) would be met, exclusion considerations should be examined (see the chapter on [Exclusion](#) below).

<sup>25</sup> CJEU, *M'Bodj*, paras.35-36.

<sup>26</sup> Recent jurisprudence of the CJEU, furthermore, addresses the case of an applicant who has been tortured by the authorities of his country of origin and who no longer faces a risk of being tortured if returned to that country, but whose physical and psychological health could, if so returned, seriously deteriorate, leading to a serious risk of him committing suicide on account of the trauma resulting from the torture. In this case, the CJEU considers that Article 15(b) QD is applicable if there is a real risk of the applicant being intentionally deprived, in his or her country of origin, of appropriate care for the physical and mental after-effects of that torture (CJEU, *MP v Secretary of State for the Home Department*, case C-353/16, judgment of 24 April 2018, para.59).



## Article 15(c) QD

### Preliminary remarks

#### Reference period

The following assessment is based on the EASO COI report on the security situation in Iraq and the supplement presenting the data recorded by the Iraq Body Count (IBC). The general reference period for this chapter is **1 January 2018 – 31 December 2018**. In some cases, information concerning 2017 is also taken into account; this is clarified within the text. Events taking place after 31 December 2018 are not taken into account in the common analysis.

This guidance should be considered valid as long as current events and developments fall within the trends and patterns of violence observed within the reference period of the mentioned COI report. New events and developments that cause substantial changes, new trends or geographical shifts in the violence, may lead to a different assessment. The security situation of a given territory should always be assessed in light of the most up-to-date COI available.

#### Legal framework

[Article 15\(c\) QD](#) defines the third type of harm that constitutes a ground for qualification for subsidiary protection. It covers a more general risk of harm and the protection needs which may arise from armed conflict situations.

Under Article 15(c) QD, serious harm consists of **serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict**.

In addition to the applicable EU legal instruments, this guidance builds on the most relevant European case law. Two judgments of the CJEU and one judgment of the ECtHR have been taken into account in particular:

- ▶ CJEU, *Diakité* judgment:<sup>27</sup> The judgment is of particular importance for the interpretation of relevant concepts, and in particular of 'internal armed conflict'.
- ▶ CJEU, *Elgafaji* judgment:<sup>28</sup> The judgment is of importance with regard to the appreciation of the degree of indiscriminate violence and in particular with regard to the application of the 'sliding scale'. In this judgment, the CJEU further discusses the 'serious harm' under the provision of [Article 15\(c\) QD](#) in comparison to the other grounds for granting subsidiary protection and considers the relation between [Article 15\(c\) QD](#) and the ECHR, in particular [Article 3 ECHR](#).
- ▶ ECtHR, *Sufi and Elmi* judgment:<sup>29</sup> It should be noted that ECtHR jurisprudence on [Article 3 ECHR](#) is not of direct applicability when discussing the scope and elements of Article 15(c) QD. However, the elements outlined in *Sufi and Elmi* with regard to the assessment of the security situation in a country and the degree of generalised violence were consulted in order to design the indicators of indiscriminate violence for the purposes of this common analysis.

The elements to examine under [Article 15\(c\) QD](#) are:

<sup>27</sup> CJEU, *Aboubacar Diakité v. Commissaire général aux réfugiés et aux apatrides*, C-285/12, Judgment of the Court (Fourth Chamber) of 30 January 2014.

<sup>28</sup> CJEU, *Elgafaji v. Staatssecretaris van Justitie*, C-465/07, Judgment of the Court (Grand Chamber) of 17 February 2009.

<sup>29</sup> ECtHR, *Sufi and Elmi v. United Kingdom*, Applications nos. 8319/07 and 11449/07, Judgment of 28 June 2011.

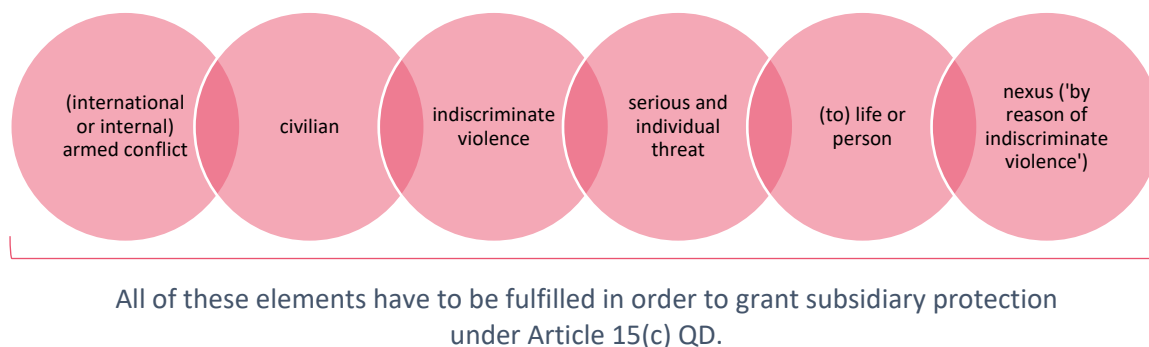


Figure 8. Elements of the legal provision of Article 15(c) QD.

Common analysis and assessment of the factual preconditions for the possible application of [Article 15\(c\) QD](#) with regard to the situation in Iraq is provided below.

#### a. Armed conflict (international or internal)

A definition of an international or an internal armed conflict within the meaning of Article 15(c) QD is not provided by the Qualification Directive itself. In *Diakité*, the CJEU interprets the concept of ‘internal armed conflict’ under [Article 15\(c\) QD](#) and concludes that it must be given an interpretation, which is autonomous from international humanitarian law:

*...internal armed conflict exists, for the purposes of applying that provision, if a State’s armed forces confront one or more armed groups or if two or more armed groups confront each other. It is not necessary for that conflict to be categorised as ‘armed conflict not of an international character’ under international humanitarian law;<sup>30</sup>*

In *Diakité*, the CJEU sets a low threshold to assess whether an armed conflict is taking place, noting that,

*nor is it necessary to carry out, in addition to an appraisal of the level of violence present in the territory concerned, a separate assessment of the intensity of the armed confrontations, the level of organisation of the armed forces involved or the duration of the conflict.<sup>31</sup>*

Furthermore, in the context of [Article 15\(c\) QD](#), differentiation between ‘international’ or ‘internal’ armed conflict is not necessary, as the provision is equally applicable in situations of international and internal armed conflict.

It should also be noted that an armed conflict can be taking place only in parts of the territory.

There are multiple overlapping non-international (internal) armed conflicts taking place in Iraq, most prominently, the conflict between the Iraqi government and ISIL. The Iraqi government is supported by a range of actors, including the Peshmerga, a range of PMU and other militia armed groups, and an international coalition led by the US. [*Security situation*, 1.1, 1.3]

Parts of Iraq are also affected by an international armed conflict involving Turkey, as the conflict in Turkey between Turkey and the PKK has extended to the northern Iraqi territory [*Security situation*, 1.1].

<sup>30</sup> *Diakité*, para 35.

<sup>31</sup> *ibid.*

The section [Indiscriminate violence in Iraq](#) provides further guidance with regard to the geographical scope of the armed conflicts taking place on the territory of Iraq.

### **b. Qualification of a person as a ‘civilian’**

Being a civilian is a prerequisite in order to be able to benefit from protection under [Article 15\(c\) QD](#). The purpose of the provision is to protect only those who are not taking part in the conflict. This includes the potential application of [Article 15\(c\) QD](#) to former combatants who have genuinely and permanently renounced armed activity.

The Qualification Directive itself does not provide a definition of the term ‘civilian’. In light of the interpretative guidance given by CJEU in *Diakité*, the term should be read by reference to its usual meaning in everyday language, whilst taking into account the context in which it occurs and the purposes of the rules of which it is a part. Therefore, the term ‘civilian’ could be considered to refer to a person who is not a member of any of the parties in the conflict and is not taking part in the hostilities, including those who are no longer taking part in hostilities.

In the context of Iraq, applications by persons falling under the following profiles should be examined carefully. Based on an individual assessment, such applicants may be found not to qualify as civilians under [Article 15\(c\) QD](#). For example:

- **ISIL and associated groups:** Insurgents belonging to ISIL and its predecessor groups in Iraq, including associated groups fighting against the Iraqi government.
- **New militant factions of ISIL remnants:** Groups of ISIL remnants appear to be building new militant factions in the Hamreen Mountains; one of them goes under the name of the ‘White flags’.
- **Other militant groups:** Aside from ISIL, other smaller militant Sunni jihadist groups were present in Iraq in the course of the Sunni uprising against the Maliki government. Main ones were Jamaat Ansar Al-Islam, the Naqshbandi Order, Jaysh Al-Mujahideen and the Islamic Army of Iraq.
- **ISF:** Formal military and security forces, including the Iraqi Army, the Federal Police, the Emergency Response Division, Provincial Emergency Police Battalions, Border Guards having a role in counterterrorism and the Counter Terrorism Service.
- **PMU and other militia groups:** Armed groups including PMU, minority militias and Sunni Tribal Militias or Tribal Mobilisation militias.
- **KRG forces:** including Peshmerga forces and the forces of the Asayish, participating in activities regarding the conflict with ISIL.
- **Tribes:** Tribes are often armed with heavy weapons and have also become entangled as actors in the ISIL conflict.

*[Actors of protection, 5.1–5.5; Targeting, 1.1; Security situation, 1.1, 1.3]*

See also the chapter on [Actors of persecution or serious harm](#).

It should be noted that actively taking part in hostilities is not limited to openly carrying arms, but could also include substantial logistical and/or administrative support to combatants.

It is important to underline that the assessment of protection needs is forward-looking. Therefore, the main issue at hand is whether the applicant will be a civilian or not upon return. The fact that the person took part in hostilities in the past would not necessarily mean that [Article 15\(c\) QD](#) would not be applicable to him or her. For example, the assessment should take into account whether the person had voluntarily taken part in the armed conflict; those who willingly joined the armed groups are unlikely to be considered civilians.

In case of doubt regarding the civilian status of a person, a protection-oriented approach should be taken, which is also in line with international humanitarian law, and the person should be considered a civilian.

 Exclusion considerations may also apply (see the chapter on [Exclusion](#) below).

### c. Indiscriminate violence

‘Indiscriminate violence’ refers to the source of the specific type of serious harm defined in [Article 15\(c\) QD](#). The CJEU in *Elgafaji* notes that the term ‘indiscriminate’ implies that the violence,

*may extend to people irrespective of their personal circumstances.*<sup>32</sup>

Some acts of violence may be indiscriminate by their nature, for example: (suicide) bombings, attacks and armed confrontations in areas that are inhabited or frequented by civilians (e.g. market places, public roads, healthcare facilities).

Based on *Elgafaji*, in situations where indiscriminate violence is taking place, the following differentiation can be made with regard to its level:<sup>33</sup>

I. territories where the degree of indiscriminate violence reaches such a high level that substantial grounds are shown for believing that a civilian, returned to the relevant country or, as the case may be, to the relevant region, would, **solely on account of his or her presence** on the territory of that country or region, face a real risk of being subject to the serious threat referred to in Article 15(c) QD.

In this category, ‘mere presence’ would exceptionally be considered sufficient and no further individual elements would need to be substantiated.

II. territories where indiscriminate violence takes place, however it does not reach such a high level, and with regard to which **additional individual elements would have to be substantiated**.

Within this category, the level of indiscriminate violence may vary from territories where it is of such a low level that in general there would be no real risk for a civilian to be personally affected, to territories where the degree of indiscriminate violence is high and a lower level of individual elements would be required to establish a real risk of serious harm under Article 15(c) QD.

With regard to the second category, *Elgafaji* provides guidance on how the serious and individual threat has to be assessed, an approach commonly referred to as the ‘sliding scale’:

*(...) the more the applicant is able to show that he is specifically affected by reason of factors particular to his personal circumstances, the lower the level of indiscriminate violence required for him to be eligible for subsidiary protection.*<sup>34</sup>

Risk-impacting elements related to the personal circumstances of the applicant should, therefore, be taken into account. See subsection on [Serious and individual threat](#).

The graph below illustrates the further differentiated standard scale applied in country guidance with regard to the different levels of indiscriminate violence and the respective degree of individual

<sup>32</sup> *Elgafaji*, para.34.

<sup>33</sup> *Elgafaji*, para.43.

<sup>34</sup> *Elgafaji*, para.39.

elements required in order to find that a real risk of serious harm under [Article 15\(c\) QD](#) is substantiated for the applicant:

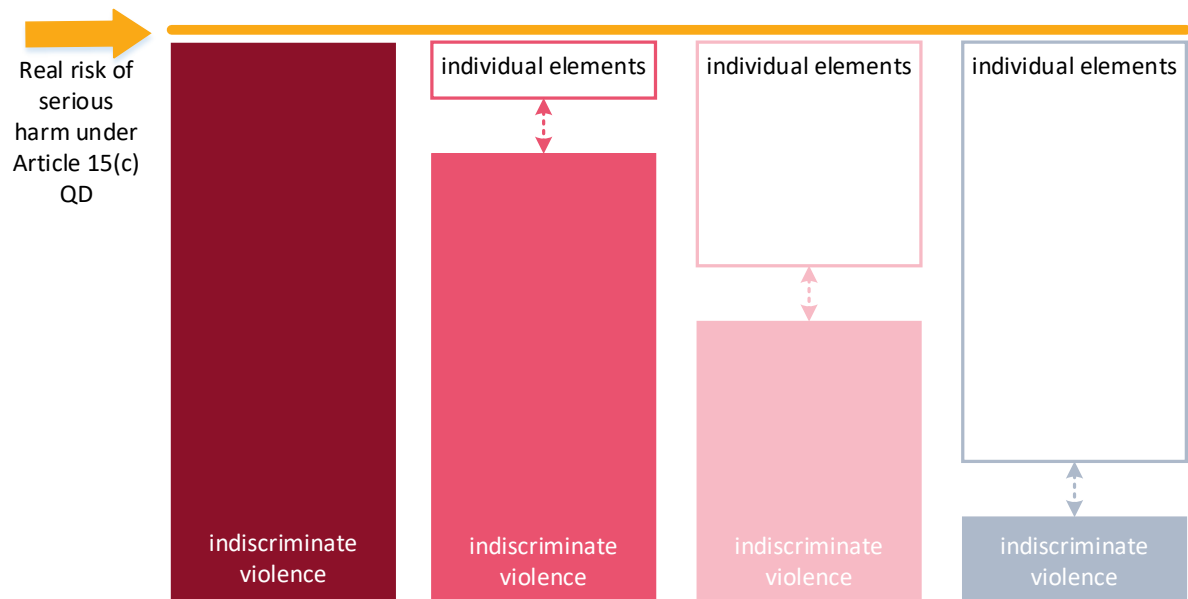


Figure 9. Indiscriminate violence and individual elements in establishing real risk of serious harm under Article 15(c) QD.

The different levels of indiscriminate violence can be described as follows:

	<p><b>I. Territories where ‘mere presence’ would be considered sufficient in order to establish a real risk of serious harm under Article 15(c) QD.</b></p> <p>Territories where the degree of indiscriminate violence reaches such an exceptionally high level that substantial grounds are shown for believing that a civilian, returned to the relevant country or, as the case may be, to the relevant region, would, <b>solely on account of his or her presence</b> on the territory of that country or region, face a real risk of being subject to the serious threat referred to in Article 15(c) QD.</p>
	<p><b>II. Territories where real risk of serious harm under Article 15(c) QD may be established if the applicant is specifically affected by reason of factors particular to his or her personal circumstances (based on a ‘sliding scale’).</b></p> <p>Territories where ‘mere presence’ in the area would not be sufficient to establish a real risk of serious harm under Article 15(c) QD, however, indiscriminate violence reaches a high level, and, accordingly, <b>a lower level of individual elements</b> is required to show substantial grounds for believing that a civilian, returned to the territory, would face a real risk of serious harm within the meaning of Article 15(c) QD.</p>
	<p>Territories where indiscriminate violence is taking place, however not at a high level and, accordingly, <b>a higher level of individual elements</b> is required in order to show substantial grounds for believing that a civilian, returned to the territory, would face a real risk of serious harm within the meaning of Article 15(c) QD.</p>
	<p>Territories where indiscriminate violence is taking place at such a low level that <b>in general there is no real risk for a civilian</b> to be personally affected by reason of indiscriminate violence within the meaning of Article 15(c) QD.</p>

It should be noted that in armed conflicts the targeting of civilians may have nexus to one of the reasons for persecution according to the refugee definition. Therefore, refugee status may be granted as noted in the section above (see, for example, the profiles *Persons perceived to be associated with ISIL, Individuals perceived to oppose ISIL, Religious and ethnic minorities, and stateless persons*). Such targeted violence, furthermore, would not be considered ‘indiscriminate’.

### *Indicators of indiscriminate violence*

The common analysis below regarding the degree of indiscriminate violence taking place in the different governorates of Iraq combines quantitative and qualitative elements in a holistic and inclusive assessment.

The indicators applied are formulated in reference to the ECtHR judgment in *Sufi and Elmi*:

*(...) first, whether the parties to the conflict were either employing methods and tactics of warfare which increased the risk of civilian casualties or directly targeting civilians; secondly, whether the use of such methods and/or tactics was widespread among the parties to the conflict; thirdly, whether the fighting was localised or widespread; and finally, the number of civilians killed, injured and displaced as a result of the fighting.*<sup>35</sup>

These indicators are further developed and adapted in order to be applied as a general approach to assessing the element of ‘indiscriminate violence’, irrespective of the country of origin in question.

The security situation in the respective states is assessed by taking into account the following elements:

#### ☐ Presence of actors in the conflict

This indicator looks into the presence of actors in the conflict in the respective governorate.

#### ☐ Nature of methods and tactics

The methods and tactics used in the armed conflicts ongoing in Iraq differ according to the actors involved. Some acts are by their nature more indiscriminate than others and create a more substantial risk for civilians.

ISIL are particularly known to use methods which are of indiscriminate nature, such as (suicide) bombings and attacks on whole villages.

The State actors tend to use methods and tactics of more targeted nature; however, they may also (indiscriminately) affect civilians, such as in the case of airstrikes and shelling.

#### ☐ Number of incidents

This indicator presents the total number of **incidents resulting in the violent death of a civilian** in 2018, compared to 2017, recorded by IBC. It should be underlined that these numbers refer solely to incidents the sources for which have been cross-checked. Furthermore, only incidents resulting in the documented violent death of a civilian (strictly, non-combatants) are recorded [*IBC supplement, Guidance notes*].

#### ☐ Geographical scope

This element looks into how widespread the violence is within the area, highlighting the districts which are particularly affected by indiscriminate violence and/or the districts which are relatively less affected.

<sup>35</sup> *Sufi and Elmi*, para.241.

Where the conflict severity varies within an area, the place of origin of the applicant could constitute an important element to consider in the assessment. The higher the level of indiscriminate violence in the respective place, the less additional individual elements would be required in order to apply [Article 15\(c\) QD](#).

The individual assessment should also take into account the accessibility of a certain territory.

#### Civilian casualties

This is considered a key indicator when assessing (the level of) indiscriminate violence in the context of [Article 15\(c\) QD](#).

The data used for this indicator consistently refers to the number of civilian deaths in the governorate, as recorded by IBC for 2018 and 2017. The reported number of deaths is further weighted by the population of the governorate and presented as '**number of civilian deaths per 100 000 inhabitants**'.

Data on injured individuals, which would also be relevant to take into account under the indicator 'civilian casualties' is only available for some governorates, as reported by UNAMI. This additional information has been added where available.

#### Displacement

This element refers to conflict-induced (internal) displacement from and within the governorate, as well as to returns to the governorate.

In addition to the indicators above, some examples of further impact of the armed conflicts on the life of civilians are mentioned and taken into account in the assessment.

