



**Upper Tribunal  
(Immigration and Asylum Chamber)**

SMO, KSP & IM (Article 15(c); identity documents) Iraq CG [2019] UKUT 00400 (IAC)

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 24, 25 and 26 June 2019**

**Decision & Reasons Promulgated**

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**Before**

**UPPER TRIBUNAL JUDGE PERKINS  
UPPER TRIBUNAL JUDGE BLUNDELL**

**Between**

**(1) SMO  
(2) KSP  
(3) IM**

**(ANONYMITY ORDERS MADE)**

**Appellants**

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**Respondent**

**Representation:**

For the First Appellant:

Mr S Knafler QC and Ms M Cleghorn of counsel, instructed by Halliday Reeves

For the Second Appellant:

Mr S Knafler QC and Mr T Hussain of counsel, instructed by Halliday Reeves

For the Third Appellant:

Mr D Bazini of counsel, instructed by Parker Rhodes Hickmotts and Mr C Cole (solicitor) of Parker Rhodes Hickmotts

For the Respondent:

Mr C Thomann and Mr T Tabori, both of counsel, instructed by the Government Legal Department

**A. INDISCRIMINATE VIOLENCE IN IRAQ: ARTICLE 15(C) OF THE QUALIFICATION DIRECTIVE**

1. *There continues to be an internal armed conflict in certain parts of Iraq, involving government forces, various militia and the remnants of ISIL. Following the military defeat of ISIL at the end of 2017 and the resulting reduction in levels of direct and indirect violence, however, the intensity of that conflict is not such that, as a general matter, there are substantial grounds for believing that any civilian returned to Iraq, solely on account of his presence there, faces a real risk of being subjected to indiscriminate violence amounting to serious harm within the scope of Article 15(c) QD.*
2. *The only exception to the general conclusion above is in respect of the small mountainous area north of Baiji in Salah al-Din, which is marked on the map at Annex D. ISIL continues to exercise doctrinal control over that area and the risk of indiscriminate violence there is such as to engage Article 15(c) as a general matter.*
3. *The situation in the Formerly Contested Areas (the governorates of Anbar, Diyala, Kirkuk, Ninewah and Salah Al-Din) is complex, encompassing ethnic, political and humanitarian issues which differ by region. Whether the return of an individual to such an area would be contrary to Article 15(c) requires a fact-sensitive, "sliding scale" assessment to which the following matters are relevant.*
4. *Those with an actual or perceived association with ISIL are likely to be at enhanced risk throughout Iraq. In those areas in which ISIL retains an active presence, those who have a current personal association with local or national government or the security apparatus are likely to be at enhanced risk.*
5. *The impact of any of the personal characteristics listed immediately below must be carefully assessed against the situation in the area to which return is contemplated, with particular reference to the extent of ongoing ISIL activity and the behaviour of the security actors in control of that area. Within the framework of such an analysis, the other personal characteristics which are capable of being relevant, individually and cumulatively, to the sliding scale analysis required by Article 15(c) are as follows:*
  - *Opposition to or criticism of the GOI, the KRG or local security actors;*
  - *Membership of a national, ethnic or religious group which is either in the minority in the area in question, or not in de facto control of that area;*
  - *LGBTI individuals, those not conforming to Islamic mores and wealthy or Westernised individuals;*
  - *Humanitarian or medical staff and those associated with Western organisations or security forces;*
  - *Women and children without genuine family support; and*
  - *Individuals with disabilities.*
6. *The living conditions in Iraq as a whole, including the Formerly Contested Areas, are unlikely to give rise to a breach of Article 3 ECHR or (therefore) to necessitate subsidiary protection under Article 15(b) QD. Where it is asserted that return to a particular part of Iraq would give rise to such a breach, however, it is to be recalled that the minimum level of severity required is relative,*

*according to the personal circumstances of the individual concerned. Any such circumstances require individualised assessment in the context of the conditions of the area in question.*

## **B. DOCUMENTATION AND FEASIBILITY OF RETURN (EXCLUDING IKR)**

7. *Return of former residents of the Iraqi Kurdish Region (IKR) will be to the IKR and all other Iraqis will be to Baghdad. The Iraqi authorities will allow an Iraqi national (P) in the United Kingdom to enter Iraq only if P is in possession of a current or expired Iraqi passport relating to P, or a Laissez Passer.*
8. *No Iraqi national will be returnable to Baghdad if not in possession of one of these documents.*
9. *In the light of the Court of Appeal's judgment in HF (Iraq) and Others v Secretary of State for the Home Department [2013] EWCA Civ 1276, an international protection claim made by P cannot succeed by reference to any alleged risk of harm arising from an absence of a current or expired Iraqi passport or a Laissez passer, if the Tribunal finds that P's return is not currently feasible on account of a lack of any of those documents.*
10. *Where P is returned to Iraq on a Laissez Passer or expired passport, P will be at no risk of serious harm at the point of return by reason of not having a current passport.*

## **C. CIVIL STATUS IDENTITY DOCUMENTATION**

11. *The CSID is being replaced with a new biometric Iraqi National Identity Card – the INID. As a general matter, it is necessary for an individual to have one of these two documents in order to live and travel within Iraq without encountering treatment or conditions which are contrary to Article 3 ECHR. Many of the checkpoints in the country are manned by Shia militia who are not controlled by the GOI and are unlikely to permit an individual without a CSID or an INID to pass. A valid Iraqi passport is not recognised as acceptable proof of identity for internal travel.*
12. *A Laissez Passer will be of no assistance in the absence of a CSID or an INID; it is confiscated upon arrival and is not, in any event, a recognised identity document. There is insufficient evidence to show that returnees are issued with a 'certification letter' at Baghdad Airport, or to show that any such document would be recognised internally as acceptable proof of identity.*
13. *Notwithstanding the phased transition to the INID within Iraq, replacement CSIDs remain available through Iraqi Consular facilities. Whether an individual will be able to obtain a replacement CSID whilst in the UK depends on the documents available and, critically, the availability of the volume and page reference of the entry in the Family Book in Iraq, which system continues to underpin the Civil Status Identity process. Given the importance of that information, most Iraqi citizens will recall it. That information may also be obtained from family members, although it is necessary to consider whether such relatives are on the father's or the mother's side because the registration system is patrilineal.*
14. *Once in Iraq, it remains the case that an individual is expected to attend their local CSA office in order to obtain a replacement document. All CSA offices have now re-opened, although the extent to which records have been destroyed by the conflict with ISIL is unclear, and is likely to vary significantly depending on the extent and intensity of the conflict in the area in question.*
15. *An individual returnee who is not from Baghdad is not likely to be able to obtain a replacement document there, and certainly not within a reasonable time. Neither the Central Archive nor the assistance facilities for IDPs are likely to render documentation assistance to an undocumented returnee.*

16. *The likelihood of obtaining a replacement identity document by the use of a proxy, whether from the UK or on return to Iraq, has reduced due to the introduction of the INID system. In order to obtain an INID, an individual must attend their local CSA office in person to enrol their biometrics, including fingerprints and iris scans. The CSA offices in which INID terminals have been installed are unlikely – as a result of the phased replacement of the CSID system – to issue a CSID, whether to an individual in person or to a proxy. The reducing number of CSA offices in which INID terminals have not been installed will continue to issue CSIDs to individuals and their proxies upon production of the necessary information.*

#### **D. INTERNAL RELOCATION WITHIN GOI-CONTROLLED IRAQ**

17. *Where internal relocation is raised in the Iraqi context, it is necessary to consider not only the safety and reasonableness of relocation but also the feasibility of that course, in light of sponsorship and residency requirements in operation in various parts of the country. Individuals who seek to relocate within the country may not be admitted to a potential safe haven or may not be permitted to remain there.*
18. *Relocation within the Formerly Contested Areas. With the exception of the small area identified in section A, the general conditions within the Formerly Contested Areas do not engage Article 15 QD(b) or (c) or Article 3 ECHR and relocation within the Formerly Contested Areas may obviate a risk which exists in an individual's home area. Where relocation within the Formerly Contested Areas is under contemplation, however, the ethnic and political composition of the home area and the place of relocation will be particularly relevant. In particular, an individual who lived in a former ISIL stronghold for some time may fall under suspicion in a place of relocation. Tribal and ethnic differences may preclude such relocation, given the significant presence and control of largely Shia militia in these areas. Even where it is safe for an individual to relocate within the Formerly Contested Areas, however, it is unlikely to be either feasible or reasonable without a prior connection to, and a support structure within, the area in question.*
19. *Relocation to Baghdad. Baghdad is generally safe for ordinary civilians but whether it is safe for a particular returnee is a question of fact in the individual case. There are no on-entry sponsorship requirements for Baghdad but there are sponsorship requirements for residency. A documented individual of working age is likely to be able to satisfy those requirements. Relocation to Baghdad is likely to be reasonable for Arab Shia and Sunni single, able-bodied men and married couples of working age without children and without specific vulnerabilities. Other individuals are likely to require external support, ie a support network of members of his or her family, extended family or tribe, who are willing and able to provide genuine support. Whether such a support network is available is to be considered with reference to the collectivist nature of Iraqi society, as considered in AAH (Iraq).*

#### **E. IRAQI KURDISH REGION**

20. *There are regular direct flights from the UK to the Iraqi Kurdish Region and returns might be to Baghdad or to that region. It is for the respondent to state whether she intends to remove to Baghdad, Erbil or Sulaymaniyah.*

##### *Kurds*

21. *For an Iraqi national returnee (P) of Kurdish origin in possession of a valid CSID or Iraqi National Identity Card (INID), the journey from Baghdad to the IKR by land is affordable and practical and can be made without a real risk of P suffering persecution, serious harm, or Article 3 ill treatment nor would any difficulties on the journey make relocation unduly harsh.*
22. *P is unable to board a domestic flight between Baghdad and the IKR without either a CSID, an INID or a valid passport. If P has one of those documents, the journey from Baghdad to the IKR*

*by land is affordable and practical and can be made without a real risk of P suffering persecution, serious harm, or Article 3 ill treatment nor would any difficulties on the journey make relocation unduly harsh.*

23. *P will face considerable difficulty in making the journey between Baghdad and the IKR by land without a CSID or an INID. There are numerous checkpoints en route, including two checkpoints in the immediate vicinity of the airport. If P has neither a CSID nor an INID there is a real risk of P being detained at a checkpoint until such time as the security personnel are able to verify P's identity. It is not reasonable to require P to travel between Baghdad and IKR by land absent the ability of P to verify his identity at a checkpoint. This normally requires the attendance of a male family member and production of P's identity documents but may also be achieved by calling upon "connections" higher up in the chain of command.*
24. *Once at the IKR border (land or air) P would normally be granted entry to the territory. Subject to security screening, and registering presence with the local mukhtar, P would be permitted to enter and reside in the IKR with no further legal impediments or requirements. There are no sponsorship requirements for entry or residence in any of the three IKR Governorates for Kurds.*
25. *Whether P would be at particular risk of ill-treatment during the security screening process must be assessed on a case-by-case basis. Additional factors that may increase risk include: (i) coming from a family with a known association with ISIL, (ii) coming from an area associated with ISIL and (iii) being a single male of fighting age. P is likely to be able to evidence the fact of recent arrival from the UK, which would dispel any suggestion of having arrived directly from ISIL territory.*
26. *If P has family members living in the IKR cultural norms would require that family to accommodate P. In such circumstances P would, in general, have sufficient assistance from the family so as to lead a 'relatively normal life', which would not be unduly harsh. It is nevertheless important for decision-makers to determine the extent of any assistance likely to be provided by P's family on a case by case basis.*
27. *For Kurds without the assistance of family in the IKR the accommodation options are limited:*
  - (i) *Absent special circumstances it is not reasonably likely that P will be able to gain access to one of the refugee camps in the IKR; these camps are already extremely overcrowded and are closed to newcomers. 64% of IDPs are accommodated in private settings with the vast majority living with family members;*
  - (ii) *If P cannot live with a family member, apartments in a modern block in a new neighbourhood are available for rent at a cost of between \$300 and \$400 per month;*
  - (iii) *P could resort to a 'critical shelter arrangement', living in an unfinished or abandoned structure, makeshift shelter, tent, mosque, church or squatting in a government building. It would be unduly harsh to require P to relocate to the IKR if P will live in a critical housing shelter without access to basic necessities such as food, clean water and clothing;*
  - (iv) *In considering whether P would be able to access basic necessities, account must be taken of the fact that failed asylum seekers are entitled to apply for a grant under the Voluntary Returns Scheme, which could give P access to £1500. Consideration should also be given to whether P can obtain financial support from other sources such as (a) employment, (b) remittances from relatives abroad, (c) the availability of ad hoc charity or by being able to access PDS rations.*

28. *Whether P is able to secure employment must be assessed on a case-by-case basis taking the following matters into account:*
- (i) Gender. Lone women are very unlikely to be able to secure legitimate employment;*
  - (ii) The unemployment rate for Iraqi IDPs living in the IKR is 70%;*
  - (iii) P cannot work without a CSID or INID;*
  - (iv) Patronage and nepotism continue to be important factors in securing employment. A returnee with family connections to the region will have a significant advantage in that he would ordinarily be able to call upon those contacts to make introductions to prospective employers and to vouch for him;*
  - (v) Skills, education and experience. Unskilled workers are at the greatest disadvantage, with the decline in the construction industry reducing the number of labouring jobs available;*
  - (vi) If P is from an area with a marked association with ISIL, that may deter prospective employers.*

*Non-Kurdish Returnees*

29. *The ability of non-Kurdish returnees to relocate to the IKR is to be distinguished. There are no sponsorship requirements for entry or residence in Erbil and Sulaymaniyah, although single Arab and Turkmen citizens require regular employment in order to secure residency. Arabs from former conflict areas and Turkmen from Tal Afar are subject to sponsorship requirements to enter or reside in Dohuk. Although Erbil and Sulaymaniyah are accessible for such individuals, particular care must be taken in evaluating whether internal relocation to the IKR for a non-Kurd would be reasonable. Given the economic and humanitarian conditions in the IKR at present, an Arab with no viable support network in the IKR is likely to experience unduly harsh conditions upon relocation there.*

**F. EXISTING COUNTRY GUIDANCE DECISIONS**

30. *This decision replaces all existing country guidance on Iraq.*

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## Glossary

CPIN	Home Office Country Information and Policy Note
CSA	Civil Status Affairs
CSID	Civil Status Identity Document
CTF	Counter Terrorism Force
<i>Disputed Territories</i>	<i>Land to which the GOI and the IKR both lay claim (map at p126)</i>
DIS	Danish Immigration Service
EASO	European Asylum Support Office
FCA	Formerly Contested Areas ( <i>areas previously under ISIL control</i> )
GOI	Government of Iraq
IBC	Iraq Body Count
IDP	Internally Displaced Persons
IED	Improvised Explosive Device
IFA/IRA	Internal Flight or Relocation Alternative
IKR	Independent Kurdish Region
INC	Iraqi Nationality Card
INID	Iraqi National Identity Document
IOM	International Office for Migration
ISF	Iraqi Security Forces
ISIL	Islamic State of Iraq and the Levant
IS	Islamic State
ISIS	Islamic State of Iraq and Syria
ISW	Institute for the Study of War
KDP	Kurdistan Democratic Party
KRG	Kurdistan Regional Government
KRI	Kurdistan Region of Iraq
LGBTI	Lesbian, gay, bisexual, transgender and intersex
<i>Lifos</i>	<i>Sweden's legal and country of origin information institution</i>
MSF	Médecins Sans Frontières
<i>Mukhtar</i>	<i>Local official</i>
NGO	Non-governmental organisations
PD	Practice Direction
<i>Peshmerga</i>	<i>Kurdish military units</i>
PDS	Public Distribution System
PKK	Kurdistan Workers' Party
PMF	Popular Mobilisation Forces
PMU	Popular Mobilisation Units
PUK	Patriotic Union of Kurdistan
QD	Qualification Directive (Directive 2004/83/EC)
<i>REACH</i>	<i>A European humanitarian research initiative (p38 refers)</i>
UNAMI	United Nations Assistance Mission for Iraq
UNHCR	United Nations High Commissioner for Refugees
UNOCHA	United Nations Office for the Coordination of Humanitarian Affairs
USAID	United States Agency for International Development
VBIEDs	Vehicle Borne IEDs
<i>White Flags</i>	<i>An insurgent group in northern Iraq</i>

## SECTION A - INTRODUCTION

1. The appellants are male citizens of Iraq whose cases were selected for revisiting, in light of the military defeat of the Islamic State of Iraq and the Levant (“ISIL”), the country guidance which was initially issued in AA (Iraq) CG [2015] UKUT 544 (IAC).

### **The Individual Appellants**

2. The first appellant was born on 1 September 1989. He entered the United Kingdom on 22 March 2016 and claimed asylum. He is from a village called Albu Mohammed in the Daquq District of Kirkuk Governorate. His account of having been targeted by ISIL and of having lost contact with his family in Iraq was rejected by the First-tier Tribunal. The FtT found that his family remained in the family home. The FtT held that there had been a significant change in circumstances in Iraq and departed from AA (Iraq), concluding that the appellant could return to his home area in safety. That conclusion was held by Upper Tribunal Judge O’Connor to be erroneous in law and was set aside, with the primary findings of fact made by the judge at first instance otherwise preserved.
3. The second appellant was born on 1 November 1989. He entered the United Kingdom on 28 November 2005 and claimed asylum. He is from Tuz Khurmato, the main city of the Duz District in Salah al Din Governorate. His appeal against the respondent’s refusal of his asylum claim was dismissed by the FtT, which rejected all aspects of his account other than his claim to have run a barbershop in Tuz Khurmato. The FtT found that there had been a significant change in Iraq since the last country guidance decision and that KSP would not be at risk on return to Salah al Din. On appeal, the latter aspect of the decision was deemed by Upper Tribunal Judge Rintoul to be unsustainable because the FtT had failed to adopt the correct approach to the existing country guidance. Judge Rintoul directed that the decision should be remade in the Upper Tribunal, based on the findings of fact made by the FtT.
4. The third appellant was born on 25 May 1987 and is from Mosul in Ninewa Governorate. He entered the United Kingdom on 5 October 2000 and, although his claim for asylum was refused, he was granted Exceptional Leave to Remain (as an Unaccompanied Asylum Seeking Child) until 18 July 2005. He was granted Indefinite Leave to Remain on 11 March 2001. He committed offences in the United Kingdom, as a result of which the respondent sought to deport him. His appeal against that decision was dismissed by the FtT which found, amongst other things, that he could relocate to Baghdad. Permission to appeal was refused by the FtT and the Upper Tribunal and a “Cart” JR was initially unsuccessful. Permission to appeal to the Court of Appeal was granted, however, and the respondent agreed that the appeal should be allowed and remitted to the Upper Tribunal. Following a hearing in the Upper Tribunal, it was ordered that the decision on the appeal should be remade (on Humanitarian Protection and Article 3 ECHR grounds) on the basis of the FtT’s findings of fact. Those findings included an acceptance that the appellant lacked the requisite documents to obtain a Civil Status Identity Document (“CSID”) in the UK or Iraq and that he had no family or friends in Baghdad who could accommodate him.
5. The hearing of these appeals was due to take place in the week commencing 24 June 2019. On 21 June, the respondent informed the third appellant’s representatives that she intended to grant the third appellant leave to remain. This was because it was accepted by the respondent that the findings we have summarised above would give rise to a breach of Article 3 ECHR upon the third appellant’s return to Iraq. Mr Thomann confirmed at the outset of the hearing, and at [20] of his closing written submissions, that this was the basis upon which the appellant was to be granted leave to remain.

6. It was not submitted by the respondent at the hearing that the third appellant's appeal fell to be treated as abandoned pursuant to section 104(4A) of the Nationality, Immigration and Asylum Act 2002. Nor could such a submission have been made; the appellant's appeal remains pending until he is formally granted leave to remain. Were the appellant to be granted limited leave on that basis, he would be entitled to elect to continue with the appeal (on humanitarian protection grounds) under section 104(4B) of the Nationality, Immigration and Asylum Act 2002. Mr Bazini indicated that the appellant would so elect in the event that he was granted leave whilst the appeal was pending. We indicated that we would value the input of Mr Bazini and Mr Cole in any event. As we have recorded, each of the appellants is from a different part of the formerly contested areas and the third appellant is from Mosul, which is Iraq's second city. The submissions to be made on behalf of the third appellant therefore concerned a significant part of the intended Country Guidance. In the circumstances, Mr Bazini and Mr Cole remained throughout the hearing. As we record below, Mr Bazini not only responded at length to the closing submissions made by Mr Thomann; he also asked questions of the expert witness (Dr Fatah) in chief and in re-examination. We valued his assistance. We were notified after the hearing that the third appellant had been granted leave to remain. As anticipated, he elected to continue with his appeal on humanitarian protection grounds nevertheless. We gave an indication in writing that the appeal would remain before us on that basis.

### **The Current Country Guidance**

7. There are three extant Country Guidance decisions about Iraq: AA (Article 15(c)) Iraq CG [2015] UKUT 544 (IAC); BA (Returns to Baghdad) Iraq CG [2017] UKUT 18 (IAC); and AAH (Iraqi Kurds – internal relocation) Iraq CG [2018] UKUT 212 (IAC).
8. In AA (Iraq), it was conceded by the respondent that a civilian with no distinguishing characteristics would, simply by virtue of his presence in one of the contested areas (the governorates of Anbar, Diyala, Kirkuk, Ninewa and Salah al Din) be at real risk of suffering serious harm of the type identified in Article 15(c) of the Council Directive 2004/83/EC (the Qualification Directive). For the reasons it gave at [101]-[106], the Upper Tribunal had no hesitation in endorsing that concession, noting that life in those areas (which were controlled at the time by ISIL) was characterised by systematic and widespread acts of violence and gross violations of international humanitarian law and abuses of human rights. The Upper Tribunal also concluded that certain parts of the so-called Baghdad Belts were affected by an internal armed conflict of such intensity that there was a generalised Article 15(c) risk there. It was not accepted that the remainder of Iraq, including Baghdad City, was affected by such a level of internal armed conflict.
9. Guidance was also given in AA (Iraq) on relocation within Iraq and the Kurdistan Region of Iraq ("KRI", also known as the IKR); the feasibility of return to Iraq; and the position on documentation where return to Iraq is feasible. The appellant appealed to the Court of Appeal and it was accepted by the respondent that the Upper Tribunal had erred in its approach to the latter two issues and that the correct course was for the Court of Appeal to amend the Country Guidance so as to correct it. The amended guidance was appended to the judgment of the court: [2017] EWCA Civ 944; [2018] 1 WLR 1083.
10. In AAH (Iraq), the Upper Tribunal revisited that guidance to a limited extent. As noted at [1]-[2] of that decision, the principal focus of that case was whether Iraqi Kurds could relocate to the IKR. The Upper Tribunal stated that it was not concerned to consider whether the guidance given in AA (Iraq) in respect of Article 15(c) held good, and the appeal had proceeded on the assumption that it did. Instead of issuing additional guidance, the Upper Tribunal simply amended sections C and E of the guidance given in AA (Iraq). The AA

(Iraq) guidance, as amended by the Court of Appeal and supplemented in AAH (Iraq), is reproduced at Annex A to this decision.

11. In BA (Iraq), the Upper Tribunal's original intention was to give guidance on the risk to those perceived as having collaborated with the West: [8] and [12]. At the outset of the hearing, the Upper Tribunal expressed some concern about the suitability of the case as a vehicle for guidance but, having heard argument from both representatives, it agreed that it would provide guidance because the decision "may assist a wider readership in so far as the Tribunal sets out a summary of recent evidence relating to the situation in Baghdad regarding a number of potential risk factors, albeit that it is accepted that none of those factors, taken alone, are sufficient to found a claim at the current time": [15]. The Upper Tribunal proceeded to give guidance which included a conclusion that the level of violence in Baghdad City remained significant but did not justify departing from the guidance in AA (Iraq). We have reproduced the guidance in full at Annex B of this decision. As submitted at [20] of the appellants' combined skeleton argument, BA (Iraq) essentially provides supplementary guidance, alongside the main framework which has been amended since 2015.

### Scope

12. We have set out the facts of the appellants' cases and the state of the current guidance at some length in order to explain and contextualise the scope of our task. In each of the appeals before us, the appellant's claim under the Refugee Convention has been finally determined. It would not be appropriate, in those circumstances, to embark upon a general consideration of risk categories in Iraq under that Convention. Although the first and second appellants' written submissions seemed on occasion to range into that territory, Mr Knafler accepted orally that no issues under the 1951 Convention arose before us. He clarified that the risk categories relied upon in the written submissions were relevant to the "sliding scale" question of whether an individual with particular characteristics might be more specifically affected by indiscriminate violence under Article 15(c) of the Qualification Directive: Elgafaji v Staatssecretaris van Jutsitie (C-465/07); [2009] 2 CMLR 45 refers, at [39].
13. In light of the above, the issues which arise in these appeals are as follows:
  - (i) Whether there are substantial grounds for believing that an individual returned to Baghdad or a formerly contested area<sup>1</sup> would face a real risk of being subject to indiscriminate violence amounting to serious harm within the scope of Article 15(c).
  - (ii) Whether the general humanitarian situation in those areas is such that an individual, if returned, would suffer harm contrary to Article 3 of the European Convention on Human Rights (and therefore conditions contrary to Article 15(b) QD) if returned.
  - (iii) Whether that risk, if found to exist, can be avoided by internal relocation.
  - (iv) Whether amendments need to be made to the Tribunal's extant country guidance in respect of the circumstances in which a Civil Status Identity Document may be obtained and/or is required to travel in Iraq.

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<sup>1</sup> A 'contested area' is to be distinguished from a 'Disputed Territory'. The former term relates to an area which was under the control of ISIL; the latter relates to an area to which the Kurdistan Region of Iraq and the Government of Iraq both lay claim, as recognised in Article 140 of the Iraqi Constitution.

## SECTION B – BACKGROUND MATERIAL

14. Substantial amounts of background material were adduced by the appellants, including recent reports from the UNHCR, the European Asylum Support Office<sup>2</sup> and a letter from Amnesty International which was written specifically in connection with the fourth of the questions set out above. For her part, the respondent adduced statements from officials, documents exhibited to those statements and Country Policy and Information Notes. Mr Thomann, Mr Knafler and Mr Bazini also made reference to the opinions of various commentators on Iraq, including Joel Wing, the author of an established and reputable blog called Musings on Iraq and Michael Knights, Senior Fellow of the Washington Institute for Near East Policy. As in AAH (Iraq), however, the principal evidence to which counsel referred came from Dr Rebwar Fatah.