None of the indicators above would be sufficient by itself to assess the level of indiscriminate violence and the risk it creates for the civilian population in a particular area. Therefore, a holistic approach has been applied, taking into account all different elements.

It should, furthermore, be noted that the COI used as a basis for this assessment cannot be considered a complete representation of the extent of indiscriminate violence and its impact on the life of civilians. Concerns with regard to underreporting should be underlined.

*Indiscriminate violence in Iraq*

The map below summarises and illustrates the assessment of indiscriminate violence per governorate:

### Iraq: Level of indiscriminate violence

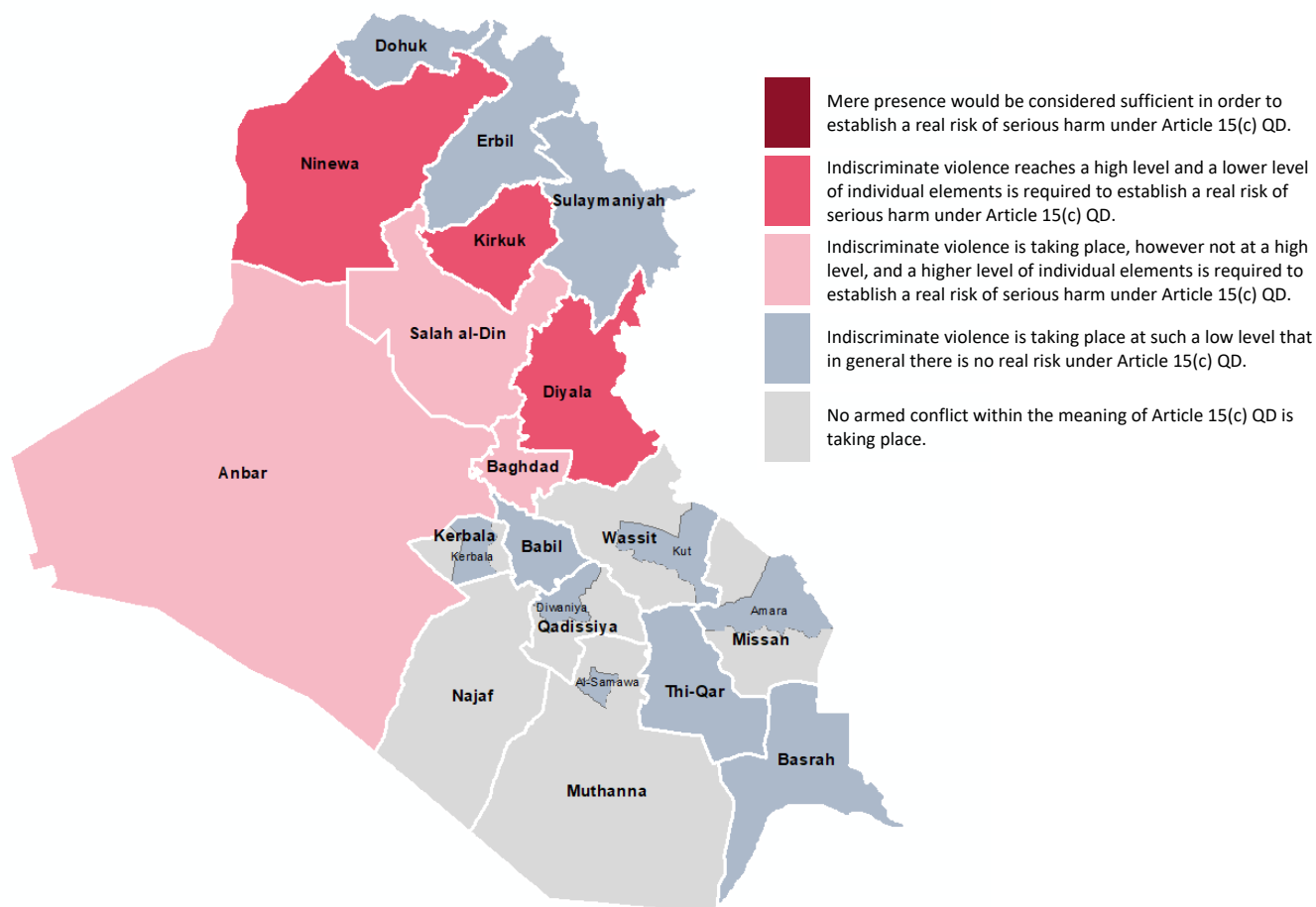


Figure 10. Level of indiscriminate violence in situations of armed conflict in Iraq (based on data as of 31 December 2018).

It should be noted that there are no governorates in Iraq where the degree of indiscriminate violence reaches such a high level that substantial grounds are shown for believing that a civilian, returned to the relevant region, would, solely on account of his or her presence on the territory of that region, face a real risk of being subject to the serious threat referred to in [Article 15\(c\) QD](#).



## Anbar

[*Security situation, 1.4.1.1, 2.1; IBC supplement*]

Anbar is the largest governorate in Iraq. Due to its vast desert terrain, it is also one of the most sparsely populated regions in the country. Anbar was one of the first governorates to fall under ISIL control and the last remaining bastion of the insurgency, with the ISF regaining control in November 2017.

ISIL does not control any territory in the governorate, however sleeper cells have been reported in the Anbar desert, the Ghadaf Valley and in Al-Hussainiah, west of Rutbah, and the group continues to carry out asymmetric attacks against the ISF. ISIL attack cells were identified as being active in: Al-Qaim, Wadi Horan/Rutbah and Lake Tharthar/Hit/Ramadi.

A number of security actors are present in the governorate, including the army, police, PMU, Shia militias, Iran-backed militias and tribal Sunni militias. A state of emergency was declared in October 2018 along the Iraqi-Syrian border after an ISIL attack near the border, and up to 30 000 army and PMU fighters were deployed to prevent cross-border ISIL attacks from Syria.

IBC data regarding the governorate of Anbar recorded a total of 46 security-related incidents involving violent civilian deaths in 2018, accounting for 5.1 violent civilian deaths per 100 000 inhabitants; compared to 45.3 documented violent civilian deaths per 100 000 inhabitants (170 incidents) in 2017. UNAMI reported 252 civilian casualties in 2018, compared to 822 in 2017.

The highest intensity of violent civilian deaths in 2018 was recorded in the districts of Haditha (14.1 per 100 000 inhabitants) and Ana (11.5 per 100 000 inhabitants). The districts of Ramadi and Al-Ka'im recorded the most security-related incidents leading to civilian deaths.

ISIL attacks predominantly targeted ISF and PMU personnel, including reported attacks on checkpoints, police stations and military vehicles. During 2018, most incidents which caused civilian deaths, as recorded by IBC, involved IED, followed by gunfire.

The military operations that led up to the liberation of Anbar caused widespread destruction of private and public property, which the government is still struggling to address. Areas retaken from ISIL by security forces have not all been cleared of explosive remnants. Multiple incidents have been reported of civilians, including children, killed and injured by remnant explosives placed by ISIL in agricultural and residential areas, including booby-trapped homes.

As of December 2018, Anbar ranked second amongst the top governorates of return with 1 290 606 registered returnees according to IOM data. The governorate continued to have 201 996 individuals displaced, with 52 878 displaced within the governorate. According to UNOCHA's 2019 Humanitarian Needs Overview, Anbar is one of the governorates with highest severity of humanitarian needs and the second in number of people in need (more than 1 350 000). There are also reports of forced evictions from camps and informal settlements and forced returns, harassment by armed actors in IDP camps, as well as unsuccessful attempts to return due to lack of services.

Looking at the indicators, it can be concluded that indiscriminate violence is taking place in the governorate of **Anbar**, however not at a high level and, accordingly, a higher level of individual elements is required in order to show substantial grounds for believing that a civilian, returned to the territory, would face a real risk of serious harm within the meaning of Article 15(c) QD.

## Babil/Babylon

[*Security situation, 2.8; IBC supplement*]

During 2018, ISIL made raids in Babil governorate, mostly in the northeast along the border with Anbar and in Jurf al-Sakhr. There have been reports of ISIL asymmetric attacks spilling over into Babil (Jurf al-Sakhr and Iskandariya). ISIL attack cells were identified as being permanently active in Jurf al-Sakhr.

A number of security actors are present in the governorate, including the ISF and the PMU, particularly the Iran-backed militias.

IBC data regarding the governorate of Babil recorded a total of 23 security-related incidents involving violent civilian deaths in 2018, accounting for 1.4 civilian deaths per 100 000 inhabitants; compared to 5.6 documented violent civilian deaths per 100 000 inhabitants (49 incidents) in 2017.

The districts that were mainly affected were Al-Mahawil (3.9 civilian deaths per 100 000 inhabitants) and Al-Musayab (3.2 civilian deaths per 100 000 inhabitants). With regard to the nature of the methods and tactics, COI shows that the leading cause for civilian casualties were gunfire and executions. Attacks predominantly targeted ISF and PMU personnel, but there were also reports of civilian kidnappings at checkpoints by militias and criminal gangs.

It needs to be taken into consideration that Babil is the only governorate where there is a 'blanket' no-return position applied to the Jurf al-Sakhr area. The town of Jurf al-Sakhr, which is the only majority Sunni town in the governorate, remains depopulated because of its strategic location. In particular, IDPs originally from Jurf al-Sakhr (around 30 000 individuals) are currently moving from one area to another, but are not allowed to return for security reasons.

Looking at the indicators, it can be concluded that indiscriminate violence is taking place in the governorate of **Babil** at such a low level that in general there is no real risk for a civilian to be personally affected by reason of indiscriminate violence within the meaning of Article 15(c) QD. However, individual elements always need to be taken into account as they could put the applicant in risk-enhancing situations.

## Baghdad

*[Security situation, 2.2; IBC supplement]*

Baghdad governorate is the smallest in the country and contains the capital of Iraq, Baghdad city. This sub-section also includes an assessment of the situation in the areas referred to as the Baghdad belts.

Overall, violent incidents in Baghdad city and the belts have declined since 2017. In 2018, Baghdad became a lower priority for ISIL attacks, with their activity declining in Baghdad city and the belts. However, ISIL remains present in the belts and capable of carrying out attacks.

The governorate of Baghdad is generally under the control of the authorities and the defence and law enforcement roles are shared with the PMU. The PMU presence is difficult to track and it is unclear to what extent groups shift. PMU have collided on occasions with ISF forces in Baghdad and are reported to engage in violent competition for territorial presence and territory, populations, and political leverage.

IBC data regarding the governorate of Baghdad recorded a total of 392 security-related incidents involving violent civilian deaths in 2018, accounting for 7.4 civilian deaths per 100 000 inhabitants; compared to 13.4 documented violent civilian deaths per 100 000 inhabitants (487 incidents) in 2017. UNAMI reported 1 214 civilian casualties in 2018, compared to 2 975 in 2017.

With regard to the nature of the methods and tactics, COI shows that the leading causes for civilian casualties were gunfire, executions/summary killing, and IEDs. The highest number of security-related incidents leading to civilian deaths were Adhamiya (78 incidents) and Resafa, including Thawra 1 and 2 (77 incidents). The highest intensity violent deaths of civilians was recorded in Tarmia and Mada'in.

The majority of violence in 2018 in Baghdad was political violence, generally involving political intimidation, armed skirmishes, and targeted assassinations between Shia in the context of the 2018 elections. Criminal violence, often attributed to the militias, included kidnappings, extortion, intimidation and small explosives/IEDs/grenades, shootings, robbery and racketeering. ISIL used small

explosives to target civilians in markets, buses and shops. Tribal leaders were also targeted by ISIL for supporting the May 2018 elections.

As of 15 December 2018, the number of displaced persons in Baghdad has been reduced to 69 204 IDPs, from 604 140 at the height of the displacement crisis (2016). The majority of the IDPs living in Baghdad originated from the governorates of Anbar, Ninewa and Babil. The number of IDPs originating from Baghdad who fled into other areas within the borders of the governorate itself decreased from 8 550 on 15 September 2017 to only 486 intra-government IDPs by 15 December 2018.

### *Focus on the Baghdad belts*

The Baghdad belts are areas encircling the city of Baghdad, which share a border with Diyala, Anbar, Salah al-Din, and Babil governorates. For the purposes of IBC data, the Baghdad belts encompass the districts of Tarmia, Mada'in, Mahmoudiya, Abu Ghraib and Khadamiya.

The Baghdad Operations Command (BOC) is responsible for security in both Baghdad and much of the Baghdad belts that surround the capital. Shia militias, including lethal proxy militias and Sadrist loyalists, operate outside the BOC's command and control. They have conducted crimes and kidnappings with impunity, established bases and unilateral control zones in north-eastern and southern Baghdad, and even clashed with the ISF on rare occasions.

ISIL activity has declined in the belts, but the organisation retains active cells in the northern and western parts, including in Tarmia, Taji, Latifiyah/Yussufiyah, Jisr Diyala/Madain, and Radwaniyah/Abu Ghraib. From its traditional support zones in the belts, ISIL can still execute attacks into the urban centre of Baghdad.

Sources observed that most incidents of IEDs and shootings occurred in the towns around the northern and southern parts of the Baghdad belts, and to a lesser extent, in the west. In terms of ISIL activity, hotspot areas with higher attack rates are in the belt areas of Tarmia, Taji and Latifiyah.

IBC data regarding Baghdad governorate indicates that the border areas of the governorate, i.e. the Baghdad belts, recorded the highest intensity of violence in 2018: Tarmia (35.8 violent civilian deaths per 100 000 inhabitants) and Mada'in (15.9 violent civilian deaths per 100 000 inhabitants).

### *Focus on Baghdad city*

For the purposes of IBC data, Baghdad city comprises the districts of Adhamiya, Resafa and Karkh.

Baghdad city and the suburbs are generally under the control of the authorities; however, in practice, authorities share defence and law enforcement roles with the Shia-dominated PMU, leading to 'incomplete' or overlapping control with these militias.

ISIL activity has decreased considerably in the city itself. The main sources of violence in Baghdad during 2018 were related to political intimidation, armed skirmishes, and targeted assassinations between Shia in the context of ongoing economic and political competition.

According to IBC data, in Baghdad city the district that recorded the highest intensity of violence in 2018 was Adhamiya (8.3 violent civilian deaths per 100 000 inhabitants).

Looking at the indicators, it can be concluded that indiscriminate violence is taking place in the governorate of **Baghdad**, however not at a high level and, accordingly, a higher level of individual

elements is required in order to show substantial grounds for believing that a civilian, returned to the territory, would face a real risk of serious harm within the meaning of Article 15(c) QD. However, it should be noted that the Baghdad belts, and in particular the district of Tarmia, are relatively more affected by indiscriminate violence.

## Basrah

*[Security situation, 2.8; IBC supplement]*

The governorate of Basrah has the largest oil fields in Iraq and Basrah city is the third largest city in Iraq. The vast majority of the population of Basrah governorate and the south of Iraq are Shia Muslim Arabs.

The control of Basrah is in the hands of the Iraqi government. Security forces included units of the Iraqi army, federal police and PMU, particularly Iran-backed militias. The Basrah PMU are independent of the ISF and during the protests there were reports that the Iran-backed PMU were acting to defend the political order and Iran's interests against the protesters, while some PMU affiliated with Shia cleric Al-Sistani were siding with the protesters. PMU in Basrah city started voluntary forces after the summer 2018 riots on water scarcity, poor public services and corruption.

IBC data regarding the governorate of Basrah recorded a total of 88 security-related incidents involving violent civilian deaths in 2018, accounting for 4.6 violent civilian deaths per 100 000 inhabitants; compared to 3.3 documented violent civilian deaths per 100 000 inhabitants (60 incidents) in 2017. Most incidents recorded by IBC during 2018 in Basrah governorate involved gunfire and executions.

The most affected areas are Basrah city, Al-Zubair and Shatt Al-Arab. The highest intensity of violence against civilians was recorded in Shatt Al-Arab (9.7 civilian deaths per 100 000 inhabitants), followed by Basrah (5.1) and Al-Zubair (4.1).

As with most southern governorates, most problems are related to tribal violence and local riots against the government, which have to do with water scarcity and poverty. Basrah tribes are known to be heavily armed and tribal clashes are the main source of violence in the area. This included tribal fighting between rival Shia tribes over farmland, state construction contracts and land ownership. Unresolved tribal disputes frequently spill into violent clashes, transforming some residential areas into conflict zones. Local security forces rarely intervene in tribal disputes. The government has resorted to short-term military actions to stabilise the situation temporarily. In 2018, tribal violence and unrest increased in Basrah governorate. Independent analysts tracked 62 tribal-related violent incidents in April, compared to 42 in March. It is reported that intra-Shia violence predominantly affects those actively involved in a militia or a tribal group.

Due to the conflict with ISIL, forces have been relocated from the southern governorates to other areas, leading to a situation where arms proliferation, tribal feuds, militancy, and smuggling have increased in Basrah governorate. Criminal gangs in Basrah have exploited the security gap and there has been a rise in robberies, kidnapping, murder, and drug trafficking while the Iraqi security forces struggle to keep security among competing armed groups.

There were 7 704 IDPs within the governorate. No numbers of returns or secondary displacement are available.

Looking at the indicators and in particular the type of violence taking place in the governorate, it can be concluded that indiscriminate violence is taking place in the governorate of **Basrah**, at such a low level that in general there is no real risk for a civilian to be personally affected by reason of indiscriminate violence within the meaning of Article 15(c) QD. However, individual elements always need to be taken into account as they could put the applicant in risk-enhancing situations.

## Dahuk/Dohuk

[*Security situation, 1.4.1.1, 2.7; IBC supplement*]

The KRI is an autonomous region, which includes three governorates: Erbil, Sulaymaniyah and Dahuk.

Security forces of the KRI are the Peshmerga and the Asayish intelligence services, in addition to KPD- and PUK-controlled militias. The KDP exercise its power over Dahuk and Erbil governorates and the PUK controls Sulaymaniyah governorate.

There was limited presence of ISIL in Dahuk in remote areas in the borders with the governorate of Ninewa.

The PKK has developed its territorial presence and control over mountainous areas along the Turkish and Iranian borders, especially in the Qandil Mountains, along the border between Erbil/Sulaymaniyah governorates and Iran, and in the Zab Mountains, in Dahuk governorate along the Turkish border. The Turkish military has presence in rural areas of Dahuk.

Ground clashes and air attacks by the Turkish Air Force increased significantly in 2018 compared to the previous year, sometimes causing civilian fatalities. In April 2018, Turkish shelling was reported in the districts of Zakho in Dahuk, which caused border closures between Iraq and Syria.

Other armed groups active in the KRI's mountainous areas are Kurdish insurgent and Kurdish-Iranian opposition groups (including KDP-I, PJAK, Komala). Sporadic attacks by these groups and Iranian forces were reported in 2018.

IBC data regarding the governorate of Dahuk recorded a total of 20 security-related incidents involving violent civilian deaths in 2018, accounting for 3.1 civilian deaths per 100 000 inhabitants; compared to 1.9 documented violent civilian deaths per 100 000 inhabitants (7 incidents) in 2017.

Conflict severity was low in the governorate, with Dahuk district being the most affected area (16 incidents, accounting for 5.7 civilian deaths per 100 000 inhabitants). With regard to the nature of the methods and tactics, COI shows that the leading causes for civilian casualties were air attacks, gunfire and executions.

Dahuk hosts a large number of IDPs, with 337 596 IDPs, concentrated in Sumel and Zakho districts and mainly coming from Ninewa. The aftermath of the fight against ISIL has left Dahuk with a contamination of explosive remnants, like cluster munition, unexploded ordnance of hand grenades and artillery shells.

Looking at the indicators, it can be concluded that indiscriminate violence is taking place in the governorate of **Dahuk**, at such a low level that in general there is no real risk for a civilian to be personally affected by reason of indiscriminate violence within the meaning of Article 15(c) QD. However, individual elements always need to be taken into account as they could put the applicant in risk-enhancing situations.