### **Overview of Dr Fatah’s Evidence**

15. Dr Fatah is, as the Upper Tribunal noted at [7] of AAH (Iraq), well known to this Tribunal. He is a British citizen who was born in the IKR. His academic qualifications including his doctorate are in Physics. He worked for a variety of private companies in the UK before setting up Middle East Consultancy Services in 2000. His expertise is in the Middle East and North Africa and he describes himself as a ‘MENA specialist’. He speaks Kurdish Sorani and Arabic and is able to converse in Farsi, Pashto and Dari also. As an expert on the region, he undertakes three main types of work: expert reports on the background situation; document authentication; and nationality assessments. Since 2000, he has produced more than 2000 expert reports, which have been relied upon in immigration, family and criminal proceedings. As well as providing reports in various country guidance appeals, Dr Fatah has been commissioned to undertake projects for organisations such as UNHCR and the International Office for Migration. He travels regularly to Iraq, and was most recently in Sulaymaniyah in October 2018. He has spoken publicly in the UK and abroad about the Iraq and the region as a whole.
16. In AAH (Iraq), Dr Fatah’s evidence was described as insightful, helpful, measured and well-sourced. Both counsel in that case submitted that he was an excellent expert. Similar submissions were made before us and we have no hesitation in endorsing those submissions. The depth and breadth of his knowledge on Iraq is readily apparent, as was his desire to remain absolutely impartial. He refused to be drawn into speculation, preferring always to justify his opinion with reference to an identifiable source. We were impressed with his reports and with his oral evidence and have been greatly assisted by him.
17. Dr Fatah’s main report was completed on 22 March 2019. It runs to 1055 paragraphs, spanning 166 pages of single-spaced type. He stated in oral evidence that it is the lengthiest report he has ever produced.
18. Having set out his credentials, his instructions and the facts of the individual cases, Dr Fatah turns to explaining the division of control in certain parts of Iraq. With reference to the map which we have reproduced at Annex C, Dr Fatah identifies the Disputed Territories, which include parts of the governorates of Ninewa, Kirkuk, Salah al Din and Diyala. He explains that the Kurdish Regional Government (“KRG”) gained autonomy in 1991 and governed the Dohuk, Erbil and Sulaymaniyah governorates. Saddam Hussein was removed in 2003, after which the KRG gained some de facto control over parts of the Disputed Territories. When

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<sup>2</sup> EASO was established on 19 May 2010 under European Union Regulation 439/2010. Its stated aims are “to increase the cooperation of EU Member States on asylum, improve the implementation of the Common European Asylum System, and support Member States under pressure.”

ISIL began to expand across the region in 2014, the Iraqi government forces fell back, thereby enabling yet further expansion by the KRG authorities into the Disputed Territories. In September 2017, the KRG authorities held an Independence Referendum, despite the lack of international support for such a move. In the aftermath of that referendum, the Prime Minister of Iraq ordered that much of the Disputed Territories should be reclaimed from Kurdish forces. There were some clashes, particularly around Kirkuk, but the KRG forces eventually withdrew and were effectively pushed back to the 1991 borders.

19. Dr Fatah considers the dysfunctional nature of the political situation in the IKR and explains that the relationship between the autonomous region and the Government of Iraq ("GOI") has deteriorated as a result of the referendum. Religious fundamentalism has increased in the region and the rift between the two main political parties (the Patriotic Union of Kurdistan and the Kurdistan Democratic Party) has worsened. The KRG and the GOI remain locked in disagreement over the Disputed Territories, and about Kirkuk in particular. Disputes over the right to export oil from the IKR only serve to increase the tension. Iraq itself held elections in May 2018 and Adil Abdul-Mahdi became Prime Minister, although his position is a difficult one, since it was only earned by consent from all political blocs. The security situation is complicated by the presence of Shia militia known as the Popular Mobilisation Forces or Units ("PMF" or "PMU") in the country. The most powerful of these militias have ties to Iran and whilst they have technically been under Baghdad's control since 2016, they answer to their Iranian sponsors. Dr Fatah opines that the current level of insecurity in Iraq is rooted in a number of socio-political circumstances. He identifies sectarian and tribal divisions, poverty, the loss of command and structure in the army, ISIL cooperation by politicians and the role of force in political legitimacy.
20. Sections 8 and 9 of Dr Fatah's report consider the security situations in the IKR and Disputed Territories and the part of Iraq which is controlled by the Government of Iraq ("GOI") respectively. Dr Fatah's own summaries of those sections are as follows:

*Section 8 - The IKR and Disputed Territories*

[443] The objective evidence provides that the IKR and Disputed Territories are unstable due to recent political developments. This will affect issues of relocation to the region. Usually, the IKR hardly ever experiences violent attacks. Security incidences are notable because of their rarity in the IKR. However, growing tensions between the Gol and IKR have resulted in an unstable situation. Moreover, there was a notable terror attack in Erbil in July 2018. The general profile of those that are at risk/ have been targeted within the IKR include persons residing within PKK majority areas due to indiscriminate Turkish bombings. Moreover, those that protest against the KRG have been forcibly dispersed and sometimes killed.

[444] The Disputed Territories are - and have been, since 2003 - the most unstable. These are the provinces in which Iraq's different religions, ethnic groups and political ideologies collide. This is where the vast majority of those casualties listed above take place.

[445] The current situation in Salahuddin<sup>3</sup> is volatile. In Tuz Khurmato, displacement and civilian casualties are occurring due to conflict between the "White Flags" group, the Kurdish Liberation Army, and PMU forces; whereas

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<sup>3</sup> There are various different ways of spelling the name of this governorate. We have used that which is most frequently encountered in the background material: "Salah Al Din"

ISIS sleeper cells have organised attacks in Tikrit. According to Michael Knights, a senior fellow at the Washington Institute for Near East Policy, Tuz Khurmato is "the most violent, most divided place in the country" due to their being "so many layers of conflict". The situation in Tuz is considered to be very unstable due to the presence of various armed groups in addition to ethno-sectarian violence. As with elsewhere in the Disputed Territories, civilians are at some risk of indiscriminate attacks by insurgent groups. Security forces and village chiefs, or mukhtars, are at risk of targeting by ISIS and other armed groups. There have also been reported kidnappings by Shia militia groups, and Iranian pilgrims have also faced targeting here.

[446] While the majority of recorded attacks in Kirkuk governorate following the referendum appeared to be insurgent attacks targeting military personnel, there has been an increase in documented civilian attacks there. Moreover, ISIS has regained territory on the Kirkuk / Salahadin border. Based on the objective evidence, civilians in Kirkuk face some risk of indiscriminate targeting by insurgent groups. A number of reported incidents documents the killing and wounding of civilians here by planted explosives. Such groups also target both Gol and KRG security forces, particularly at checkpoints. Insurgent groups in the area have also been reported to abduct minorities, including Kakais.

[447] It is plausible to assume that the targeting of the Asayish member and the instance of a Kurdish man being shot at by a passing car indicates tribal activity.

[448] Ninewa, a disputed and formerly-contested area, is considered to have a very high level of security incidents. Based on the objective evidence provided below, civilians face a level of risk of indiscriminate attacks by insurgent groups. While ISIS is still present in the region via sleeper cells, security forces are particularly targeted by this group.

[449] Diyala too has a very high level of security incidents. While in December it was reported that only sporadic ISIS cells remain, recorded attacks constitute a threat to civilians living there. Due to indiscriminate targeting by insurgent groups, it is considered that all citizens here face some level of risk. The security forces are also largely targeted by such groups, particularly at checkpoints. The objective evidence also demonstrates the targeting of a judge, Turkoman politicians and their families, and foreigners. Moreover, the targeted death of Kurdish citizens here may indicate tribal forces.

[450] Generally, in areas where militant groups continue to pose a risk, particularly in Kirkuk, Salahadin, Anbar, and Ninewa, individuals who are authority figures, such as security personnel, mukhtars, and volunteers who fought against ISIS may face a targeted risk. Regular civilians face some general risk. In areas where militants pose a more sporadic threat, civilians may face a greater general risk, but a lower targeted one.

#### *Section 9 – Iraq Proper*

[541] Going back to late-2013 southern provinces have often experienced weeks or months between reported incidents and conflict-related casualties. In the beginning of January 2016, there was some increase in the levels of violence as security forces that have been redeployed in the fight against ISIS has resulted in a security vacuum in some parts of the South of Iraq. Security incidences in comparison to the rest of Iraq is relatively low, however the existence of ISIS



sleeper cells, Shia militia, and tribal disputes demonstrate an existing level of potential risk for those that live there.

[542] It is the third area of the country (Baghdad, Anbar and the 'Disputed Territories') that are - and have been, since 2003 - the most unstable. These are the provinces in which Iraq's different religions, ethnic groups and political ideologies collide. This is where the vast majority of those casualties listed above take place.

[543] In 2017, Baghdad recorded the highest number of security incidences across the country and until the start of the military offensive in Ninewa, Baghdad was continuously the worst affected governorate. In recent months, registering dozens of casualties every month. ISIS has stepped up its bombing campaigns as it seeks to reassert power while the group loses control of large swathes of territory it once held. The ISF have been incompetent in foiling large-scale attacks and protecting civilians.

[544] Following the liberation of Iraqi population centres from ISIS rule, ISIS has been relegated to parts of the desert in Anbar along the border with Syria. While this means that citizens are no longer living under ISIS, it does not mean that the threat has been removed entirely, as sleeper cells may continue to pose a threat in various parts of the country. Other than ISIS, there are further security issues remaining in Iraq, particularly the ongoing tension between the federal Iraqi authorities and the Kurdish regional government, which has already led to clashes between the Peshmerga and the ISF and its associated Shia militias and the displacement of thousands from the Disputed Territories. Shia militias are also reported to have committed atrocities within many of these disputed areas. Reprisals against Sunnis from formerly ISIS-controlled areas and the continuous persecution of ethnic and religious minorities also remain a concern.

[545] Today the level of security incidences and civilian casualties remain high.

21. Section 10 of Dr Fatah's report describes the composition of the various security forces in Iraq, including the PMF, the Peshmerga and the Iraqi Security Forces (ISF). Section 11 is devoted to risk profiles in GOI-controlled Iraq and section 12 to risk profiles in the Disputed Territories. We will consider below the extent to which these risk profiles are relevant to the sliding scale assessment required by Elgafaji. Sections 13 to 16 consider the influence of international actors with Iraq. In section 17, Dr Fatah reiterates evidence he has given previously about the need for a CSID in order to travel in Iraq. He updates that evidence, with particular reference to the Iraqi National ID card ("INID"), and responds to the respondent's evidence that an individual can use other documents, including a Laissez Passer or a 'Certification Letter' in order to travel internally. Section 18 considers the possibility of internal relocation within Iraq and section 19 contains Dr Fatah's overall conclusions.
22. The respondent asked 32 written questions of Dr Fatah. He prepared an additional report on 18 April 2019, containing responses to each of these questions. On 21 June 2019, days before the hearing of the appeals, he prepared an updating report which was handed up (without objection from Mr Thomann) on the first morning of the hearing. The report takes the form of an update on the security situation in Makhmour, Anbar, Hawija and the IKR as a whole.
23. We heard from Dr Fatah on the first and second day of the hearing. Having confirmed the accuracy of his reports, he was examined by Mr Knafler and Mr Bazini before being cross-

examined by Mr Thomann. Mr Knafler and Mr Bazini each had a few questions in re-examination before we asked several questions of our own, from which counsel asked questions arising.

24. We turn in the next part of this judgment to provide a more detailed summary of Dr Fatah's evidence about the Formerly Contested Areas and Baghdad. In respect of each governorate, there is also reference to the reports produced in March 2019 by the European Asylum Support Office ("EASO") and to the very recent posts on Joel Wing's Musings on Iraq blog. We have naturally considered all of the background material before us but these three sources are notably well researched and recent, and offer qualitative and quantitative analysis of the individual areas in question. For the avoidance of doubt, however, our conclusions are drawn from the evidence as a whole.

### **Kirkuk Governorate**

25. Kirkuk city lies approximately 150 miles north of Baghdad and gives its name to the governorate of which it is the capital. It is a disputed territory and is highly desirable due to the presence of oil reserves. Insurgent groups including ISIL and its predecessor, al Qa'eda, have been active in the area since 2003. It has routinely recorded high levels of violence.
26. The Iraqi army and PMF forces seized control of Kirkuk from Kurdish forces after the Kurdish Independence Referendum and Kurdish officials were removed from office. There are growing fears of an Arabisation campaign in the region because such policies have been pursued in the past due to a desire on the part of Baghdad to retain control of Kirkuk's oil reserves. Dr Fatah referred in his oral evidence to Baghdad 'changing the equation' in the same way Saddam Hussein had done, and described Shia emblems and place names currently being used in Kirkuk pursuant to such a policy.
27. ISIL continues to operate in the region. In his first report, Dr Fatah states that recent search operations by Iraqi Security Forces had uncovered ISIL hideouts in the region and that insurgents had continued to make random and irregular hit and run attacks, the aim of which was to destabilise the security situation in Kirkuk. In March 2018, following a wave of attacks, a Kurdish MP expressed concern that ISIL was regrouping in the area. The MP claimed that Kirkuk was no longer safe as the ISF had been unable to prevent ISIL launching attacks against the civilian population.
28. In his main report, Dr Fatah considered that civilians in Kirkuk face 'some risk of indiscriminate targeting by insurgent groups'. He documents a number of instances of civilians being killed and wounded by explosives and refers to further incidents in which ISF and KRG security forces have been targeted, particularly at checkpoints. Insurgent groups had also been reported to abduct minorities, particularly Kakais. Having reviewed security incidents from the start of January 2018 to 25 February 2019, Dr Fatah concluded that the majority of recorded attacks in Kirkuk after the referendum appeared to be insurgent attacks against military personnel although civilian casualties had also been recorded. ISIL was reverting to its old tactics of hit and run attacks and had retreated into caves, particularly in the Hamrin mountain range near the city of Kirkuk.
29. Dr Fatah's more recent report – of 21 June 2019 – provides a focused update on Hawija, a city which is 45 kilometres to the west of Kirkuk. He states that Hawija is under the control of Sunni Arab armed groups affiliated with the Popular Mobilisation Forces ("PMF"). There were reports of PMF abuses against civilians during the battle for Hawija in early October 2017. Many residents had fled from Hawija during the battle and remain displaced in an IDP camp in Laylan, although one such camp closed in February 2019 following the return of 402 IDPs to their homes in Hawija. Médecins Sans Frontieres ("MSF") had described the

conditions in Hawija as dire, with episodes of violence and particular insecurity along the highway. A curfew is in place at night and 35% of primary health centres remain non-functional, leaving many patients' needs unmet. Citing the March 2019 EASO report, Dr Fatah stated that ISIL activity in Kirkuk was limited but that there were pockets of fighters in Hawija and in the Hamrin mountains. He documented five security incidents between 1 October 2018 and 25 May 2019. The final incident, on 25 May 2019, was the explosion of an Improvised Explosive Device ("IED") in the al-Hawija District of Kirkuk, which killed four civilians and wounded two others. The other incidents were the destruction of 247 acres of wheat through fire; the discovery of an ISIL hideout in Hawija; the discovery of a mass grave near Hawija, believed to contain ISIL victims and the destruction of an electricity pylon in Hawija by ISIL.

30. Examined by Mr Bazini on the specific circumstances in Kirkuk, Dr Fatah stated that it was 'fine' but that Hawija was 'ruined'. He emphasised that the problem with the area was its control and that a person who had lived there since the 1970s would have seen it change hands on several occasions. Kirkuk was specifically identified in the Iraqi Constitution as a Disputed Territory whose governance would be finally decided by 2007 but that process was still to be completed.
31. Cross-examined by Mr Thomann on the situation in Kirkuk, Dr Fatah explained that it was only the area around Hawija which had been controlled by ISIL. Kirkuk was an ethnically diverse area, with Kurds, Arabs, Turkmen, Christians and Assyrians. When the Iraqi authorities had taken control of the area, many Kurdish people had fled their homes to two IDP camps, although some people had returned. The administration had left and there were arrest warrants issued against a number of them, including the Head of the Kirkuk Provincial Council. Referred to [856] of his report, Dr Fatah stated that the PMF's role in Kirkuk was to keep ISIL out. They had been searching houses but they now parked their vehicles on the main roads in the area. The Kurds and the Turkmen wanted them to retreat but that had not happened. He did not accept the suggestion by the Danish Immigration Service ("DIS") that the PMF had left Kirkuk, although he did not know the numbers of PMF which remained there. The local police and the counter terrorism unit might be present in the city but the PMF remained. If the DIS were correct and the PMF had withdrawn, that would be very positive because the PMF were unpopular with residents. There remained a need to reinstate the local authorities nevertheless.
32. Dr Fatah was asked about the statement at [757] of his first report that the level of violent incidents in Kirkuk still remained "considerably high". Mr Thomann asked whether it was his view that the tension in the area was high during the process of reconciliation (following the Referendum). Dr Fatah stated that it would be beneficial if there was a sensible conclusion between the GOI and the KRG over the area. They needed to have a local election and reinstate the system they had before; bringing people from Baghdad was no good. They needed to build the local police because the federal police were not trusted. The security incidents in the area are very low. ISIL had not controlled Kirkuk, apart from Hawija, and the area was now essentially clear of ISIL. Controlling Kirkuk would be easier if the population trusted the security services.
33. Dr Fatah was asked about the Hamrin mountain range. He said that ISIL maintained a presence there and that there was another group which called itself the White Flags, which was also present in the area. The mountain range was south of Kirkuk and straddled governorates, reaching down towards Baghdad. Dr Fatah was referred to the Musings on Iraq blog for April 8-14, in which it was stated that a number of documents had been captured from ISIL. He stated that this was militarily significant. It could not be disputed that ISIL had lost control of parts of Mosul and Kirkuk Governorate but it had changed its

tactics to guerrilla warfare. They were using tunnels, as they were in Anbar. There was no doubt that their military capability had been reduced.

34. Dr Fatah was asked about the Revenge of the Levant campaign, which was announced by ISIL in April 2019. He stated that this was very naïve and that ISIL had not gained much. As an insurgent group, their recent pattern was to choose high profile targets and he did not think that they were going to rebuild capacity and retake Mosul. Dr Fatah was referred to the latest Musings on Iraq blogs, from 15 April to early May. He was referred, in particular, to a graph which showed the number of attacks in Kirkuk from January 2018 to April 2019. A summary above the graph suggested that attacks in Kirkuk had gone down since the start of the year but that ISIL was 'active in all districts in the Province, and has access to Kirkuk city'. Dr Fatah agreed with the graph and the assessment, stating that it was similar to what he had provided.
35. Dr Fatah agreed that the level of violent incidents in early May had been very low but that there had been a spike in late May, when ISIL had been responsible for burning farms. He said that this was co-ordinated in order to destroy the livelihood of the farmers. He agreed with the Musings blog that the level of attacks in late May 2019 was the highest it had been since October 2018 and that the picture was variable. There had been more recent targeting of the security forces in the region. Dr Fatah agreed that despite the Revenge of the Levant campaign, it remained the case that ISIL was not capable in this region of causing widespread chaos. He said that the trend was one of 'hit and go' targeting of specific individuals. This was why there would be an incident in which 20 people were killed, followed by no activity, followed by an incident in which a further 5 people were killed. ISIL clearly wanted to be efficient and they were still causing trouble.
36. Dr Fatah was referred to the United Nations Assistance Mission in Iraq ("UNAMI") casualty figures for Kirkuk, which he said were lower because they did not include combatants. The trend, he said, remained the same. He was asked to explain the numbers, which showed that the total numbers of those killed or injured in Kirkuk were 852 (2014), 299 (2015), 747 (2016), 112 (2017) and 155 (2018). He suggested that the number was particularly high in 2014, when ISIL rose in the area, and in 2016, at which point a number of mass graves were discovered. He agreed that there was a 'lag' in the figures, caused by the discovery of mass graves; the figures did not mean that people had been killed at that time. Dr Fatah agreed with Joel Wing, the author of the Musings on Iraq blog, who said that Kirkuk stood out because ISIL had been able to regularly attack Kirkuk city. He agreed that this view was expressed in August 2018, however, and that matters had changed since ISIL lost Hawija, which had been their hub. They now had to use sleeper cells and were in the process of restructuring.
37. Dr Fatah stated that the humanitarian situation in Kirkuk was challenging, and agreed with the assessment by MSF that it was 'dire'.
38. Re-examined by Mr Bazini about Kirkuk, Dr Fatah said that the population of Kirkuk was around 1.5 million people and the districts in which there were permanently operating ISIL attack cells had a population of around half a million people. There was a durable support base for ISIL in some towns and villages and it was able to move freely and expand in the area. Kirkuk was bad and suffered from a lack of infrastructure. He was not able to state that Hawija was a contested area, as defined, but it was bad and had no infrastructure. There was also the White Flag group which had begun to establish itself in the area. Wherever there was community support for such groups, they would remain. There was a security vacuum in the area and it would remain fragile and complex until the political problem was solved. A large number of IDPs had not returned to the region, some of whom would be linked to Kurdish forces. The situation in Kirkuk was vulnerable. It had the

physical infrastructure but the political and social structure was very vulnerable. Kidnappings and assassinations occurred at checkpoints, particularly in rural areas around the city.

39. In addition to the evidence of Dr Fatah, the advocates referred regularly to the detailed reports from EASO. The reports were published on 11 March 2019. The first contains a general overview of the security situation in Iraq. The second contains an examination of the security situation in the governorates.
40. Section 2.4 of the EASO report considers the situation in Kirkuk. Like Dr Fatah, the EASO report emphasises the ethnic diversity of Kirkuk and the long-standing struggle over the control of the governorate. It records the International Crisis Group as stating that the area has experienced 'the worst turbulence' in recent years. ISIL took over the region around Hawija when the Iraqi army collapsed in 2014. The PUK moved in and controlled Kirkuk city between 2014 and 2017, during which time there was a standoff between ISIL and the Peshmerga, with repeated clashes along the southern and western parts of the city. ISIL controlled Hawija until it was expelled in 2017. From Hawija district, ISIL carried out attacks against the Kirkuk governorate from 2014. The area has seen significant displacement throughout the period.
41. ISIL was removed from Hawija by the ISF and the PMUs in early October 2017. In retaliation for the Kurdish Independence Referendum, Kirkuk city was retaken from the PUK Peshmerga by the ISF and the PMUs. Like Dr Fatah, EASO considers Hawija to be under the control of Sunni armed groups affiliated with the PMUs.
42. The EASO report quotes the Iraq Body Count ("IBC") as recording 126 security related incidents leading to 276 civilian deaths during 2018, a decrease compared to 2017 when IBC reported 175 incidents leading to 950 civilian deaths. The intensity of civilian deaths (which is deaths per 100,000 of the population) dropped from 62.9 in 2017 to 18.3 in 2018, placing Kirkuk as the governorate with the second intensity level in both years (behind Ninewa). The incidents were gunfire (34.9%), IEDs (31.7%) and executions or summary killing (28.6%). The number of ISIL attacks dropped from 39 per month in the first quarter of 2018 to 25.3 per month in the third quarter. EASO accords with Dr Fatah in stating that ISIL no longer controls any territory in Kirkuk governorate but that it retains pockets of fighters in Hawija and the Hamrin mountains. It retains permanently operating attack cells in Kirkuk, Hawija, Rashad, Zab, Dibis, Makhmour and Ghaeda and has durable support zones in certain areas, including leadership elements in the Hamrin mountains. In those areas where it enjoyed support, ISIL was able to move freely across the terrain at night and is actively waging attacks in order to expand its freedom of movement during the night. It assessed that Hawija and Daquq districts were contested, in that ISIL exerted physical and psychological pressure over the population, as indicated by abandonment of villages, targeted destruction of agriculture/infrastructure, repeated raids and assassinations of local social hierarchy. Kirkuk was ISIL's most prominent attack location in the first ten months of 2018. The level of security incidents and level of violence was still relatively high but was improving. What stood out was ISIL's ability to attack Kirkuk city, and most attacks appeared near the Hamrin mountains, hitting the south-western half of the governorate.
43. Small arms attacks, targeted assassinations and suicide vests were used in 2018 and attacks on local authority figures were particularly noted. This was considered to be part of ISIL's attempts to regain control over rural areas. Civilians continued to be at risk from IED attacks, and small arms fire. Numerous village chiefs were killed in October and November 2018 as part of ISIL's campaign to depopulate strategic areas. ISIL used its freedom of movement at night to kill farmers, burn houses and crops, destroy irrigation systems and

blow up tractors and irrigation systems. ISIL was reported in autumn 2018 to attack Kirkuk's towns and civilians and engaging in kidnapping, retaliation, and gun battles, including in the daytime. The use of fake checkpoints for ambushing and kidnapping had also been noted.

44. Other types of violence, particularly due to organised crime, political reasons or inter-ethnic land disputes were also noted in Kirkuk, as was election-related violence. There have been reports of the PMUs and the government forces being involved in criminality and one source suggested that two militias affiliated with the Badr organisation demand a protection tax from local traders and killed those who refuse to comply.
45. The PMUs tended to control the villages around Kirkuk city and to control entry to the city. The city itself was under the control of the local police and counter terrorism force. The Federal Police - who are perceived to be Shia from outside the area - were mistrusted by the local Sunni population. The Iraqi Counter Terrorism Force ("CTF") were generally perceived as being more professional. There is a heavy concentration of police garrisons in Kirkuk, which complicates ISIL's ability to operate. Nevertheless, they were often failing to protect civilians. According to the KRG, the departure of the Peshmerga in October 2017 was reported to have left a security vacuum in parts of Kirkuk, Diyala and Salah al-Din. This had allowed ISIL to operate there and to prepare attacks. Other sources suggested that the security situation in Kirkuk had improved after October 2017, although the situation was said to be fragile and complex. The intensity of the violence in Kirkuk was characterised as medium high, as it was in Salah al-Din and Diyala. A two week long offensive against ISIL in summer 2018 (called "Revenge of the Martyrs") had led to a significant decline in the number of attacks but ISIL cells were not completely uprooted from Kirkuk and attacks continued.
46. The White Flags reportedly launched attacks in the first half of 2018, including an attack on an oil field and the abduction and killing of passengers at checkpoints.
47. Kirkuk hosts a significant number of IDPs, albeit that the number reduced from 180,000 individuals in December 2017 to 108,000 individuals in December 2018. The majority come from within the governorate. The International Office for Migration ("IOM") reported in December 2018 that 319,000 IDPs originating from Kirkuk had returned to the governorate. Due to rates of return, the government closed Daquq camp in September 2018, causing hundreds of families to return to liberated areas. 75% of displaced families from Kirkuk city have returned and the families who are reluctant to do so are families of KDP or KDP Peshmerga members. High ranking PUK members are still displaced, although state employees and soldiers have been able to stay in Kirkuk.
48. The United Nations Office for the Coordination of Humanitarian Affairs ("UNOCHA") and the IOM reported that returnees to certain areas were at risk of secondary displacement because conditions for returnees were described as high or very high severity due to infrastructure destruction. Basic services remained limited and livelihood opportunities were low in urban centres and non-existent in rural areas. Those displaced from rural areas were reluctant to return without guarantees of protection and Hawija had been described in April 2018 as a ghost town. Some people had been refused resettlement in certain areas and others had returned to IDP camps from those areas - most notably Hawija. Ongoing military operations had caused some further, small scale displacement.
49. Focusing on civilian infrastructure, EASO quoted the World Bank as stating that 7% of housing in Kirkuk had been damaged. Health facilities had suffered and Hawija's five main health centres were partially or completely damaged. The report gave the same figure as Dr

Fatah in assessing that 35% of primary health centres were not functioning in Kirkuk governorate. Agricultural areas had been severely damaged during the conflict against ISIL. Around forty Kurdish villages west of Kirkuk had been depopulated and repopulated with Arab families. Reports of ISIL attacks on infrastructure targets in Kirkuk persisted into late 2018. Numerous roads around Kirkuk were considered to be 'primary risk and the highway between Baghdad and Kirkuk is one of the most dangerous routes in Iraq, with militant activities, fake checkpoints and explosions mentioned.