## Dhi Qar/Thi-Qar

[*Security situation, 2.8; IBC supplement*]

The control of Dhi Qar is in hands of the Iraqi government. The Rafidain Operations Command oversees security in the governorate. The PMU are independent of the ISF and during the protests in the southern governorates there were reports that the Iran-backed PMU were acting to defend the political order and Iran's interests against the protesters, while some PMU affiliated with Shia cleric Al-Sistani were siding with the protesters. As with most southern governorates, most problems are

related to tribal violence and local riots against the government, which have to do with water scarcity and poverty. The riots started in Basrah and have influenced other southern governorates, such as Dhi Qar.

In February 2018, it was reported that 20 clan clashes had developed between tribes in Dhi Qar due to water scarcity. The local government was unable to reach a solution over the tribal differences. Protests in Nassriya turned violent in July 2018 as protesters stormed government buildings, started fires, and raided the airport temporarily.

IBC data regarding the governorate of Dhi Qar recorded a total of 39 security-related incidents involving violent civilian deaths in 2018, accounting for 2.5 civilian deaths per 100 000 inhabitants; compared to 5 documented violent civilian deaths per 100 000 inhabitants (15 incidents) in 2017.

Most incidents in the governorate were related to tribal violence and anti-government protests. Most incidents recorded by IBC during 2018 in Dhi Qar governorate involved executions and gunfire.

The most affected district was Nassriya (24 incidents, accounting for 3.7 violent civilian deaths per 100 000 inhabitants).

3 552 IDPs were hosted within the governorate. No numbers of returns or secondary displacement are available.

Looking at the indicators, it can be concluded that indiscriminate violence is taking place in the governorate of **Dhi Qar** at such a low level that in general there is no real risk for a civilian to be personally affected by reason of indiscriminate violence within the meaning of Article 15(c) QD. However, individual elements always need to be taken into account as they could put the applicant in risk-enhancing situations.

## Diyala

*[Security situation, 2.3; IBC supplement]*

Diyala has a diverse ethnic and religious population and is known to have hosted extremist insurgents in Iraq since 2004. Although ISIL managed to occupy large areas in the north of the governorate, the governorate did not fall under their control in its entirety and was among the first areas liberated from ISIL in 2015. However, ISIL has been expanding its activity in Diyala and established control in most rural areas of the governorate. ISIL militants are reported to be hiding in the mountain ranges, where they are difficult to find. ISIL permanently operating attack cells were reported in Muqdadiyah, Jawlawla, Saadiyah, Qara Tapa, and Mandali. Kifri and Khanaqin districts were assessed to be ISIL-contested.

PMU are reported to be particularly strong in Diyala. The Badr Organisation, which has control over the provincial council, is considered to be the main security actor. Local Sunni tribal militias also operate in the governorate under the patronage of the more powerful PMU.

Overall, the violence in the governorate of Diyala has remained at similar levels in 2018 as in 2017. In some districts, it has been increasing. According to IBC data, most security-related incidents resulting in violent civilian deaths were gunfire, IEDs and executions. ISIL attacks on civilians included killings, kidnappings, and destruction of rural farming infrastructure. Attacks on checkpoints were also reported.

IBC data regarding the governorate of Diyala recorded a total of 170 security-related incidents involving violent civilian deaths in 2018, accounting for 16.4 civilian deaths per 100 000 inhabitants; compared to 17.1 documented violent civilian deaths per 100 000 inhabitants (180 incidents) in 2017. UNAMI reported 142 civilian casualties in 2018; no civilian casualties were documented by UNAMI in Diyala in 2017.



The highest intensity of violent civilian deaths in 2018 was recorded in the districts of Al-Muqdadia (46.4 civilian deaths per 100 000 inhabitants), Khifri (33.8 civilian deaths per 100 000 inhabitants), Khanaqin (26.1 civilian deaths per 100 000 inhabitants) and Baladrooz (21.4 civilian deaths per 100 000 inhabitants), while the lowest intensity was recorded in Ba'quba (0.7 civilian deaths per 100 000 inhabitants) and Al-Khalis (5.1 civilian deaths per 100 000 inhabitants).

As of December 2018, Diyala governorate ranked fifth amongst the top governorates of return, with a total 223 326 of registered returnees the majority formerly displaced within the governorate. However, 89 662 individuals from Diyala remained displaced, the majority within the governorate itself. ISIL militants left booby-trapped homes which complicate the return for IDPs. Forced evictions of IDPs, denied returns of Sunni perceived to be affiliated with ISIL, and returns conditioned on recruitment in the tribal militias were reported. It is also reported that corruption is rampant on the main commercial roads of the governorate where checkpoints are manned by PMU.

Looking at the indicators, it can be concluded that 'mere presence' in the area would not be sufficient to establish a real risk of serious harm under Article 15(c) QD in the governorate of **Diyala**, however, indiscriminate violence reaches a high level, and, accordingly, a lower level of individual elements is required to show substantial grounds for believing that a civilian, returned to the territory, would face a real risk of serious harm within the meaning of Article 15(c) QD. However, it should be noted that the districts of Ba'quba and Al-Khalis are relatively less affected by indiscriminate violence.

## Erbil

*[Security situation, 2.7; IBC supplement]*

The KRI is an autonomous region, which includes three governorates: Erbil, Sulaymaniyah and Dahuk. The city of Erbil is the capital of Erbil governorate and is the fourth largest city in Iraq and the most populated city in the KRI.

Security forces of the Kurdistan Region of Iraq are the Peshmerga and the Asayish intelligence services, in addition to KPD- and PUK-controlled militias. The KDP exercise its power over Dahuk and Erbil governorates and the PUK controls Sulaymaniyah governorate.

The PKK has developed its territorial presence and control over mountainous areas along the Turkish and Iranian borders, especially in the Qandil Mountains, along the border between Erbil and Sulaymaniyah governorates and Iran. The Turkish military has a presence in rural areas of Erbil. There are also PKK positions in the governorate that are reportedly targeted by Turkish jets. In addition to that, there is presence of Iranian forces and it is reported that Iranian artillery shelling in parts of Erbil displaced the inhabitants of three villages. Missile and car bomb attacks targeting Kurdish insurgent and Kurdish-Iranian opposition groups were reported to take place in 2018 in Koisanjaq, Bnaslawa and Kuyah and have been attributed to the Iranian Revolutionary Guard Corps.

Limited presence of ISIL was reported in Erbil, in particular in Makhmour district. Makhmour district is considered what the Institute for the Study of War (ISW) calls a 'contested district', where ISIL cannot hold terrain but does contest control with the ISF. According to the ISW, ISIL 'exerts a high level of physical and psychological pressure over the population'.

Makhmour reportedly also hosts a camp for 12 000 Kurds originally from Turkey, who fled and crossed the border during the 1990s and who have 'lost children fighting in PKK ranks'. Turkish jets reportedly attacked the camp in December 2018, accusing the inhabitants of links to the PKK.

In April of 2018, the main highway linking Erbil and Makhmour district was reopened after a six-month closure due to clashes between KRG and Iraqi forces over the disputed areas in October 2017. The main road connecting Erbil to Kirkuk was also officially reopened in August 2018, after having remained closed since clashes between ISF and the Peshmerga on 16 October 2017.

In general, conflict severity remained low in the governorate of Erbil. IBC data regarding the governorate of Erbil recorded a total of 15 security-related incidents involving violent civilian deaths in 2018, accounting for 1.3 civilian deaths per 100 000 inhabitants; compared to 0.8 documented violent civilian deaths per 100 000 inhabitants (10 incidents) in 2017. The districts of Erbil, Soran and Koisanjaq recorded the most security-related incidents leading to civilian deaths. The highest intensity of violence was recorded in Koisanjaq (6.6 civilian deaths per 100 000 inhabitants), followed by Soran (3.5 civilian deaths per 100 000 inhabitants).

Most incidents recorded by IBC during 2018 in Erbil leading to civilian casualties involved gunfire, followed by IED.

Erbil was the only KRI governorate with internal displacement and return within the governorate, in particular displacement from the district of Makhmour. Erbil hosts a large number of IDPs, with 211 920 individuals. In addition, the aftermath of the fight against ISIL has left Erbil with a contamination of explosive remnants, like cluster munition, unexploded ordnance of hand grenades and artillery shells, and 15-17 % of the arable and grazing lands are not accessible due to mining.

Looking at the indicators, it can be concluded that indiscriminate violence is taking place in the governorate of **Erbil** at such a low level that in general there is no real risk for a civilian to be personally affected by reason of indiscriminate violence within the meaning of Article 15(c) QD. However, individual elements always need to be taken into account as they could put the applicant in risk-enhancing situations.

## Kerbala

*[Security situation, 2.8; IBC supplement]*

The control of Kerbala is in hands of the Iraqi government. It is under the responsibility of the Mid-Euphrates Operations Command. Federal Police units have also been reported to be concentrated in western Kerbala.

The PMU maintain a strong presence independent of the ISF and during the protests in the southern governorates there were reports that the Iran-backed PMU were acting to defend the political order and Iran's interests against the protesters, while some PMU affiliated with Shia cleric Al-Sistani were siding with the protesters. As with most southern governorates, most problems are related to tribal violence and local riots against the government, which have to do with water scarcity and poverty. The riots started in Basrah and have influenced other southern governorates, such as Kerbala. In addition, the city of Kerbala has recorded increased violence due to drug gangs over the last year.

IBC data regarding the governorate of Kerbala recorded a total of 9 security-related incidents involving violent civilian deaths in 2018, 8 of them recorded in the district of Kerbala. The incidents in the governorate accounted for 1.2 civilian deaths per 100 000 inhabitants, all of them recorded in the district of Kerbala (1.5 civilian deaths per 100 000 inhabitants); compared to 2.1 documented violent civilian deaths per 100 000 inhabitants (10 incidents) in the governorate in 2017.

Most incidents recorded by IBC during 2018 in Kerbala governorate involved gunfire and executions.

There were 22 000 IDPs within the governorate. No numbers of returns or secondary displacement are available.

Based on the available country of origin information and in particular taking into account the type of violence, it can be concluded that no armed conflict within the meaning of Article 15(c) QD is taking place in the governorate of Kerbala, except in the district of Kerbala.

Looking at the indicators, it can be concluded that indiscriminate violence is taking place in the **district of Kerbala** at such a low level that in general there is no real risk for a civilian to be personally affected



by reason of indiscriminate violence within the meaning of Article 15(c) QD. However, individual elements always need to be taken into account as they could put the applicant in risk-enhancing situations.

## Kirkuk (Tameem)

*[Security situation, 2.4; IBC supplement]*

Kirkuk is a governorate in northern Iraq with a diverse and mixed population, with a variety of ethnic and religious groups. Kirkuk has been described one of the areas of the disputed territories that has experienced the worst turbulence in recent years. ISIL took over and administered areas of Hawija district since June 2014, controlling the countryside and rural areas of Kirkuk until it was pushed out in October 2017.

A number of security actors are present in the governorate, including the army, police, counter-terrorism units, PMU, and Sunni tribal militias. ISIL does not control any territory in the governorate, but retains pockets of fighters, especially in Hawija (Al-Hawiga) and the Hamreen mountains. ISIL retains permanently operating attack cells in Hawija, Rashad, Zab, Dibis, and Ghaeda, in or near Kirkuk province. It has reportedly established support zones in 'areas south of Kirkuk city, including Daquq, Hawija, Riyadh, and Rashad districts, as well as rural areas around Lake Hamrin in the Diyala River Valley. ISIL is reported to be regrouping efforts and there are ongoing activities to retain a strong presence.

Kirkuk was assessed to be ISIL's most prolific attack location in Iraq during the majority of 2018, and the insurgent group has been able to regularly hit Kirkuk city. Hawija and Daquq have been assessed by the ISW to be ISIL-contested districts, where ISIL is contesting for control with the ISF, as indicated by abandonment of villages, destruction of agriculture and infrastructure, repeated ISIL raids, and assassinations of the local social hierarchy. ISIL tactics included small arms attacks, targeted killings, ambushes, abductions at fake checkpoints and suicide attacks.

In the south-eastern part of Kirkuk governorate, the 'White Flags', an alliance of former ISIL militants and disgruntled Kurdish militants, also reportedly launched attacks during the first half of 2018, using fake checkpoints on highways where it abducted and killed passengers.

IBC data regarding the governorate of Kirkuk recorded 126 security-related incidents involving violent civilian deaths in 2018, accounting for 18.3 civilian deaths per 100 000 inhabitants; compared to 62.9 documented violent civilian deaths per 100 000 inhabitants (175 incidents) in 2017. UNAMI reported 155 civilian casualties in 2018, compared to 112 in 2017.

The highest intensity of violent civilian deaths in 2018 was recorded in the districts of Hawija (43.7 civilian deaths per 100 000 inhabitants) and Daquq (41.6 civilian deaths per 100 000 inhabitants). The most security-related incidents leading to violent civilian deaths were recorded in the districts of Kirkuk (53 incidents) and Hawija (48 incidents). During 2018, most incidents which caused civilian deaths, as recorded by IBC, involved gunfire, followed by IEDs and executions.

In January 2018, it was assessed that 7% of the housing in Kirkuk governorate had been damaged, placing the governorate behind Ninewa, Salah al-Din and Anbar as the worst affected governorates. Up to November 2018, several reports documented ISIL attacks on infrastructure facilities in Kirkuk governorate, such as water, electricity or oil infrastructure, depriving entire areas from basic services. Healthcare facilities were also targeted by attacks in the context of the fight against ISIL, with Hawija being particularly affected. UNOCHA stated in its 2019 Humanitarian Needs Overview that 35 % of primary health centres are not functional in Kirkuk governorate. Agricultural areas have been severely damaged during the conflict with ISIL, divesting the population of its main financial resource.

The Baghdad-Kirkuk highway was described as one of the most dangerous routes in Iraq with sources noting militant activities targeting travellers, such as ambushes, kidnappings, and fake ISIL checkpoints, killings, robberies, targeted assassinations of government officials and security forces, car bombings, and ISIL raids on travellers. Cases of unexploded ordnances were also reported on roads in Kirkuk.

As of December 2018, 319 338 IDPs originating from Kirkuk had returned to the governorate, according to IOM data. Most of the Kurdish population who fled the disputed territories during Iraqi forces' offensive against the Peshmerga in October 2017 have reportedly returned. However, Kirkuk continued to have 62 652 individuals displaced inside the governorate. Due to rates of return, the Iraqi government closed Daquq camp in Kirkuk in September 2018, which caused hundreds of families to return to liberated areas, to go to host communities or other camps. There are also reports of prevention of returns by local authorities, evictions, forced returns, as well as unsuccessful attempts to return due to lack of services, destroyed homes and security concerns, mainly in Hawija. Secondary displacement has been reported in the governorate.

Looking at the indicators, it can be concluded that 'mere presence' in the area would not be sufficient to establish a real risk of serious harm under Article 15(c) QD in the governorate of **Kirkuk**, however, indiscriminate violence reaches a high level, and, accordingly, a lower level of individual elements is required to show substantial grounds for believing that a civilian, returned to the territory, would face a real risk of serious harm within the meaning of Article 15(c) QD.

## Missan

*[Security situation, 2.8; IBC supplement]*

The control of Missan is in hands of the Iraqi government. The Rafidain Operations Command oversees security in Missan.

The PMU maintain a strong presence independent of the ISF and during the protests in the southern governorates there were reports that the Iran-backed PMU were acting to defend the political order and Iran's interests against the protesters, while some PMU affiliated with Shia cleric Al-Sistani were siding with the protesters. As with most southern governorates, most problems are related to tribal violence and local riots against the government and have to do with water scarcity, corruption and poverty. The riots started in Basrah and have influenced other southern governorates, such as Missan.

Tribes have been reported to be heavily armed in the area. In January 2018, the Iraqi government had to deploy security forces to restore order in Missan, after armed tribesmen launched an attack on tribal rivals' houses. In February 2018, tribal conflicts were reported to intensify due to water scarcity, as tribal leaders took control of the water flow of the Tigris River for irrigation purposes in the northern areas of the governorate. Authorities in Missan have pointed out that due to insufficient security forces, the governorate risked an increase in arms proliferation, tribal feuds, militancy, and smuggling.

IBC data regarding the governorate of Missan recorded a total of 13 security-related incidents involving violent civilian deaths in 2018, 6 of them documented in the district of Amara. The documented incidents accounted for 1.7 civilian deaths per 100 000 inhabitants; compared to 1.2 documented violent civilian deaths per 100 000 inhabitants (11 incidents) in 2017. In the district of Amara, the number of violent civilian deaths accounted for 1.6 per 100 000 inhabitants.

The incidents recorded by IBC during 2018 in Missan governorate involved gunfire and executions.

There were 2 592 IDPs within the governorate. No numbers of returns or secondary displacement are available.

Based on the available country of origin information, it can be concluded that no armed conflict within the meaning of Article 15(c) QD is taking place in the governorate of Missan, except in the **district of Amara**.

Looking at the indicators, it can be concluded that indiscriminate violence is taking place in the **district of Amara** at such a low level that in general there is no real risk for a civilian to be personally affected by reason of indiscriminate violence within the meaning of Article 15(c) QD. However, individual elements always need to be taken into account as they could put the applicant in risk-enhancing situations.

## Muthanna

*[Security situation, 2.8; IBC supplement]*

The control of Muthanna is in hands of the Iraqi government. The PMU maintain a strong presence independent of the ISF and during the protests in the southern governorates there were reports that the Iran-backed PMU were acting to defend the political order and Iran's interests against the protesters, while some PMU affiliated with Shia cleric Al-Sistani were siding with the protesters. As with most southern governorates, most problems are related to tribal violence and local riots against the government, which have to do with water scarcity and poverty. The riots started in Basrah and have influenced other southern governorates, such as Muthanna.

IBC data regarding the governorate of Muthanna recorded a total of 7 security-related incidents involving violent civilian deaths in 2018, 4 of them recorded in the district of Al-Samawa. These incidents accounted for 1.3 civilian deaths per 100 000 inhabitants in the governorate; compared to 1.2 documented violent civilian deaths per 100 000 inhabitants (5 incidents) in 2017. In the district of AL-Samawa, the number of violent civilian deaths accounted for 1.8 per 100 000 inhabitants.

Most incidents recorded by IBC during 2018 in Muthanna governorate involved gunfire and executions.

There were 1 200 IDPs within the governorate. No numbers of returns or secondary displacement are available.

Based on the available country of origin information, it can be concluded that no armed conflict within the meaning of Article 15(c) QD is taking place in the governorate of Muthanna, except in the **district of Al-Samawa**.

Looking at the indicators, it can be concluded that indiscriminate violence is taking place in the **district of Al-Samawa** at such a low level that in general there is no real risk for a civilian to be personally affected by reason of indiscriminate violence within the meaning of Article 15(c) QD. However, individual elements always need to be taken into account as they could put the applicant in risk-enhancing situations.

## Najaf

*[Security situation, 2.8; IBC supplement]*

The control of Najaf is in the hands of the Iraqi government. The PMU maintain a strong presence independent of the ISF and during the protests in the southern governorates there were reports that the Iran-backed PMU were acting to defend the political order and Iran's interests against the protesters, while some PMU affiliated with Shia cleric Al-Sistani were siding with the protesters. As with most southern governorates, most problems are related to tribal violence and local riots against

the government, which have to do with water scarcity and poverty. The riots started in Basrah and have influenced other southern governorates, such as Najaf.

IBC data regarding the governorate of Najaf recorded a total of 4 security-related incidents involving violent civilian deaths in 2018, accounting for 0.3 civilian deaths per 100 000 inhabitants; compared to 1.9 documented violent civilian deaths per 100 000 inhabitants (9 incidents) in 2017.

Most incidents recorded by IBC during 2018 in Najaf governorate involved gunfire.

There were 12 858 IDPs within the governorate. No numbers of returns or secondary displacement are available.

Based on the available country of origin information, it can be concluded that no armed conflict within the meaning of Article 15(c) QD is taking place in **Najaf** governorate.

## Ninewa

*[Security situation, 2.5; IBC supplement]*

The governorate of Ninewa is the third largest governorate and has the second highest population in Iraq. In Ninewa, the ISIL occupation was preceded by years of overlapping violent extremism and organised crime by militia groups. Mosul was taken over and occupied by ISIL in June 2014 and was recaptured at the beginning of 2017. ISIL attacks on Sinjar, Zummar and the Ninewa Plains led to widespread displacement.

A plethora of security actors are present in Ninewa with the CTS being regarded as the most powerful security actors in the region, followed PMU and ISF forces. Units of the Iraqi army and federal police are also reported to be present in the governorate, as well as different minority and Sunni tribal militias.

ISIL does not control any territory in the governorate, but in January 2019 it was reported that ISIL was contesting control with the ISF in rural parts of Mosul district. ISIL reportedly has operating attack cells in Mosul city, Qayyarah, Hatra, and the Iraq-Turkey pipeline corridor southwest of Mosul, Badush, and Sinjar at the Syrian border, and continues to carry out asymmetric attacks against the ISF. ISIL carried attacks on a regular basis, which included explosions, killings, and assassinations.

Ninewa was the governorate with the highest intensity of violence in terms of civilian deaths per 100 000 inhabitants in 2017 and again in 2018. IBC data regarding the governorate of Ninewa recorded a total of 217 security-related incidents involving violent civilian deaths in 2018, which accounted for 46.5 civilian deaths per 100 000 inhabitants; compared to 268.2 documented violent civilian deaths per 100 000 inhabitants (600 incidents) in 2017. UNAMI reported 182 civilian casualties in 2018, compared to 2 621 in 2017.

The highest intensity of violent civilian deaths in 2018 was recorded in the districts of Sinjar, where 14 incidents caused 95 violent civilian deaths (113 civilian deaths per 100 000 inhabitants) and Mosul, where 183 incidents caused 1369 civilian deaths (62 civilian deaths per 100 000 inhabitants). No violent civilian deaths were recorded in Al-Shikhan and Akre, and the intensity was lower in Hatra (16.2 civilian deaths per 100 000 inhabitants) and Telafar (20 civilian deaths per 100 000 inhabitants). During 2018, most incidents which caused civilian deaths, as recorded by IBC, involved executions, followed by gunfire and IEDs.

The level of destruction is high in West Mosul, which remains completely destroyed, and Sinjar. It is reported that 8 million tons of explosive remnants remain in Mosul city. Accidents are frequent and some areas of the city remain inaccessible. Other areas in the governorate also suffered heavy damage, including parts of Hamdaniya district, Zummar and Rabia sub-districts of Telafar and Qayara,

and particularly Ba'aj, reportedly the town with the highest level of destruction in Iraq. In addition to residential buildings, the infrastructure also suffered damage, and has to be partially rebuilt.

Competition between security actors over territorial control, institutions and resources creates uncertainty in the local community. There have been reports of clashes between the PMU and ISF that are hampering reconstruction, demining and safe returns in the governorate.

As of December 2018, Ninewa ranked first amongst the top governorates of return, with 1 614 150 registered returnees according to IOM data. The governorate continued to have 1 073 994 individuals displaced, 539 436 of them displaced inside the governorate itself. According to UNOCHA's 2019 Humanitarian Needs Overview, Ninewa is one of the governorates with highest severity of humanitarian needs and the highest number of people in need (2 168 222). There are also reports of denied returns of people accused of ISIL affiliation, forced relocations, as well as forced and premature returns, often resulting in secondary displacement.

Looking at the indicators, it can be concluded that 'mere presence' in the area would not be sufficient to establish a real risk of serious harm under Article 15(c) QD in the governorate of **Ninewa**, however, indiscriminate violence reaches a high level, and, accordingly, a lower level of individual elements is required to show substantial grounds for believing that a civilian, returned to the territory, would face a real risk of serious harm within the meaning of Article 15(c) QD. However, it should be noted that the districts of Al-Shikhan, Akre, Hatra and Telafer are relatively less affected by indiscriminate violence.

## Qadissiya

[Security situation, 2.8, IBC supplement]

The control of Qadissiya is in the hands of the Iraqi government. The PMU maintain a strong presence independent of the ISF and during the protests in the southern governorates, there were reports that the Iran-backed PMU were acting to defend the political order and Iran's interests against the protesters, while some PMU affiliated with Shia cleric Al-Sistani were siding with the protesters. As with most southern governorates, most problems are related to tribal violence and local riots against the government, which have to do with water scarcity and poverty. The riots started in Basrah and have influenced other southern governorates, such as Qadissiya. Other problems in this governorate are violence and extortion by local gangs.

IBC data regarding the governorate of Qadissiya recorded a total of 10 security-related incidents involving violent civilian deaths in 2018, 9 of them recorded in the district of Diwaniya. These incidents accounted for 0.8 civilian deaths per 100 000 inhabitants; compared to 0.9 documented violent civilian deaths per 100 000 inhabitants (7 incidents) in 2017. In the district of Diwaniya, the incidents accounted for 1.6 civilian deaths per 100 000 inhabitants.

The incidents recorded by IBC during 2018 in Qadissiya governorate involved gunfire and executions.

There were 11 250 IDPs within the governorate. No numbers of returns or secondary displacement are available.

Based on the available country of origin information, it can be concluded that no armed conflict within the meaning of Article 15(c) QD is taking place in the governorate of Qadissiya, except in the **district of Diwaniya**.

Looking at the indicators, it can be concluded that indiscriminate violence is taking place in the **district of Diwaniya** at such a low level that in general there is no real risk for a civilian to be personally affected by reason of indiscriminate violence within the meaning of Article 15(c) QD. However,

individual elements always need to be taken into account as they could put the applicant in risk-enhancing situations.

## Salah al-Din

*[Security situation, 2.6; IBC supplement]*

Salah al-Din governorate has an estimated population of about 1 600 000, which is predominantly Sunni Muslim. Salah al-Din was amongst the first to be liberated in the Iraqi forces' offensive against ISIL and most of the key population centres were out of ISIL's control by mid-2015. Salah al-Din was also affected in the context of the change of control over the disputed territories after the Kurdish referendum on independence.

A number of security actors are present in the governorate, including the army, police, PMU, Hawza-militias, Sunni tribal militias, Turkmen militias as well as Sadr, Sistani and other affiliated Shia militias.

In October 2018, it was reported that ISIL had established a small control zone north of Baiji in Salah al-Din. ISIL continues to carry out asymmetric attacks against the ISF in the governorate and reportedly has operating attack cells in the southern Jallam Desert (south of Samarra), Baiji, Shirqat, Pulkhana (near Tuz), and Mutabijah/Udaim. ISIL's attack activities in Salah al-Din have reportedly significantly decreased in 2018 and its operational capabilities are limited by the presence of the PMU; however, pockets of fighters operating during the night have been reported. It is reported that with the exception of the ruined refinery town of Baiji and the adjacent Shirqat, ISIL is only slowly starting to attack Salah al-Din cities like Samarra, Tikrit, Dour, Balad, and Tuz Khurmatu. ISIL attacks predominantly targeted ISF forces, PMU, Sunni tribal militias, civilians and local officials. Kidnappings, killings and acts of intimidation were reported.

In the first months of 2018, the 'White Flags', an alliance of former ISIL militants and disgruntled Kurdish militants, was reported to operate in the area of Tuz Khurmatu, and along the Kirkuk-Baghdad highway.

IBC data regarding the governorate of Salah al-Din recorded 69 security-related incidents involving violent civilian deaths in 2018, which accounted for 10.1 civilian deaths per 100 000 inhabitants; compared to 28 documented violent civilian deaths per 100 000 inhabitants (83 incidents) in 2017. UNAMI reported 104 civilian casualties in 2018, compared to 471 in 2017.

The highest intensity of violent civilian deaths in 2018 was recorded in the districts of Shirqat (19.4 civilian deaths per 100 000 inhabitants), Baiji (15.2 civilian deaths per 100 000 inhabitants) and Tooze (13.4 civilian deaths per 100 000 inhabitants). The districts of Baiji, Shirqat and Balad recorded the most security-related incidents leading to civilian deaths. During 2018, most incidents that caused civilian deaths, as recorded by IBC, involved gunfire, followed by IED and executions.

Salah al-Din is one of the governorates, which suffered particularly significant damage to infrastructure.

As of December 2018, Salah al-Din ranked third amongst the top governorates of return, with 590 652 registered returnees according to IOM data. The governorate continued to have 238 728 individuals displaced, with 117 870 displaced within the governorate itself. According to UNOCHA's 2019 Humanitarian Needs Overview, Salah al-Din is third in relation to the number people in need, with 764 669 individuals.

There are reports of denied returns of people accused of ISIL affiliation, forced relocations and evictions from camps and informal settlements, as well as forced and premature returns, often resulting in secondary displacement.



Looking at the indicators, it can be concluded that indiscriminate violence is taking place in the governorate of **Salah al-Din**, however not at a high level and, accordingly, a higher level of individual elements is required in order to show substantial grounds for believing that a civilian, returned to the territory, would face a real risk of serious harm within the meaning of Article 15(c) QD.

## Sulaymaniyah incl. Halabja

[*Security situation, 2.7; IBC supplement*]

The KRI is an autonomous region which includes three governorates: Sulaymaniyah, Erbil and Dahuk. Although Halabja was symbolically designated as a governorate by the Iraqi government in December 2013, many ministries and institutions consider it as part of Sulaymaniyah.

Security forces of the KRG are the Peshmerga and the Asayish intelligence services, in addition to KPD- and PUK-controlled militias. The PUK controls Sulaymaniyah governorate, while the KDP exercise its power over Dahuk and Erbil governorates.

Kurdish forces have allegedly arrested many ISIL cells within Sulaymaniyah governorate since January 2018. ISIL still maintains a support zone in the Halabja Mountains close to the Iranian borders. This area of Halabja Mountains, where groups such as Ansar Al-Islam pledged allegiance to ISIL, is known to have provided ISIL with Kurdish fighters.

In addition to the ISIL presence, the PKK has developed its territorial presence and control over mountainous areas along the border between Erbil and Sulaymaniyah governorates and Iran.

Concerning the political situation in the governorate, large scale mass protests were reported in December 2018 in some places, with public buildings and party offices being targeted, as protesters called for the KRG to resign. On 18 December 2018, 5 political party offices in Sulaymaniyah were set on fire, injuring several protesters.

IBC data regarding the governorate of Sulaymaniyah recorded a total of 26 security-related incidents involving violent civilian deaths in 2018, which accounted for 2.3 civilian deaths per 100 000 inhabitants; compared to 1.2 documented violent civilian deaths per 100 000 inhabitants (16 incidents) in 2017.

The highest intensity of violent civilian deaths in 2018 was recorded in the district of Penjwin (9.3 civilian deaths per 100 000 inhabitants), while several districts recorded no civilian deaths, including Kalar, Pshdar, Darbandihkan and Sharbazher. Most incidents recorded by IBC during 2018 in Sulaymaniyah governorate involved gunfire, followed by executions.

Sulaymaniyah hosts a large number of IDPs, with 150 894 IDPs, the majority of whom are located in Sulaymaniyah district.

The aftermath of the fight against ISIL has left Sulaymaniyah, along the border with Iran, with a contamination of explosive remnants. Mine contamination in the KRI covered 226 km<sup>2</sup>, with more than half of that area being in Sulaymaniyah.

Looking at the indicators, it can be concluded that indiscriminate violence is taking place in the governorate of **Sulaymaniyah** at such a low level that in general there is no real risk for a civilian to be personally affected by reason of indiscriminate violence within the meaning of Article 15(c) QD. However, individual elements always need to be taken into account as they could put the applicant in risk-enhancing situations.

## Wassit

*[Security situation, 2.8; IBC supplement]*

The control of Wassit is in the hands of the Iraqi government. The PMU maintain a strong presence independent of the ISF and during the protests in the southern governorates, there were reports that the Iran-backed PMU were acting to defend the political order and Iran's interests against the protesters, while some PMU affiliated with Shia cleric Al-Sistani were siding with the protesters. As with most southern governorates, most problems are related to tribal violence and local riots against the government, which have to do with water scarcity and poverty. The riots started in Basrah and have influenced other southern governorates, such as Wassit. Other problems in this governorate are violence and extortion by local gangs.

IBC data regarding the governorate of Wassit recorded a total of 5 security-related incidents involving violent civilian deaths in 2018, 4 of them recorded in the district of Kut. These incidents accounted for 0.6 civilian deaths per 100 000 inhabitants; compared to 0.3 documented violent civilian deaths per 100 000 inhabitants (4 incidents) in 2017. In the district of Kut, the incidents accounted for 1.2 civilian deaths per 100 000 inhabitants.

The incidents recorded by IBC during 2018 in Wassit governorate involved gunfire and executions.

There were 11 706 IDPs hosted within the governorate. No numbers of returns or secondary displacement are available.

Based on the available country of origin information, it can be concluded that no armed conflict within the meaning of Article 15(c) QD is taking place in the governorate of Wassit, except in the **district of Kut**.

Looking at the indicators, it can be concluded that indiscriminate violence is taking place in the **district of Kut** at such a low level that in general there is no real risk for a civilian to be personally affected by reason of indiscriminate violence within the meaning of Article 15(c) QD. However, individual elements always need to be taken into account as they could put the applicant in risk-enhancing situations.



#### d. Serious and individual threat

CJEU in *Elgafaji* notes:

*While it is admittedly true that collective factors play a significant role in the application of Article 15(c) of the Directive, in that the person concerned belongs, like other people, to a circle of potential victims of indiscriminate violence in situations of international or internal armed conflict, it is nevertheless the case that that provision must be subject to a coherent interpretation in relation to the other two situations referred to in Article 15 of the Directive and must, therefore, be interpreted by close reference to that individualisation.*<sup>36</sup>

However, the existence of a serious and individual threat to the life or person of an applicant for subsidiary protection is,

*(...) not subject to the condition that that applicant adduce evidence that he is specifically targeted by reason of factors particular to his personal circumstances.*<sup>37</sup>

Furthermore,

*- the existence of such a threat can exceptionally be considered to be established where the degree of indiscriminate violence characterising the armed conflict taking place (...) reaches such a high level that substantial grounds are shown for believing that a civilian, returned to the relevant country or, as the case may be, to the relevant region, would, solely on account of his presence on the territory of that country or region, face a real risk of being subject to that threat.*<sup>38</sup>

For territories where the indiscriminate violence does not reach such a high level, the more the applicant is able to show that he or she is specifically affected by reason of factors particular to his or her personal circumstances, the lower the level of indiscriminate violence required for him or her to be eligible for subsidiary protection.<sup>39</sup> See [\*Indiscriminate violence\*](#).

Certain applicants may be considered at enhanced risk of indiscriminate violence, including its direct and indirect consequences due to, inter alia: geographical proximity to areas which are targeted by violence, age, gender, health condition and disabilities, lack of a social network, etc.

Profiles at enhanced risk of indiscriminate violence could include, for example:

- Civilians who lack the capacity to properly assess a situation and therefore expose themselves to risks related to indiscriminate violence (e.g. children – depending on their environment, family background, parents or guardians, and level of maturity; mentally disabled persons).
- Civilians who are less able to avoid risks of indiscriminate violence by way of seeking temporary shelter from fighting or attacks (e.g. persons with disabilities or serious illnesses; elderly; those in an extremely dire economic situation).
- Civilians who may be substantially and materially affected by violence because of their geographical proximity to a possible target (e.g. those living in proximity to known ISIL targets, such as the houses of local politicians, local administration buildings, markets, schools, hospitals, religious buildings, IDP camps, military bases).

<sup>36</sup> *Elgafaji*, para.38.

<sup>37</sup> *Elgafaji*, para.43.

<sup>38</sup> *ibid.*

<sup>39</sup> *Elgafaji*, para.39.

This is a non-exhaustive list. It is also non-conclusive and individual elements would always need to be taken into account.

**e. Qualification of the harm as a ‘threat to (a civilian’s) life or person’**

Neither the Qualification Directive, nor the CJEU in its jurisprudence, have defined the terms ‘threat to (a civilian’s) life or person’.

The CJEU has held that Article 15(c) QD has an additional scope to Article 3 ECHR and, therefore, has to be interpreted independently, but with due regard to fundamental rights as they are guaranteed under the ECHR.<sup>40</sup>

By comparing the provisions of Article 15(a) and (b) QD, which indicate a particular type of harm, with the provision of Article 15(c) QD, the CJEU further concludes that the harm under the latter,

*(...) covers a more general risk of harm. Reference is made, more generally, to a ‘threat ... to a civilian’s life or person’ rather than to specific acts of violence. Furthermore, that threat is inherent in a general situation of ‘international or internal armed conflict’.*<sup>41</sup>

Some of the commonly reported types of harm to civilians’ life or person in Iraq include killings, injuries, abductions, retaliatory violence by the armed forces, forced displacements, forced recruitment of minors, explosive remnants of war, etc.

**f. Nexus/‘by reason of’**

Subsidiary protection under Article 15(c) QD is granted to any person in respect of whom substantial grounds have been shown for believing that he or she, if returned, would face a real risk of a serious and individual threat to his or her life or person **by reason of** indiscriminate violence.

The nexus ‘by reason of’ refers to the causal link between the indiscriminate violence and the harm (serious threat to a civilian’s life or person).

The interpretation of the causation ‘by reason of’ may not be limited to harm which is directly caused by the indiscriminate violence or by acts that emanate from the actors in the conflict. To a certain extent, it may also include the indirect effect of indiscriminate violence in situations of armed conflict. As long as there is a demonstrable link to the indiscriminate violence, such elements may be taken into account in the assessments, for example: widespread criminal violence as a result of the collapse of State institutions in the context of the conflict with ISIL, destruction of the necessary means to survive, destruction of infrastructure.

---

<sup>40</sup> *Elgafaji*, para.28.

<sup>41</sup> *Elgafaji*, paras. 33-34.

## IV. Actors of protection

[Article 7 QD](#) stipulates the requirements for actors of protection:

Article 7(1)(2) of the Qualification Directive Actors of protection
<p>1. Protection against persecution or serious harm can only be provided by:</p> <ul style="list-style-type: none"> <li>a) The State; or</li> <li>b) Parties or organisations, including international organisations, controlling the State or a substantial part of the territory of the State;</li> </ul> <p>provided they are willing and able to offer protection in accordance with paragraph 2.</p> <p>2. Protection against persecution or serious harm must be effective and of a non-temporary nature. Such protection is generally provided when the actors mentioned under points (a) and (b) of paragraph 1 take reasonable steps to prevent the persecution or suffering of serious harm, inter alia, by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and when the applicant has access to such protection.</p>

### The State

The term **'State'** ([Article 7\(1\)\(a\) QD](#)) encompasses any organ exercising legislative, executive, judicial or any other functions and acting at any level, be it central, federal, regional, provincial or local. Sometimes, private entities may also be given State powers and made responsible for providing protection under the control of the State.

In order to qualify as an actor of protection, the State has to be **able and willing** to protect persons under its jurisdiction.

The protection in the country of origin has to meet three cumulative conditions. It has to be:

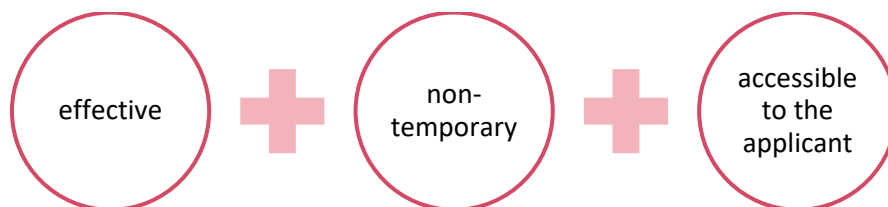


Figure 11. Requirements to the protection in the country of origin in accordance with Article 7 QD.