50. The Musings on Iraq blog by Joel Wing was also cited before us. Dr Fatah considered Joel Wing to be reliable, both as to his raw data and the inferences he drew from it. The value of the blog lies in the fact that it is very up-to-date and contains a breakdown of the types of security incidents on a week-by-week basis. Each post contains statistics concerning the number of type of security incidents, followed by the author's evaluation of the security situation. Amongst other activities recently reported in Kirkuk are the burning of farms (by ISIL) in order to intimidate locals and extort money; the exploitation of 116 abandoned villages in the south Kirkuk and North and East Diyala; assaults on checkpoints and gunfire.

### **Ninewa Governorate**

51. Ninewa is Iraq's north western governorate, lying to the east of Syria. Its capital, Mosul, is Iraq's second city and is more than 300km north of Baghdad. It is the third largest governorate geographically and has the second highest population (3.7 million in 2018). Mosul's population is approximately 1.5 million. Mosul is an important traffic hub, with direct connections to many parts of Iraq and to Syria and Turkey. It is the most ethnically diverse governorate, with Sunni Arabs, Kurds, Christians, Shabaks and Yezidis. Sunni Arabs constitute the majority but other groups share power and influence. The KRG controls two districts. The Ninewa Plains are home to the Christian and Shabak populations. The Turkmen are prominent in Tal Afar. In Sinjar and Lalish, the Yezidis are in the majority.
52. Much of the governorate is officially disputed territory between the GOI and the KRG. The border line of control is situated in the Ninewa Plains and in Tal Afar district.
53. After years of violent extremism and Sunni Arab nationalism in Ninewa, Mosul was taken by ISIL in June 2014. ISIL attacks in Sinjar and other areas displaced nearly 1 million people in the following months. Under ISIL control, Ninewa's minority communities were subjected to torture, public executions, crucifixions, kidnappings and sexual slavery.
54. After a battle which lasted for nine months, Mosul was retaken by the ISF and the international coalition in July 2017. The battle for Western Mosul was particularly fierce and much of that part of the city was destroyed by heavy munitions. It is estimated that eight million tonnes of rubble were created. 54,000 houses were destroyed and 64,000 families were displaced. Significant amounts of unexploded ordnance remain, as do booby-traps set by ISIL. Estimates of the numbers of civilians killed during the three year conflict range widely. There were even reports of ISIL killing civilians who tried to leave Mosul. We have already recorded above that, of the 202 mass graves reported by UNAMI in November 2018, 95 were found in Ninewa, especially around Mosul and Sinjar. Estimates of the number of victims found in these sites range from 4000 to 15,000.
55. In his first report, Dr Fatah adjudged the current situation in Ninewa to be unstable. Although ISIL controls no territory in Ninewa, it remains active and is concentrated in areas close to the Iraq-Syria border and in the Badoush area between Mosul and Tal Afar. Various armed groups and extremist sleeper cells operate in the region.
56. Dr Fatah noted that the IOM documented more than a million returnees to Ninewa by

January 2018, although the same report noted that conditions were largely un conducive to safe and dignified returns, with security as the main hindrance. Basic services were said to be improving in East Mosul in January 2018 but the situation in Western Mosul and Old Mosul were poor, with no electricity or water services.

57. UNAMI reported that Ninewa was the worst affected governorate in December 2018, with 26 civilian casualties (7 killed, 19 injured). Dr Fatah states at [374] of his report that civilians face 'a level of risk of indiscriminate attacks by insurgent groups; that ISIL is still present in the region in sleeper cells; and that security forces are particularly targeted by this group. He supports those conclusions with reference to 11 security incidents between 6 January 2018 and 27 January 2019. The three incidents in 2019 relate to the detection and elimination of ISIL units and facilities. The incidents on 25 August 2018 and 1 June 2018 were also of that nature. The remaining six incidents involved ISIL activity.
58. Dr Fatah helpfully dedicated a separate section of his first report to the situation in Sinjar. Sinjar was 80% destroyed during the conflict, he reports, and low numbers have returned. There is a significant challenge to rebuild communities by providing security and basic services, addressing public grievances and seeking accountability and justice so that people can return to their homes and communities. Sinjar falls within disputed territory and the dispute creates a situation of chronic insecurity. There is deep mistrust between the various ethnic groups in the area and a range of armed actors operate there.
59. In response to the respondent's written questions, Dr Fatah stated that the theme of the more recent incidents in Ninewa indicated that ISIL was operating a more selective approach to targeting victims. Those working for the security services were targeted by ISIL and vice versa. Major security issues nevertheless remained. Bodies with gunshot wounds had been discovered in Mosul. There had been instances of abduction and the area was still affected with explosive hazards such as mines. There had also been reports of indiscriminate violence against civilians.
60. In his 21 June 2019 report, Dr Fatah provided an update on the security situation in one specific part of Ninewa: Makhmour, which is part of the Disputed Territories and is administered by Ninewa, although Erbil lays claim to it. The Peshmerga withdrew from Makhmour in October 2017. ISIL had held the area for two days in August 2016 before being forced out by Kurdish forces. Most residents fled before ISIL arrived in order to avoid their atrocities. Since the city has been recaptured, there have been reports of attacks. In April 2019, the US army spokesman said that ISIL was attempting to 'refit, reorganise, and recruit in the vicinity of Makhmour'. This followed activity during 2017, including bomb blasts and ambushes on security forces. It was reported that ISIL had a renewed presence in the area, particularly in the rural parts. In early summer 2019, there were a number of reports of agricultural fires after farmers in the area had been the subject of extortion demands by ISIL members. It had been reported that ISIL were becoming increasingly brazen in the area; whilst they were clustered in caves and ravines, they approached the local population more often and seemed to have a support base in the area. ISIL cells plainly remain active in the area and sporadic attacks continue. ISIL have been recruiting in the area and threatening the locals in order to obtain money and livestock. Dr Fatah concluded that the security vacuum had deepened in this area and the situation had worsened dramatically, with a vast increase in the number of attacks and a more brazen approach to interaction with the local populace.
61. In answer to questions from Mr Bazini, Dr Fatah stated that Mosul had been razed to the ground and that a recent international estimate suggested that the cost of rebuilding would be in the region of \$60 billion US. He said that ISIL had been everywhere, and had even wired up fridges as booby traps so that soldiers who subsequently opened them would be



killed or injured. There was not much infrastructure left, whether housing or drinking water. Some refugees had returned. The international community had pledged vastly less than the \$60bn required. He had not been to Mosul himself. ISIL had treated Mosul as their capital in Iraq. The Christians had been expelled. They had destroyed the Yazidis. They had destroyed various mosques and anything which did not conform to their beliefs. They had destroyed historical sites across Ninewa and had executed intellectuals including university lecturers who did not agree with their ways. The infrastructure had existed whilst ISIL were in occupation but the city had been destroyed in the effort to get them out.

62. Cross-examined by Mr Thomann, Dr Fatah stated that the ethnic make-up of the region was more complex than Kirkuk or Diyala. In Mosul, it was really fascinating. Before ISIL, it had been divided along medieval lines, with different groups having their own sections of the city. Dr Fatah's father had worked there and he had seen Kurds there in Arab dress, such was the diversity. There was a large Kurdish population but also a significant Sunni presence; one of Saddam Hussein's sons had been killed there whilst in hiding. Some places in the city were operating but there were booby traps and other risks.
63. As to the risk from ISIL in the region, Mr Thomann suggested to Dr Fatah that there were sporadic and irregular attacks and that the pattern was generally of the security forces targeting ISIL and vice versa. There were relatively few incidents relating to civilians. Dr Fatah confirmed that this was the new ISIL strategy. As for the return of IDPs, he said that Mosul was very complicated but that people had returned to Sinjar. In Sinjar, ISIL had operated a policy of killing the men and taking the women to Raqah as sex slaves. The challenge was to see whether the ancient Yazidi community could be rebuilt after such trauma. This was particularly difficult when it was recalled that the Yazidi blood line came from the mother. Fifty two mass graves of Yazidis had been discovered in the region.
64. Dr Fatah was asked about the significance of governors and civil servants beginning work again in the region. He said that this was a very positive sign because they were no longer in fear. Referred to an article in the respondent's bundle about East Mosul which recorded students and shops operating there, Dr Fatah said that it was possible that it was not as badly destroyed as the rest of the city. The first opportunity people had to return to their home area, they would do so. It was fair to say that life was returning. ISIL could not invade the city any more, although that may change in the future.
65. Mr Thomann asked about the update on the situation in Makhmour. Dr Fatah explained that it was a remote area in Ninewa, although the respondent treated it as being part of Erbil. He had highlighted the situation there because of recent security incidents, particularly the burning of crops by ISIL cells. This was another strategy used by ISIL to cause trouble. It was possible that they were hiding in the mountain range nearby
66. Re-examined by Mr Bazini, Dr Fatah stated that Mosul was terribly bad and mostly destroyed. The structures in the city were either not standing or unsafe. There were no mosques remaining. There were dead bodies and all sorts of diseases there. The only real solution in the area was political and ISIL could not be defeated long-term otherwise. The PMU and other actors do not provide security for the people and their roles are not defined. There was no operational police force and now, if you knew an influential person, you could get away with murder. He pointed out that there was no one to stop ISIL or the abuse of power by the PMU, and reminded us that the PMU were not under the control of an elected body.
67. Dr Fatah was referred to a BBC News Article which suggested that the western side of Mosul was in ruins, whereas the east side was functioning. Mr Thomann had suggested that there

some day to day life in that part of the city, despite major problems remaining. Dr Fatah responded that most of the people had worked in the destroyed part of the city. It would be positive when they started to rebuild the city. It had not been an industrial city but there had been a major factory there and some agriculture. Mosul was not like any other place in Iraq; it had historically narrow roads and people used to go there for city breaks but that was not the case now. Many people from there had gone to Baghdad or the IKR.

68. The EASO report dedicates section 2.5 to Ninewa. It describes the plethora of armed groups operating in Ninewa under the following headings: formal Iraqi Security Forces (“ISF”); Popular Mobilisation Units (“PMU”); Kurdish Security Forces; militias aligned with the KRG; non-aligned militias; foreign forces; and insurgents. Ninewa governorate had been divided into three areas of control. Mosul city was controlled by the local police. The outskirts of the city were controlled by various PMUs which are both Shia and local militias. The rest of the governorate was controlled by the Iraqi army, which retains a large presence in the governorate. The image of the army in Ninewa has improved significantly. It plays a significant role in securing Mosul by manning checkpoints and playing a role in decision making. The increased popularity of the army stems from the local population’s preference for the army over the Shia militia.
69. Considering the presence of ISIL in the region, EASO reported that ISIL exerted a great deal of physical and psychological pressure over populations even if it did not meet the doctrinal definition of control. ISIL could not hold terrain but there were a number of indicators that it was contesting control. The picture is strikingly similar to that in Kirkuk:

These indicators include the abandonment of populated villages, destruction of agricultural products and infrastructure, repeated raids, and assassinations which target the local security hierarchy’. ISW further noted that in these areas civilians cannot rely upon security services for adequate protection.

70. EASO quotes Michael Knights as stating that ISIL has permanently operating attack cells in at least 27 areas of Iraq, including the following areas in Ninewa: Mosul, Qayyarah, Hatra and the Iraq Turkey pipeline corridor south west of Mosul, Badush and Sinjar. Mr Knights had suggested that in various parts of Iraq, including southern Ninewa, ‘the reality is that the Islamic State still rules the night, meaning that key parts of the country have only really been liberated for portions of each day’. It was estimated in January 2019 that there were at least 300 ISIL fighters in sleeper cells in Mosul, ‘ready to move when the opportunity arises’. ISIL controlled no territory in the governorate but it was concentrated in more remote areas. Attacks were carried out at night on a regular basis, taking the form of explosions, killings and assassinations. Sources from the US Consulate in Erbil and USAID were reported to have drawn a distinction (in November 2018) between the threat posed by ISIL to the civilian population in Kirkuk, where it was seen as a threat to the security actors and authorities, and in Ninewa, Diyala and Anbar, where ISIL “would also be a threat to the civilian population.”
71. EASO reported the following UNAMI casualty figures for Ninewa: 2014 (2158 killed and injured), 2015 (899), 2016 (2791), (2621) and 2018 (182). Considering the IBC figures for the governorate, it was noted that there were 600 security incidents in 2017, leading to 9211 civilian deaths, and 217 security incidents in 2018, leading to 1596<sup>4</sup> civilian deaths. The governorate still had the highest intensity of violence in Iraq, with 46.46 civilian deaths per 100,000 in 2018, compared with 265.15 per 100,000 in 2017. Mosul, Sinjar and Tal Afar were

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<sup>4</sup> The obvious differences in the figures collated by UNAMI and the IBC has been discussed in previous cases and is helpfully explained by Dr Fatah at [457]-[465] of his first report and at [107]-[112] of HM2.

the most dangerous areas. Most incidents recorded by IBC were executions/summary killings (44.7%), gunfire (32.3%) and IEDs (18.9%).

72. ISIL had continued to perpetrate asymmetric attacks in Ninewa, as it had in other governorates, during 2018. According to Michael Knights, ISIL had focused on rural insurgency in Ninewa after losing Mosul. It had focused on the areas named above. It had produced 62% 'quality attacks' in the first ten months of 2018, including 37 assassinations of local leaders. In the same period, there had been 17.1 ISIL attacks per month in Ninewa and 3 in Mosul city, the reason for which was thought by Mr Knights to be the group's inactivity in Mosul and there being 'practically no visible insurgent activity at all' in Tal Afar. Joel Wing noted that the group had not started attacking towns until the end of the year. The UN Security Council noted a tendency on ISIL's part to target local mayors for colluding with the authorities. Police and PMU members had also been targeted. IEDs and small arms fire had been the main cause of civilian deaths and one of the governorates in which ISIL posed a threat to civilians was Ninewa. At the end of 2018, ISIL had begun using heavily armed groups akin to special forces who were capable of outgunning isolated outposts and making highways and village roads too dangerous to use. Whilst security forces were continuing operations to clear ISIL from the area, attacks continued. In the latter half of 2018, a number of ISIL members had been arrested, an explosives factory had been discovered in Sinjar and 20 operatives had been killed in Badush, Ninewa. There was then a description of specific ISIL activities during the year, largely targeting authority figures but in which some civilians were also killed or injured.
73. EASO cited DIS and Landinfo as concluding that the violence in Mosul was perpetrated by the multiple armed actors as well as ISIL and that, in some cases, people were PMU members by day and criminals by night. There had been reports of clashes between the various security actors in Ninewa. There were reports of extortion by the PMUs and embezzlement of public funds. Fake PMUs were created in order to benefit criminally from these opportunities. The US withdrawal from Syria was thought to accelerate ISIL's resurgence and there had been no attempt to address the root cause which led to ISIL's rise.
74. By December 2018, more than a million were displaced from their homes in Ninewa, with more than half of those displaced within the governorate. It nevertheless ranks top in the governorates in terms of the numbers who have returned, with more than 1.6 million having done so at that point, although UNOCHA complained that forced returns had taken place, often leading to secondary displacement. Families with perceived ISIL links were prevented from returning to some areas of Ninewa and some families had been forcibly moved from villages near Mosul to camps in Ninewa due to such links. Mosul had by far the most returns, nearing 1 million individuals. Most had returned from other parts of the governorate although returns from the IKR were also noted. There had been very few returns to Baaj, where the Badr PMU is in control. Again, this was due to a prohibition on those perceived to be affiliated with ISIL returning there. Very few Yazidis had returned to Sinjar due to perceptions of insecurity and the KRG had hindered the return of this group to Sinjar, through pressure and incentives. More than 238,000 families who returned were likely to face some category of harsh conditions upon return, with 54% falling under the medium category and 29% in the low category. 15% were likely to face high severity conditions and 2% face very high. Sinjar is the area in Iraq to which people are least willing to return. The highest number of people in need are in Ninewa: more than 2.1 million.
75. As in Kirkuk, there was evidence of ISIL targeting agricultural infrastructure in Ninewa. This was particularly so in Sinjar. The government's reconstruction plan had not yet addressed the problems and safe water remained a problem in areas of return. Like Dr Fatah, EASO highlighted the level of destruction in West Mosul and Sinjar but it also

highlighted other areas and towns, including Baaj, which was said to be the town with the highest level of destruction in Iraq. Baaj had no primary health facilities whatsoever. Western Mosul was still completely destroyed and almost no one returned to the city. Corpses and diseased posed a risk to health. Unexploded ordnance remained a threat. Road travel is difficult between Mosul and Sinjar due to the presence of 30 different checkpoints, each manned by a different group and with varying levels of control and predictability. Fake checkpoints are a phenomenon in Ninewa, as in other parts of the formerly contested areas.

76. The Musings on Iraq blog of the period April 1 - June 2019 sheds further light on the security situation in Ninewa. Joel Wing assesses Ninewa (amongst other parts of the formerly contested areas) to be the core area of ISIL's efforts to rebuild. Over this period, Mr Wing documented various types of ISIL activity in Ninewa, including farm burning and extortion attempts. In his 10 June blog, Mr Wings considered that ISIL were attempting to force taxes upon local farmers and to drive some out so that they can take over the villages: "Gaining towns is important because it allows training camps to be established so that ISIL can rebuild its cadres". He also documented a car bomb and other activity in Mosul, which showed that ISIL still had access to this major urban area. Earlier in the year there was a truck bomb in a market and a video-recorded execution of a peshmerga soldier in Sinjar. In the period 15-21 May, Ninewa residents reported that 30 villages in Ninewa had been emptied as the lack of security allowed ISIL to roam and carry out this new strategy. In the preceding week, the blog carried accounts of the targeting of local authority figures alongside a report that Ninewa Operations Command intended to arm villagers to repel ISIL activity. There were reports of extortion and militants hidings in caves and a local official said that ISIL were making a return to the governorate. Similar reports appeared, in respect of Baaj, in the final blog for April.

#### **Salah al-Din Governorate**

77. Salah al-Din lies directly to the north west of Baghdad. It has a population of over 1.5 million. Tikrit city is the capital of the governorate and was the birthplace of Saddam Hussein. It is considered an important centre of power for the Sunni Arabs. They are the predominant ethnic group but Shia Muslims, Turkmen and Kurds also live there.
78. ISIL captured the Tooz district in the summer of 2014. It also seized control of the oil town of Baiji in the north and the capital Tikrit. Other cities in the governorate withstood attacks and were unconquered. It was the first governorate in which control was regained from ISIL, with the insurgents removed from most of the key population centres by mid 2015. 130,000 IDPs returned in July 2015 and a further 360,000 returned by December 2016, almost all of whom were Sunni Arab. There were higher rates of violence after the removal of ISIL, however, including abduction and killing and the destruction and deprivation of property. This was largely attributed to the PMU.
79. The governorate also suffered in the wake of the Kurdish Independence Referendum. The ethnically mixed city of Tuz Khurmato, which lies just to the south of Kirkuk governorate, witnessed significant clashes between Peshmerga and ISF forces. On 16 October 2017, serious fighting between the two sides saw the death of 50 civilians as well as the looting of property by the local population. Heavy weaponry was used in densely populated areas in that month and in the months which followed and civilians were killed and wounded as a result. An estimated 35,000 people fled the city in the face of this violence and intimidation from Turkmen armed groups. Predominantly Kurdish residents were targeted in these actions, and in looting by other residents of the city. This was thought to be retaliation by the Turkmen population for perceived marginalisation by the KRG government. When the Kurds were expelled from Tuz Khurmato in the aftermath of the Referendum, the city was taken over by one of the most senior commanders in the Badr Organisation, one of the most

powerful Shia militia. He has reportedly developed a personal militia with the local Turkmen Shia, who are reportedly involved in looting, arms and drugs trafficking. Displacement and civilian casualties continue to occur in the area due to conflict between armed actors in the region, including the comparatively recently formed White Flag group.

80. As with other parts of the formerly contested areas, armed groups proliferate in the region, consisting of official Iraqi forces and police; PMUs; and other militia representing the ethnic groups in the governorate. There is a proliferation of militias and armed groups that are not under government control.
81. In his first report, Dr Fatah states that Salah al Din has been the centre of many insurgent attacks since 2003 and that it was second only to Baghdad in December 2017. He cites examples of abductions and attacks in 2018 but endorses the view expressed in the Musings on Iraq blog that ISIL might be reducing activity in this governorate as it focuses on Diyala and Kirkuk. Nevertheless, there remain small-scale attacks perpetrated by cells of fighters. Some attacks by sleeper cells have taken place in Tikrit.
82. Dr Fatah notes the importance of Baiji city to the oil industry, in that it houses the largest oil refinery in the country. It took months of battles to reclaim Baiji and much assistance was provided to the ISF by the PMUs. The city is still troubled by issues surrounding the oil industry. IDPs have been slow to return due to insecurity and the PMU directives. ISIL have planted roadside bombs in the area and the ISF has recently intensified efforts to locate and destroy the remaining ISIL presence.
83. Dr Fatah considers civilians to be at 'some risk of indiscriminate attacks by insurgent groups' in Salah al Din. Security forces and village chiefs are at particular risk of being targeted by ISIL or other armed groups. There have also been reports of kidnappings by Shia militia groups. Dr Fatah then gives 37 examples of security incidents during the period. Many of these incidents relate to the detection of ISIL cells and equipment, rather than actions by ISIL against the civilian population or the security apparatus. The remaining entries, however, relate to the use of small arms and explosive devices by ISIL and unidentified armed groups against authority and security figures and, to a lessening extent, the civilian population.
84. In response to written questions from the respondent, Dr Fatah stated that the fight against ISIL in Salah al Din had led to a reduction in its military capabilities but that it was necessary to look at the root causes for its support. In Salah al Din, in particular, there was growing Sunni alienation caused by the imposition of Shia rule (by the PMUs) over the governorate. Civilians remained at some risk of indiscriminate attacks in the region although ISIL were now conducting more targeted operations. They continued to have access to weapons, as the discovery of weapons caches showed.
85. Examined by Mr Knafler about the situation in Salah al Din, Dr Fatah stated that Tuz Khurmato was said to be the most dangerous place. The Kurds were being 'kicked out' and the insurgency was quite high. Those in charge would not allow a Kurdish (PUK) flag to be flown when it had been placed on a statue; it was taken down and replaced with an Iraqi flag.
86. Examined by Mr Bazini, Dr Fatah stated that ISIL had not occupied much of this governorate, which was the Sunni heartland or 'Sunni Triangle'. They were able to find support in the area, however, and could be very effective.
87. In cross-examination, Dr Fatah was asked by Mr Thomann about Tuz Khurmato. He said that the Kurds had ruled the area before 2017 and had partitioned the communities. When

the city came back under central government control, the residents were disillusioned and there was violence. He agreed that some people had returned but this was from the first wave. Considering the governorate as a whole, he considered the ISIL presence to be akin to Diyala. They had an insurgency and they selected their targets. It was correct to assert, as in the Landinfo report, that their operations were limited by the PMU and that there were pockets of fighters remaining. They no longer did mass attacks, hence the decrease in the casualty figures. It was mostly people in the security forces who were targeted but civilians who were queuing at a checkpoint might also be killed if the checkpoint was attacked.

88. Dr Fatah was asked about a statement made by Michael Knights in December 2018, suggesting that the decrease in ISIL's activity in Salah al Din might be due to the pressure from the partnership between the Shia and Sunni PMUs, which could have led ISIL to reinvest its resources in other areas. He agreed that this might be the case but the proliferation of the PMUs was not seen by the community as a positive thing. They regarded the PMUs as mercenaries who had been paid to form a paramilitary group. What was needed was to bring the Sunnis into the peace process. Asked about Tuz Khurmato, Dr Fatah agreed that it was a particular centre of violence in 2018 and it was suggested to him by Mr Thomann that there had been little violence in 2019. He stated that it was actually a very small area. The tensions were mostly of an ethnic nature, and were not security incidents as such.
89. Re-examined by Mr Bazini, Dr Fatah confirmed that the population of Salah al Din was in the region of 1.6 million and that more than three quarters of a million people were recognised as being in need. He considered what was going on Salah al Din as revenge by the Shia militia against the Sunnis and the Kurds, as demonstrated by the fact that the name of a university had been changed. The PMU was not like the police; they are not educated and are hard-line, sectarian people who had responded to a fatwa. Iran relied on them and had trained them. They had narrow political and religious views. They had not forgiven the Sunnis and they did not like the Kurds.
90. Mr Bazini asked about ISIL's doctrinal control of areas in Salah al Din. He referred Dr Fatah to the EASO report (see below) and asked about the areas which were under ISIL's control in Salah al-Din. He stated that Baiji was very important because it generated electricity for the region but the areas in question were just villages. It was significant, Dr Fatah stated, that ISIL felt able to ask for donations (zaqat) in some areas of the governorate, as this meant that they felt they were sufficiently significant to do so. The EASO report suggested that there was significant damage to the infrastructure, poverty and forcible eviction. Dr Fatah stated that life had been unbearable under ISIL and that there was a continuing problem with infrastructure but there was a sectarian interest in this persisting.
91. Like Dr Fatah, the EASO report highlights the proliferation of armed groups in Salah al Din and the sectarian tensions in the governorate. Most checkpoints are controlled by the militia, together with a variety of security forces like the Federal Police and Counter Terrorism Forces, most of whom do not communicate with each other. The EASO report refers to the sectarian tensions in the area having been exacerbated by the execution by ISIL of 1700 Shia recruits in an army camp near Tikrit. This had led to ongoing retaliatory attacks against the Sunni community. A mass grave, thought to contain the bodies of some 157 cadets from the camp, was discovered in March 2018. Unlike in other areas, there were few Sunni tribal groups who had mobilised their support to the PMU forces, and this was attributable to the Sunni mistrust of the Shia forces.
92. EASO reported that the Institute for the Study of War ("ISW") stated in October 2018 and January 2019 that ISIL had established a small control zone north of Baiji in Salah al Din. In

January 2019, ISIL was said to have 'doctrinal control' over terrain in the Makhoul Mountains of rural Baiji District. Numerous indicators of social control had been observed including prisons, judicial proceedings, training camps and organised worship. Also in the Shirqat and Tuz Districts ISW were of the opinion that ISIL exerted a great deal of physical and psychological pressure over populations even if it did not meet the definition of doctrinal control. In those areas there were abandoned villages, the destruction of agricultural products and infrastructure, repeated raids and assassinations which targeted the local social hierarchy. The civilian population could not rely upon the security services for adequate protection. The Hamrin mountain range also extends through this area, and ISIL had used it to create 'vast rural cave and tunnel complexes with weapon depots and foodstuffs, providing a logistical lifeline stretching from Diyala to Kirkuk via Salah al Din. There were thought to be between 150-200 militants operating in the areas between Salah al Din and Diyala. The former Minister for the Interior suggested in July 2018 that ISIL controlled some 75 villages in Kirkuk, Diyala and Salah al-Din. White Flag militants also operated in the area, tapping oil from pipelines in and around Tuz Khurmato and the main Kirkuk-Baghdad highway.

93. The UNAMI figures for the governorate showed a steady decline in the casualty figures from 2014 (2833 civilians killed or injured) to 2018 (104 killed or injured). According to IBC, it was the governorate with the fourth highest intensity, recording 10.05 civilian deaths per 100,000 in 2018, representing a marked drop from the 2017 figure of 28.05 per 100,000. The IBC recorded 69 security incidents in 2018, involving 152 civilian deaths, down from 83 incidents involving 424 civilian deaths in 2017. Most incidents involved gunfire (36.2%), IEDs (29%) and executions (27.5%). Suicide attacks and shelling made up only 4.3% and 1.4% respectively.
94. Michael Knights considered that ISIL had weakened its campaign in Salah al Din in 2018, with a drop from 84 attacks per month in 2017 to 14.2 per month in 2018. The overall scale of the local insurgency was small. As was put to Dr Fatah in oral evidence, this was thought by Michael Knights to be attributable to the presence of Shia and Sunni PMU in the area. The EASO report then continued by reviewing the nature of the incidents experienced throughout the year in 2018, including attacks on local security services and some attacks against the local civilian population. EASO considered there to be a resurgence of ISIL in the Hamrin mountain range, which was a destabilising factor for the governorate. Security sweeps had proven ineffective and the main problem was the lack of government presence in the local areas. In Hawija, Kirkuk and Tuz Khurmato, eye witnesses stated that ISIL had been roaming villages during the day, asking for zaqat or demanding information about the whereabouts of government forces. The security vacuum in Tuz Khurmato was an area of particular concern.
95. More than 238,000 individuals were displaced from within Salah al Din, the majority of whom were displaced within the governorate. Nearly 600,000 individuals had returned, mostly from within the governorate but some had returned from Kirkuk and Erbil. 68% of displaced individuals had returned. 764,000 individuals were in need, according to UNOCHA. Returnees were affected by security issues and faced some degree of harsh conditions upon return. There were also particularly high levels of infrastructure damage. As in other parts of the formerly contested areas, there were reports of forced and premature returns. Those who were perceived to be associated with extremists were at risk of forcible eviction on return to their homes and others had been unable to return home. These people were confined to camps and were poorly treated in the camps, with reports of food and ID documents being refused and sexual violence. The PMUs in the area controlled the highways and there were regular checkpoints. Fake checkpoints had been set up by ISIL.

96. The final entry for the Musings on Iraq blog for Salah al Din records:

Finally, in Salahaddin there were four incidents including a mukhtar's house being hit by an IED, and then another going off when the Iraqi forces responded. Balad Air Base was also hit by a mortar. Balad is where the Iraqi air force has its F-16 fighters. This range of attacks highlights the major activities of IS as it rebuilds. It is challenging the local security forces. It is intimidating the residents in rural areas, attacking their mayors, threatening them into paying taxes so the organization can put its finances back together, and driving people out of more and more towns so those areas can be converted into bases. This is a major goal of IS because it has to train its new cadres after its massive losses during its defeats in Syria and Iraq. The government has not adequately responded to this growing threat as local politicians and parliamentarians are constantly complaining. That's because the Mahdi government has no security, rebuilding or reconciliation policy in the post-conflict regions of Iraq. This is not a priority and is allowing IS to make a comeback much faster than the last time.

### **Diyala Governorate**

97. Diyala governorate lies to the east of Baghdad and borders Iran on its easternmost side. It has a population of more than 1.6 million. It is ethnically diverse, with Arabs, Kurds and Turkmen comprising the majority. There are also Christians, Yazidis and the Ahl al-Haqq. Diyala has been described as an ethno-sectarian microcosm for the whole of Iraq. It has hosted insurgents since 2004 and is considered to be good territory for such groups due to its difficult terrain providing good cover from security forces. Because of its proximity to Baghdad, it is a priority for the government and the PMU to exercise control over the area. ISIL occupied large areas in the north of the governorate but it did not fall as a whole. The occupation, which lasted for about six months, led to thousands of inhabitants being displaced. The area was brought back under government control in January 2015 and the occupation is not thought to have lasted long enough to influence the underlying trends in the region.
98. In his first report, Dr Fatah stated that the ethnically heterogeneous nature of Diyala makes it amongst the most unstable areas in the country. He assessed ISIL and other terrorist organisations to have increased their attacks after their defeat in January 2015. The security situation continues to be volatile and the targeting of civilians continues to be reported. He records that Musings on Iraq noted in October 2017 that 728 had been killed and 549 wounded during a period of intense fighting between government forces and ISIL in the areas of Jalawla and Saadiyah. This was thought to be retaliation by ISIL for losses in Ninewa.
99. Nevertheless the number of attacks in 2018 (26.2 per month) was a third of what it was in 2017 (79.6) per month, according to Michael Knights. There were 31 targeted killings of local authority figures in Diyala in 2018. The residents of Khanaqin were particularly conscious of ISIL activity around the time of the elections in spring 2018. In general, Dr Fatah considered that ISIL has been intensifying attacks in Diyala, especially through shelling and shooting both civilians and security forces, whilst the Iraqi forces had increased its search operations, targeting ISIL hideouts and sleeper cells. Due to indiscriminate targeting by insurgent groups in the area, Dr Fatah concluded that all citizens in the area face 'some level of risk'. The security forces are also targeted, particularly at checkpoints.
100. Dr Fatah gives a list of 38 security incidents in the governorate between December 2017 and 29 January 2019. Again, we do not propose to list these individual incidents. Six of the fourteen incidents in 2019 relate to the ISF discovering and taking action against ISIL



personnel or facilities. The remaining incidents show action taken by ISIL militants against the security forces and authority figures and, in a number of cases, the local civilian population.

101. In response to written questions from the respondent, Dr Fatah stated that the insurgents remaining in Diyala continued to coordinate a large number of attacks, including the indiscriminate targeting of civilians. There was targeting of security personnel and strategic areas such as oil installations and military bases. The checkpoint attacks presented a risk for security services and civilians alike. Individuals and groups including local politicians had also been targeted although this may instead have been attributable to tribal or sectarian confrontations.
102. Dr Fatah was also asked what effect the search operations and government action against insurgents had had in the region. He responded with a detailed account of the action of relevant incidents, showing that a number of ISIL members had been arrested and positions destroyed between September 2018 and March 2019 but that ISIL activity continued.
103. In oral evidence, Dr Fatah was asked by Mr Knafler to give some idea of the change in those areas of Diyala which had previously been under ISIL occupation. He said that there were parts of Diyala which had been controlled by the Kurds prior to 2017 and others which had not. Security in the Kurdish areas had been quite strong but now there were regular security incidents in the governorate. These were not just assassinations and targeted killings, there were bombings too. There were ISIL hideouts in the mountains and Khanaqin in particular had suffered. Mr Knafler asked whether the security situation and infrastructure was better now. Dr Fatah said that he could not compare. ISIL had done a lot of damage in the area and some tribes in Diyala had suffered. ISIL was still active there but the target had changed, in that their goal was to create chaos by targeting checkpoints and officials.
104. In answer to Mr Thomann's questions, Dr Fatah agreed that Diyala is ethnically diverse. He also highlighted that it is a large governorate and that it is between Baghdad and Iran. He agreed that it was significant that the number of attacks had reduced. He agreed that there was generally a similar pattern of ISIL targeting their operation and killing relatively few civilians. He stated that the group was now more selective in their attacks, as was demonstrated by the examples given in the report. Mr Thomann suggested to him that Iraqi forces had been relatively successful in finding and eradicating members in this part of the country. Dr Fatah agreed. He said that there were still cells, particularly in the West of the governorate, which had a strong Sunni presence. Diyala was very important to Iraq and Iran alike. He emphasised that the Hamrin Mountain Ridge, about which he had spoken previously, extended into Diyala. Asked to comment on the UNAMI figures, which showed a fall to 142 civilian deaths in 2018, Dr Fatah noted that there had been 56 Sunni Muslims killed in Diyala in revenge for the killing of ISIL members and Shia militia. Mr Thomann asked Dr Fatah to note that these events had taken place in January 2015. He agreed, and stated that ISIL's methods were different now; they would now seek out and find particular targets. There was no doubt, however, that casualties were going down.
105. Re-examined by Mr Bazini, Dr Fatah was asked about the suggestion by Michael Knights that ISIL 'ruled the night' in certain parts of Diyala (and elsewhere). He stated that these areas were close to Baghdad and that it was easier for the militants to operate at night. ISIL had been defeated but not eliminated. In Diyala, as elsewhere, there were ethnic groups which had been distanced from the government and that was the basic problem in Iraq. He explained that militias had prevented candidates from campaigning in certain areas because this was disputed territory; there was no democratic infrastructure in Iraq, merely voting. Mr Bazini asked about the reference to 'blood for blood demands' in the EASO report, which

Dr Fatah said was like a blood feud. The traditional tribes might have disappeared but new groups emerged with the same mentality. This mentality spilt over into the political arena also and the PUK party was really just an amalgamation of groups and tribes so that they would all benefit. It was the community's mentality that the family of a man with ISIL links should be targeted, whether that was his wife and young baby or his brother. This was preventing families from returning to their homes. Dr Fatah did not think that such feuds would last for generations, although the whole family would be tarnished if a member fought for ISIL.

106. Mr Bazini asked how the fake checkpoints, taxes and ransom demands described in the background material had an impact on civilians. Dr Fatah said that it was very difficult for civilians and for local businesses, from whom money was extorted. He said that this was not a new tactic for ISIL and that the funds raised went to the local commander.
107. The EASO report considers the situation in Diyala at section 2.3. It notes that the PMUs are particularly strong in the governorate and that the Iranian backed Badr Organisation is considered to be the main security actor.
108. EASO notes that ISIL was pushed back from the governorate in 2015 but that it was already launching attacks from the Hamrin mountains long before the fall of Mosul in 2017, having re-established contacts with former allies. Asymmetric attacks continue in Diyala as in other governorates. The Institute for the Study of War assesses in January 2019 that a number of districts were contested, including Khanaqin in the east and Kifri. In Diyala, there are permanently operating attack cells in five areas identified by Michael Knights in December 2018. ISW also stated in 2018 that ISIL had established 'support zones' in the rural area around Lake Hamrin (at the end of the Hamrin Mountain Range), from where it tries to expand its freedom of movement and actively launches attacks. In those areas, ISIL still "rules the night, meaning that key parts of the country have only really been liberated for portions of each day", Michael Knights was quoted as saying in December 2018.
109. It was reported that ISIL fighters operated in cells of three to five individuals. There were not thought to be more than 75 fighters in the governorate. Another source quoted by EASO thought that they had between 150 and 200 fighters deployed between Salah ah Din and Diyala. Hit and run tactics, including sniper fire and fake checkpoints, were the preferred means of attack. The militants had shaved off their beards and wore normal clothes so that they could blend in with the rest of the population.
110. It is accepted on all sides that the UNAMI figures cited in the EASO report contain an error for 2017, in which no civilian deaths or injuries were recorded. The other years show 1233 killed and injured in 2014, 2131 in 2015, 437 in 2016 and 142 in 2018. The IBC data for Diyala showed that the number of recorded incidents remained similar in 2017 and 2018. There were 170 security incidents in 2018, leading to 265 civilian deaths. In 2017, there were 180 incidents, leading to 276 civilian deaths. The intensity of the violence was almost the same: 17.1 per 100,000 people in 2017 and 16.4 per 100,000 in 2018. The incidents were gunfire (49.4%), IEDs (25.9%) and executions or summary killing (19.4%).
111. Those figures are to be contrasted with those of Michael Knights, who recorded a sharp decrease in security incidents in Diyala from 2017 (79.6 per month) to 2018 (26.2 per month). Mr Knights recorded attacks on local authority and security figures and attacks on civilians which included killings, kidnappings and destruction of rural farming infrastructure. Michael Knights is quoted as considering whether the decrease was due to the fact that ISIL's brutality had driven local Sunni tribes into partnership with the Shia PMF and Iraqi Military forces, although he noted that they had to cooperate with these groups in order to return to

their homes in any event. Security attacks had fluctuated in 2018 and ISIL was reported to be active in every rural part of the governorate and it had free movement across Diyala. The EASO report then contains a review of the security incidents across Diyala in 2018, which include a note of an increase in activity in March 2018 and attacks on security forces and clashes between security forces and ISIL in June. Violence continued between July and September 2018, along a crescent which stretched from Anbar in the West to Diyala in the east.

112. Like Dr Fatah, EASO considered the situation in Khanaqin in the east to deserve separate consideration. It noted that the district was ethnically diverse and that a range of pressures had been brought to bear on it during the Saddam Hussein years and thereafter. Suburbs had been taken by ISIL in June 2014, but not Khanaqin city itself. When these areas were recaptured by the (Shia) PMU and the Peshmerga in 2015, it was the former who took over control of the area. This caused many, especially the Kurds, to flee in fear of reprisals. Many had not returned. Security was now shared between the Iraqi forces and the Badr Organisation, although Kurdish forces continue to stand at checkpoints. A high-ranking official felt that the withdrawal of Kurdish forces had left Khanaqin vulnerable to insurgent attacks. The town of Jalawla has witnessed similar events resulting in the marginalisation of the Kurdish population. Some 84 villages in the district lack the presence of security forces and there is perceived to be a security vacuum in Khanaqin.
113. ISIL left booby traps in the areas they left in Diyala, as they did elsewhere, and the time it took to detect and neutralise these devices left room for ISIL to revert to insurgent tactics in the region. Security sweeps continue across Diyala but the militants take refuge in the Hamrin mountains. In February 2018, one such sweep discovered a tunnel complex fitted with fridges and washing machines which were powered by a solar grid. In June 2018, in response to the abduction and killing of civilians and ISF members, the ISF began a major operation but were unable to detect any militants. The operation was suspended after two weeks. In October 2018, a further operation led to the discovery of 40 ISIL positions in Diyala.
114. About 89,000 people remain displaced from Diyala, the majority of whom have relocated within the governorate. 223,000 have returned, about 80% of whom returned home from within the governorate. UNOCHA stated in November 2018 that Diyala had 319,000 people in need. The IOM stated that more than 36,000 families faced conditions of severity upon return and the governorate retains the highest proportion of returnees living in high severity conditions. There are high levels of unemployment and poverty. Forced and premature returns continue, often resulting in secondary displacement. As with the other governorates we have considered above, those with perceived ISIL connections were frequently prevented from returning home or were forcibly evicted thereafter. The family members of ISIL members had been targeted in the 'blood-for-blood demands' about which Dr Fatah was asked. A Shia militia reportedly charged illegal taxes on checkpoints in the area. ISIL had set up fake checkpoints in the area in order to kidnap people for ransom or execution.
115. The Musings on Iraq blog for 8-14 June reported that:

In Diyala there were 9 incidents. That included a gun battle with the security forces in the Sadiya district in the northeast, two suicide bombers were killed in the center and east, and two IS members were arrested for threatening farmers that their fields would be burned unless they paid taxes to the group. Diyala is regularly the most violent province in Iraq because that's where IS has spent the longest time converting back to an insurgency. Local politicians are always calling for the government to do more. During the week parliamentarians from

Diyala held a press conference calling for more Iraqi forces to be deployed there.

### **Anbar Governorate**

116. Anbar is geographically the largest governorate. It is not a disputed territory between the KRG and the GOI but it was a contested territory between ISIL and the GOI. It makes up around a third of Iraq's total area and has a population of around 1.7 million. As a result of the fact that large areas are desert terrain, however, it is one of the most sparsely populated areas. The capital is the city of Ramadi, which has a population of only around 148,000 individuals.
117. The governorate is predominantly inhabited by Sunni Arabs and its socio-political fabric is tribal and hierarchical. Many of the elders fled when Saddam Hussein was removed from power and new sheikhs who were willing to align with coalition forces took power. Anbar was the earliest governorate to fall under ISIL control, in January 2014, and the last to return to government control in November 2017. The military victory caused extensive destruction in the governorate. 24 mass graves have been discovered since the governorate was liberated, containing more than 600 bodies of civilians and ISF personnel.
118. In his first report, Dr Fatah stated that the security and protection situation remained challenging in Anbar. There had been fighting between tribal militia and the army even before ISIL took control of 70% of the territory in June 2014. The total number of individuals who have returned to Anbar exceeds 1.2 million. IED contamination remains a problem and several incidents have related to IEDs killing and injuring civilians. There have also been reports of booby-trapped houses, particularly in newly retaken areas.
119. At [475]-[492], Dr Fatah documents 18 security incidents which occurred between December 2017 and January 2019. A number of these relate to the detection and destruction of ISIL capabilities but others document the targeting of security forces and civilians, including three adults and two children in January 2019. Dr Fatah noted that the presence of Shia militia in Fallujah could pose a major threat to the stability of the region. These militia had perpetrated serious abuses against Sunni civilians, who had fled to more southern parts. Dr Fatah was concerned that these abuses would fuel the ethno-religious divides in the area, which was already a support base for extremist Sunni groups. Tribal problems had prevented displaced families from returning home in the region. The wide destruction in the region and the presence of hundreds of landmines presented further problems on return.
120. The respondent asked no written questions of Dr Fatah about Anbar. In his updating report of 21 June 2019, however, Dr Fatah dedicated section 3 to Anbar. He stated that the recapturing of Raqa, on the border with Syria, had marked the point at which Iraq declared the collapse of ISIL, at the end of 2017. It was reported in April 2019 that the security forces had intensified their operations in the area to clear the remaining ISIL members. At the same time, the ISF had asked locals to steer clear of remote areas to avoid ISIL. In June 2019, a further 1000 people returned to their homes in Anbar. Many refuse to return, however, due to security and basic infrastructure concerns. There were reports of forced returns and camp closures. Those camps which remained were not run by the government or humanitarian agencies, but by the PMUs. As in other areas, some families with actual or perceived ISIL connections were prevented from returning home. Dr Fatah went on to note a number of security incidents in the governorate before concluding that there were concerns about the return of ISIL to Anbar as a result of the marked increase in attacks since May 2019. Some ISIL attacks killed civilians but the majority appear to have been targeted at members of the local security apparatus. There were many reports of ISIL members being detected, including one senior figure being arrested on 5 May 2019.

121. In oral evidence, Dr Fatah stated that the governorate was more than 90% Sunni. He said that the security pattern was the same as in the other governorates under consideration. It was not a disputed area but it was a Sunni region which had been contested by ISIL for a long time. There were ongoing disputes between local tribes and ISIL. Anbar was also next to Syria, from which insurgents could enter. Security incidents in the region seemed to be going down. IED contamination was a problem. It was a fair summary to say that there were targeted operations by ISIL and counter insurgency operations by the ISF. The statistic showed a reduction in the insurgency from the position in 2014 when ISIL were in control.
122. Mr Bazini asked a number of questions about Anbar in re-examination. Dr Fatah agreed that there were around 1.7 million residents. He was asked about the figure that there were 200,000 people displaced in the region and that it contained the second most people in need. He said that this had a bad effect on stability and morale in the area, as it did in Mosul, Salah al Din and Kirkuk. This was why international support was so important. Mr Bazini asked whether there was a view that not enough was being done. Dr Fatah said that this was common to all the Sunni regions. It was to be recalled that Anbar had been where the insurgency started, with three UK contractors being hanged from a bridge. He had said in the last CG case that people had been prevented from entering Baghdad when they fled from ISIL. They had discovered a number of mass graves in the area, thought to be those who opposed ISIL rule, but it was still seen as a pro-ISIL area. Most of Anbar was now controlled by Iranian backed Shia militia, who were certainly in all the cities. The Sunni militia were treated differently to the Shia but the ones who were closer to power were treated rather better. Sunnis were generally not trusted in Iraq, and this was why the majority of the mass graves were of Sunnis. The areas described by Michael Knights in 2018, in which ISIL were reportedly still operating, were big areas, including Ramadi.
123. Mr Bazini asked why there were so many militia in the area if the groups of ISIL fighters were small. Dr Fatah stated that they did not need so many fighters but they were inefficient. The thinking was that the country could be controlled by security forces rather than services. There were 120,000 men in the PUK Peshmerga and each cleric would have his own army. The PMU were now legitimised and on the government payroll but they did not report to a known ministry, Mr Bazini asked about a report that the PMU had been due to leave Anbar after the declaration of victory over ISIL but had refused to do so. Dr Fatah suggested that this was because the government believed that the militia could control the security situation in the Sunni areas better than any other force. There was a need to address the underlying problem. There should be no need, he said, to have a Shia militia in control of an area like Kirkuk, which was Sunni and Kurdish.
124. Asked about an entry in the EASO report which suggested that residents of Anbar still lived in fear of ISIL, Dr Fatah stated that the situation was really not complicated. ISIL had controlled a third of Iraq in 2014 and the international community did not know what to do. Then the international community, the PMU and the Peshmerga managed to eliminate them, which had been very costly. After that, ISIL had taken a different route and had undertaken a guerrilla war. Unless it was treated as a political issue, ISIL was not going to disappear.
125. Dr Fatah confirmed that a range of different forces were in charge of the checkpoints in the region and that these made life difficult for the population. They would hold people overnight. Since 2003, the issue of basic services had not been addressed. There was not even a guaranteed electricity supply in Baghdad.
126. Echoing Dr Fatah's evidence, the EASO report states that there are more than 16,000 PMU fighters in Anbar, working alongside ISF forces including the army and the Federal Police. As with other parts of the formerly contested areas, there is a presence of Iranian backed

militia throughout. The Sunni tribal militias, which were formed in 2015 with the aim of driving out ISIL, do not have the same status as the Shia militia. The behaviour of some tribal militias was contributing to tension with the local population.

127. EASO reported that Michael Knights considered there to be areas in Anbar in which ISIL retained permanently operating attack cells and sleeper cells. The Iraqi government believed there to be a few hundred fighters, clustered in small groups. Insurgency activities continued, particularly in the rural and desert areas. Counter terrorism forces had been deployed to prevent ISIL fighters entering from Syria. ISF operations to clear the fighters were hampered by the desert and mountainous conditions. Anbar was considered by the US Consulate in Erbil and USAID to be one of the areas in which ISIL posed a threat to civilians.
128. The UNAMI statistics on the civilians killed and injured in Anbar in the years 2014 to 2018 are as follows: 5927 (2014), 4703 (2015), 2115 (2016), 822 (2017) and 252 (2018). IBC recorded a significant decrease in security related incidents between 2017 (170 incidents leading to 761 deaths) and 2018 (46 incidents and 86 deaths). The intensity per 100,00 civilians dropped from 45.3 in 2017 to 5.1 in 2018. Incidents involved IEDs (41.3%), gunfire (26.1%) and executions and summary killings only 4.3%.
129. Joel Wing reported in 2018 that insurgents largely withdrew from the governorate in 2018 and Michael Knights suggested that the decrease in activity 'may indicate a de-prioritisation of Anbar by ISIL as an attack stage at this stage of the war'. There followed a month-by-month examination of security incidents, including operations against ISIL in January and an increase in attacks in March. Security incidents generally subsided after March and most then targeted members of the Iraqi forces and the PMU. The Anbar desert continues to be used by ISIL sleeper cells for regrouping and planning attacks and it is difficult to maintain a security presence there, or on the 600 kilometre border between Iraq and Syria. The government intended to build a fence to keep militants out but there were doubts about the efficacy of such a fence. ISIL has taken territory in Syria, including the entire side of one area, from which ISIL rockets strayed into Iraq.
130. The PMUs were not trusted by the local population and had committed human rights violations. Anbar was the only Sunni area from which the PMU had yet failed to withdraw. Anbar continues to have more than 201,000 people displaced, with more than 52k displaced within the governorate. IOM has registered nearly 1.3 million returnees. According to UNOCHA, the number of people in need in the governorate was 1.35 million. As with other governorates, there was evidence of forced and premature returns and UNHCR expressed concerns, including secondary displacement.
131. The commentary sections of Joel Wing's most recent Musings on Iraq blogs sometimes omit reference to Anbar altogether. He refers to attacks in Anbar being up and down and a graph accompanying the post on 3 May is accompanied by a comment that violence in the governorate has 'continuously fluctuated'. Having stated in the second week of April that Anbar was at the centre of a new ISIL campaign, he suggested in the first week of May that Anbar was merely a transit point for militants entering from Syria. In his 1-7 June blog, he referred to Anbar as being a 'secondary front for the Islamic State right now', although he describes a number of attacks on security and civilian targets in the governorate, including significant car bomb attacks in Qaim and Haditha in the fourth week of May.

### **Baghdad and the Baghdad Belts**

132. Baghdad governorate is the smallest but most populous, with a population of 8.1 million in 2018. The outlying areas of Baghdad City, where it shares a border with Diyala, Anbar, Salah al Din and Babil are known as the Baghdad Belts. The population of Baghdad is Shia

and Sunni, with a number of Christian communities. Baghdad was heavily affected by sectarian conflict in the aftermath of Saddam Hussein's removal and neighbourhoods which were previously mixed became much more segregated along religious lines.