It should also be kept in mind that effective protection is presumed not to be available where the State or agents of the State are the actors of persecution or serious harm ([Recital 27 QD](#)).

The availability of protection is addressed separately for the Iraqi State and the KRG.

#### a. Iraqi State

[*Actors of protection*, 3, 4.1, 5.1, 5.2.2, 5.3.1, 6.3- 6.6]

The Republic of Iraq is a constitutional, federal, parliamentary republic. The executive branch is composed of the Presidency Council (president and maximum of three vice-presidents) and the Council of Ministers (the prime-minister, three deputy prime-ministers, and 30 ministers).

Legislative power is exercised by the elected parliamentary Council of Representatives (Iraq's 329-seat Parliament) and the Federation Council.

The judiciary is made up of the Federal Supreme Court, Court of Cassation, Public Prosecution Department, Judicial Oversight Committee, and federal courts and the Higher Judicial Council, which

oversees the federal court system. Under the Constitution of Iraq, the judiciary is independent and no power is above the judiciary except the law.

The Iraqi Constitution provides guarantees for fundamental rights, rule of law, equal treatment before the law, equal participation, and judicial independence, and prohibits discrimination on various grounds.

The UN describes the criminal justice system in Iraq as weak. Sources state that courts lack resources and have limited forensic capabilities; and that lack of remuneration, security, technical, and human resources hindered the judiciary from carrying out its duties. The judiciary is described as understaffed. The lack of resources in the judiciary has reportedly caused lengthy delays before and during trials. The system is currently predominantly dealing with ISIL cases.

The Iraqi judiciary is described as having restricted independence and impartiality, with a weak and dependent nature, due to the unstable security situation and historical political conflict. According to sources, the Iraqi judiciary is susceptible to corruption, bribery and political interference, and pressure from religious and tribal forces. Court decisions are reportedly influenced by political and sectarian identity. Abuses by paramilitary groups have gone on with impunity and without being addressed by the judicial system.

Iraqi often avoid the civil and criminal courts and instead rely on tribal and religious dispute settlement of private issues, even those involving major crimes. This is largely due to lack of access to justice, lack of trust in the judiciary or because of lower social status and lack of financial resources for some parts of the population. Some citizens turned to religious and militia groups instead of the official system, mainly in poor areas of the south and west.

The ISF maintain a significant presence in most major urban centres to limit terrorist, insurgent, and militia activity. Despite merging forces under the ISF to fight against ISIL, inter-institutional rivalry and competition cause tension in the relationship between the ISF, PMU, Peshmerga, Sunni PMU and local tribal forces. The deployment of southern Iraqi security and law enforcement forces in the fight against ISIL has resulted in security voids in areas such as Basrah, where a significant rise in robbery, murder, drug trafficking and kidnapping was reported in 2017-2018.

Ministry of Interior forces were reported to have an authorised strength of 531 000 in 2013, across the Iraqi police service, Iraqi federal police, border enforcement, facilities protection police and the oil police. Due to 'ghost soldiering' actual figures of police personnel have been difficult to estimate.

The Iraqi federal police are focused more on counter-terrorism than on ordinary policing, and are organised into military-style units. Particularly in recent years of fighting ISIL, they have transformed themselves into a paramilitary force rather than focusing on law enforcement. Sources report its membership to be between 37 000 - 44 000.

Police and military units in Baghdad are described as having the ability to respond to security incidents, terrorist attacks and criminal activities, although response and capabilities of the responding authorities vary considerably. In some areas, police perform well, while in others the police are not efficient in responding to crime. Iraqi police and law enforcement officials reportedly lack resources, training, and forensic capacity to gather impartial and reliable evidence of sufficient standard to identify alleged perpetrators, warrant charges, or secure convictions before the courts.

In 2014, Prime Minister al-Abadi launched anti-corruption efforts in the security sector, leading to the dismissal of a number of senior army and police commanders as well as 50 000 'ghost soldiers' and police. However, corruption is reportedly a persistent problem in the police forces, occurring at many levels, and involving bribes to reduce or drop criminal charges.

Organised crime continues to be a significant problem. Individuals, militias, and criminal groups have been involved in abductions and kidnappings for extortion or political purposes.

The Constitution prohibits all forms of violence and abuse in the family. However, the national draft 'Family Protection Law', which provides protections for gender and sexual-based violence, has not been passed and remains unimplemented. Spousal rape is not criminalised in Iraq. Domestic violence or honour killings are seldom punished in Iraq and cases of sexual violence are rarely reported to the police. Perpetrators frequently go unpunished, as they are able to escape punishment through bribery. According to COI sources, Iraqi police lack sufficient capacity to respond to violence against women and children via its 16 Family and Child Protection Units. These units have improved women's access to justice, but are limited to provincial capitals and major cities and lack suitable facilities and female personnel. Furthermore, police were reportedly not willing to meaningfully investigate killings of women and girls for honour during 2017, despite an increase in violence against women.

The disputed territories of Iraq are located in parts of Erbil, within KRI, and across parts of Kirkuk, Diyala, Salah al-Din, and Ninewa governorates. These areas have been the subject of contested control between the KRG and the Iraqi central government when Kurds took control of these areas lying outside the KRI border, after the fall of Saddam Hussein. The question of their control was addressed in Article 140 of the 2005 Constitution, but this has never been resolved.

In 2014, in the context of the war with ISIL, the Peshmerga moved into some areas of the disputed territories and took over control there, including Kirkuk and parts of Ninewa, populated by ethnic and religious minorities. In September 2017, the KRG held a non-binding referendum on KRI independence which was largely supported by the Kurdish population, but was opposed by the federal government. The government issued demands that the KRG nullify the results, and in support of this, Iraqi government forces retook parts of the disputed territories taken by the Kurds, sparking the displacement of thousands of Kurds.

The presence and control of the Iraqi State have become stronger since the defeat of ISIL. It can be concluded that the State may, depending on the individual circumstances of the case, be considered able and willing to provide protection that meets the requirements of Article 7 QD in **Baghdad** and **southern Iraq**. In most other parts of **northern and central Iraq**, including the disputed territories, the capacity of the State is limited and the criteria under Article 7 QD would generally not be met.

When assessing the availability of State protection, **individual circumstances**, such as ethnicity, home region, gender, social status, wealth, personal connections, actor of persecution and type of human rights violation must be taken into account. The Iraqi State is in general considered able and willing to provide protection that meets the requirements of Article 7 QD for Shia Arabs in Baghdad and southern Iraq. This is without prejudice to the assessment in cases where State protection is considered not available due to individual circumstances. With regard to Sunni Arabs, the availability of state protection is considered limited, but may in individual cases be available. State protection is generally not considered available for members of minority religions and ethnicities, Palestinians, LGBTI persons and victims of domestic or honour-related violence, and gender-based violence, including harmful traditional practices.

It should be noted that if the actor of persecution is a PMU, and the group in question is considered a State actor, effective protection is presumed not to be available in accordance with [Recital 27 QD](#).

## **b. Kurdistan Regional Government (KRG)**

*[Actors of protection, 3.4, 8.3]*

The KRI is governed by the autonomous KRG under the Iraqi Constitution. The KRG is responsible for the governorates of Erbil, Sulaymaniyah, and Dahuk. The KRI is the only constitutionally recognised autonomous region. The Constitution permits the KRG to have their own executive, legislative and judicial powers, aside from those exclusive to the federal government. They are allocated an equitable

share of national revenues, and are permitted to establish and organise their own internal security forces, such as police.

KRG's regional legislative assembly is made up of 111 seats, ten of which are reserved for minorities (5 for Christian, 5 for Turkmen), and 30 % of which are for women. Under the Constitution, the KRG has considerable powers to legislate a range of areas including health services, education, policing and security, environment and natural resources, housing, trade, industry, social services, transportation and roads. The Kurdish Parliament may also amend the application of Iraq-wide legislation falling outside of exclusive federal powers.

Legislation, decisions, court decisions and contracts enacted in the region of Kurdistan shall remain in force, and decisions issued by the government of the region of Kurdistan 'shall be considered valid unless they are amended or annulled pursuant to the laws of the region of Kurdistan by the competent entity in the region, provided that they do not contradict with the Constitution'.

A number of parliamentary committees also support the government in areas such as health, housing, human rights, civil affairs, women's rights, education, integrity and labour rights.

As a result of different political factions, Peshmerga groups' operating procedures are not standard or uniform and they frequently do not coordinate, with each faction taking orders from their political command. Sources indicated that the Peshmerga factions are politically divided and 'deeply partisan', and an instrument of political patronage for the PUK and KDP's respective political bureaus. An atmosphere of mistrust between the main political parties in KRI has been created, with each perceiving their own factions of the security forces as a line of defence against political rivals.

In KRI, the Kurdistan Judicial Council is independent of the KRG Ministry of Justice, however the executive branch reportedly 'politically influenced sensitive cases'. Judges are frequently appointed based on partisanship rather than merit or independence.

According to a UNHCR interview in 2016, the population of KRI does not make use of the police or the courts. The same report notes that IDPs generally mistrust the KRG forces and do not approach police either. There are no signs of 'systematic mistreatment' of Arab IDPs by the police or courts on account of their status or belonging in the north. However, collective punishment of IDPs upon security incidents is common and scapegoating sometimes occurred. There were reports that PMU and KRG forces detained children accused of terrorism, subjecting them to beating and abuses.

Both Arabs and Kurds were at risk of arbitrary detention and torture from the Asayish.

Despite legal protections under the 'press law' No 35. of 2007, which prohibits imprisonment, harassment, or physical abuse of reporters, journalists state that it is used arbitrarily by the 'ruling elite to stifle dissent' and that security forces harassed news outlets critical of the KRG leadership.

Kurdish authorities have detained political opponents and have violently suppressed demonstrations, and political demonstrators and journalists have been beaten.

According to the UN, there is an 'overall mistrust in the criminal justice system' in Kurdistan with respect to the lack of effective investigations and the atmosphere of impunity, particularly regarding attacks on media professionals. In 2016, UNHCR observed that 'access to the rule of law [in KRI] is dependent on ethnic and religious affiliation, tribe, connections, family and relatives, and it is very difficult, if not impossible, for an individual to stand up for his rights by himself'.

In general, the KRG is considered to be an actor of protection meeting the requirements of Article 7 QD. However, in certain individual circumstances, such as for persons perceived as associated with ISIL, political opponents, LGBTI individuals, in relation to harmful traditional practices, honour-based and domestic violence, the KRI may be unwilling to provide protection within the meaning of Article 7 QD.

### Parties or organisations, including international organisations

In the context of [Article 7 QD](#), it is necessary that those parties or organisations control the State or a substantial part of the territory of the State. In order to consider that parties or organisations control a region or a larger area within the territory of the State, it should be established that they exercise governmental functions. Furthermore, those parties or organisations have to be willing and able to provide protection against persecution or serious harm as defined in [Article 7\(2\) QD](#).

No such actors are identified in Iraq.

## V. Internal protection alternative

This chapter is developed with reference to [Article 8 QD](#) on internal protection:

<b>Article 8 of the Qualification Directive</b> <b>Internal protection</b>
<ol style="list-style-type: none"> <li>1. As part of the assessment of the application for international protection, Member States may determine that an applicant is not in need of international protection if in a part of the country of origin, he or she:               <ol style="list-style-type: none"> <li>a) has no well-founded fear of being persecuted or is not at real risk of suffering serious harm; or</li> <li>b) has access to protection against persecution or serious harm as defined in Article 7;</li> </ol> <p>and he or she can safely and legally travel to and gain admittance to that part of the country and can reasonably be expected to settle there.</p> </li> <li>2. In examining whether an applicant has a well-founded fear of being persecuted or is at real risk of suffering serious harm, or has access to protection against persecution or serious harm in a part of the country of origin in accordance with paragraph 1, Member States shall at the time of taking the decision on the application have regard to the general circumstances prevailing in that part of the country and to the personal circumstances of the applicant in accordance with Article 4. To that end, Member States shall ensure that precise and up-to-date information is obtained from relevant sources, such as the United Nations High Commissioner for Refugees and the European Asylum Support Office.</li> </ol>

It should be noted that the provision of [Article 8 QD](#) is an optional one. Therefore, the relevance of this chapter to the practice in Member States will depend on the transposition of [Article 8 QD](#) and/or the concept of internal protection alternative (IPA) in national legislation and its implementation in practice.

In national legislation and practice, IPA may also be referred to as ‘internal flight alternative’, ‘internal relocation’, etc.

### Preliminary remarks

IPA should only be examined after it has been established that the applicant has a well-founded fear of persecution or faces a real risk of serious harm and that the authorities or other relevant actors of protection are unable or unwilling to protect him or her in his or her home area. In such cases, if IPA applies, it can be determined that the applicant is not in need of international protection.

It should, however, be stressed that there is no requirement that the applicant has exhausted the possibilities to obtain protection in different parts of his or her country of origin before seeking international protection.

The analysis of IPA should be part of the assessment of the future risk of being subjected to persecution or serious harm. When assessing whether or not IPA applies, the burden of proof lies with the determining authority, while the applicant remains under an obligation to cooperate. The applicant is also entitled to submit elements to indicate that IPA should not be applied to him or her.

This chapter is structured following the elements of the legal provision of [Article 8 QD](#):



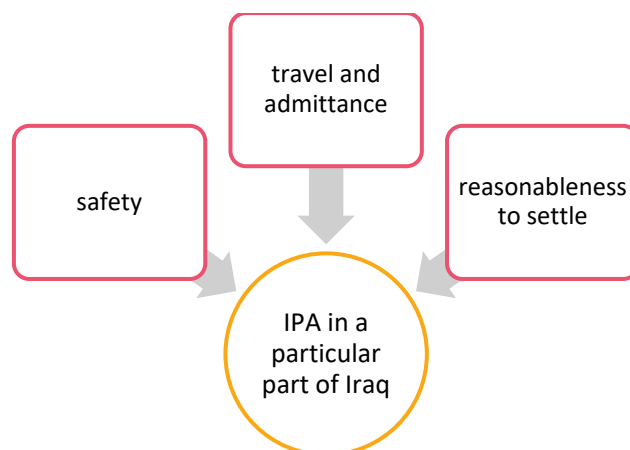


Figure 12. Internal protection alternative: elements of the assessment.

These criteria under [Article 8\(1\) QD](#) reflect ECtHR jurisprudence, for example in the case of *Salah Sheekh*.<sup>42</sup>

In relation to these elements, when assessing the applicability of IPA, the case officer should consider the general situation in the respective part of Iraq, as well as the individual circumstances of the applicant.

This chapter analyses and provides guidance on the applicability of IPA in the southern and central parts of Iraq and in KRI, looking in particular at the following three cities as examples: **Baghdad, Basrah and Erbil**.

This is without prejudice to the possibility to apply IPA to other places in Iraq.

### Part of the country

The first step in the analysis of IPA is to identify a particular part of the country with regard to which the criteria of [Article 8 QD](#) would be examined in the individual case.

The examples of Baghdad, Basrah and Erbil are selected as the three most important economic centres in Iraq.

When identifying the part of the country to be considered for IPA, the case officer should take into account the ethno-religious background of the applicant and the region they originate from. In general:

- For individuals of **Kurdish ethnicity** IPA would be considered in KRI.
- For **Arab applicants**, IPA would be assessed with regard to other parts of Iraq.
- In the case of **ethno-religious minorities**, IPA should primarily be assessed with regard to the region where their communities are concentrated.

Existing ties with the place, such as previous experience and/or availability of a support network should, for example, be taken into account.

<sup>42</sup>ECtHR, *Salah Sheekh v. The Netherlands*, Application no. 1948/04, Judgment of 11 January 2007, para.141: ‘The Court considers that as a precondition for relying on an internal flight alternative certain guarantees have to be in place: the person to be expelled must be able to travel to the area concerned, gain admittance and settle there, failing which an issue under Article 3 may arise, the more so if in the absence of such guarantees there is a possibility of the expellee ending up in a part of the country of origin where he or she may be subjected to ill-treatment.’

## Safety

The criterion of safety would be satisfied where the following two aspects have been established:

### ✓ **absence of the initial persecution or serious harm**

With regard to protection needs related to refugee status, Article 15(a) QD and Article 15(b) QD, this should be examined in light of the elements below.

In the context of IPA concerning serious harm under Article 15(c) QD, it should be established that in the area considered under IPA the applicant would not face a real risk of such serious harm by reason of indiscriminate violence.

### ✓ **no potential new forms of persecution or serious harm**

The case officer should also establish that there are no potential new forms of persecution or serious harm in the area where IPA is considered for the applicant.<sup>43</sup>

The analysis under the chapters [Refugee status](#) and [Subsidiary protection](#) should be referred to in this regard.

These elements should be examined based on the general situation in the respective part of Iraq and the individual position and personal circumstances of the applicant, including elements such as background, gender, age, etc. (see [Article 8\(2\) QD](#) in reference to [Article 4 QD](#)).

## Absence of persecution or serious harm

When assessing the requirement of safety with regard to the applicability of IPA in individual cases of applicants from Iraq, the following elements should be taken into account:

### ▶ **general security situation**

The general security situation in particular in the cities of **Baghdad, Basrah and Erbil** should be assessed in accordance with the analysis under the section on [Article 15\(c\) QD](#).

### ▶ **actor of persecution or serious harm and their reach**

In case where the person fears persecution or serious harm by **State actors**, there is a presumption that IPA would not be available (e.g. persons perceived to be associated with ISIL). In specific cases, where the reach of a certain State actor is clearly limited to a particular geographical area (e.g. a PMU, the KRG, the Peshmerga), the criterion of safety may be satisfied with regard to other parts of Iraq.

With regard to persecution or serious harm by **ISIL**, it should be noted that the operational capacity of the armed group has decreased, however, it is still active in certain regions.

In some cases, where the applicant faces persecution or serious harm for reasons related to the prevalent tribal and social norms in Iraq and the actor of persecution or serious harm is **Iraqi society** at large (e.g. LGBTI persons, certain ethno-religious minorities), IPA would in general not be available.

For certain particularly vulnerable individuals, such as women and children, if the actor of persecution or serious harm is the **(extended) family, tribe or community** (e.g. fasliya marriage,

<sup>43</sup> This can be further supported, by way of analogy, by the CJEU findings in the case of *Abdulla*, where the Court, interpreting Article 11(1)(e) QD on cessation, concluded that not only should the original circumstances which justified the person's fear no longer exist, but the person should also have no other reason to fear being 'persecuted', CJEU, *Abdulla and Others v Bundesrepublik Deutschland*, joined cases C-175/08, C-176/08, C-178/08 and C-179/08 judgment of 2 March 2010, para. 76.

FGM), taking into account the reach of these actors and the lack of State protection, IPA would in general not be available.

See the section [Actors of persecution or serious harm](#).

► **whether or not the profile of the applicant is considered a priority target and/or a threat by the actor of persecution or serious harm**

The profile of the applicant could make him or her a priority target for the State or for insurgent groups, increasing the likelihood that the actor of persecution or serious harm would attempt to trace the applicant in the potential IPA location.

► **personal enmity**

Some private disputes, including those based on honour and blood feuds, could strengthen the determination of the actor of persecution or serious harm to trace the applicant.

► **other risk-enhancing circumstances**

The information under the section [Analysis of particular profiles with regard to qualification for refugee status](#) should be used to assist in this assessment.

► **behaviour of the applicant**

The applicant cannot be expected to change his or her behaviour or to live in concealment, for example in relation to his or her sexual orientation or religion, in order to avoid persecution or serious harm.<sup>44</sup>

### Availability of protection against persecution or serious harm

Alternatively, the case officer may determine that the requirement of safety is satisfied if the applicant would have access to protection against persecution or serious harm, as defined in [Article 7 QD](#), in the area where IPA is considered. In the case of persecution by the State, a presumption of non-availability of State protection applies.