133. In his first report, Dr Fatah stated that Baghdad remained one of the main centres of violence in Iraq and the risk to all civilians in Baghdad is high. He gave nineteen examples of security incidents which had occurred in the capital between 1 January 2018 and 21 January 2019, the majority of which involved explosions which killed or injured civilians.
134. The respondent asked Dr Fatah in writing to provide figures indicative of any trend for violent incidents in the central area and in the Baghdad Belts in the period since 2017. He answered with a table he had compiled using data from Musings on Iraq, showing that the number of casualties in Baghdad had declined from 932 in January 2017 to 10 in March 2019 and the number of security incidents there had declined from 184 to 4 over the same period.
135. In oral evidence, Dr Fatah touched on Baghdad when he was answering questions from Mr Knafler, stating that Baghdad was always the target for the insurgency because it was the seat of government. Cross-examined by Mr Thomann, Dr Fatah stated that the ethnic makeup of Baghdad City had changed after 2003, with the Sunnis being pushed to the West of the river and the Shias occupying the east of the city. The part of the city which was called Sadr City was mostly Shia and was controlled by the cleric Muqtada al Sadr. He stated that there were many Kurds in Baghdad; they had been part of the state infrastructure but they had left in 2003. The Feyli Kurds had always been there, however, and they spoke Arabic and the local dialect.
136. It was suggested to Dr Fatah that Joel Wing described Baghdad as a 'forgotten area' to ISIL. He accepted that this was possibly correct, and that ISIL was in other places and would come to Baghdad from areas like Mosul and Diyala. He was taken to a report from Lifos - the Swedish Migration Agency - from the end of 2017, which suggested that the occasional attacks which were launched from the south and north of the city were largely unsuccessful. The report suggested that there was a new Operations Commander in Baghdad, who had focussed on the Belts, and that ISIL had withdrawn its sleeper cells from the area at the time of the Mosul offensive in October 2017. Dr Fatah stated that a commander would be helpful but would not be able to do much if ISIL were surrounding the city. Dr Fatah was asked to comment on the fact that the Musings on Iraq blog recorded three incidents in the whole of May and June. He accepted that to be the case. He stated that the trend in Baghdad was the same as elsewhere in the country but that the figures (of incidents and casualties) would always be higher in Baghdad because of the size of the population. A bomb in a market in the capital would result in higher casualty figures than elsewhere due to the concentration of population. Baghdad had always been a target.
137. Dr Fatah was taken to the EASO report, which suggested that ISIL violence had more or less disappeared from Baghdad and that violent incidents there tended to be of a political nature. He agreed with that analysis. He also agreed that the trend was the same in the Baghdad Belts, in which the figures were also diminishing. The trends were reflected in the figures he had presented in answer to the respondent's written questions. Asked about the humanitarian situation in Baghdad, Dr Fatah said that he had spoken to people there and the situation was more stable, which chimed with the figures he had cited from the Musings blog. The worst thing about Baghdad was the five or six checkpoints within the city. The situation in the Belts was also improving as the area became more clear of ISIL and they found it more difficult to penetrate the city, possibly because the PMF was better trained than the Iraqi police. Checkpoints remained on the way between Baghdad and the IKR, however.

138. EASO dedicates section 2.2 of its March 2019 report to Baghdad. It records that ISIL attacks increased dramatically in Baghdad in 2013, with Shia targets being particularly hit by Vehicle Borne Improvised Explosive Devices (“VBIEDs”). The aim was to demonstrate the ineffectiveness of the Iraqi authorities and to provoke sectarian divisions. The VBIEDs continued into 2014 but the fear that ISIL would overrun Baghdad proved to be incorrect, although there was fighting between the ISF and ISIL to the west of the city and gunfights were reported in southern areas. These attacks led to the mobilisation of Shia militia in Baghdad and to increased sectarian divisions in the city, with reports of Shia militia killing Sunnis. The large-scale sectarian killings which occurred in 2006-2007 did not re-appear, however.
139. Attacks by ISIL continued from 2013-2016, although they dropped for a few months in the early part of 2016. They then increased in intensity again, and there were a number of mass casualty attacks, including three simultaneous attacks on 11 May 2016 in which 93 civilians lost their lives. Mass casualty attacks dropped significantly after the first quarter of 2018. There were active cells in the northern and western Belts but these were in hibernation following the significant losses sustained in 2017. Baghdad had become a lower priority for ISIL to attack in 2018 and ISIL activity had been limited in Baghdad and the Belts during 2018, although the Institute for the Study of War believed that it was still capable of mounting attacks in the centre of Baghdad from its traditional support zones in the Belts. It was reconstituting as an insurgency around Baghdad. Michael Knights was of the view that there were permanently operating attack cells in Baghdad, as elsewhere, although he stated that, in 2018, Baghdad had seen the ‘fewest Salafi jihadist terrorist attacks since 2003’. Where there is activity, it is generally in the Belts and there are certain areas which according to Michael Knights were hotspot areas in which attacks were more likely to take place. The safest areas tended to be those in which the ISF were concentrated. Mr Knights opined that the threat of violence in Baghdad has become personal and targeted as opposed to situational, of being in the wrong place at the wrong time. Despite the general downturn in ISIL activity in Baghdad, it continued to target those who supported the May 2018 elections and other authority figures. The report gives a number of examples of such targeted killings in 2018.
140. The UNAMI casualty figures for Baghdad were: 7983 civilians killed and injured in 2014, 12,999 (2015), 11524 (2016), 2975 (2017) and 1214 (2018). The IBC recorded 392 security incidents in Baghdad in 2018, leading to 566 civilian deaths, compared with 487 incidents in 2017 leading to 1032 deaths. The intensity of civilians killed per 100,000 of the population was 7.36 in 2018, compared to 14.38 in 2017. Most incidents in 2018 were gunfire (46.4%), executions and summary killings (30.6%) and IEDs (20.7%). The report gives examples of IEDs and explosive attacks and armed clashes.
141. Security in Baghdad is maintained by the Iraqi army, the police and various PMUs. The city and the suburbs were generally under the control of the authorities but in practice the authorities shared control with the Shia-dominated PMUs. The Baghdad Operations Command of the ISF was one of the best resourced. The PMUs had been involved in criminality within the city and had clashed with the ISF on occasion. Violence linked to criminal and political disputes continues to occur in Baghdad and the latter remains the largest concern for destabilisation and civilian protection. This is related to competition and government formation in the wake of the 2018 elections. The unaccountable PMU militias are said to have strong links to criminal gangs and it can be difficult to distinguish between the two, or to attribute responsibility for security incidents.
142. Baghdad experienced a massive influx of IDPs in 2015 and 2016, forcing the authorities to limit access to the capital and to impose sponsorship requirements. As of March 2016, there



were more than 600,000 IDPs in Baghdad. This number was reduced to just over 69,000 individuals by December 2018, with the majority originating from Anbar, Ninewa and Babil. The majority of IDPs in Baghdad live with a host family or in rented accommodation and only a minority live in camps or alternative accommodation.

143. Road security inside Baghdad City is generally not maintained by the PMUs, although they do set up ad hoc checkpoints in emergencies. Their checkpoints feature mostly outside the centre, in the Belts. In January 2018, the director of Baghdad Operations Command stated that 281 checkpoints in Baghdad had been removed and thousands of concrete blocks had been lifted. On 10 December 2018, the fortified Green Zone in the centre of the city opened to the public.
144. In his 22-28 May 2019 blog, Mr Wing suggested that ISIL had almost forgotten about the capital but that a car bomb attempt suggested that it was trying to attack Baghdad in order to stay relevant. In the subsequent blog, he also suggested that the capital had been largely ignored by ISIL but that there had been three incidents, one of which was serious. In the final blog before the hearing, Mr Wing stated that ISIL was trying to return to Baghdad, and had hit the centre of the city (with a mortar) for the first time in months.

#### **Dr Fatah - General Observations on the Situation on Iraq**

145. As in his reports, Dr Fatah provided valuable insights into the general security and humanitarian situation in Iraq.
146. In response to questions from Mr Knafler and Mr Bazini, Dr Fatah echoed concerns he had expressed throughout his report and in section 7 in particular. He emphasised that insecurity would remain in Iraq as a whole and in the Disputed Territories in particular until a lasting political solution could be found to the ongoing ethnic and religious tensions within the country. (We note that Dr Fatah highlighted, in particular, the disenfranchisement of the Sunnis in answer to the ninth of the respondent's written questions.) There were instances of place names being changed from Sunni to Shia names, for example. He said that these political and social issues should be in the mind of the Tribunal when considering the situation. He stated that people were not happy with the level of services provided by the Iraqi government and that there was significant corruption in the government, the Peshmerga and the PMF. There was significant international interference, particularly in relation to the Iranian influence over the PMF, which was did not fall under the Iraqi Ministry of the Interior and had no code of conduct. It was to be recalled, he said, that the PMF had been created after Ayatollah Sistani in Iran called in a 2014 fatwa for Shia Muslims to mobilise against ISIL. Many of the population, particularly the Sunnis and the Kurds, were unhappy with such a significant Iranian influence in the country. For his part, he did not feel that Iran was helping with Iraq's stability. The PMUs had even had a say in the candidates for the election. There were many different militias. He had obtained a list from Baghdad and it was in his first report. Everyone knew which PMU was most powerful in their own area
147. Dr Fatah also emphasised that there was a risk of ISIL growing in strength and carrying out more attacks, although he declined to speculate, in response to a direct question from Mr Knafler, as to whether they would be more likely to disappear or to come back. He compared the situation to the Kurds under Saddam Hussein. They had been suppressed between 1961 and 1991 but they had come back. There was a need, he opined, not to treat the existence of ISIL as a security issue but as a political one which flowed from the disenfranchisement of their Sunni support base. He stated that ISIL had been 'badly disturbed' by the final battle for Mosul but they had changed their modus operandi and were now selective in their targeting; they would go to a village and kill the local mukhtar,

they would attack a PMF checkpoint. He felt that there was still command and control for ISIL and that they had some support in some communities.

148. The situation in the Disputed Territories remained unsettled and tense and the PMU were trying to bring the Peshmerga into those areas, in the hope that their presence would ease the situation. It was to be recalled that there were 2.6 million refugees in the IKR.
149. The EASO and UNHCR reports highlight problems of food poverty and Dr Fatah was asked whether these problems were more or less acute when ISIL controlled the Contested Areas. He stated that the situation was better now, but only in those places in which the infrastructure had not been completely destroyed.
150. Cross-examined by Mr Thomann, Dr Fatah said that the state of different parts of the formerly contested areas varied. A recent conference had decided that \$60bn was necessary to rebuild Ninewa but the other places, including Kirkuk, were not so bad. There was insufficient money to rebuild. Some places in Diyala had been completely destroyed. He was not able to state which towns in Iraq had an electricity supply but it was generally bad.
151. He agreed that the number of security incidents had reduced because ISIL was no longer controlling towns and cities as they had before and had switched to guerrilla warfare tactics instead. The counter insurgency had been effective in some areas, with tunnels and cells destroyed. Infrastructure was needed and people needed to be rehabilitated and rehoused. The Yazidis had been particularly traumatised and there were also 'ISIL' children.
152. The relationship between the governments in Baghdad and the IKR remained tense, with disagreements over the Disputed Territories and oil payments continuing, although the resumption of oil exports was a very positive point. Cooperation between the ISF and the Peshmerga forces was also a positive sign but what was really needed was to bring the Peshmerga under the control of the government of Iraq and to train them. The overall direction of travel in Iraq was a change of emphasis to post-conflict reconstruction but challenges remained. Civil servants in the IKR had not been paid for some time and there were still problems with Internally Displaced People there. ISIL would not be completely defeated without the support of the Kurds. ISIL had announced its spring and summer offensive under the title "Revenge of the Levant" but this was very naïve of them. They had not achieved much. As an insurgency, they needed to choose high profile targets such as Mukhtars. The campaign had not really altered the overall trend. He did not think that they were going to rebuild capacity in order, for example, to retake a city such as Mosul. The picture was variable, as was shown by the Musings on Iraq blog, and one recent phenomenon was ISIL burning farmers' crops
153. It remained the case that the IKR was 'virtually violence free' despite an incident involving an attack on a government building by one man with a pistol. There had been Turkish airstrikes in the IKR and Sinjar, which was apparently targeted at the PMU.
154. Dr Fatah was asked by Mr Thomann to comment on the significance of certain matters when looking to the future. Regarding the military defeat of ISIL in 2017, he said that this had changed the face of the group from a state actor to a "hit and go" force. Regarding their loss of control over urban centres, he said that it could work both ways. When ISIL had defined territory, it was clear where they were and they could be bombed. Now they came out and attacked and then hid again. They did not have the same impact but they could not be targeted as simply. The Iraqi authorities remained ineffective but the role of the PMF was to be considered. It was a different force now, a sectarian paramilitary organisation which had generated its own problems. He accepted that the PMF made it more difficult for ISIL to

regain territory, however. ISIL defeat in Syria was also relevant, although the situation there was complicated. ISIL's last stronghold had been in Anbar, bordering Syria, and it made a difference that it had been defeated in Syria. Regarding ISIL recruitment for the future, Dr Fatah stated that they had been joined in the past by Sunnis and even some Yazidis, who had taken the view (in relation to the Shias and the ongoing sectarian violence) that 'the enemy of my enemy is my friend'. Dr Fatah knew people in Mosul who had thought that ISIL would liberate them from Shia rule but had quickly become unhappy under ISIL as a result of their extremist behaviours. They had lost the battle for hearts and minds amongst the local population with this behaviour.

155. On the second day of the hearing, Dr Fatah was cross-examined by Mr Thomann about the humanitarian situation in Iraq. He agreed that the epicentre of the humanitarian problems was centred in Ninewa and Kirkuk. He agreed with the UN that the humanitarian response had expanded in certain areas and contracted in others. He said that sadly some of the IDP camps were becoming permanent and that more needed to be done. He accepted that primary healthcare had been restored to parts of Ninewa governorate and he had no intention to undermine the efforts which were being made but it had to be recalled that there were 2.6 million IDPs in the IKR, which had a population of 5.5 million. The number of displaced people had increased after 2017 and what was needed was a political solution. Displacement was a serious problem and the figures did not accurately reflect the reality. Dr Fatah agreed that there was an increase in the number of IDPs when the contested areas were cleared, followed by a reduction in the total number. He agreed with the assessment made by REACH<sup>5</sup>, which was that the Public Distribution System ("PDS") provided food sporadically and irregularly, with limited access in recently retaken areas. He explained that there were people who were not reached by the system. People were not dying in the camps; they had a tent. If it was a single individual who was sleeping rough, that would be a different story. It was not easy to say which people did not receive help although it was manifest that some did not. He accepted that the Iraqi humanitarian response plan was one of the best funded globally but there were always limitations. He agreed that 42% of the population were employed, noting that 65% lived in families. The figure of unemployment amongst IDPs was high; in the camps he had visited, many of the boys worked in the local town but other camps were in the desert and they were not able to access the local labour market, whether as a result of distance or curfew. There was no possibility of an IDP working if they lived in the Baharka Camp in Erbil, for example.
156. Dr Fatah was asked about the parts of his report in which he had identified personal characteristics giving rise to increased risk. He explained that a Sunni Kurd would face as much additional risk as a Sunni Arab. After 2017, a Kurd might face more questioning in Iraq proper and particularly at checkpoints which were manned by Iraqi forces, who would want to establish whether he had any political affiliations or ties to the Peshmerga. Dr Fatah did not consider there to be any additional risk from having been out of Iraq, unless an individual did not have an ID or was displaying non-Islamic symbols at a checkpoint, for example. An association with the Iraqi Security Forces was definitely a profile which enhanced an individual's risk, however.
157. Dr Fatah was asked about the examples he had given of people who had suffered problems as a result of opposition to the government. He stated that the examples were in connection with the KRG, not the GOI. He agreed that the most recent example he had given was in 2016 and said that his intention was to show the scale of human rights violations; there was a

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<sup>5</sup> REACH is a humanitarian research initiative, founded in 2010 by Geneva-based NGO IMPACT, the French NGO ACTED and the United Nations Operational Satellite Applications Programme ("UNOSAT")

history of people who had spoken out against those in power and had disappeared. Nothing had happened, although investigations were supposedly underway. Politics had opened up in the IKR since 2009, however. Before then it had just been the PUK and the KDP but the new opposition had been effective at highlighting the human rights violations under the main political parties. Dr Fatah agreed that the number of checkpoints around Baghdad had decreased but he had not seen anything to suggest a reduction between Baghdad and the IKR; it remained the case that there were fixed checkpoints and that others were regularly erected by various groups.

158. Asked about the support which may be available to a returnee from the family, Dr Fatah agreed with Mr Thomann that even the extended family would be likely to provide support. Relatives could help an individual to find a job, for example. Tribal connections were not necessarily the same but being from a significant tribe like the Barzanis (who are in power in the IKR) would be of assistance.
159. In re-examination, Dr Fatah was asked by Mr Bazini about the statement by Michael Knights, quoted in all of the EASO reports, that ISIL maintained permanently operating attack cells in 27 named parts of Iraq. Mr Bazini asked about the population of these areas. Dr Fatah said that around a million people lived in the relevant areas. It was to be recalled that sectarian tensions in some of these areas were particularly high and that this might cause the population to stay silent in the face of ISIL activity. If, for example, it was an area in which a Shia militia had renamed Kurdish or Sunni sites with Shia names, the resentment might be such that the population would tolerate the presence of an ISIL sleeper cell. Previously, the Kurdish population would probably have co-operated with the authorities.
160. Mr Bazini suggested to Dr Fatah that the parts of Iraq where ISIL were said to 'rule the night' were actually huge. Dr Fatah stated that the areas were close to Baghdad and it was easier for ISIL to operate in these parts at night; ISIL had been defeated but not eliminated. It remained the situation that there were parts of the population who had become distanced from the government and that was the basic problem with Iraq.
161. Also in re-examination, Mr Knafler asked Dr Fatah about the Musings on Iraq blog. He said that the author was an ex-teacher based in America who was becoming an authority on Iraq. He said that the blog was so good that Mr Wing was quoted by the BBC and other agencies. There was no political view in the blog and his opinions were good. The conclusion in the blog that ISIL was rebuilding was not contradicted by other evidence. He had listed the events which led Mr Wing to that conclusion. Asked about Mr Wing's conclusion that ISIL would manage a comeback much faster than before, Dr Fatah declined to speculate as to whether they might become a major military force but it might happen in the future. Iraq is very unstable, he said, and it remained a possibility unless the political issues, including the interference from Turkey and Iran were resolved. Asked directly by Mr Knafler whether ISIL would rise again in the near future, Dr Fatah said that he could not tell.
162. We asked some questions of Dr Fatah. He confirmed that it was usual for commentators on Iraq to include incidents in which ISIL equipment and personnel had been detected as 'security incidents'. Equally, it was usual for commentators on Iraq to include within the casualty figures for a given month the deaths of those found in mass graves in that month. There had been 52 individual mass graves discovered in Shangal (Sinjar), for example, and those deaths were included in the casualty figures for the month in which the graves had been discovered. Other examples of mass graves being discovered were in his reports.
163. Asked about how the casualty and security incident figures were collected and collated, Dr Fatah stated that Joel Wing collected his figures from media outlets, by reading the reports of

incidents on a daily basis and counting the number of casualties. There were also official figures kept by the Iraqi authorities. He emphasised that the numbers differed somewhat between the different sources but the trends always remained the same and the commentators and the official sources broadly matched.

164. Asked whether there was evidence of ISIL cells targeting the civilian population in 2019, Dr Fatah stated that a number of farms had been burned in 2019 and that there had been incidents of positive targeting of civilians. There was a small area in Anbar, for example, and there were other areas where they demanded zaqat taxes.
165. We asked Dr Fatah whether he was able to give any idea of the size of the ISIL “sleeper cells” which were described in the evidence. He said that the cells might number 3-5 individuals. He thought that ISIL had been reduced to around 10% or 25% of its former size in Iraq.
166. Dr Fatah stated that his view of Michael Knights was favourable. He had hesitated when he was asked a question about one of his opinions not because of the author but because of the opinion in question, which concerned cooperation between the Shia and Sunni PMUs. There was another point taken by Mr Knights with which he did not fully agree; he had suggested that the Baghdad Operations Command had been successful in reducing the number of security incidents in Baghdad but the reality was that it was not the commander, it was the removal of ISIL from the Baghdad Belts.
167. In questions arising from our own, Mr Knafler asked Dr Fatah about the number of ISIL fighters remaining in Iraq. He stated that there had probably been about 8000 originally and that there were around 2000 remaining; that was ‘not a bad estimate’. Asked by Mr Bazini about the under-reporting of casualties, Dr Fatah stated that it would always be an issue in a Muslim country, in which people were required to bury the dead within 24 hours of their passing. If people just went straight to the burial site and bypassed the media or the hospital, their death would not be registered.

#### SECTION C – SUBMISSIONS

168. In advance of the hearing, we received a detailed skeleton argument on behalf of all three appellants and an equally detailed skeleton argument on behalf of the respondent. We subsequently received closing written submissions on behalf of the first and second appellants and the respondent. We have taken each into account and are grateful to the representatives for the clarity of the submissions presented.
169. In addition, we received an untitled document of 237 pages, subdivided into 11 sections and inaccurately described in the first and second appellant’s written submissions as ‘the Schedule’. We have derived significantly less assistance from this document, which consists of substantial excerpts from various reports without any submissions other than those in the index (for example “evidence of the categories of persons who may have a well-founded fear of persecution in Iraq”). It is repetitious in many parts and contains extensive boldening and underlining which does not appear in the original reports. There is evidently a danger in such a document, in that the context of the passages in question is lost when they are presented in this manner. We have read and considered the document but we record that we have derived significantly more assistance from the complete reports before us, the evidence of Dr Fatah, and the extensive written and oral submissions we received.
170. Mr Thomann’s oral submissions on behalf of the respondent followed the structure of his excellent written submissions. He began with a summary of the respondent’s case, which was as follows. There has been a seismic change in Iraq. ISIL suffered a military defeat

which led to the implosion of its numbers and to a loss of control in the Contested Areas. The correct approach was to consider whether there was a real risk of a breach of Article 15(c) now and also to consider the foreseeable future. Tensions had finally eased after the Kurdish Independence Referendum. It remained the case that there was internal armed conflict in Iraq but it had changed in character and was confined to rural areas. The conflict was not of the intensity required to meet the threshold for Article 15(c), although it remained necessary to consider the individual circumstances of a claimant in order to apply the sliding scale approach in Elgafaji. ISIL's strategy had changed, and that had not been a change made by choice. Amongst other factors which bore on the extent of the risk from ISIL was the presence of the PMU in Iraq. It was accepted by the respondent that a role needed to be found for these militia but the reality on the ground was that their presence had narrowed ISIL's capabilities. Overall, there was a durable and well established change in the security situation.

171. Mr Thomann encouraged the Tribunal to consider the relevant areas of Iraq individually but he submitted that such consideration should lead to the conclusion that the Article 15(c) threshold was not crossed in any part of Iraq. Anticipating a submission which was to be made by the appellants, he submitted that there was no foreseeable risk of ISIL's resurgence. Whilst certain individuals might be at greater risk, and certain areas might present a greater risk to an individual, it was the respondent's position that individuals could relocate internally within Iraq, either to the IKR (in the case of Kurds) or to Baghdad (in the case of Sunni or Shia Arabs).
172. The concession which was made at [93] of AAH (Iraq) – that returnees without support who were not in possession of a CSID, and who were unable to obtain one, would face a real risk of destitution in all parts of Iraq such that Article 3 ECHR would be engaged – was maintained but the evidence available to the Tribunal on this issue was far wider than had been considered in the past. Individuals could be returned to Baghdad or to Erbil. The respondent now relied on evidence to show that a Laissez Passer or a certification letter could be used for internal travel, for example. Dr Fatah had also given evidence about the circumstances in which other forms of ID might be acceptable, including professional ID cards. In any event, the respondent submitted that an individual without a CSID would frequently be able to obtain a replacement from the Central Registry in Baghdad.
173. The situation which presently obtained in Iraq was to be contrasted with that which obtained when the previous country guidance was issued. The high point of the indiscriminate violence had been in 2014 and there had been a very significant reduction to the current levels. It was also to be recalled that the country guidance in AA (Iraq) was issued at a time when ISIL were in control of tracts of Iraq and Ramadi had fallen shortly before the hearing in that case. Now, there was no area in which ISIL could hold occupational control. They had a presence in some rural locations but there was no particular area in which it could rebuild. Dr Fatah had stated that rebuilding the insurgency would be easier for them if they had control of a specific area. The improvements were not limited to the formerly contested areas; Baghdad and the Belts had been essentially cleared of ISIL. Shelling had reduced across Iraq and civilians were returning. The safety and feasibility of internal relocation to Baghdad and the IKR had been considered in AA (Iraq) and AAH (Iraq) and, broadly speaking, the respondent did not ask the Tribunal to revisit those findings. It was accepted that those without family support would face a real challenge. It was clear that IDP camps were not previously available and that some had been closed down. The most significant consideration in respect of internal relocation was likely to be whether there was support from friends or family. Concern had previously been expressed about so called 'critical shelter arrangements' and individuals without a CSID would clearly be in difficulty. The respondent did not seek to go behind the concession made in AAH (Iraq). Generally,

however, it was a relatively straightforward process to obtain a replacement CSID.

174. Mr Thomann submitted that there was no real dispute between the parties regarding the substantive law on Article 15(c). The origin of the provision was to be borne in mind and was highlighted in OD (Iraq). It was obviously common ground that the sliding scale applied. In relation to Article 3 ECHR, however, the bar was set very high when it was submitted that removal would be contrary to that article on account of conditions in the receiving state. Equally, there was no real dispute between the parties about the correct approach to departure from or modification of existing country guidance. Observations in cases such as SG (Iraq) [2012] EWCA Civ 940; [2013] 1 WLR 41 resonated with less force in a case which had been set down for country guidance. Ultimately, the question was whether the changes were well established and durable. As to the foreseeability of future risk, Mr Thomann adopted what had been said by Eleanor Grey for the Secretary of State in EM (Zimbabwe) CG [2011] UKUT 98 (IAC): the more remote a risk becomes, the more difficult it is to satisfy the 'real risk' test.
175. It had been submitted in writing by the appellants that it was not appropriate to rely on country information in the respondent's publications. That submission was ill founded, however, and documents such as Country Policy and Information Notes were not driven by government policy. Such notes merely drew together a variety of sources in a helpful way. The limitations of such notes were apparent, however, and the respondent urged the Tribunal to consider the evidence as a whole.
176. Mr Thomann submitted that it was instructive to consider the situation from the end of 2017 onwards. Hundreds of thousands of people had returned home from that point onwards and the focus of the present Prime Minister was on the reconstruction of his country. Whilst it remained the case that ISIL was responsible for civilian deaths, it had a much reduced ability to cause mass casualties and December 2018 represented the lowest period on record. The exact number of ISIL fighters remaining in Iraq was obviously unknown but the respondent commended the figures preferred by Dr Fatah and Hisham al-Hashimi, both of whom suggested that the numbers were in the hundreds. Those numbers were to be compared to what Dr Fatah had said about the size of the other military actors in the country. The reduction in the number of ISIL fighters was not the only change; their methods had changed as well. They remained in the Hamrin Mountains and other such places and they chose their targets carefully. The recent posts on the Musings on Iraq blog showed that the Return of the Levant campaign had come to nothing and that counter insurgency was effective. In summary, the position had changed fundamentally since AA (Iraq) in 2015; challenges remained but there was no longer a degree of risk which engaged Article 15(c) anywhere in Iraq.
177. There had been an interregnum period after the Kurdish Independence Referendum but the situation had not resulted in armed conflict and there was a more settled period in the Disputed Territories as a whole. ISIL was finding it more difficult to operate. The trend was that tensions between the IKR and the GOI were lessening and there was some military co-operation between their forces. There was some criticism of the PMUs and there were particular problems in places such as Kirkuk, from which Dr Fatah thought they should retreat. Despite these concerns, it was clear that the impact of the PMUs on security in Iraq had been beneficial overall. Dr Fatah had not stated that ISIL was likely to resurface and that was unlikely to be the case. It was particularly difficult to recruit foreign assistance when dependent on sleeper cells. The state forces were now entirely different and the counter insurgency had been successful. And the experience of the population living under ISIL was to be remembered. Those who had experienced life under ISIL were unlikely to support them again. Whilst the group had not been eradicated, the security situation was not

presently such as to generate a general risk under Article 15(c) and would not be in the future.

178. Before turning to the specific areas under consideration, Mr Thomann noted that it was to be suggested by Mr Bazini that there were swathes of territory which remained either ISIL control or in which they instilled fear in the population. Whilst this was factually correct in respect of certain areas, even the situation in those areas was not shown to engage Article 15(c) generally. There was no area in which ISIL could regroup and the authorities had generally maintained a 'foot on the throat' of the insurgents.
179. In relation to Kirkuk, Mr Thomann submitted that tensions were apparent but the general situation had improved and attacks had continued to fall. There was little infrastructure damage. The majority of attacks had happened since the Referendum and targeted military personnel. Many IDPs had returned and British Petroleum had returned to Kirkuk's oil fields, demonstrating returning confidence in the area.
180. In relation to Ninewa, this had previously been the epicentre of ISIL and there were many humanitarian considerations. Mosul and Sinjar were particularly of concern and any decision maker considering the return of an individual to either place would need to assess their home area and personal characteristics with great care. That said, east Mosul had returned to normal life surprisingly quickly. Infrastructure challenges plainly remained, particularly in relation to Mosul but the circumstances there did not engage Article 15(c) when the level of security incidents and the presence of ISIL was at present levels. Even recalling the sliding scale, it was not likely that an individual would be able to show an Article 15(c) there.
181. As to Salah al Din, Mr Thomann submitted that ISIL had been weakened in this governorate to the point of becoming anaemic. They had been limited by the PMUs. Tuz Khurmato and Sinjar are in Salah al Din, however, and these are areas of particular concern. As with Mosul and Hawija, it was necessary to consider the appeals of individuals from those areas with particular care. Violent incidents in those areas had continued into 2018 but they had recently decreased significantly and the most recent incidents of note were in 2018.
182. Diyala had been an area of significant success for the ISF, with the number of attacks decreasing from 79.6 in 2017 to 26.2 in a month in 2018. Sleeper cells remained but the risk was greatly reduced.
183. Dr Fatah's evidence in respect of Anbar was accepted. Whilst there had been a steady decrease in ISIL activity, that was initially less so in Anbar, although there was a reduction by 2019. It was instructive to consider the weekly trends in the 2019 Musings on Iraq blog with the figures given by Dr Fatah for previous periods.
184. The Baghdad Belts had obviously improved; Dr Fatah had been very clear regarding the reduction of ISIL presence in the Belts and the improvements it had brought to the area. Security barriers and blast protection was being removed in Baghdad. It was correct to note that there had been promises made by the incoming Prime Minister and these steps may be part of his attempt to keep those promises but it was likely to be more than that and to signal real change.
185. The appellants submitted that certain categories of individual were more susceptible to risk on the sliding scale and the categories were essentially agreed. There had been real changes in respect of those who were perceived to have an association with ISIL, however, and there were no longer reports of Sunni males disappearing or suffering serious ill treatment at



checkpoints. The respondent's primary position, however, was that there was no part of Iraq in which there was a general risk of conditions which breached Article 15(c) of the Qualification Directive.

186. It was clear, and the respondent accepted, that there were particular humanitarian challenges in certain geographical areas. The UNHCR's guidance was particularly valuable in this regard. There were a variety of international actors providing humanitarian assistance but the situation was challenging in areas such as Mosul in particular. Nevertheless, in light of the very high threshold for there to be a breach of Article 3 ECHR by reason of country conditions in the receiving state, that threshold would not generally be reached in the case of a documented failed asylum seeker.
187. As to relocation, this had not been a particular focus for Dr Fatah. The enquiry of whether it would be reasonable for a particular individual to relocate was intensely fact specific. The respondent's general position was that the conclusions in the extant country guidance decisions should be affirmed in relation to relocation to Baghdad and the IKR. The respondent recognised that there was potentially a need for a letter of support from a local mukhtar before an individual would be permitted to settle in a particular area. Cities other than Baghdad and those in the IKR were potentially viable places of relocation but Dr Fatah's evidence should be considered in that regard. In particular, it would be important to consider in any such place of relocation whether there was support available, whether from nuclear or extended family or friends and tribal connections to the area. In the event that family was present in such a location, support would probably be forthcoming. Tribal connections were not necessarily as dependable but might be counted on, in certain circumstances, in order to provide employment opportunities. Again, however, Mr Thomann underlined the respondent's acceptance that some areas in Iraq remain particularly challenging.
188. As to documentation, Mr Thomann submitted that individuals needed to be able to establish their identity and that it was not only the CSID that was able to serve that purpose. It was important, in any given case, to consider whether an individual's identity could also be established by family connections. Dr Fatah had also explained, with reference to his sister (a judge in Sulaymaniyah), that it might also be possible to travel in Iraq using an alternative form of ID such as a professional ID card. That evidence tallied with the evidence upon which the respondent relied, which was to the effect that a Laissez Passer or a 'certification letter' could be used for onward travel from Baghdad to other areas of the country. It was accepted on the part of the respondent that there was no empirical evidence of such documents being used but there was no evidence to the contrary effect either. The respondent's evidence was to be considered in the round, noting that Dr Fatah had not heard of such documents being used. Considered in the round, however, the respondent had provided cogent evidence that such documents could be used for onward travel. It would be submitted by the appellants that Laissez Passers or certification letters would be unacceptable at checkpoints and it was accepted that these could be manned by various armed actors. The CSID was not the indispensable prerequisite for passing through checkpoints, however, and Dr Fatah's evidence did not exclude the possibility that an individual could be permitted to pass using alternative documents.
189. As regards the acquisition of new identity documents, it was clear that records were held in a national database. There were 300 or so family registry offices around the country. The Tribunal would wish to consider the evidence about the roll out of the new INID. Dr Fatah had said that it was to be compulsory by the end of 2019 and he had understandably based his conclusions on discussions with a lawyer and his own experience. The other background material suggested, however, that the implementation process was proceeding more slowly

and that CSID documents were still being issued and used. That was indeed the evidence of the Iraqi authorities themselves. The significance was that the CSID could be obtained 'remotely' whereas the INID, which required iris and fingerprint scans, could not. In practice, it was the respondent's submission that most individuals would not encounter difficulty in obtaining replacement identity documents.

190. As for the individual appellants, SMO and KSP were in relatively advantageous positions regarding the availability of family support. SMO would be returning to southern Kirkuk and there was no reason to believe that he would encounter any particular difficulty in demonstrating his identity en route. KSP would be returning to his family, who remained in Tuz Khurmato. There was no suggestion that he would have any difficulty in returning there.
191. For the first and second appellants, Mr Knafler highlighted that their written submissions had been amended to take account of Dr Fatah's oral evidence. He sought to amplify the following points. The legal framework was agreed with the respondent and the appellants were also in agreement with the point inserted at [51] of Mr Thomann's closing submissions regarding the correct approach to potential changes in the country situation in light of EM (Zimbabwe).
192. As to documentation, Mr Knafler submitted that the current country guidance should be maintained but that it needed supplementing and updating in relation to the INID. The appellants' position in relation to the letters from the Iraqi authorities and the other material which had been deployed initially in R (on the application of SS (Iraq)) v SSHD [2019 EWHC 1402 (Admin)] was that it had no doubt been given and gathered in good faith but it was so wholly inadequate that the Tribunal could not properly place any weight on it. The respondent sought to attach significance to a statement made by the Baghdad Chief of Police to one of her officers (Ms Drew) but there was nothing from the Chief of Police himself and Dr Fatah had described his pronouncement that a certification letter would be adequate to ensure safe passage beyond Baghdad as a "political statement".
193. The need for documentation remained and it had not been established that either a Laissez Passer or a certification letter would suffice, although Dr Fatah had suggested that an individual might be allowed (depending on the officer at the airport) to make contact with a family member in order to obtain documentation. It was to be recalled, however, that many IDPs do not have official documents because of the reasons which led to their displacement and the UNHCR had made clear that there was a real issue in Iraq about people not being able to obtain replacement documents. It was also to be recalled that the respondent accepted that an individual without access to a CSID and without support would be in grave difficulty, as confirmed by the recognition that the return of the third appellant to Iraq would breach Article 3 ECHR.
194. In relation to the risk of conditions contrary to Article 15(c) in the formerly contested areas, Mr Knafler submitted that it was significant that the UNHCR recognised in its May 2019 guidelines that individuals from those areas may be deserving of subsidiary protection. Those who were at risk of such treatment in their home areas had either no or very scant chance of relocation. Again, there was nothing between the parties on the correct legal approach to the assessment of Article 15(c) in those areas. There was a vast amount of evidence which required careful assessment but the first and second appellants commended the approach of the UNHCR.
195. At [44]-[48] of his written submissions, Mr Knafler had highlighted categories of those who might be at risk under the Refugee Convention or at 'special risk' under Article 15(c). The

breadth of those categories was significant for two particular reasons. Firstly, it could not sensibly be submitted that the situation in the formerly contested areas was stable when such a number of groups were at risk. Secondly, there must come a point when the risk to different groups of individuals merged into a risk of indiscriminate violence under Article 15(c). It was clear that the areas in question remained febrile. When pressed, Dr Fatah had accepted quite clearly that the situation in these areas was better. He emphasised, however, that the areas had returned to a situation of high sectarian tension as a result of a Shia-led and Shia-imposed military solution. Dr Fatah had consistently returned to that high-level analysis and to his conclusion that a durable solution had not been achieved. ISIL had been militarily defeated but there were still 'hit and go' attacks in these areas. A number of these attacks and extortion attempts were on agricultural infrastructure, affecting the livelihoods of farmers. Dr Fatah had, in re-examination by Mr Bazini, highlighted the ongoing activities of ISIL and the extent to which it can be said to exercise control over certain areas. He had guessed that there were up to 2000 ISIL fighters remaining in Iraq, which was a serious number and a serious threat. He had not been prepared to say that they were about to return to prominence but he had accepted the views expressed in that regard in the Musings on Iraq blog. The root causes for ISIL rising in the region remained and it mattered not whether ISIL would rise again or whether another group would rise to prominence. The clear analysis underpinning all of Dr Fatah's evidence was that the situation was precarious and uncertain and that the root cause for insurgency remained. Without a political solution, there was a real risk that such groups would resurface, as had the PKK in Turkey.

196. Dr Fatah had not considered the humanitarian situation in great depth in his reports and he had essentially accepted all propositions which were put to him in cross-examination and re-examination. He particularly endorsed the views of the UNHCR, which the Tribunal was invited to adopt.
197. Mr Bazini adopted Mr Knafler's submissions and added the following. It was submitted by the respondent that the military defeat of ISIL and the diminishing figures for security incidents and civilian casualties meant that the Article 15(c) was no longer reached in respect of the formerly contested areas but this was an unprecedented situation for a country guidance assessment. There had previously been an acceptance on the part of the respondent and the Tribunal that there were vast areas of Iraq in which such a general risk existed and now it was said that no such risk existed. There was plainly a need for cogent evidence to substantiate such a conclusion. It was necessary, in considering the extent of the risk, to adopt the inclusive approach described in the authorities and to consider qualitative and quantitative indicators. Mr Bazini commended the approach of Mr Fordham QC in HM (Iraq), at [114], in which he had submitted that it was relevant to consider the extent to which people lived 'under the shadow of violence'.
198. It was the appellants' position that some areas were properly described as contested, and they drew support from EASO, the Institute for the Study of War and Michael Knights in that submission. In those areas which were still said to be contested, there was necessarily an Article 15(c) risk solely on account of a civilian's presence in that area. There were also attack cells which covered large areas and places in which ISIL were said to 'rule the night'. Again, adopting the holistic and inclusive approach which was required by the authorities, it was likely that a general risk under Article 15(c) existed in those places as well. There were also areas in which sleeper cells existed and operated. Mr Bazini submitted that there was a non-exhaustive list of factors which fell to be considered pursuant to the inclusive approach. The size of the IDP issue had been highlighted by Dr Fatah and returns from the United Kingdom would only serve to compound that issue. Individuals had already been returning from their places of relocation and the reports showed that secondary displacement was a concern. Large amounts of people were living in severe conditions. Returnees were sadly

living in fear of retribution for perceived association with ISIL. There had been extraordinary disruption to the infrastructure of the country and the \$30 US billion that had been injected appeared not to have made a great deal of difference. Unprecedented amounts of unexploded ordinance remained. Large numbers of people remained in need of humanitarian aid. There were serious issues with agriculture, not least the fact that ISIL were now seeking to target farms and farmers. That only served to compound a problem which had been identified in AAH, which was that it was necessary for Iraq to import large quantities of food.

199. Mr Bazini submitted that a vacuum had been left by ISIL and it had been filled by large militias which were a threat in themselves. The population were hostile towards them in any areas and vice versa. They were guilty of extortion and of criminal activity and they were known to have links to Iran. They perpetrated violence against the Sunnis. The background material showed that these PMU militias were all over Iraq and were filling the security void whilst frightening the population and extorting money from them. The PMU are unaccountable and were, in reality, a law unto themselves who viewed the local population as nothing more than a piggy bank.
200. It remained the case that there was a very real danger at the checkpoints which proliferated around the country. Those which were manned by armed PMU brought with them a risk of extortion at the very least. Those which were set up by ISIL brought considerably greater risks. Dr Fatah had spoken about 'blood for blood' retribution, which was the type of phenomenon which had disappeared under the brutal regime of Saddam Hussein but had re-emerged latterly. The increasing involvement of international forces, including Iran and Turkey was a source of further concern. Violence clearly flared at elections times. Even if the overall numbers of incidents and casualties had fallen, the picture was to be considered holistically. It could not be said that the contested areas were functioning properly. The situation remained very unpleasant in those areas and the population was greatly traumatised. The changes were not durable and the situation was likely to get worse because the government was allowing the militia to take hold. The UNHCR was clear that various groups were at risk, including the LGBT community. It was, in summary, premature to conclude that the situation had changed to the point that Article 15(c) no longer applied throughout the formerly contested areas.
201. As regards the documentation issues, Mr Bazini also adopted what had been said by Mr Knafler. The fact that leave was to be granted to IM suggested that the respondent did not have confidence in his own position. If, as the respondent sought to suggest, records were centrally held and would enable him to obtain a new CSID, why had it been accepted that this appellant could not obtain one? As HHJ Coe QC had held in R (SS(Iraq)) v SSHD, there was very little evidence to show that microfilm records were accessible. The Deputy High Court judge had reached a logical conclusion on the same evidence and the respondent had chosen not to take matters any further evidentially. (Mr Thomann confirmed, in answer to our question, that the respondent had not sought to obtain an example of a certification letter.)
202. In considering the respondent's submission that the staff at the airport in Baghdad would issue a certification letter, it was relevant to note that Amnesty International had not heard of such a document. These documents were not said to hold any legal status and it was illogical to consider that they would be recognised and accepted at the checkpoints which were manned by a selection of armed actors. The respondent was clutching at straws when she relied on the submission that professional ID documents might suffice.

#### SECTION D - THE LEGAL FRAMEWORK (Article 15(c) and Article 3 ECHR)

**(i) Article 15(c)**

203. As we have stated above, our enquiry in these cases is confined to Article 15 of the Qualification Directive and Article 3 ECHR. The Refugee Convention does not fall for consideration due to the findings which have been preserved in the individual appeals. Other decision makers will wish to recall the instruction at [154]-[156] of AK (Afghanistan) CG [2012] UKUT 163 (IAC), however, and to ensure that questions of subsidiary protection are only resolved after consideration of any entitlement under the Refugee Convention.

204. Article 2(e) of the Qualification Directive defines a person eligible for subsidiary protection as “a third country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm as defined in Article 15, and to whom Article 17(1) and (2) do not apply, and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country.”

205. Article 15 of the Qualification Directive provides as follows:

Serious harm consists of

- (a) Death penalty or execution
- (b) Torture or inhuman or degrading treatment or punishment of an applicant in the country of origin
- (c) Serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

206. It is for the appellants to show that there are substantial grounds for believing that there is a real risk of such treatment. No issues arise under Article 15(a) in these cases. Article 15(b) is essentially coterminous with Article 3 ECHR: Elgafaji, at [28]. In relation to Article 15(c), the leading European authorities remain Elgafaji and Diakite v Commissaire général aux réfugiés et aux apatrides (C-285/12); [2014] 1 WLR 2477 and the leading domestic authority remains QD (Iraq). Whilst the CJEU has more recently had occasion to consider the procedural protections inherent in Article 15 (in M v Minister for Justice and Equality (C-560/14); [2017] 3 CMLR 2), the substantive law remains as it was at the time of MOJ (Somalia) CG [2014] UKUT 442 (IAC). At [31]-[33] of that decision, the Upper Tribunal extracted the following principles from the leading authorities:

[31] In Elgafaji, the ECJ construed Article 15(c) as dealing with a more general risk of harm than that covered by 15(a) and (b). The essence of the Court’s ruling in Elgafaji was:

- (43) Having regard to all of the foregoing considerations, the answer to the questions referred is that Article 15(c) of the Directive, in conjunction with Article 2(e) of the Directive, must be interpreted as meaning that: 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; 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 assessed by the competent national authorities before which an application for subsidiary protection is made, or by the courts of a Member State to

which a decision refusing such an application is referred 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.”

[32] In *Diakite*, the Court, having provided a definition of internal armed conflict at [28], reaffirmed in [30] its view that for civilians as such to qualify for protection under Article 15(c) they would need to demonstrate that indiscriminate violence was at a high level:

(30) Furthermore, it should be borne in mind that the existence of an internal armed conflict can be a cause for granting subsidiary protection only where confrontations between a State’s armed forces and one or more armed groups or between two or more armed groups are exceptionally considered to create a serious and individual threat to the life or person of an applicant for subsidiary protection for the purposes of Article 15(c) of Directive 2004/83 because the degree of indiscriminate violence which characterises those confrontations reaches such a high level that substantial grounds are shown for believing that a civilian, if returned to the relevant country or, as the case may be, to the relevant region, would – solely on account of his presence in the territory of that country or region – face a real risk of being subject to that threat (see, to that effect, *Elgafaji*, paragraph 43).”

At [31] the Court reaffirmed the view it expressed in *Elgafaji* at [39] that Article 15(c) also contains (what UNHCR has termed) a “sliding scale” such that “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.” The Court thereby recognised that a person may still be accorded protection even when the general level of violence is not very high if they are able to show that there are specific reasons, over and above them being mere civilians, for being affected by the indiscriminate violence. In this way the Article 15(c) inquiry is two-pronged: (a) it asks whether the level of violence is so high that there is a general risk to all civilians; (b) it asks that even if there is not such a general risk, there is a specific risk based on the “sliding-scale” notion.

[33] In the United Kingdom, the principal decision of the higher courts dealing with Article 15(c) remains *QD (Iraq) v Secretary of State for the Home Department* [2011] 1 WLR 689. *QD* helpfully explains and indicates how *Elgafaji* should be applied. In addition we have the guidance set out in *HM and others (Article 15(c) Iraq) CG* [2012] UKUT 409 (IAC). At [42]-[45] of *HM (Iraq)* the Tribunal stated that:

(42) We recognise that the threat to life or person of an individual need not come directly from armed conflict. It will suffice that the result of such conflict is a breakdown of law and order which has the effect of creating the necessary risk. It is obvious that the risk is most likely to result from indiscriminate bombings or shootings. These can properly be regarded as indiscriminate in the sense that, albeit they may have specific or general targets, they inevitably expose the ordinary civilian who happens to be at the scene to what has been described in argument as collateral damage. By specific targets, we refer to individuals or gatherings of individuals such as

army or police officers. The means adopted may be bombs, which can affect others besides the target, or shootings, which produce a lesser but nonetheless real risk of collateral damage. By general targets we refer to more indiscriminate attacks on, for example, Sunnis or Shi'as or vice versa. Such attacks can involve explosions of bombs in crowded places such as markets or where religious processions or gatherings are taking place.

- (43) The CJEU requires us to decide whether the degree of indiscriminate violence characterising the armed conflict taking place reaches such a high level as to show the existence for an ordinary civilian of a real risk of serious harm in the country or in a particular region. When we refer below to the "Article 15(c) threshold", this is what we have in mind. Thus it is necessary to assess whether the level of violence is such as to meet the test. (...)
- (44) In HM1 at [73] the Tribunal decided that an attempt to distinguish between a real risk of targeted and incidental killing of civilians during armed conflict was not a helpful exercise. We agree, but in assessing whether the risk reaches the level required by the CJEU, focus on the evidence about the numbers of civilians killed or wounded is obviously of prime importance. Thus we have been told that each death can be multiplied up to seven times when considering injuries to bystanders. This is somewhat speculative and it must be obvious that the risk of what has been called collateral damage will differ depending on the nature of the killing. A bomb is likely to cause far greater "collateral damage" than an assassination by shooting. But the incidence and numbers of death are a helpful starting point.
- (45) The harm in question must be serious enough to merit medical treatment. It is not limited to physical harm and can include serious mental harm such as, for example, post-traumatic stress disorder. We repeat and adopt what the Tribunal said in HM1 at [80]:

In our judgment the nexus between the generalised armed conflict and the indiscriminate violence posing a real risk to life or person is met when the intensity of the conflict involves means of combat (whether permissible under the laws of war or not) that seriously endanger non-combatants as well as result in such a general breakdown of law and order as to permit anarchy and criminality occasioning the serious harm referred to in the Directive. Such violence is indiscriminate in effect even if not necessarily in aim. As the French Conseil d'Etat observed in Baskarathas, it is not necessary for the threat to life or person to derive from protagonists in the armed conflict in question: it can simply be a product of the breakdown of law and order."

207. These principles were cited at [36]-[42] of the respondent's skeleton argument and were expressly agreed by Mr Knafler. The parties agreed, therefore, that we are bound to adopt what has become known as the "inclusive approach" to the assessment required by Article 15(c). In HM2, the Tribunal said this about the inclusive approach:

[114] One aspect of the inclusive approach is an appreciation that there are threats to the physical safety and integrity of civilians beyond those measured in the civilian casualty rates. As put by Michael Knights of the Washington Institute for Near East Policy in a report of 16 February, 2012 entitled "A Violent

New Year in Iraq, The National Interest (cited at n. 217 of the May 2012 UNHCR Guidelines), “[m]ass casualty attacks tell only part of the story of violence in Iraq, and mortality statistics overlook the targeted nature of violence in today’s Iraq, where a high proportion of victims are local progovernment community leaders. For every one person of this kind who is killed, an exponential number of others are intimidated into passive support for insurgent groups”. Whilst our principal focus when examining levels of violence is physical harm causing death or injury, it is important that we also take account of indirect forms of violence such as threats, intimidation, blackmail, seizure of property, raids on homes and businesses, use of checkpoints to push out other factions, kidnapping and extortion. To adopt Mr Fordham’s metaphor, these factors mean that most Iraqis (outside the KRG) I continue to “live under the shadow of violence”.

**(ii) Departure from Extant Country Guidance**

208. A further point arises due to the existence of extant country guidance (particularly AA (Iraq)) which is favourable to the appellants. At [33]-[38] of the skeleton argument which was signed by all three junior counsel and Mr Cole, reliance was placed on the range of authorities in which the Upper Tribunal and the Court of Appeal have considered the circumstances in which it is permissible to depart from extant country guidance. Similar but rather more concise submissions were made in the first and second appellant’s closing written submissions, at [11]-[13].

209. The correct approach was considered in EM (Zimbabwe) CG [2011] UKUT 98 (IAC) and comprehensively reviewed in light of subsequent authority in MST (Eritrea) CG [2016] UKUT 443 (IAC), at [148]-[154]. In EM (Zimbabwe), Blake J recalled the terms of Practice Direction 12 of the Practice Directions (Immigration and Asylum Chambers of the FtT and the Upper Tribunal) of February 2010 and held materially as follows:

[71] The proposition that a country guidance case should provide the “starting point” for a subsequent case that relates to the country guidance issue is inherent in the Practice Direction (and its AIT predecessor). Whether the subsequent case is being “set down to review existing country guidance” or not, the effect of Practice Direction 12 and section 107(3) of the Nationality, Immigration and Asylum Act 2002 is to require the existing country guidance case to be authoritative, to the extent that the requirements in Practice Direction 12.2(a) and (b) are met. This is fully in accord with what the House of Lords (per Lord Brown) held in R (Hoxha) v Special Adjudicator [2005] UKHL 19. If the existing country guidance is such as to favour appellants (to a greater or lesser extent), it will in practice be for the respondent to adduce before a subsequent Tribunal “sufficient material to satisfy them” that the position has changed” (Paragraph 66).