See the chapter on [Actors of protection](#) above.

## Travel and admittance

As a next step, case officers have to establish whether an applicant can:

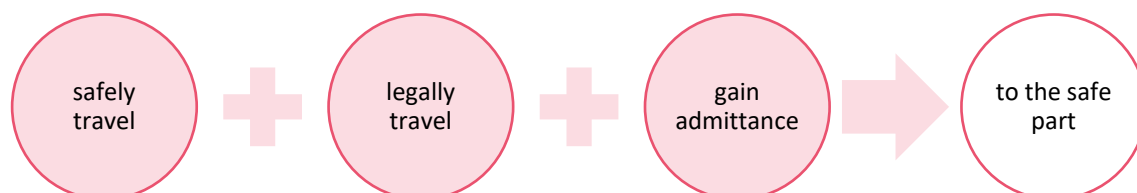


Figure 13. Travel and admittance as requirements for IPA.

The individual circumstances of the applicant should be taken into account when assessing whether he or she can safely and legally travel and gain admittance to a part of the country.

<sup>44</sup> CJEU, *X, Y and Z*, paras. 70-76; CJEU, *Y and Z*, para. 80.


It should be noted that in the context of Iraq and in particular the security measures related to ISIL, the three requirements cannot be clearly differentiated.

The information in this section is largely based on the recent UNHCR report on access and residency requirements in Iraq, hereinafter referred to as '*UNHCR, Access and residency*'.<sup>45</sup>

In April 2019, UNHCR reports that security screenings remain in place for persons from formerly ISIL-held or conflict-affected areas. Access bans have been lifted, while sponsorship requirements remain in place for entry to and residency in several governorates for persons from formerly ISIL-held or conflict-affected areas [*UNHCR, Access and residency*].

It should also be noted that crossing checkpoints is a fact of daily life in Iraq. Passing through checkpoints requires giving one's identity by providing identification papers, including at least their national ID and citizenship card. In addition to some permanent checkpoints, temporary checkpoints may also be established [*Internal mobility, 2.3*].


The multitude of security checkpoints, often operated by a variety of security actors in the same area, often lack coordination. Due to the lack of clear rules, checkpoints are often run at the whims of the different actors operating them. In many cases, ethnic or religious affiliation is used by the different militias operating checkpoints to allow or deny access to that particular region or governorate of Iraq, sometimes with immediate consequences for the safety of individuals [*Security situation, 1.4.1; Internal mobility, 2.3*].

 **Safely travel** – there should be a safe route, which the applicant can practically travel through without undue difficulty, so that he or she can access the area of IPA without serious risks.

- **Baghdad:** Baghdad International Airport is located 16 kilometres west of downtown Baghdad.
- **Basrah:** Basrah International Airport is located 10.5 kilometres from the city centre and is the second largest airport.
- **Erbil:** Erbil International Airport is located 9 kilometres from the city centre.

Road travel in Iraq is described as dangerous due to continued road side bombings and attacks on vehicles, false checkpoints, and robbery [*Internal mobility, 2.3*]. Attacks by ISIL and other criminal groups are also carried out against checkpoints controlled by government forces or during clearing operations. The tactics of ISIL also involve hostage-taking at fake checkpoints, in which civilians and military are kidnapped and executed by ISIL fighters, who are sometimes disguised as militia members [*Security situation, 1.4.2.2*].

Despite the above, and taking into account the availability of an international airport, the requirement of safety of travel would in general be considered met with regard to the three cities. For some profiles, in particular for individuals who may be perceived as associated with ISIL, this requirement should be carefully assessed on an individual basis.

 **Legally travel** – there should be no legal obstacles that prevent the applicant from travelling to the safe area.

---

<sup>45</sup> UNHCR, *Iraq: Country of Origin Information on Access and Residency Requirements in Iraq: Ability of Persons Origination from Formerly ISIS-Held or Conflict-Affected Areas to Legally Access and Remain in Proposed Areas of Relocation*, 25 April 2019. The information in this report updates the information in the EASO COI report 'Internal mobility', the primary source of which was a previous UNHCR document from April 2017.

Iraqis have freedom of movement, travel and residence inside and outside Iraq provided for under Article 44 of the Iraqi Constitution. The Constitution also provides that ‘no Iraqi may be exiled, displaced, or deprived from returning to the homeland’ [*Internal mobility*, 1.3].

Based on available COI, it is concluded that there are in principle no legal restrictions for Iraqis to travel in Iraq, including in the cities of Baghdad, Basrah and Erbil.

- ❑ **Gain admittance to** – the applicant should be allowed to access the safe area by the actor(s) who control it.

According to Iraq’s National Policy on Displacement ‘The Government ensures that a person’s freedom of movement and choice of place of residence will not be subject to any restrictions save those maintained by the law as they are deemed necessary for reasons pertaining to national security, public order or health, morals or other people’s rights and freedoms.’ The National Policy on Displacement provides for a broad range of IDP rights to protection, legal status, basic social services, health, food, shelter, freedom of expression and freedom of movement [*Internal mobility*, 1.3].

According to COI sources, rules, regulations and security procedures for IDPs entering **KRI** do not fall under any law, and are subject to change due to security and political developments. In general, it is found that access to the KRI has improved in recent years [*Internal mobility*, 3.4].

Information on the access and residency requirements for the cities of Baghdad, Basrah and Erbil is provided below.

### **Baghdad**

[*UNHCR, Access and residency*]

According to recent information, no sponsor is required for entry to Baghdad governorate.

With regard to residency requirements, persons from formerly ISIL-held or conflict-affected areas, including those who return to Iraq from a third country, require two sponsors from the neighbourhood in which they intend to reside, as well as a support letter from the local *mukhtar*. In addition, security clearance from relevant security agencies is needed.

### **Basrah**

[*UNHCR, Access and residency*]

Persons from formerly ISIL-held or conflict-affected areas, particularly Sunni Arabs, including persons who returned to Iraq from a third country, require a sponsor for access to Basrah. The sponsor must receive the individual at the governorate entry checkpoint in order to facilitate the entry. In case an individual entered the governorate without being checked, he or she needs to approach the concerned security branch for clearance, accompanied by the sponsor. Inability to secure a sponsor will likely result in the individual being denied access to the governorate, although security actors have a level of discretion to exceptionally grant access, depending on the profile of the person and their reasons for relocation.

With regard to residency requirements, persons from formerly ISIL-held or conflict-affected areas require a local sponsor as well as a support letter from the local *mukhtar* in order to legally reside in Basrah. In addition, security clearance from relevant security agencies is needed.

### **Erbil**

[*UNHCR, Access and residency*]

Since early 2019, no sponsor is required for entry to Erbil governorate.

With regard to residency requirements, persons originating from outside the KRI must approach the local Asayish in the neighbourhood in which they seek to reside in order to obtain a residency card. They do not require a sponsor. Single Arab and Turkmen men, however, require regular employment and must submit a support letter from their employer in order to obtain a one-year, renewable residency card. Those without regular employment receive only a one-month renewable residency and reportedly face difficulties to finding regular employment due to the short duration of their permits.

It should be noted that access and residency requirements are not always clearly defined and/or implementation can vary or be subject to changes depending mostly on the security situation. Sponsorship requirements are generally not grounded in law and are not officially announced. Moreover, in some areas, persons from formerly ISIL-held or conflict-affected areas may be pressured by local authorities or other actors to return to an area previously held by ISIL [*UNHCR, Access and residency*].

Based on available COI, it is concluded that there are certain administrative restrictions or requirements for persons from previously ISIL-held or conflict-affected areas to be admitted in parts of the country, including the cities of Baghdad, Basrah and Erbil. This refers to requirements for entry to the respective governorate, in particular in the case of Basrah, and for residency, in the case of Baghdad, Basrah and Erbil. Sunni Arabs and in some cases Turkmen men are particularly affected by such requirements.

The assessment of whether or not the requirement of gaining admittance is likely to be met, should take into account the individual circumstances of the applicant (ethno-religious background, place of origin, identity documents, family status, existing social ties and having a potential sponsor, etc.). The individual case should be assessed based on the most recent COI available.

## Reasonableness to settle

According to [Article 8\(1\) QD](#), IPA can only apply if the applicant ‘can reasonably be expected to settle’ in the proposed area of internal protection.

Neither the QD nor the case law of CJEU offer relevant criteria that may be relied upon when establishing whether it is reasonable for the person to settle in the IPA location.

This common analysis follows a rights-based approach in light of relevant jurisprudence of the ECtHR.

While acknowledging that the ECtHR jurisprudence is in the context of a different legal regime and addresses particular individual situations, the following principles could be derived from it and are found of relevance to the reasonableness test under [Article 8 QD](#):

- The assessment should take into account ‘the applicant’s ability to cater for his most basic needs, such as food, hygiene and shelter, his vulnerability to ill-treatment and the prospect of his situation improving within a reasonable time-frame’.<sup>46</sup>
- ‘Internal relocation inevitably involves certain hardship.’ In this regard, difficulties in ‘finding proper jobs and housing’ would not be decisive if it could be found that the general living conditions for the applicant in the proposed area of IPA would not be ‘unreasonable or in any way amount to treatment prohibited by Article 3 [of ECHR]’.<sup>47</sup>

<sup>46</sup>ECtHR, *Sufi and Elmi*, para.283.

<sup>47</sup>ECtHR, *A.A.M. v. Sweden*, para.73.

In applying the reasonableness test, it should be established that the basic needs of the applicant would be satisfied, such as food, shelter and hygiene. Additionally, due consideration has to be given to the opportunity for the person to ensure his or her own and his or her family's subsistence, and to the availability of basic healthcare.

In the examination of the reasonableness of IPA, the following elements should be taken into account:

- the situation with regard to food security;
- the availability of basic infrastructure and services, such as:
  - shelter and housing;
  - basic healthcare;
  - hygiene, including water and sanitation;
- the availability of basic subsistence that ensures access to food, hygiene and shelter, such as through employment, existing financial means, support by a network or humanitarian aid.

The general situation in the area in consideration should be examined in light of the criteria described above, and not in comparison with standards in Europe or other areas in the country of origin.

These criteria are assessed below in relation to the general situation in Basrah, Baghdad and Erbil (*General situation*). This general situation is, furthermore, taken into account in the conclusions regarding the applicability of IPA to certain profiles of applicants (*Conclusions on reasonableness*).

### General situation

Based on available COI, the general situation with regard to the elements mentioned above is assessed as follows:

**Food security** [*Key socio-economic indicators, 5*]: All food commodities tracked by the UN World Food Programme were 'widely available' in Babylon, **Baghdad**, Najaf, Qadissiya, and Salah Al-Din; and 'available' in Kirkuk and in Ninewa. In June 2018, an abnormal high price level was indicated in Baghdad compared to the long-term seasonal trend. Food commodities and prices are relatively stable and available in **Basrah** for more than 80 % of agricultural products. Markets in the city, where most people access their food needs, are functional, although prices were 'relatively higher' than in surrounding areas. Dhi Qar was noted as the area with the greatest food scarcity for all commodities, where items were only 'sparsely available'. The food prices have stabilized since November 2017, but vary by governorate. The most expensive food prices were in Najaf and Kerbala, while they were cheapest in Sulaymaniyah and Kirkuk. **Erbil** was registered to be among the cities with the highest food prices.

All Iraqis are eligible for the Public Distribution System (PDS), a government programme consisting of distribution of food and oil rations on a monthly basis, which keeps many Iraqis out of deep poverty. However, significant inefficiencies in the PDS have been reported and displaced families face particular difficulties in accessing the PDS.

Although food is generally available, food remained a high priority concern for IDPs in Iraq. IDPs and those living in areas affected by conflict have significantly lower purchasing power to obtain food, thereby exposing them to higher vulnerability to food insecurity.

**Housing and shelter** [*Key socio-economic indicators, 6*]: The country is reported to have a large housing deficit. The UN reports that more than half of the urban population lives in slum-like conditions. Housing prices have increased in areas where many IDPs have come to. A lot of the housing in cities is informal and is not built according to planning of the government. Rents are increasing extremely in **Baghdad**. In **Erbil**, the rents decreased when the conflict with the Iraqi government was



at its highest. The cost of renting housing in **Basrah** city is also higher than in surrounding areas. IDPs that are in camps do have shelter, but it is the most basic form of shelter.

**Hygiene** [*Key socio-economic indicators, 5, 5.2, 6.1*]: Water access has improved since 2010, however, many Iraqis still rely on informal wells, government and NGO water trucks and unreliable tap systems while Iraq's freshwater continues to be depleted. Water shortages are reported. Estimated 2.3 million people in Iraq are in need of water and sanitation access as of December 2018. Tap water is available to most residents where IDPs and returnees live in Iraq, however, the provision of tap water per week is variable depending on the region, with the south having access 6 days a week and the lowest supply being in Ninewa and Kirkuk, which have access for 3 days a week on average.

Access to safe drinking water represents one of the main problems in **Basrah**. Reports from August and October 2018 link the quality of water to outbreaks of gastro-intestinal waterborne disease. Bottled water is available for purchase, however, it is considered prohibitively expensive, especially for marginalised groups.

Sewerage and waste management/disposal exist but are only functioning in locations where around 10 % of returnees and 40 % of IDPs live. While these services are mostly present in **KRI**, the main problem in the north-central governorates seems to be the absence of both services, whereas malfunctioning was reported in the south.

**Basic healthcare** [*Key socio-economic indicators, 7*]: As a result of the conflict, the healthcare system in Iraq, including in Baghdad, has seen a significant deterioration. Both health services and medication are available in a public and a private sector system. Hospitals and other health services are heavily concentrated in urban areas. As a consequence, hospitals and other medical facilities are either scarcely or not at all available for inhabitants of the poorer governorates. Medical staff are not evenly distributed across the country; disproportionately large numbers of doctors, healthcare professionals and beds are located in **Baghdad** while poorer governorates have fewer available medical resources.

There are huge needs for mental healthcare and the available services do not meet the demand. Maternal healthcare is lacking in Iraq; most specialised centres are in cities and these centres are not easily accessible, due to a lack of insurance. Especially for IDPs, the supply of medical services does not meet demand.

**Means of basic subsistence** [*Key socio-economic indicators, 3, 4*]: The World Bank states that unemployment is high and labour force participation remains exceedingly low, especially for women and youth and in the areas affected by conflict. Although the situation is improving, the current economic situation is not at the same level as it was before the ISIL conflict. The rates of unemployment are especially high for IDPs. The lack of livelihoods for IDPs translated into difficulties accessing basic needs such as food, household/non-food items, and shelter.

The general circumstances prevailing in Baghdad, Erbil and Basrah, assessed in relation to the factors above, do not preclude the reasonableness to settle in the cities. The assessment should take into account the individual circumstances of the applicant.

### Individual circumstances

In addition to the general situation in the area of potential IPA, the assessment whether it is reasonable to settle in that part of the country should take into account the individual circumstances of the applicant.

The individual considerations could relate to certain vulnerabilities of the applicant as well as to available coping mechanisms, which would have an impact in determining to what extent it would be reasonable for the applicant to settle in a particular area.

Please note that this is a non-exhaustive list:



- **Ethno-religious and linguistic background** [*Key socio-economic indicators, 1.1; Targeting, 3.4, Internal mobility, 3.3*]: The ethno-religious background of the applicant and their linguistic knowledge are determinative when assessing the reasonableness of IPA in parts of Iraq. Kurdish is the most widely spoken language in KRI, while the most widely spoken language in the rest of the country is Arabic. Few Iraqis speak both Arab and Kurdish, which leads to a general language divide between north and south, with some exception, such as in Baghdad, which has a large Kurdish community that speaks both languages. Individuals of ethno-religious background, which represent a minority in the area, face discrimination. Members of ethnic and religious groups would face difficulties relocating and assimilating into the community in an area dominated by another ethnic or religious group if they would be without familial, tribal, or political networks.
- **Civil documentation** [*Internal mobility, 2.4*]: In Iraq, proper civil documentation is necessary for one's ability to carry on daily life and access basic rights, public services, education, food assistance, housing, employment, to register in order to receive state aid or welfare benefits, to rent a house, to register with the police in one's neighbourhood, or to sell vehicles or large items. Civil documentation is necessary for movement in and around Iraq and for passage through security checkpoints. The national civil status ID card is issued by the district where the person is registered and on the basis of information in the person's family register. In order to re-acquire an ID card, applicants must present necessary documentation, including proof of identity such as birth certificate or ID card of a close relative such as father or grandfather, which is checked against central population registers, as well as a fee. Several sources state that individuals without valid identity documentation have restricted freedom of movement and may be at risk of being arrested.
- **Support network** [*Key socio-economic indicators, 3, 10.2, 10.3*]: A support network can be the family network, not restricted to the core family, but also including the extended family, and/or a social network, in particular: friends, employers, members of the same tribe, especially when there is a certain point of contact, etc., taking into account their ability to assist the person in accessing basic subsistence. Family connections play an important role in the Iraqi society, particularly in terms of finding employment and affordable housing. Networks of support are also linked to mainly sectarian political connections, with political parties being the main vehicles through which resources provided by the State are accessed, particularly jobs in the public sector, various social assistance schemes and all administrative services. Those without the associated political party connections, or the wrong party affiliation in a certain place, are at a particular disadvantage. Special consideration should be given in the case of individuals who lived abroad for a long period and who have no relatives in the three cities, as they may often lack the necessary support network.
- **Family status** [*Key socio-economic indicators, 10.3, 10.5; Targeting, 1.4*]: Single people, and in particular single women, may face difficulties when resettling without a support network. Additional obstacles may be related to the family status of the woman, such as being a single mother or a widow, a wife or formerly a wife of an ISIL fighter, etc. According to a COI source, generally in Iraq, it is hard for single men to rent houses alone.
- **Age** [*Key socio-economic indicators, 8*]: Young age as well as elderly age could significantly limit the applicant's access to means of subsistence such as through employment, making him or her dependent on other providers. Therefore, this element should be seen in conjunction with the available support by family or a broader support network. In the case of children, the best interests of the child shall be a primary consideration, for example, with regard to access to basic education.
- **Gender** [*Key socio-economic indicators, 10.5*]: Women and girls in Iraq may be subjected to discriminatory restrictions and may need the support of a male family member in order to access different services and to exercise certain rights. What is more, women and girls encounter additional difficulties in relation to education, work, housing, etc. Therefore, the

gender of the applicant should be taken into account when considering reasonableness in conjunction with their family status and available support.

- **State of health** [*Key socio-economic indicators, 7*]: Access to healthcare is strained in various areas of Iraq, making the health status of the applicant an important consideration when assessing the reasonableness of IPA for those who require medical treatment, also taking into account that their state of health may affect their ability to work. For those with disabilities, access to basic subsistence such as through employment would be further limited.
- **Professional and educational background and financial means** [*Key socio-economic indicators, 3*]: The professional background of the applicant, their level of education and available financial means should be taken into account when assessing the reasonableness of IPA, and in particular the access of the applicant to means of basic subsistence.

It should be noted that these factors would often intersect in the case of the particular applicant, leading to different conclusions on the reasonableness of IPA. In some cases, more than one element of vulnerability would confirm a conclusion that IPA is not reasonable for the particular applicant (e.g. individual from an ethno-religious minority without a support network, unaccompanied child), while in other cases, they would balance each other (e.g. elderly person with a support network).

### Conclusions on reasonableness

The general conclusions on the reasonableness of IPA for particular profiles of applicants are based on an assessment of the general situation in the three cities, and the individual circumstances of such applicants, as outlined in the sections above.

Taking into account the ethno-religious background of the applicant, it could be substantiated that IPA in the cities of Baghdad, Basrah, Erbil would be reasonable for **single able-bodied men** and **married couples without children**, who have identification documents and have no additional vulnerabilities, including when they do not have a support network. In the case of **families with children**, internal protection alternative may be reasonable, including without a support network, where the best interests of the child have been duly assessed.