[72] We do not find that the Upper Tribunal’s conclusion in RS at paragraph 199 is of assistance to our task in the present case. There the Upper Tribunal was expressing a view about the need for cogent evidence to depart from an extant country guidance case in a case that was not itself intended to be a country guidance case on the issue before us. The present cases have long been designated country guidance on the issue of a change in circumstances since RN, and we are re-examining all material data to inform ourselves what the present evidential position is. We recognise that the country guidance system has limitations if extant decisions become out of date and not based on relevant assessments as close as reasonably practicable to the date of the decision. The solution is two fold. First, in individual appeals where there is fresh material not



available at the time of the country guidance the Immigration Judge will be entitled to depart from the country guidance in the particular case on the basis that the guidance was either not directed to the particular issue in the subsequent appeals, or the factual assessment in the guidance case has now to be updated in the light of relevant cogent fresh information. Second, it is for the Tribunal to identify appeals as suitable for fresh country guidance where a fundamental review of all relevant material should be undertaken to see whether the situation has changed. The observations in TK were directed to the first class, rather than setting a test for departure from country guidance in all circumstances. We nevertheless recognise that where a previous assessment has resulted in the conclusion that the population generally or certain sections of it may be at risk, any assessment that the material circumstances have changed would need to demonstrate that such changes are well established evidentially and durable. That is the test that we will apply in our consideration of the material but not as a preliminary reason to decide whether we should revisit RN at all.

210. At [118] of CM (Zimbabwe) CG [2013] UKUT 59 (IAC), Blake J returned to the subject and held that what he had said in EM (Zimbabwe) was not to be interpreted as imposing some sort of legal gloss on PD12 so as to place greater restrictions on a Tribunal making a later CG decision than would be placed on a judge of the FtT hearing a subsequent appeal. He had not intended to set a test to be satisfied before an existing CG decision could be varied but merely to describe a means of approaching and evaluating the nature of the changes in the evidence. He continued:

Where a regime has engaged in persecutory conduct of a particular type even for a limited period, the judge undertaking a subsequent analysis will need to be satisfied that the cessation of the conduct was durable before concluding that either Country Guidance should not be followed or (if engaged in a Country Guidance exercise) that the Guidance itself needed to be amended. There is no rule of law here but simply an application of the precautionary principle relating to the assessment of reasonable likelihood of harm, where the previous assessment of risk was itself based on an unusually virulent and widespread outburst of persecutory activity dating from June 2008, the nature and duration of which needed to be assessed with care.

211. At [48] of the respondent's skeleton, it was suggested that we were concerned, in summary, to assess: (i) whether material circumstances have changed; and (ii) whether such changes are well established evidentially and durable. Mr Knafler expressly accepted that this summary of our task was accurate. Having considered MST (Eritrea), we agree. As the Upper Tribunal stated at [154] of that decision, the correct approach is now well established.

**(iii) The Assessment of Future Risk**

212. One final point emerges from EM (Zimbabwe), and is considered under the sub-heading 'The Legal Assessment of Future Risk' in the respondent's closing written submissions. The same sub-heading appears above [247]-[265] of the Upper Tribunal's decision in that case. In EM (Zimbabwe), it was submitted on behalf of the appellant that elections in Zimbabwe usually brought increased political violence and that this future risk should be considered, in addition to the position at the date of hearing. In these appeals, it is submitted by the appellants that the situation in Iraq, and in the contested areas in particular, is likely to change in the future with a consequent increase in the risk to the appellants. It was agreed on all sides before us that the law was correctly stated in EM (Zimbabwe), and in this paragraph in particular:

[258] In the present appeals, both sides agreed that, in Mr Henderson's words, there needed to be a "single holistic assessment of whether there is a real risk of serious harm in the event of return as opposed to a mere possibility" of serious harm, in the event of return. As we have already said, and as the case law plainly reveals, this inevitably involves an element of prognostication on the part of the Tribunal. In her closing submissions, Ms Grey acknowledged that the judgment in Saadi, which spoke of examining "the foreseeable consequences of sending the applicant to the receiving country," necessitated an examination of the risk of change to an existing situation. That was what SIAC had done in DD. According to Ms Grey, it is not suggested by the respondent that there is any "bright-line" test to be adopted, based upon some temporal rules; rather the Tribunal looks to see what are the foreseeable consequences of return. As the date at which events/risks might transpire or materialise becomes more remote, so their prospects become more uncertain; and the "real risk" test becomes progressively more difficult to satisfy.

**(iv) Article 3 ECHR / Article 15(b) QD**

213. Only two authorities were cited to us in connection with the evaluation of whether the conditions experienced by an individual in a particular territory might, without more, be a breach of Article 3 ECHR (and Article 15(b)). The cases cited (by the respondent) were Saadi v Italy (2009) 49 EHRR 30 and DD v SSHD [2008] EWCA Civ 289. Neither is of any real assistance beyond stating the well-established standard of proof in an Article 3 ECHR case, however, since neither case concerned an individual who contended that his mere presence in the territory of return would breach that article. In both cases, it was instead contended that the individual in question would be intentionally ill-treated upon return.
214. The correct approach in cases such as the present has been considered by the ECtHR and the domestic courts on a number of occasions, however. The review conducted by Laws LJ in GS (India) & Ors [2015] EWCA Civ 40; [2015] 1 WLR 3312 considered the state of the ECtHR authorities as they stood at the end of 2014, albeit in the context of what has come to be known as a 'health case'. At [57], Laws LJ noted that there was a 'fork in the road' between the approach in N v United Kingdom on the one hand and MSS v Belgium on the other. He considered it difficult to discern any governing principle which provided a rationale for departure from the approach in N v UK but he noted that there were certain strands of reasoning in the cases which assisted.
215. The Court of Appeal returned to Laws LJ's fork in the road in SSHD v Said [2016] EWCA Civ 442; [2016] Imm AR 1084, which concerned the deportation of a Somali national whose appeal had been allowed in the Upper Tribunal on the basis that the conditions to which he would be exposed on return to Somali would be contrary to Article 3 ECHR. Burnett LJ (as he then was) reviewed the Article 3 ECHR jurisprudence at some length from [12]-[18]. His conclusion in the latter paragraph (with which Sharp and Christopher Clarke LJ agreed) was as follows:

These cases demonstrate that to succeed in resisting removal on [article 3](#) grounds on the basis of suggested poverty or deprivation on return which are not the responsibility of the receiving country or others in the sense described in para 282 of Sufi and Elmi, whether or not the feared deprivation is contributed to by a medical condition, the person liable to deportation must show circumstances which bring him within the approach of the Strasbourg Court in the D and N cases. [emphasis supplied]

216. At [19], Burnett LJ explained why Said's particular circumstances were not such as could

preclude his removal to Somalia on Article 3 grounds. He then clarified the proper approach to the country guidance in MOJ (Somalia). Said was cited in MA (Somalia) [2018] EWCA Civ 994; [2019] 1 WLR 241, in which Arden LJ (as she then was) stated:

[63] The analysis in *Said*, by which this Court is bound, is that there is no violation of Article 3 by reason only of a person being returned to a country which for economic reasons cannot provide him with basic living standards. Mr Sills however contends that that situation is brought about by conflict, which is recognised by the European Court of Human Rights as an exception to this analysis. It is true that there has historically been severe conflict in Somalia, but, on the basis of *MOJ*, that would not necessarily be the cause of deprivation if the respondent were returned to Somalia now. The evidence is that there is no present reason why a person, with support from his family and/or prospects of employment, should face unacceptable living standards.

217. Further guidance on the caveat at [282] of Sufi & Elmi was provided in MI (Palestine) [2018] EWCA Civ 1782; [2019] Imm AR 75. The appellant and his wife were to be returned to Gaza, and it was submitted to the Deputy Upper Tribunal Judge that the risks to her health, combined with the harsh conditions in the place of return, would amount to a breach of Article 3 ECHR. The DUTJ applied the test in N v UK and held that the high threshold in that decision was not reached. Flaux LJ, with whom King LJ agreed, concluded that the DUTJ had erred in adopting that approach.
218. Flaux LJ reviewed the European and domestic authorities again. He noted that the paradigm Article 3 ECHR case was one in which there was an intentional act which constituted torture or inhuman or degrading treatment or punishment and that the case of someone whose life would be shortened by the progress of a natural disease did not fall within that paradigm. In the latter category of case, Strasbourg had set a very high threshold. He noted, as had Laws LJ in GS & EO, that the Strasbourg court had rejected the application of the N v UK threshold in Sufi & Elmi because the humanitarian crisis in Somalia was predominantly due to the direct and indirect actions of the parties to the conflict there: [19]. He cited what Laws LJ had observed about the rationale of the decision in MSS, in which Greece had been impugned for breach of Article 3 because of the applicant's plight in Greece itself, rather than in a third country: [20]. Having considered Said in light of the earlier authorities, Flaux LJ stated that the Court of Appeal had "evidently considered that the Country Guidance case showed that the conditions in Somalia, although harsh, could no longer be attributed to the direct and indirect actions of the parties to the former conflict so that the *N* test applied to the applicant's case and he could not satisfy that test".
219. At [30]-[34], Flaux LJ held that the Deputy Judge had erred in law in failing to consider whether the approach in MSS v Belgium should have been applied to the country conditions in Palestine. He considered it sufficiently arguable, having had regard to the country information, that the conditions in Gaza were attributable to the direct and indirect actions of the parties to the conflict within the meaning of [282] of Sufi & Elmi and that there was an "element of intentionality": [32]. The appeal was remitted to the Upper Tribunal to decide whether to apply the approach in N v UK or MSS v Belgium. In a case such as the present, in which it is submitted that return of an individual to Iraq would breach Article 3 ECHR as a result of the country conditions themselves, it is necessary to consider which of these thresholds applies.

## SECTION E - ANALYSIS

### **Article 15(c)**

220. It will be apparent from the submissions recorded above that the law and the facts, at least in relation to the background situation in Iraq, are not substantially in dispute between the parties. The approach we are required to adopt to Article 15(c) of the Qualification Directive is settled domestically and in Luxembourg and is summarised above.
221. We have taken the existing country guidance as our starting point but, as will become apparent, the determination of these appeals does not depend upon the same or similar evidence as was before the Upper Tribunal in AA (Iraq), in which it was found that the situation in certain parts of Iraq reached the Article 15(c) threshold.
222. We were referred to hundreds of pages of background material during the course of the hearing. Dozens of pages of written submissions were made and supplemented by hours of oral submissions. We do not intend any criticism of the representatives in making that observation. On the contrary, we have been greatly assisted by the material presented and by the submissions we received about it. In reaching our conclusions, however, it is obviously not feasible to refer to every item of background material or to every submission made, since to do so would produce a decision of unnecessary length. We have considered all of the submissions made, and all of the background material to which we have been referred. In considering the background situation, we note the diversity of the sources to which we were referred, which included EU and state-funded bodies such as EASO and Landinfo (the Norwegian Country of Origin Information Service), other non-governmental organisations such as Amnesty International, and statistical data and opinion from individual commentators such as the author of the Musings on Iraq blog, Joel Wing. As noted above, we were particularly assisted by Dr Fatah's evidence and by the March 2019 reports from the European Asylum Support Office due to the care taken by both to identify the sources of their evidence and opinions.
223. Although we refer extensively to those reports, we have considered the other material carefully, and have paid particular regard to the UNHCR's May 2019 *International Protection Considerations with Regard to People Fleeing the Republic of Iraq*, as a result of what was said at [155]-[158] of MST (Eritrea) CG [2016] UKUT 443 (IAC). We note two points in connection with that guidance at this stage. Firstly, because the guidance is not primarily focussed upon Article 15(c) of the Qualification Directive, it does not contain an extensive examination of the situation in the Formerly Contested Areas and Baghdad. For that reason, we have derived more assistance from reports such as those prepared by Dr Fatah, EASO and Joel Wing, which focus individual scrutiny on the areas under consideration in these appeals.
224. Secondly, it is not correct to assert, as Mr Knafler and his juniors do at [50] of their closing submissions, that 'the view of UNHCR and Dr Fatah is that A15(c) does apply right now in the [contested areas]'. As an experienced expert, Dr Fatah is well aware that such an assessment is for the Tribunal, not for him. And the UNHCR simply does not state in its May 2019 report that Article 15(c) applies throughout the formerly contested areas. UNHCR certainly advises against returns to those areas but its stance on *Eligibility for Subsidiary Protection under the EU Qualification Directive* is to suggest a close analysis of the situation in the home territory and consideration of the precise circumstances of the individual:

Iraqis and former habitual residents of Iraq who seek international protection in Member States of the European Union and who are found not to be refugees under the 1951 Convention may qualify for subsidiary protection under Article 15 of the 2011 Qualification Directive, if there are substantial grounds for believing that they would face a real risk of serious harm in Iraq. In light of the information presented in Section II.C of these Guidelines, applicants may, depending on the individual circumstances of the case, be in need of subsidiary

protection under Article 15(a) or Article 15(b) on the grounds of a real risk of the relevant forms of serious harm (death penalty or execution; or torture or inhuman or degrading treatment or punishment), either at the hands of the State or its agents, or at the hands of non-state agents.

Equally, in light of the fact that Iraq continues to be affected by a non-international armed conflict and in light of the information presented in Sections II.B, II.C, II.D and II.E of these Considerations, applicants originating from or previously residing in conflict-affected areas may, depending on the individual circumstances of the case, be in need of subsidiary protection under Article 15(c) on the grounds of a serious and individual threat to their life or person by reason of indiscriminate violence. [emphasis supplied]

In the context of the armed conflict in Iraq, factors to be taken into account to assess the threat to the life or person of an applicant by reason of indiscriminate violence in a particular part of the country include the number of civilian casualties, the number of security incidents, as well as the existence of serious violations of international humanitarian law which constitute threats to life or physical integrity. Such considerations are not, however, limited to the direct impact of the violence, but also encompass the consequences of violence that are more long-term and indirect, including the impact of the conflict on the human rights situation and the extent to which the conflict impedes the ability of the State to protect human rights. In the context of the conflict in Iraq, relevant factors in this respect are (i) the continued presence of ISIS in areas outside of urban centres, where effective government control has not been established following the retaking of these areas from ISIS and the latter's ability to threaten, intimidate, extort, kidnap and kill civilians and restrict their freedom of movement; (ii) the high level of fragmentation of security actors, the prevalence of corruption and the ability of security actors to commit human rights violations with impunity; (iii) the impact of violence and insecurity on the humanitarian situation as manifested by food insecurity, poverty, the destruction of homes, livelihoods and the loss of assets; and (iv) constraints on women's participation in public life.

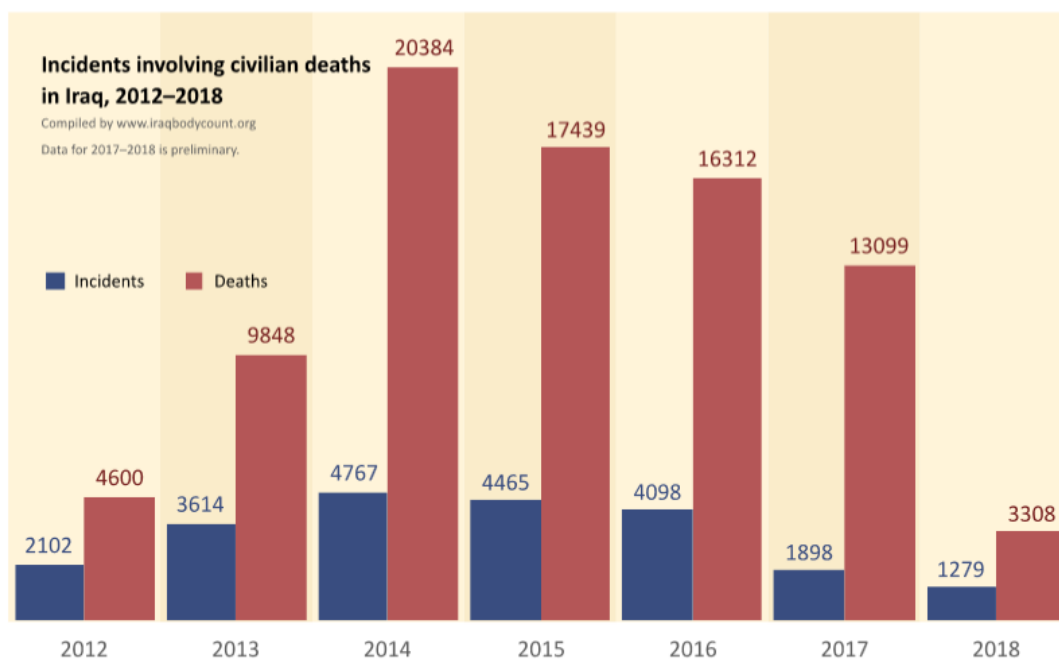
These factors, either alone or cumulatively, may be found to give rise to a situation in a particular part of Iraq that is sufficiently serious to engage Article 15(c) without the need for the applicant to demonstrate individual factors or circumstances increasing the risk of harm. Where, after all relevant evidence has been considered, this is found not to be the case in the part of Iraq from which the applicant originates, it falls to be considered whether the applicant's individual characteristics are such as to reveal specific vulnerabilities which, combined with the nature and the extent of the violence, give rise to a serious and individual threat to the applicant's life or person.

225. That is precisely the approach we intend to adopt, since it accords with the approach required by the jurisprudence of the CJEU and our domestic courts.
226. In considering Article 15(c), the first but by no means the only issue we are required to consider is the presence of ISIL and the threat posed by that group to the population of Iraq, and to the population the formerly contested areas in particular. Before we turn to ISIL's current presence and activity in the country, we refer briefly to the situation in 2015, which led the respondent to concede in AA (Iraq) that the level of risk to a civilian solely on account of his presence in the then contested areas was such as to cross the Article 15(c) threshold in

the generality of cases. At that stage, ISIL was in control of approximately a third of Iraq, including Mosul (its second city) and Amnesty International recorded that the group had carried out 'ethnic cleansing on a historic scale in Iraq': AA (Iraq) at [32] and [103]. In the same paragraph, the United Nations Assistance Mission was recorded as having found numerous examples of targeted executions and the use of mass graves in the country. In its March 2019 report, EASO referred to ISIL having 'a sustained and deliberate policy of executing civilians as a means of exerting control and instilling fear' in the areas it controlled between June 2014 and December 2017.

227. It is accepted on all sides that ISIL is still present in Iraq and that it is still active. It is accepted that there is a state of internal armed conflict in the country and that there is some risk to civilians as a result of that conflict. The material question is whether the violence in the areas under consideration remains at a scale and intensity whereby the Appellants, or any other returning civilian, would by his presence alone face a serious and individual threat to his life or person. We will consider ISIL's activity in specific areas below but we note at the outset two figures provided by Dr Fatah, both of which were said by him to be estimates. We received a great deal of evidence about ISIL 'sleeper' or 'attack' cells, which carry out a range of insurgent activities, including targeted assassinations, the creation of fake checkpoints and, latterly, the burning of crops and agricultural infrastructure. We asked Dr Fatah about the size of these cells and he estimated that they would probably contain in the region of three to five individuals. Asked about the number of ISIL fighters remaining in Iraq as a whole, Dr Fatah estimated that their numbers had been reduced to somewhere between ten and twenty five per cent of their full strength of 8000 fighters. On that evidence, between 800 and 2000 remain in the whole of Iraq, therefore. There is a range of opinion about the numbers remaining. At 1.3.2 of its March 2019 report, EASO noted that the US Department of State had estimated in August 2018 that there were between 15,500 and 17,100 ISIL fighters remaining in the country. It then recorded the view of Hisham al-Hashimi in July 2018, which was that around 1000 remain. Given the range of sources consulted by Dr Fatah and the fact that his evidence was given considerably more recently, we consider his estimate to be the most reliable before us.
228. ISIL was militarily defeated at the end of 2017 and all sources agree that its tactics have changed significantly since then. It no longer holds swathes of territory and it is simply not able to carry out ethnic cleansing and genocide, whether on a historic scale or at all. There are now concentrations of ISIL fighters in 27 places, particularly but not exclusively in remote desert areas and along the Hamrin Mountain Ridge. Their primary activity, as Dr Fatah described throughout his evidence, is on what he described as 'hit and go' attacks on identified targets. These asymmetric attacks are most often directed at figures of authority or those associated with the security forces. As Dr Fatah put it in his oral evidence, they are 'selective' in their targets. All sources agree that the focus of the insurgency is now on destabilising the security situation in those areas in which it retains a presence, exploiting Sunni grievances and attempting to rebuild.
229. The military defeat of ISIL and the changed focus of their operations has brought with it what the respondent describes as a 'seismic change' in the security situation in Iraq. Michael Knights states that ISIL is now at its 'lowest operational tempo'. Joel Wing stated in his 1-7 April blog that the violence in Iraq is at its lowest level since 2003. In considering the extent of that change on a national level, it is instructive to consider some statistical data concerning the situation in Iraq as a whole. We take this information from section 9 of Dr Fatah's report, which relies upon data from the Iraq Body Count website, which was noted at [110] of HM (Iraq) CG [2012] UKUT 409 to be more reliable than other datasets, due to their use of multiple sources. (We note that the UNHCR's May 2019 report cites figures from IBC, as well as UNAMI).

230. Saddam Hussein was removed from power in 2003, in which year there were 12,133 civilians killed. The number fell slightly in the following year, to 11,736. The number then rose to the first of two peaks in 2007, in which year there were 29,451 civilians killed. The number then fell, year on year, to 4,153 in 2011. As ISIL rose in prominence in the region, the number then climbed again until it reached 20,218 in 2014. The numbers declined in 2015 (17,578), 2016 (16,360) and 2017 (13,187) before falling dramatically in 2018 to 3,319. It is to be recalled, when considering those figures, that HM2 was decided in November 2012; AA (Iraq) was decided in on 30 October 2015; and ISIL was defeated militarily at the end of 2017. This graph from Iraq Body Count for the period 2012 to 2018, which is from 1.5.1 of the EASO report on the general security situation<sup>6</sup>, provides a graphical representation of the trends over the last six years.



231. The statistics compiled by the various organisations and commentators do not tally precisely, as was recognised on all sides. As Dr Fatah explained, however, the trends reflected in the statistics remain the same, even if the numbers vary from source to source. His opinion in that respect mirrors EASO's comment immediately below the graph we have reproduced. The trend shown in the graph is reflected in all of the sources, as it was in Dr Fatah's oral evidence. It is abundantly clear, considering the situation in Iraq as a whole that the numbers of security incidents and civilian casualties and civilian casualties have decreased significantly since 2014.

232. There will be further reference to statistics in the later sections of this decision. We consider them as part of an inclusive approach and with some caution as a result of the under-reporting to which Dr Fatah referred in his evidence (as partly attributable to the need for Islamic burials to take place shortly after death). It is also appropriate to record two other observations about such statistics.

<sup>6</sup> Unfortunately, and seemingly as a result of the use of 'bundle making' software on the part of the appellant's representatives, the graphs were not reproduced in the printed reports before us and we were required to access them online.

233. Many of the data sources to which we were referred record numbers of ‘security incidents’ in parts of Iraq. Dr Fatah’s reports helpfully include not only the numbers of such security incidents in each area but also a short description of the incident in question. We noted that a number of the security incidents he described were not incidents which might be said to bear on the assessment of risk under Article 15(c). At [405]-[442] of his first report, for example, he describes the security incidents in Salah al Din Governorate between 31 December 2017 and 3 February 2019. Of the 37 incidents recorded over that period, 10 related to the discovery of ‘hotbeds’ of ISIL and the clearance of ISIL caches of weapons and explosives. We asked Dr Fatah whether it was standard for commentators to record incidents of this nature as security incidents. He confirmed that this was standard practice. Whilst we understand the reason why such events are recorded, we consider there to be a danger in relating the number of security incidents with the risk of indiscriminate violence under Article 15(c) because incidents of this nature reflect the reduction in ISIL’s capability rather than the proliferation of its operations.
234. Secondly, we noted that Dr Fatah’s reports included bodies discovered in mass graves in the regional casualty figures for the month in question. That appeared to follow the approach of other commentators, including Joel Wing who writes the *Musings on Iraq* blog which was placed before us by the respondent. In answer to our questions, Dr Fatah confirmed that it was usual for commentators on Iraq to record bodies discovered in mass graves as casualties which occurred in the month of their discovery. It is sadly a commonplace of life in post-ISIL Iraq that such mass graves are regularly discovered. The impact of such discoveries on the statistics is apparent from a number of the sources before us. At 1.2.5 of the respondent’s “Situation on the Ground” report from March 2019, for example, Joel Wing’s *Musings on Iraq* blog was quoted as saying that there were 112 casualties during the week 8-14 March 2019 “because of a mass grave”. The blog continued, stating that the bodies of 65 people, believed to be members of the Iraqi Election Commission, had been discovered in a mass grave in the Baaj District in Western Ninewa. As a result of that discovery, the blog reported that there were 67 casualties in Ninewa during that week. At first blush, such a statistic would appear to indicate a fairly significant risk to the population of Ninewa. When it is borne in mind that the statistic takes into account the deaths of people which occurred during ISIL’s control of the area, however, it is of marginal relevance to the present risk of indiscriminate violence contrary to Article 15(c).
235. The impact of the discoveries of mass graves on the casualty statistics is potentially significant, and particularly so when the number of such graves in areas previously controlled by ISIL is understood. The second of the EASO reports from March 2019, entitled *Iraq: Targeting of Individuals*, records that UNAMI released a report in November 2018 in which it documented the discovery of 202 mass graves since June 2014, the overwhelming majority of which contain victims killed by ISIL. Estimates provided to UNAMI range from 6000 to 12,000 buried in these sites, with the largest number being located in the governorates of Ninewa (95), Kirkuk (37), Salah al-Din (36) and Anbar (24).
236. Whether or not allowance is made for the observations immediately above, the national trend is clearly of a greatly reduced number of security incidents and civilian casualties. The latest figures from *Musings on Iraq* show some spikes in security incidents and civilian casualties but the overall picture remains one of improvement. There is reference in the *Musings* blog to ISIL mounting a new spring/summer offensive called The Return of the Levant but Dr Fatah stated that this was ‘naïve’ and it is clear that it has made no significant impact on the general trends shown by the graph above.
237. UNAMI has published numbers of casualties from the six worst affected governorates in Iraq



on a monthly basis since November 2012. On 3 January 2019, however, it issued a statement which is quoted at 3.2.2 of the Home Office report entitled *Iraq: Situation on the ground* dated May 2019:

UNAMI used to publish these casualty figures on a monthly basis as part of its broader efforts to highlight civilian protection needs, reduce civilian harm, and to encourage all parties to the conflict to abide by their obligations under international human rights and humanitarian law. However, UNAMI's monitoring in recent months has shown a steady reduction in civilian casualties. UNAMI has therefore decided that it will no longer publish these civilian casualty updates on a monthly basis but only if circumstances dictate. Whilst this decision is made in the context of a stabilizing security situation, and a consequent reduction in conflict-related harm to civilians, the conditions necessary for a sustained reduction in violence remain very fragile. UNAMI will, therefore, continue to monitor the situation.