Although the situation related to settling in the three cities entails certain hardships, it can still be concluded that such applicants would be able to ensure their basic subsistence, housing, shelter and hygiene, and access to basic healthcare.

In order to ensure their basic needs, **other profiles** of applicants would in general need a support network in the area of potential IPA. However, additional individual circumstances may be relevant to take into account when assessing the reasonableness of IPA.

It should be highlighted that these conclusions are without prejudice to the criteria of safety, travel and admittance and that the individual circumstances in the case at hand should be fully examined.

## VI. Exclusion

### Preliminary remarks

Applying the exclusion clauses, where there are serious reasons to consider that the applicant has committed any of the relevant acts, is mandatory.

This chapter focuses on the exclusion of applicants found not to deserve international protection in accordance with [Article 12\(2\) QD](#) and [Article 17\(1\) QD](#).

If a person would otherwise qualify for refugee status, the following would constitute exclusion grounds, according to [Article 12\(2\) and \(3\) QD](#):

Article 12(2) and (3) of the Qualification Directive Exclusion (refugee status)	
2.	A third-country national or a stateless person is excluded from being a refugee where there are serious reasons for considering that: <ul style="list-style-type: none"> <li>(a) he or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;</li> <li>(b) he or she has committed a serious non-political crime outside the country of refuge prior to his or her admission as a refugee, which means the time of issuing a residence permit based on the granting of refugee status; particularly cruel actions, even if committed with an allegedly political objective, may be classified as serious non-political crimes;</li> <li>(c) he or she has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations.</li> </ul>
3.	Paragraph 2 applies to persons who incite or otherwise participate in the commission of the crimes or acts mentioned therein.

If the person would otherwise be eligible for subsidiary protection, the exclusion clauses under [Article 12\(2\)\(a\) and \(c\) QD](#) would apply in the same way ([Article 17\(1\)\(a\) and \(c\) QD](#), respectively). The ground of ‘serious crime’ ([Article 17\(1\)\(b\) QD](#)), on the other hand, is broader than ‘serious non-political crime’ and has no geographical or temporal limitations. Furthermore, additional exclusion grounds are envisaged under [Article 17\(1\)\(d\) QD](#) and [Article 17\(3\) QD](#). [Article 17\(3\) QD](#) contains an optional provision and its applicability would depend on the transposition of this provision in national legislation.<sup>48</sup>

Article 17 of the Qualification Directive Exclusion (subsidiary protection)	
1.	A third-country national or a stateless person is excluded from being eligible for subsidiary protection where there are serious reasons for considering that: <ul style="list-style-type: none"> <li>(a) he or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;</li> <li>(b) he or she has committed a serious crime;</li> </ul>

<sup>48</sup> Noting the optional nature of this exclusion ground, and its scope, which is not country-specific, no further analysis and guidance is provided on Article 17(3) QD.

- (c) he or she has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations;
  - (d) he or she constitutes a danger to the community or to the security of the Member State in which he or she is present.
2. Paragraph 1 applies to persons who incite or otherwise participate in the commission of the crimes or acts mentioned therein.
  3. Member States may exclude a third-country national or a stateless person from being eligible for subsidiary protection if he or she, prior to his or her admission to the Member State concerned, has committed one or more crimes outside the scope of paragraph 1 which would be punishable by imprisonment, had they been committed in the Member State concerned, and if he or she left his or her country of origin solely in order to avoid sanctions resulting from those crimes.

It should be underlined that the determining authority has the burden of proof to establish:

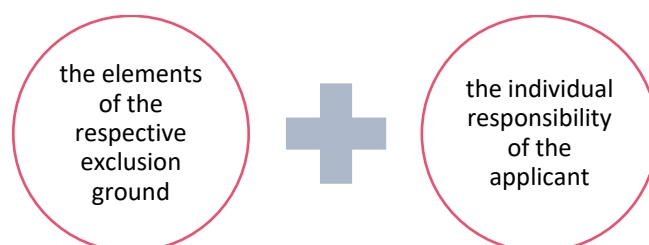


Figure 14. Elements in applying exclusion.

At the same time, the applicant has a duty to cooperate in establishing all facts and circumstances relevant to his or her application.

Given the serious consequences that exclusion may have for the individual, the exclusion grounds should be interpreted restrictively and applied with caution.

In the context of Iraq, the need to examine possible exclusion issues may arise, for example, in cases of applicants under the following profiles. The list is non-exhaustive:

- Members of the Baath regime, such as by Baath party members of a certain rank or level, intelligence services, members of the military, judicial and administrative institutions
- Insurgent and/or extremist groups (e.g. ISIL, Al-Qaeda)
- Members of ISF and Peshmerga, intelligence services (e.g. Asayish) and other security actors
- Members of PMU
- Members of Sahwa
- Individuals involved in tribal feuds
- etc.

The Qualification Directive does not set a time limit for the application of the grounds for exclusion. Applicants may be excluded in relation to events occurring in the recent and more distant past, such as during the regime under Saddam Hussein (1968-2003).

In relation to potential exclusion considerations, see also the chapters [Actors of persecution or serious harm](#) and [Analysis of particular profiles with regard to qualification for refugee status](#) (see, for example, [Persons perceived to be associated with ISIL](#), [Former Baath party members](#), [Members of the](#)

*Iraqi Security Forces (ISF), Popular Mobilisation Units (PMU), Peshmerga and local police, Individuals accused of ordinary crimes, etc.)*

The examples mentioned in this chapter are non-exhaustive and non-conclusive. Each case should be examined on its own merits.

## Applicability of the exclusion grounds

The subsections below look into the different exclusion grounds applicable in accordance with the Qualification Directive.

### a. Crime against peace, war crime, crime against humanity

[Article 12\(2\)\(a\) QD](#) and [Article 17\(1\)\(a\) QD](#) refer to specific serious violations of international law, as defined in the relevant international instruments:

► **‘Crime against peace’** is related to the planning, preparation, initiation, waging or participation in a common plan or conspiracy related to a war of aggression. It is considered applicable only in the context of international armed conflict and would usually be committed by individuals in a high position of authority, representing a State or a State-like entity.

► **‘War crimes’** are **serious violations of international humanitarian law**, committed against a protected person or object (civilians, combatants placed out of combat, such as in detention or being wounded, or those who have put down their arms, or civilian and cultural objects) or through the use of unlawful weapons or means of warfare.<sup>49</sup> War crimes can only be committed during an armed conflict qualified accordingly under international humanitarian law.

They can be committed by combatants/fighters, as well as civilians, as long as there is a sufficient link to the armed conflict. This means that the act needs to have been ‘closely’ related to the armed conflict.<sup>50</sup>

The nature of the armed conflict (international or non-international) is decisive in order to define the elements of the particular war crime.

Some relevant (non-exhaustive) examples include:

- violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture of persons taking no direct part in hostilities;
- committing outrages upon personal dignity, in particular humiliating and degrading treatment of persons taking no direct part in hostilities;
- intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

<sup>49</sup> War crimes are listed, *inter alia*, under [Article 8 of the Rome Statute](#), under the ‘Grave Breaches’ provisions of the 1949 Geneva Convention and Additional Protocol I, common Article 3 and relevant provisions of Additional Protocol II, the Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the Statute of the International Criminal Tribunal for Rwanda (ICTR).

<sup>50</sup> ‘The armed conflict need not have been causal to the commission of the crime, but the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator’s ability to commit it, his decision to commit it, the manner in which it was committed or the purpose for which it was committed’, ICTY (Appeals Chamber), judgment of 12 June 2002, *Prosecutor v Kunarac et al.*, IT-96-23 and IT-96-23/1-A, para. 58.

- intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
- intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
- killing or wounding treacherously a combatant adversary;
- the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognised as indispensable;
- conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;

► **‘Crimes against humanity’** are fundamentally inhumane acts, committed as part of a systematic or widespread attack against any civilian population.<sup>51,52</sup> Inhumane acts, which could reach this threshold when committed pursuant to or in furtherance of a State or organisational policy, include: murder, extermination, enslavement; deportation or forced transfer of population; imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; torture; rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, or other grounds that are universally recognised as impermissible under international law; enforced disappearance of persons; apartheid; other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

Crimes against humanity can be committed in peace time as well as during an armed conflict. Even a single act could fall under this exclusion ground provided it forms part of a widespread or systematic attack against a civilian population and the act is committed by someone who had knowledge of the attack and the link of the act to the attack.

In order to establish whether a war crime or a crime against humanity has been committed, the case officer should consult the relevant international instruments.

### *Analysis of the applicability of Article 12(2)(a) QD and Article 17(1)(a) QD*

It can be noted that the ground ‘crime against peace’ is not found to be of particular relevance in the cases of applicants from Iraq.

According to COI, especially (former) members of insurgent groups (e.g. ISIL), security actors (e.g. ISF, PMU), as well as Baathists, can be implicated in acts that would qualify as war crimes and/or crimes against humanity.

Relevant situations, which should be considered in relation to this exclusion ground include, for example:

<sup>51</sup> **Crimes against humanity** are defined in international instruments, *inter alia* [Article 7 of the Rome Statute](#).

<sup>52</sup> On ‘widespread’ and ‘systematic’, see for example, ICTY, *Prosecutor v. Dusko Tadic aka "Dule"* (Opinion and Judgment), IT-94-1-T, 7 May 1997, para. 648; ICTR, *The Prosecutor v. Jean-Paul Akayesu (Trial Judgment)*, ICTR-96-4-T, 2 September 1998, para. 580; ICTY, *Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic (Appeal Judgment)*, IT-96-23 & IT-96-23/1-A, 12 June 2002, para.94; on ‘civilian population’ see ICTY, *Prosecutor v. Dusko Tadic aka "Dule"* (Opinion and Judgment), IT-94-1-T, 7 May 1997, para. 648; ICTR, *The Prosecutor v. Jean-Paul Akayesu (Trial Judgment)*, ICTR-96-4-T, 2 September 1998, para. 644.

- Iraq - Iran war (1980 - 1988): international armed conflict;
- Al-Anfal military campaign (1986 - 1989);
- Invasion of Kuwait (1990 - 1991): international armed conflict; and subsequent uprising;
- Kurdish civil war (1995 - 1998): non-international armed conflict;
- Invasion of Iraq (2003): international armed conflict;
- Armed conflict between ISF and insurgent groups as from 2004: non-international armed conflict;
- Sectarian conflict / civil war (post 2003): non-international armed conflict;
- ISIL conflict (2014 - ongoing): non-international armed conflict;

Reported violations of international humanitarian law by all parties in the current and in past conflicts in Iraq could amount to war crimes in line with [Article 8 of the Rome Statute](#), such as those listed in the sub-section above.

It is estimated that a million persons are buried in mass graves across Iraq due to mass killings under Saddam Hussein, sectarian violence, and due to ISIL [*Actors of protection*, 7.5].

### **Crimes committed during the regime of Saddam Hussein:**

Saddam Hussein and the Baath party used violence, killing, torture, execution, and various forms of repression to control the population [*Targeting*, 1.7].

Kurdish people were systematically persecuted. The al-Anfal military campaign against Kurdistan in Northern Iraq between 1986 and 1989 is qualified by some European countries as genocide. 182 000 Kurds were estimated to have been deported, killed, disappeared in depopulation campaigns in Kurdish areas carried out by Baath party. A particularly well known incident was when the northern Kurdish village of Halabja was gassed with poison in 1988, killing 5 000 and wounding 10 000 Iraqi Kurds suspected of disloyalty to the regime [*Security situation, Annex I; Targeting*, 1.7]. Under the former Baath regime, the Fayli Kurds also faced systematic marginalisation and targeted discrimination from the State. Estimated 300 000 Fayli Kurds were deported to Iran by the Baathist regime [*Targeting*, 3.4.12; see also the profile [Fayli Kurds](#)].

Persons adhering to the Baha'i faith were particularly oppressed by the Baath party regime from the early 1970s. At that time, the UN reported that the religion was banned, Baha'i property was confiscated and members of the community ultimately faced prison or execution [*Targeting*, 3.4.9; see also the profile [Baha'i](#)].

After the first Gulf War, in the south, up to 200 000 Shia Marsh Arabs were killed between March and October 1991 and the marshlands between Euphrates and Tigris were drained to eliminate the hiding places for many Shia during and after the uprising [*Security situation*, 1.1.1].

### **Crimes committed after the fall of the regime of Saddam Hussein:**

In the context of the invasion of Iraq (2003) and the conflict between the ISF, the Multi-National Forces, militias and insurgent groups (especially Al-Qaeda) - including the sectarian conflict (2006 - 2007), the following have been reported:

- Arbitrary arrest, incommunicado detention, torture, disappearances and summary or extrajudicial executions of civilians, reportedly committed by parts of the ISF, and in particular the Police, Special Police Commandoes/Iraqi National Police and the Federal Police;
- Abductions, extortion and intimidation, torture, summary or extrajudicial killings and forced displacement of civilians by militias, at times in collaboration with the ISF, and insurgency groups;
- Abductions, torture, extra-judicial killings and extortion of civilians by members of the Awakening Councils;



- Forced displacement of Arab settlers in Kirkuk, as well as arbitrary arrests, abductions, incommunicado detention and torture, attributed to the Kurdish Peshmerga, security and intelligence agencies;
- Abductions, extortion, rape, murder and torture by criminal gangs, at times in cooperation with or on behalf of militias or insurgents.<sup>53</sup>
- Targeting of civilians with suicide bombs, car bombs, indiscriminate attacks and attacks that 'are tantamount to crimes against humanity' committed by Shia and Sunni armed groups [*Security situation, Annex I*]

### **Crimes committed in the context of the conflict with ISIL (2014 – ongoing):**

In a report from 2015, the UN Human Rights Council found that **ISIL's** targeted violence against civilians and minorities in particular may constitute war crimes, crimes against humanity and possibly genocide [*Targeting, Context*]. Regarding the Yazidis, the UN's Independent International Commission of Inquiry on the Syrian Arab Republic, made it clear, that ISIL has committed the crime of genocide, as well as multiple crimes against humanity and war crimes [*Targeting, 2.2.4*]. Since 2014, the Yazidis have been severely persecuted by ISIL. Between 2 000 and 5 500 Yazidis were killed by ISIL. More than 6 000 were abducted in August 2014, including 3 500 women and girls, who were subsequently sold or offered as sex slaves to ISIL members. The almost 3 000 men and boys in captivity were enrolled as fighters. In October 2018, over 3 000 Yazidis were still in ISIL captivity. Other minorities (e.g. Christians) faced numerous abuses by ISIL, including kidnapping, rape, enslavement, forced marriage and sexual violence [*Targeting, 2.2.3, 2.2.4; see also Religious and ethnic minorities, and stateless persons*].

In areas under their control, ISIL committed widespread, systematic violations and abuses against civilians. These acts include executions, targeted killings and enforced disappearances of religious, community and political leaders [*Targeting, 2.2.1*].

In November 2018, the UN announced that more than 200 mass graves had been discovered allegedly resulting mainly from atrocities perpetrated by ISIL between 2014 and 2017; the graves are believed to contain the remains of thousands of civilians, including women, children, elderly and disabled, as well as members of the ISF [*Security situation, 1.4.2.2*].

ISIL continues to carry out targeted attacks against civilians and asymmetric attacks across Iraq [*Targeting, 2.1*].

Although most abuses in the 2014 - 2017 period were committed by ISIL, elements of the **PMU**, especially Shia militias, but also the **ISF**, were accused of committing serious human rights abuses in the course of the fighting against ISIL. Security actors have been engaged in unlawful and extra-judicial killings, torturing during arrest, forced disappearances and abductions of civilians, child recruitment, evictions and extortion of civilians, destruction of property and revenge attacks [*Targeting, 1.1.1, 1.1.2, 1.2.2; 3.8.1*].

PMU and ISF are primarily targeting perceived ISIL affiliates who are often Sunni Arabs. After October 2017, there were reports on PMU human rights violations against the Kurdish population in the disputed territories, especially in Kirkuk and Tuz Khurmatu [*Targeting, 1.1.2; Security situation, 1.4.1.2; 2.4*].

The battle against ISIL has also afforded **KRG forces** the latitude to carry out serious abuses under the guise of fighting terrorism. There have been retaliatory attacks by Kurdish security forces and associated armed groups, against Sunni Arab civilians and property following the recapturing of the

<sup>53</sup> UN High Commissioner for Refugees (UNHCR), *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers*, April 2009, available at: <https://www.refworld.org/docid/49f569cf2.html>.



disputed areas, including Kirkuk, from ISIL. Since 2014, units of the KRG have carried out mass destruction of civilian property in these areas [*Targeting*, 1.2.3].

The Kurdish security actors are targeting primarily political and societal opponents as well as perceived ISIL affiliates, who are often Sunni Arabs [*Targeting*, 1.1.3, 1.2.3]. There have been reports of Asayish forces torturing perceived ISIL affiliates in order to extract confessions [*Targeting*, 1.2].

## **b. Serious (non-political) crime**

The commission of serious (non-political) crimes is a ground that could apply to applicants from all countries of origin, regardless of the general situation.

In order to determine whether the crime qualifies as **serious**, the following factors may be taken into account: the nature of the act, the actual harm inflicted, the form of procedure used to prosecute such a crime, the nature of the envisaged penalty, and whether most jurisdictions would consider it serious.

There is no requirement that the offence constitutes a crime (or a serious crime) in both, the country of origin and the country of application. Therefore, certain acts (e.g. in relation to religious offences) that are criminalised in Iraq, but would not be considered serious crimes according to international standards, fall outside the scope of this provision. At the same time, acts that may not be considered serious crimes in Iraq could be relevant exclusion grounds.

In order for an act to qualify as a **non-political** crime, it should be considered to have a predominantly non-political motivation or be disproportionate to a claimed political objective. Particularly cruel actions may be considered serious non-political crimes, due to being disproportionate to an alleged political objective. Terrorist acts, which are characterised by their violence towards civilian populations, even if committed with a purportedly political objective, fall to be regarded as serious non-political crimes within the meaning of point (b).<sup>54</sup>

It should also be noted that State agents could be responsible for serious (non-political) crimes (e.g. in relation to death penalty and executions, torture).

The exclusion ground for refugee status further stipulates that the act must have been committed **outside the country of refuge prior to the person's admission as a refugee**. This requirement does not apply to exclusion from subsidiary protection.

## *Analysis of the applicability of Article 12(2)(b) QD and Article 17(1)(b) QD*

In the context of Iraq, widespread criminality makes the exclusion ground 'serious (non-political) crime' particularly relevant.

ISIL relied extensively on criminality to fund its terrorist activities (e.g. extortion, looting, robbery, trafficking, kidnapping and smuggling). The violent conflict aggravated the vulnerability of Iraqis (especially women and children) to trafficking, forced labour, etc. ISIL is militarily defeated, but the ISIL crisis had severe impacts on the economy of Iraq; substantial parts of the country have suffered severe destruction. The organised and street-level crime appears to have increased in 2017 and criminally motivated kidnapping by ISIL, but also by Shia militias, continued to be a serious threat. Especially refugees and those IDPs who remain displaced continue to be highly vulnerable to exploitation (e.g. sex and drug trafficking) by criminal networks and gangs [*Targeting*, 3.1.2].

Although southern Iraq has largely escaped the ISIL violence, problems of criminality, drug abuse, and violence between Shia armed groups involved in militia and tribal groups, also occur there, including

<sup>54</sup> See, for example, CJEU, *Bundesrepublik Deutschland v. B and D*, C-57/09 and C-101/09, 9 November 2010, para.81.

organised crime by militias, as well as kidnapping, extortion, and sex trafficking. Criminal gangs in Basrah have exploited the security gap and there has been a rise in robberies, kidnapping, murder, and drug trafficking [*Targeting* 3.1.2; *Key socio-economic indicators*, 1.3.1].

Violence against women and children (for example, domestic violence, honour-based violence, forced and child marriage) is widespread in Iraq and could also potentially amount to a serious (non-political) crime [*Targeting*, 3.5.1, 3.5.2; see also the profile *Women*].

Performing FGM should be considered as a serious (non-political) crime because it amounts to an inhuman treatment of the child and a violation of the dignity of the woman. Like in any other exclusion case, a careful examination of the relevant circumstances should take place, taking into account the intent and knowledge requirement for individual responsibility [*Targeting*, 3.5.4; see also the profile *Women*].

In relation to exclusion from refugee status, a crime could fall under the exclusion ground of [Article 12\(2\)\(b\) QD](#) if committed in Iraq or any third country. In relation to exclusion from subsidiary protection based on [Article 17\(1\)\(b\) QD](#), serious crimes committed by Iraqi applicants in the host country, would also give rise to exclusion considerations.

The serious (non-political) crimes could be linked to an armed conflict (e.g. if they are committed in order to finance the activities of armed groups) or could amount to fundamentally inhumane acts committed as a part of a systematic or widespread attack against a civilian population, in which case it may be appropriate to examine them under [Article 12\(2\)\(a\)/Article 17\(1\)\(a\) QD](#).

### **c. Acts contrary to the purposes and principles of the United Nations**

The purposes and principles of the UN are set out in the [Preamble and Article 1 and 2 of the UN Charter](#). In order to apply this exclusion provision, the acts must have an international dimension, in the sense that they are capable of having a negative impact on international peace and security, or the friendly relations between States.<sup>55</sup> However, there is no requirement that the perpetrator hold a position of power in a State or a State-like entity in order to be excluded under this provision. Accordingly, this exclusion ground may apply to certain acts which constitute serious and sustained human rights violations and/or acts specifically designated by the international community as contrary to the purposes and principles of the UN (for example, terrorist acts in light of relevant UN Security Council and General Assembly resolutions).<sup>56</sup>

Relevant jurisprudence of the CJEU, including the *B and D* case<sup>57</sup> and the more recent *Lounani* case<sup>58</sup>, views acts constituting participation in the activities of a terrorist group under this provision. This could cover a wide range of conduct, such as recruitment, organisation, transportation or equipment of individuals, for the purpose of, inter alia, the planning or preparation of terrorist acts, etc.<sup>59</sup> It should be noted that the CJEU finds that the mere fact that a person was a member of an organisation implicated in terrorist acts does not automatically mean that the respective exclusion ground can be applied. However, it is not a prerequisite that an applicant for international protection has instigated a terrorist act or has otherwise participated in the commission of such an act. [Article 12\(2\)\(c\) QD](#) and [Article 17\(1\)\(c\) QD](#) can be applied only after undertaking, for each individual case, an assessment of

<sup>55</sup> CJEU, *Lounani*, para.74; *B and D*, para.84.

<sup>56</sup> See, for example, the 2001 UN Security Council resolutions 1373 and 1377.

<sup>57</sup> CJEU, *Bundesrepublik Deutschland v. B and D*, C-57/09 and C-101/09, 9 November 2010.

<sup>58</sup> CJEU, *Commissaire général aux réfugiés et aux apatrides v. Mostafa Lounani*, C-573/15, 31 January 2017.

<sup>59</sup> CJEU, *Lounani*, para. 69.

the specific facts brought to the attention of the authorities with a view to determining whether there are serious reasons for considering that the acts committed by the person in question, who otherwise satisfies the qualifying conditions for international protection, fall within the scope of that particular exclusion.<sup>60</sup>

### *Analysis of the applicability of Article 12(2)(c) QD and 17(1)(c) QD*

(Former) membership in terrorist groups such as ISIL and Al-Qaeda could trigger relevant considerations and require an examination of the applicant's activities under [Article 12\(2\)\(c\)/Article 17\(1\)\(c\) QD](#), in addition to the considerations under [Article 12\(2\)\(a\)/Article 17\(1\)\(a\) QD](#), mentioned in the sections above.

The application of exclusion should be based on an individual assessment of the specific facts in the context of the applicant's activities within that organisation. The position of the applicant within the organisation would constitute a relevant consideration and a high-ranking position could justify a (rebuttable) presumption of individual responsibility. Nevertheless, it remains necessary to examine all relevant circumstances before an exclusion decision can be made.

### **d. Danger to the community or the security of the Member State**

In the examination of the application for international protection, the exclusion ground 'danger to the community or the security of the Member State' in [Article 17\(1\)\(d\) QD](#) is only applicable to persons otherwise eligible for subsidiary protection.

Unlike the other exclusion grounds, the application of this provision is based on a forward-looking assessment of risk. Nevertheless, the examination takes into account the past and/or current activities of the applicant, such as association with certain groups considered to represent a danger to the security of the Member State or criminal activities of the applicant.

The application of this provision, in particular, would often require the involvement of other authorities, which may have access to relevant information.

### **Individual responsibility**

The assessment of individual responsibility is based on the nature and extent of the applicant's involvement in the excludable act(s), as well as his or her state of mind in relation to these act(s). Different forms of conduct may lead to a finding of individual responsibility (for example, direct commission, inducing others, aiding and abetting, command responsibility, etc.), where the relevant intent and knowledge are established.

The applicable standard of proof is 'serious reasons for considering', which requires clear and reliable evidence, but is not as high as the standard for criminal responsibility ('beyond reasonable doubt').

The fact that the applicant was or is associated with a group or regime responsible for excludable acts(s) does not relieve the determining authority from demonstrating his or her individual responsibility.

However, depending on the nature, scale of the group or regime, the voluntary association with it and the position, rank, standing and influence of the applicant within the group, there may be sufficient evidence for both, the 'conduct' and the 'state of mind', requirements to be inferred. It remains

<sup>60</sup> CJEU, *Lounani*, paras. 70, 72; *B and D*, paras. 87 and 94.

necessary, however, that the decision-maker identify the relevant mode of individual responsibility and examine the facts in light of the respective criteria.

Furthermore, the examination should take into account potential grounds negating the individual responsibility, such as lack of mental capacity to comprehend and/or control one's conduct (e.g. due to age, mental disease or defect, involuntary intoxication), duress (e.g. in the context of forced recruitment), self-defence or defence of others (or property, in the case of war crimes), superior orders in specific circumstances (see [Article 33 of the Rome Statute](#)),<sup>61</sup> etc.

Depending on national practice, the analysis may further proceed to take into account whether or not the possible exclusion of the applicant would meet the purposes of the exclusion clauses. Elements, such as the fact that an applicant has already served a sentence for the (otherwise) excludable act, or that the act is subject to an amnesty, could potentially be taken into account. The more egregious the excludable acts, the less relevant such aspects would be when taking the decision.

For further horizontal guidance on exclusion, see '[EASO Practical Guide: Exclusion](#)'.<sup>62</sup>

---

<sup>61</sup> Rome Statute of the International Criminal Court, Article 33.

<sup>62</sup> The 'EASO Practical Guide: Exclusion' is available in different languages at <https://www.easo.europa.eu/practical-tools>.

## Annex I. Abbreviations and glossary

<b>AQ-I</b>	Al-Qaeda in Iraq
<b>Asayish</b>	Intelligence services of the KRG
<b>BOC</b>	Baghdad Operations Command
<b>CAT</b>	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
<b>CJEU</b>	Court of Justice of the European Union
<b>COI</b>	Country of origin information
<b>CTS</b>	Counter-Terrorism Service; also called ISOF (Iraqi Special Operations Forces); elite-trained special forces.
<b>EASO</b>	European Asylum Support Office
<b>ECHR</b>	Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), as amended by Protocols Nos. 11 and 14, 4 November 1950
<b>ECtHR</b>	European Court of Human Rights
<b>EU</b>	European Union
<b><i>fasliya</i></b>	A traditional practice, whereby family members, including women and children, are traded to settle tribal disputes
<b>FGM/C</b>	Female genital mutilation/cutting
<b>IBC</b>	Iraq Body Count
<b>ID</b>	Identification documentation
<b>IDP(s)</b>	Internally displaced person(s)
<b>IED</b>	Improvised explosive device
<b>IILHR</b>	Institute for International Law and Human Rights
<b>INSO</b>	International NGO Safety Organisation
<b>IOM</b>	International Organisation for Migration
<b>IPA</b>	International Protection Alternative
<b>ISF</b>	Iraqi Security Forces
<b>ISI</b>	Islamic State in Iraq, precursor group of ISIL
<b>ISIL</b>	The Islamic State of Iraq and the Levant, also known as the Islamic State of Iraq and Syria (ISIS), the Islamic State, or Daesh
<b>ISIS</b>	The Islamic State of Iraq and Syria; see also ISIL.
<b>ISW</b>	Institute for the Study of War
<b><i>jizya</i></b>	A tax to be paid by Abrahamic non-Muslims, such as Christians and Jews. Imposed by ISIL in areas it controlled.
<b>KDP</b>	Kurdistan Democratic Party
<b>KDP-I</b>	Hizba Dêmkrata Kurdistanê-Îran, splinter group of the KDP
<b>KRG</b>	Kurdistan Regional Government
<b>KRI</b>	Kurdistan Region of Iraq – refers to Dahuk, Erbil, Sulaymaniyah governorates

<b>LGBTI</b>	Lesbian, Gay, Bisexual, Trans, Intersex
	‘LGBT’ is also used within the document, based on the respective COI sources.
<b><i>mukhtar</i></b>	Local community leader
<b>NGO</b>	Non-governmental organisation
<b>PDS</b>	Public Distribution System
<b>Peshmerga</b>	Military forces of the Kurdistan Region of Iraq
<b>PJAK</b>	Kurdistan Free Life Party (Partiya Jiyana Azad a Kurdistanê)
<b>PKK</b>	Kurdistan Worker’s Party
<b>PMF</b>	Popular Mobilisation Forces
<b>PMU</b>	Popular Mobilisation Units, also called Popular Mobilisation Forces, or al-Hashd al Shaabi
<b>PUK</b>	Patriotic Union of Kurdistan
<b>QD (Qualification Directive)</b>	Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted
<b>Sharia</b>	The religious law of Islam, Islamic canonical law
<b><i>Takfiri</i> or <i>Takfir</i></b>	An Arabic word meaning ‘unbeliever’; Extremist Islamist ideology employed by ISIL to declare individuals as apostates or impure, used against those who do not pledge allegiance.
<b>TM</b>	Tribal Mobilisation (militias)
<b>UN</b>	United Nations
<b>UNAMI</b>	United Nations Assistance Mission for Iraq
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>UNICEF</b>	United Nations International Children's Emergency Fund
<b>UNOCHA</b>	United Nations Office for the Coordination of Humanitarian Affairs
<b>UNRWA</b>	The United Nations Relief and Works Agency for Palestine Refugees in the Near East
<b><i>urf</i></b>	Tribal customary law; also known as aadat or al-qada al-asha’iri
<b>US</b>	United States of America
<b>USDOS</b>	United States Department of State

## Annex II. Country of origin information references

The COI sources used in the common analysis are the following EASO COI reports and queries:

<i>Actors of protection</i>	<p>EASO Country of Origin Information Report: Iraq, Actors of protection (November 2018)</p> <p><i>Available at:</i>  <a href="https://coi.easo.europa.eu/administration/easo/PLib/Iraq_Actors_of_Protection_2018.pdf">https://coi.easo.europa.eu/administration/easo/PLib/Iraq_Actors_of_Protection_2018.pdf</a></p>
<i>COI query on atheism and conversion in the KRI</i>	<p>EASO Country of Origin Information Query: Iraq, Information on the prevalence of atheism in the Kurdistan Region of Iraq (KRI) (March 2019)</p> <p><i>Available at:</i>  <a href="https://coi.easo.europa.eu/administration/easo/PLib/IRQ_7.pdf">https://coi.easo.europa.eu/administration/easo/PLib/IRQ_7.pdf</a></p>
<i>COI query on FGM</i>	<p>EASO Country of Origin Information Query: Iraq, Information on the prevalence of Female Genital Mutilation (FGM) in Iraq, including the Kurdistan Region of Iraq (March 2019)</p> <p><i>Available at:</i>  <a href="https://coi.easo.europa.eu/administration/easo/PLib/IRQ_8.pdf">https://coi.easo.europa.eu/administration/easo/PLib/IRQ_8.pdf</a></p>
<i>Internal mobility</i>	<p>EASO Country of Origin Information Report: Iraq, Internal Mobility (February 2019)</p> <p><i>Available at:</i>  <a href="https://coi.easo.europa.eu/administration/easo/PLib/Iraq-Internal_Mobility.pdf">https://coi.easo.europa.eu/administration/easo/PLib/Iraq-Internal_Mobility.pdf</a></p>
<i>Key socio-economic indicators</i>	<p>EASO Country of Origin Information Report: Iraq, Key socio-economic indicators (February 2019)</p> <p><i>Available at:</i>  <a href="https://coi.easo.europa.eu/administration/easo/PLib/Iraq_key_socio-economic_indicators.pdf">https://coi.easo.europa.eu/administration/easo/PLib/Iraq_key_socio-economic_indicators.pdf</a></p>
<i>Security situation</i>	<p>EASO Country of Origin Information Report: Iraq, Security situation (March 2019)</p> <p><i>Available at:</i>  <a href="https://coi.easo.europa.eu/administration/easo/PLib/Iraq_security_situation.pdf">https://coi.easo.europa.eu/administration/easo/PLib/Iraq_security_situation.pdf</a></p>
<i>(Security situation) IBC supplement</i>	<p>EASO Country of Origin Information Report: Iraq Security situation (supplement) – Iraq Body Count – civilian deaths 2012, 2017-2018 (February 2019)</p> <p><i>Available at:</i>  <a href="https://coi.easo.europa.eu/administration/easo/PLib/Iraq_IBC_Civilian_Deaths.pdf">https://coi.easo.europa.eu/administration/easo/PLib/Iraq_IBC_Civilian_Deaths.pdf</a></p>
<i>Targeting</i>	<p>EASO Country of Origin Information Report: Iraq, Targeting of individuals (March 2019)</p> <p><i>Available at:</i>  <a href="https://coi.easo.europa.eu/administration/easo/PLib/Iraq_targeting_of_individuals.pdf">https://coi.easo.europa.eu/administration/easo/PLib/Iraq_targeting_of_individuals.pdf</a></p>



<i>UNHCR, Access and residency</i>	<i>UNHCR, Iraq: Country of Origin Information on Access and Residency Requirements in Iraq: Ability of Persons Origination from Formerly ISIS-Held or Conflict-Affected Areas to Legally Access and Remain in Proposed Areas of Relocation, 25 April 2019</i>  Available at: <a href="https://www.refworld.org/docid/5cc2c30d7.html">https://www.refworld.org/docid/5cc2c30d7.html</a>
------------------------------------	---

## Annex III. Relevant case law

Case law referenced in the common analysis	
Actors of persecution or serious harm	<ul style="list-style-type: none"> <li>■ CJEU, <a href="#">Mohamed M'Bodj v État belge</a>, case C-542/13, judgment of 18 December 2014, Grand Chamber (M'Bodj)</li> </ul>
Reasons for persecution - religion	<ul style="list-style-type: none"> <li>■ CJEU, <a href="#">Bundesrepublik Deutschland v Y and Z</a>, joined cases C-71/11 and C-99/11, Judgment of 5 September 2012, Grand Chamber (Y and Z)</li> </ul>
Reasons for persecution – membership of a particular social group	<ul style="list-style-type: none"> <li>■ CJEU, <a href="#">Minister voor Immigratie en Asiel v X and Y and Z v Minister voor Immigratie en Asiel</a>, joined cases C-199/12 to C-201/12 Judgment of 7 November 2013 (X, Y and Z)</li> </ul>
Article 12(1)(a) QD	<ul style="list-style-type: none"> <li>■ CJEU, <a href="#">Mostafa Abed El Karem El Kott and Others v. Bevándorlási és Állampolgársági Hivatal</a>, C-364/11, Judgment of 19 December 2012 (El-Kott)</li> <li>■ CJEU, <a href="#">Bolbol v. Bevándorlási és Állampolgársági Hivatal</a>, C-31/09, Judgment of 17 June 2010 (Bolbol)</li> </ul>
Article 15(b) QD	<ul style="list-style-type: none"> <li>■ CJEU, <a href="#">MP v Secretary of State for the Home Department</a>, case C-353/16, judgment of 24 April 2018 (MP)</li> <li>■ CJEU, <i>M'Bodj</i></li> </ul>
Indiscriminate violence in relation to armed conflict (Article 15(c) QD)	<ul style="list-style-type: none"> <li>■ CJEU, <a href="#">Aboubacar Diakité v. Commissaire général aux réfugiés et aux apatrides</a>, C-285/12, Judgment of the Court (Fourth Chamber) of 30 January 2014 (Diakité)</li> <li>■ CJEU, <a href="#">Elgafaji v. Staatssecretaris van Justitie</a>, C-465/07, Judgment of the Court (Grand Chamber) of 17 February 2009 (Elgafaji)</li> <li>■ ECtHR, <a href="#">Sufi and Elmi v. United Kingdom</a>, Applications nos. 8319/07 and 11449/07, Judgment of 28 June 2011 (Sufi and Elmi)</li> </ul>
Internal protection alternative	<ul style="list-style-type: none"> <li>■ CJEU, <i>X, Y and Z</i></li> <li>■ CJEU, <i>Y and Z</i></li> <li>■ CJEU, <a href="#">Abdulla and Others v Bundesrepublik Deutschland</a>, Joined Cases C-175/08, C-176/08, C-178/08 and C-179/08, Judgment of 2 March 2010 (Abdulla)</li> </ul>

	<ul style="list-style-type: none"> <li>■ ECtHR, <a href="#">A.A.M. v Sweden</a>, Application no. 68519/10, Judgment of 3 April 2014 (<i>A.A.M v Sweden</i>)</li> <li>■ ECtHR, <a href="#">Salah Sheekh v the Netherlands</a>, Application no. 1948/04, Judgment of 11 January 2007 (<i>Salah Sheekh</i>)</li> <li>■ <i>Sufi and Elmi</i></li> </ul>
Exclusion	<ul style="list-style-type: none"> <li>■ CJEU, <a href="#">Commissaire général aux réfugiés et aux apatrides v Mostafa Lounani</a>, Case C-573/14, Judgment of the Court (Grand Chamber) of 31 January 2017 (<i>Lounani</i>)</li> <li>■ CJEU, <a href="#">Bundesrepublik Deutschland v B and D</a>, Joined Cases C-57/09 and C-101/09, Judgment of 9 November 2010 (<i>B and D</i>)</li> <li>■ ICTY (Appeals Chamber), <a href="#">Prosecutor v Kunarac et al.</a>, IT-96-23 and IT-96-23/1-A, Judgment of 12 June 2002</li> <li>■ ICTY, <a href="#">Prosecutor v. Dusko Tadic aka "Dule" (Opinion and Judgment)</a>, IT-94-1-T, Judgment of 7 May 1997</li> <li>■ ICTR, <a href="#">The Prosecutor v. Jean-Paul Akayesu (Trial Judgment)</a>, ICTR-96-4-T, Judgment of 2 September 1998</li> </ul>

For additional information on relevant case law see:

#### EASO Practical Guides:

Available at: <https://www.easo.europa.eu/practical-tools>

- EASO Practical Guide: Qualification for international protection
- EASO Practical Guide: Exclusion

#### Judicial analyses:

Available at: <https://www.easo.europa.eu/courts-and-tribunals>

- Judicial Analysis 'Qualification for International Protection (Directive 2011/95/EU)
- Judicial Analysis 'Article 15(c) Qualification Directive (2011/95/EU)
- Judicial Analysis 'Exclusion: Articles 12 and 17 Qualification Directive (2011/95/EU)