238. Alongside that statement, UNAMI issued its final statistics, which it regarded as the 'absolute minimum'. It stated that a total of 32 Iraqi civilians were killed in December 2018 and another 32 were injured in acts of terrorism. For comparison, the worst month recorded by UNAMI was June 2014, in which 1775 civilians were killed and 2351 were injured. (In answer to the respondent's written question 28, Dr Fatah confirmed that the trends revealed by these figures had continued into the first three months of 2019). It is obviously significant that UNAMI decided in January 2019 that it would no longer release monthly casualty figures.
239. We cite these figures simply in order to provide an overview of the much-reduced incidence of civilian deaths and casualties in Iraq. We recognise that there is considerable regional variation in the casualty rates and that it is necessary to consider those areas individually. We accept the submission made by Mr Bazini that any such figures should be treated with some caution due to the under-reporting of casualties. The same submission was accepted at [126] of AA (Iraq). We also recognise a point made in both HM (Iraq) decisions; although the numbers of civilians killed or wounded is obviously of "prime importance" in assessing risk under Article 15(c), it is nevertheless necessary to adopt an inclusive approach to the assessment. In undertaking that assessment, we have borne in mind the additional guidance provided at [114] of HM2, which we have set out above, and also what was said by the Upper Tribunal at [89] of AA (Iraq) and at [163] of AK (Afghanistan) CG [2012] UKUT 163. We will adopt that approach when considering the situation in individual areas but the national statistics provide an introduction to that analysis. The statistics led Michael Knights (who continues to be a well-respected commentator on Iraq) to state in his 14 December 2018 report that ISIL is currently functioning at its 'lowest operational tempo (at the national aggregate level) since its nadir in late 2010'.
240. There are other indicators of the security situation improving at a national level. Although extensive humanitarian concerns remain, Internally Displaced Persons continue to return to their home areas at a steadily increasing rate. Whilst displacement and secondary displacement continues to occur in certain areas, some 4.1 million Iraqis had returned to their areas of origin as of 31 December 2018. It is against the backdrop of improving security and increasing returns that Dr Fatah reports the current government as stating that its focus is now on post conflict recovery and reconstruction. We do not consider this to be mere rhetoric. Security has been relaxed in Baghdad, which has seen a reduction in the number of checkpoints and the removal of blast protection barriers and the government has sought substantial international funding to rebuild those parts of Iraq, including Mosul in particular, which suffered the most damage during 2014-2017 battle to regain control of the contested

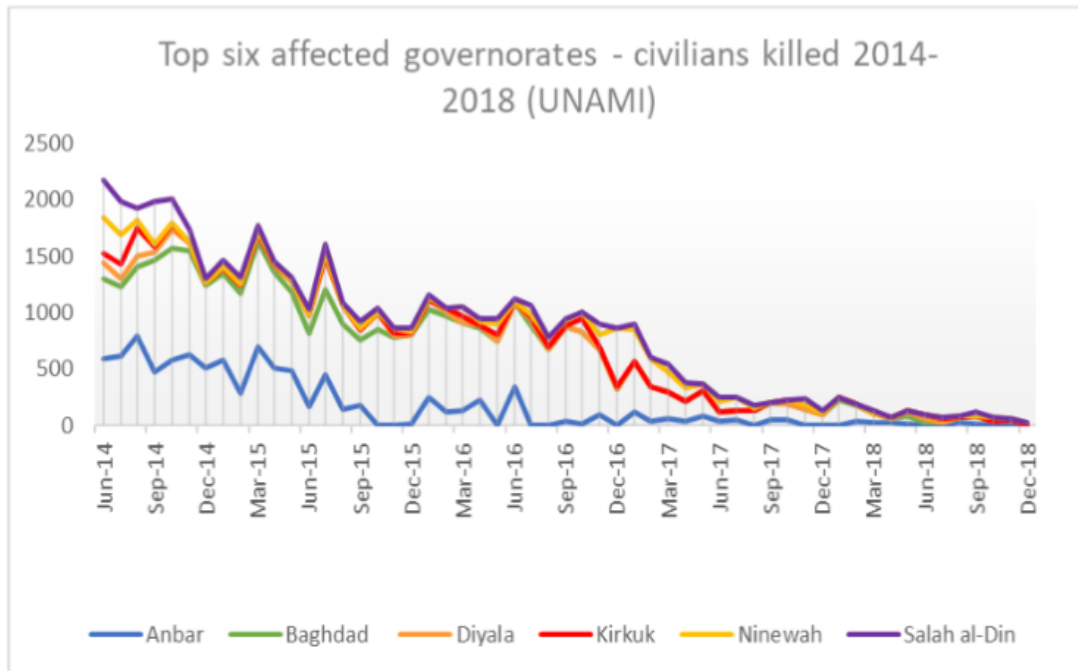
areas from ISIL.

241. These national trends were not disputed by the appellants. Nor could they have been, since they are reflected across the materials we were asked to consider, including the written and oral evidence of Dr Fatah. Building on the evidence of Dr Fatah, however, it was submitted by the appellants that Iraq remains deeply unsettled and that the proper application of the inclusive approach can only lead to the conclusion that there has not been a durable change which justifies departure from the existing country guidance in respect of the formerly contested areas in particular. Before we consider the situation in the individual governorates, we turn to the destabilising factors which were highlighted by Dr Fatah, since they are relevant to Iraq as a whole, albeit to varying degrees depending on, for example, the ethnic composition of the area in question.
242. Iraq remains characterised by deep ethnic, tribal and political divisions which are fuelled by the presence and influence of international actors in the country. As will be apparent from our summary of Dr Fatah's evidence, a recurring theme was the role of the PMUs. As ISIL was on the rise in Iraq, a fatwa was pronounced by Ayatollah Sistani, a prominent Shia cleric in Iran, asking Shias to fight against the occupying insurgency. Shias from Iran and Iraq responded in their thousands and the PMU provided considerable assistance to the Iraqi Security Forces ("ISF") in the military defeat of ISIL. In December 2016, a law was passed, incorporating the PMU into Iraq's armed forces. They remain a considerable presence in Iraq, and particularly in the parts of the country which are under consideration in this decision. The PMUs receive funding and influence from Iran and remain a part of the security apparatus which, in Dr Fatah's words, keeps a foot on the throat of ISIL.
243. The difficulties with the PMUs were apparent even at the time of the decision in AA (Iraq), however, as is clear from [34]-[35] of that decision. Whilst the presence of such a sizeable force was instrumental in the defeat of ISIL, the Tribunal noted in 2015 that there was a pattern of Shia militia attacks, motivated by retaliation for ISIL activities but also by sectarian hatred and ordinary criminality. Dr Fatah stated in his oral evidence before us that although the problem of young Sunni men being taken and killed from Shia militia checkpoints had reduced significantly, other problems associated with the militia remain. As we will see in respect of the individual areas below, the largely unaccountable PMU contribute to sectarian divisions across Iraq, including by the renaming of Sunni and Kurdish sites with Shia names and by participating in criminality and extortion. As Dr Fatah suggested in his oral evidence, it is to be remembered that Iran has a policy of 'exporting revolution' and it seems unlikely, in light of that policy and the clear role played by the PMU in enforcing security in Iraq, that these forces will withdraw in the foreseeable future.
244. The presence of the PMUs contributes to the feelings of Sunni resentment which have long existed in Iraq. Saddam Hussein was a Sunni from Tikrit and the Sunnis held the upper hand in the country until 2003. From that point onwards, the Sunnis became less powerful and their resentment simmered in the face of Shia domination, particularly in certain areas. Dr Fatah explained in his oral evidence how this enabled ISIL to build support in various Sunni tribes, in which it was thought that the 'enemy of my enemy is my friend'. As the resentment towards the PMUs continues, concern has been expressed in some quarters that this disenchantment will fuel the resurgence of ISIL.
245. After the hearing of these appeals had been concluded, the appellants sought to file a report which was published by the Institute for the Study of War in June 2019, entitled *ISIS's Second Comeback, Assessing the Next ISIS Insurgency*. It is a lengthy report but its principal conclusion may be summarised quite briefly: ISIL will seek to re-establish territorial control in Iraq and Syria and it will be likely to succeed in the event that US forces withdraw (page 8 of the

report refers). The respondent made brief submissions in writing in response to this report. Although leave was given to neither party to file such post-hearing material, we have nevertheless considered it. Having done so, we attach greater weight to the material filed by the respondent in response to the ISW report, for the following reasons.

246. In the respondent's material, Michael Knights is recorded as saying that the popular basis for Sunni insurgency has 'never been smaller' due to the brutality of ISIL towards its own people between 2014 and 2017. In similar vein, Joel Wing in his 17 July 2019 Musings on Iraq blog quoted an Italian reporter named Daniele Raineri who said that the 'whole concept of the Islamic State as the right solution for the grievances of the Sunni people in Iraq and Syria has been proven false' and that there was an 'ideological vaccination' against ISIL. As Dr Fatah put it during his oral evidence, ISIL 'lost the hearts and minds' of the Iraqi people during their brutal occupation of the contested areas. The ISW report, in contrast, fails to recognise that a crucial and significant inhibitor on the resurgence of ISIL in Iraq is that the disaffected Sunnis have recently experienced life under ISIL and are likely to prefer life under the PMUs. That said, we recognise that the presence of the largely Shia PMUs and the resentment towards them on the part of the Sunnis and the Kurds in particular contributes adversely to the security situation in Iraq, and particularly in the formerly contested areas.
247. The wider political situation in Iraq remains of concern. The Disputed Territories remain disputed between the IKR and the GOI and the Kurdish Independence Referendum in September 2017 served to increase tensions. Some clashes between the Kurdish Peshmerga, the PMU and the ISF followed, with the result that most of those areas which had been under the de facto control of the IKR fell back under the control of the Iraqi government. Kirkuk was retaken from the peshmerga by the PMU and the ISF in October 2017. The impact of the referendum was considered in AAH (Iraq), which was considered five months or so after the referendum took place. The Tribunal noted at [7] of that decision that the situation had become "increasingly unstable following the September 2017 referendum". Since then, we accept the submission made by the respondent at [72] and [73] of her closing submissions, which is that the general direction in more recent times has been towards rapprochement between the GOI and the IKR. A national budget and an agreement on the unification of customs duties were agreed in January 2019; Erbil airport was re-opened to international flights in November 2018 and there has been some co-operation between ISF and Peshmerga forces operating outside the Kurdish areas.
248. We should also mention the May 2018 elections in Iraq, which led to Adel Abdul-Mahdi becoming Prime Minister. As Dr Fatah reported in his initial report, the elections were marred by reports of fraud. He said in his oral evidence that there is no proper democratic process in Iraq, 'only voting'. The Prime Minister was selected as a 'compromise candidate' because of the lack of a clear majority. He is not able to oppose the political blocs or to do anything without their consent because he has no major bloc behind him. Dr Fatah's justifiable opinion, in these circumstances, is that this fragile situation carries with it the risk of government shutdown in the event that the Prime Minister decided something which is opposed by the blocs. In the meantime, the opposition to the two main Kurdish political parties, the PUK and the KDP, has also increased and thousands of people took to the streets in 2017 and spring 2018 to complain about a lack of transparency and accountability. It might legitimately be said that the political situation in the GOI and the IKR is unstable and that there is an uneasy truce between the two governments.
249. We now turn to consider the security situation in individual governorates against the backdrop of the observations we have made about the situation in Iraq as a whole. It will be necessary, in doing so, to consider statistics about the individual governorate in question. For a quantitative overview of the security situation in the six governorates most affected by

violence, however, another graph from the EASO on the general security situation in Iraq provides a good starting point. This graph is compiled with UNAMI figures which, as discussed above and in previous country guidance cases, do not tally precisely with those of other commentators but are nevertheless reflective of the general trend in those governorates. (We are conscious of the fact that printed copies of this graph are unlikely to be in colour and it may assist the reader to know, therefore, that the governorate with the highest number of civilians killed was consistently Salah al-Din and the governorate with the lowest numbers killed was consistently Anbar.)



250. In the EASO report, there is another UNAMI graph showing the numbers of civilians injured in the same period. The trend shown is the same, although there are dramatic upward spikes in Ninewah from October 2016 to July 2017, when the battle for Mosul was underway. As can be seen, the trend across all relevant areas is of significant and continuous reduction in the levels of violence. With those introductory observations, we turn to consider the situation in the individual governorates, as informed by the totality of the material before us.

### Kirkuk Governorate

251. All of Kirkuk governorate is disputed between the GOI and the IKR. It is an ethnically diverse governorate which has seen a great deal of upheaval in recent decades. We were struck by Dr Fatah's evidence that an individual who had lived in Kirkuk since the 1970's would have seen it change hands several times. Kirkuk City itself was never taken by ISIL although Hawija was, and Hawija was one of the last places in Iraq to be liberated, in October 2017. The battle for Hawija caused significant damage to its infrastructure. Since control over Kirkuk was taken back from the peshmerga in the aftermath of the Kurdish Independence Referendum, the whole governorate is controlled by the ISF, with a significant presence of PMU militia.

252. ISIL controls no territory as such in Kirkuk governorate but it is certainly present and active, particularly in the areas surrounding Hawija and the Hamrin Mountains. There are pockets of fighters in these areas, or permanently operating attack cells, as they are also called in the background material. We accept Dr Fatah's evidence that around half a million people live in the areas in which these cells operate.

253. The statistics we have recorded above show a sharp fall in the number of civilians killed. We recall just one of the datasets before us: IBC recorded 950 civilian deaths in the governorate in 2017, which fell to 276 in 2018. The intensity fell from 62.9 civilians deaths per 100,000 population in 2017 to 18.3 in 2018.
254. ISIL's main focus in Kirkuk is to attack specific targets, who are usually authority figures or those associated with the security services. More recently, as recorded in the Musings blog, they have also been burning farms and agricultural infrastructure, and it is this activity which was responsible for the increased number of security incidents recorded in the blog in May 2019. It is notable that there have been frequent attacks of this nature in Kirkuk, particularly in the South West of the city, which is the area nearest to the Hamrin Mountain range, in which ISIL retains a constant presence despite some ISF successes in locating and destroying their cells. The White Flag group also operates there, although its activities are limited.
255. All commentators agree that ISIL is attempting to regain control of rural areas in this governorate. Concerns have been expressed about their attempts to regroup in the governorate. The killing of village mukhtars and the attacks on farms are part of that plan. There have also been skirmishes during the day time. Civilians have undoubtedly been affected by the violence, particularly in rural areas, but also in Kirkuk city and during checkpoints attacks. We note that EASO recorded one assessment as being that Hawija and Daquq Districts are actually contested, due to the physical and psychological pressure exerted by ISIL over the population. Dr Fatah declined to use that label when it was put to him, although he said that the situation was bad and that the White Flags also continued to operate in the area.
256. There is a security vacuum in the rural parts of the governorate, left by the departure of the peshmerga in late 2017. ISIL has some support in the region and has been able to move freely and expand its operations in the region as a result of that vacuum. It is regarded as one of the core areas for ISIL's rebuilding efforts by Joel Wing and other respected contributors. We also accept the evidence given by Dr Fatah about the effect of the PMU in Kirkuk governorate. Whilst they lessen the threat from ISIL in the region, they have also brought renewed sectarian tension, for instance by renaming Sunni sites with Shia names. The fact that Kirkuk remains a Disputed Territory also contributes to the uncertainty experienced by residents of the Governorate.
257. The urban areas of Kirkuk and the transport links which connect them therefore suffer primarily from targeted attacks against authority and security figures which cause largely unintended civilian casualties. The rural areas of Kirkuk suffer from targeted attacks of a similar type but also from a security vacuum which is exploited by ISIL and, to a much lesser extent, the White Flags. The risk to civilians in the rural areas is demonstrably higher, given ISIL's attempts to rebuild in those areas and the way in which they pursue that goal. Nevertheless, we do not consider the proper application of the inclusive approach set out above to justify a conclusion the level of violence in the governorate reaches the Article 15(c) threshold. The levels of civilian casualties are not indicative of such a threat, standing as they did at 276 amongst a population of 1.5 million in 2018. Similar figures emerge from the 2019 evidence. The small numbers of ISIL fighters are thinly spread, operating in small groups, and the scale of their activities is limited. As at 23 May, 329,622 IDPs had returned to Kirkuk governorate according to Musings on Iraq. We take account of indirect forms of violence, as required by HM2 and as described above but we do not consider that the level of risk to an ordinary civilian purely on account of his presence in Kirkuk, or any part of it, is such as to cross the Article 15(c) threshold. The existence and actions of permanently operating attacks cells, the coercion brought to bear on sections of the rural population by

ISIL and the other forms of indirect violence from ISIL and other groups (including the PMU) are not at a sufficiently high level to cross that threshold when considered as a whole.

### **Ninewa Governorate**

258. Approximately a third of Ninewa is disputed between the GOI and the IKR, including Sinjar in the north and the part which lies to the east of the Tigris river in the east. It is the most ethnically diverse governorate in Iraq. Iraq's second city, Mosul, is in Ninewa. It was adopted as ISIL's capital from 2014 to the liberation of the city in July 2017. The battle for Mosul cost many lives. It also resulted in Western Mosul being razed to the ground by heavy artillery fire. What remains of that part of the city is riddled with corpses, unexploded ordinance and booby traps, although reconstruction and rehabilitation efforts on the part of the Iraqi authorities and the international community are underway. The devastation in Eastern Mosul, on the other side of the Tigris, was nowhere near as bad. The majority of the city's population of 1.5 million left and have not returned. Sinjar and Baaj were also largely destroyed and the Yezidi population of Sinjar suffered some of the worst abuses during ISIL's occupation.
259. The threat from ISIL in Ninewa is higher than in Kirkuk. We note and take seriously the view expressed by the US Consulate and USAID that ISIL is viewed as a threat to the civilian population in Ninewa (and elsewhere). As in Kirkuk, it holds no territory as such but it has an established presence of attack cells, some of which are heavily armed and well organised. Dr Fatah and other commentators agree that there are relatively few incidents involving civilians and that ISIL is more selective in its targets. The focus remains on targeting figures in military or authority positions. There are nevertheless indicators of a higher threat to civilians in this governorate, including the detonation of a truck bomb in a market, the emptying of villages and ISIL attempts to impose taxes on villagers in rural areas. Parts of the population are subjected to physical and psychological pressure from ISIL, particularly at night. We are grateful to Dr Fatah for his update on the recent developments in Makhmour, in which ISIL are said to have become increasingly brazen and have been burning fields and undertaking other activities in this remote region in an attempt to secure territory.
260. As with Kirkuk, the risk to civilians from ISIL in urban areas is different in character and magnitude to that faced by civilians in rural areas, with the latter being more likely to encounter ISIL pressure in one form or another, whereas the threat to civilians in the urban environment is mostly (but not exclusively) of inadvertent injury in a targeted attack. We note that the threat to civilians comes not only from ISIL. As in other parts of the formerly contested areas, the PMU are said to play a role in criminality and extortion alongside their legitimate function. And the insecurity in Ninewa is compounded by the fact that part of it remain Disputed Territory between the GOI and the KRG. We think Dr Fatah is correct to state that a lasting political solution is needed in order to bring stability to Ninewa and to Iraq as a whole.
261. Dr Fatah and other commentators agree, however, that ISIL presence in the governorate is not unchecked. The Iraqi army is present in the governorate in large numbers. As we have recorded, five of the recent security incidents Dr Fatah recorded in his first report were all of ISIL clearance operations carried out by the ISF and its partners. Ninewa Operations Command are aware of ISIL's increased rural activity in the governorate and are taking steps to address it. A large number of IDPs (1.6 million) have returned to the region. Despite the targeted attacks on authority figures, governors and civil servants have begun to work again in the region, which Dr Fatah agreed was a positive sign. The statistics which we have set out above are not indicative of a high level of threat to the civilian population: amongst a population of 3.7 million, IBC recorded 1596 civilian deaths in 2018 (although we consider that number to have been inflated by the discovery of mass graves from the ISIL era in the

governorate during the reporting period) and the intensity of violence is at 46.46 civilian deaths per 100,000 of the population. In 2017, the corresponding figures were 9211 civilian deaths and an intensity of 265.15 per 100,000. Considering the evidence as a whole, and adopting the inclusive approach from HM2, we do not consider that there is such a high level of indiscriminate violence there that substantial grounds exist for believing that an ordinary civilian would, solely by being present there, face a real risk which threatens his life or person. The risk of actual or indirect violence to civilians in Ninewa is higher than elsewhere but it nevertheless falls short of the Article 15(c) threshold.

### **Salah al Din Governorate**

262. Salah al-Din is a predominantly Sunni governorate, and its capital Tikrit was the birthplace of Saddam Hussein. Only its easternmost section, which includes Tuz Khurmato is disputed between the GOI and the IKR. Small parts of the governorate fell to ISIL but control was quickly regained, with ISIL forced out of the key centres (including the significant city of Baiji) by mid 2015. These battles nevertheless caused significant infrastructure damage in certain parts of the governorate. In Dr Fatah's opinion, as shared with Joel Wing of the Musings on Iraq blog, ISIL has reduced its operations in this governorate to focus on the insurgency in other areas. The reduction in ISIL attacks from 84 per month in 2017 to 14.2 per month in 2018 would certainly support that theory.
263. Problems remain, however. Tuz Khurmato saw heavy violence in the aftermath of the Independence Referendum and has suffered serious damage. Violence continued into 2018. It is now ruled by a powerful Shia militia and, as Dr Fatah stated, the problems which remain are essentially of an ethnic nature, with Kurds in that area more likely to face difficulty from the controlling PMU. We accept Dr Fatah's evidence that Salah al-Din is one of the governorates in which there is particular resentment to the presence of Shia militia, since it was formerly the seat of Sunni power in the country. This is a governorate in which Shia control is most acutely felt, with Dr Fatah giving examples of the Kurdish flag being removed and a university's name being changed by the Shias.
264. As elsewhere, the majority of ISIL activity is specifically focused towards security and authority figures. Dr Fatah again used the word 'selective' on more than one occasion during his oral evidence and accepted that their activities were limited by the presence of the PMUs in the governorate. He gave the example of civilians being killed at a checkpoint if ISIL mounted an attack on the security forces controlling it, stating that mass attacks were no longer a phenomenon.
265. There is some evidence of coercive behaviour on the part of ISIL towards the rural population in Salah al-Din. The Hamrin Mountain Range extends into Salah al Din and there are militants permanently stationed in that rugged terrain, who exert some physical and psychological control over the population, including the imposition of zaqat, or taxes, on the population. Salah al-Din also contains what is described in the EASO report (attributed to the Institute for the Study of War in January 2019) as ISIL's only area of 'doctrinal control', as manifested by prisons, judicial proceedings, organised worship and training camps. Asked about this area, which is in the Makhoul Mountains of Baiji District, Dr Fatah was dismissive, stating that it was "only villages". At Appendix D, we have appended a map<sup>7</sup> from the Washington-based Institute for the Study of War ("ISW") in which this small area is visible as a grave accent over the city of Baiji.
266. The metrics for the governorate are not indicative of a level of threat which engages Article

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<sup>7</sup> Accessed from the hyperlink in footnote 1272 of the EASO report.

15(c) in general. The IBC figures recorded 152 civilian deaths out of a population of more than 1.5 million in 2018. The intensity of the violence was considerably lower than in Ninewa, for example, standing at 10.05 per 100,000 in 2018, marking a reduction from 28.05 in 100,000 in 2017. Vast numbers have returned to the governorate and it is clear that the authorities are taking regular action in the area to continue the pressure on ISIL. We also take account of indirect forms of violence, particularly the assassination of local authority figures; the coercion exerted by ISIL on sections of the rural population in particular; and the sectarian tensions which persist across the governorate (in Tuz Khurmato in particular). We do not consider, however, that an ordinary civilian faces such a high level of indiscriminate violence there that substantial grounds exist for believing that he would, solely by being present there, face a real risk which threatens his life or person.

267. The one exception to that general conclusion is the geographically small area in rural Baiji which we have identified above as being under the doctrinal control of ISIL, as marked on the ISW map. We see no reason to doubt what is asserted in the EASO report in this respect, and consider that the position has changed from that described at [95] of the respondent's closing submissions (which refers to the Danish Immigration Service stating that ISIL controls no territory in Ninewa). Insofar as the respondent made submissions about such control, her stance was that there was no evidence of an actual threat to life or person there. We accept that submission but the inference is irresistible. If ISIL is in control of the area and is operating parallel judicial systems, prisons and training camps there, we consider it more likely than not (given the group's behaviour from 2014-2017) that the situation in that very specific area is one in which there is such a high level of indiscriminate violence that a civilian would face a real risk which threatens his life or person solely by being present there.

#### **Diyala Governorate**

268. Parts of Diyala fell under the control of ISIL during for only around six months, and it was brought back under government control in early 2015. Security operations have continued in the region after ISIL's military defeat and the evidence as a whole shows that Dr Fatah was correct to accept Mr Thomann's suggestions that Iraqi forces had been relatively successful in their counter-insurgency operations. It is unsurprising, given the proximity of Diyala to Baghdad, that there should be a focus on counter insurgency in this area. The PMUs are particularly powerful in this area, and the Iranian-backed Badr Organisation is considered to be the main security actor.
269. The Hamrin Mountain range extends into Diyala, however, and it continues to operate as a base from which ISIL can mount insurgent activities. The respondent quite rightly accepts at [110] of her closing submissions that there is evidence of ISIL hideouts and sleeper cells in Diyala. The comparative sophistication of their installations was revealed in February 2018, when a complex with solar electricity was discovered in the mountains.
270. Khanaqin and Kifri have been particularly targeted in recent times and there was notable violence in Khanaqin around the time of the 2018 elections. The estimated number of ISIL fighters in the region is between 75 and 200. The general trend in Diyala is as elsewhere, with the group being selective in the targets selected, and preferring 'hit and run' attacks on authority and security figures. 31 such individuals were killed in 2018. More so than in other governorates, however, there is some evidence of intentional attacks on the civilian population by ISIL. There are reports of fake checkpoints, zaqat demands and extortion perpetrated by ISIL on rural communities.
271. Dr Fatah's opinion that the ethnically heterogenous nature of Diyala makes it more prone to instability is amply supported by the other material before us. As in other parts of the Disputed Territories, the withdrawal of Kurdish forces in the aftermath of the Referendum



has left a security vacuum in certain parts of the governorate. The ISIL presence in the west of the governorate is greater, since that is where the highest concentration of Sunnis is to be found.

272. Michael Knights considers ISIL to 'rule the night' in certain rural parts of Diyala and ISW assesses a number of districts to be contested, including Khanaqin and Kifri. We remind ourselves that the statistical data are of prime importance in assessing the level of threat to the civilian population, however, and we do not consider the IBC figures for 2018 to be indicative of a high level of threat. In 2018, there were 256 civilian deaths amongst a population of more than 1.6 million and an intensity of violence of 16.4 civilians killed per 100,000 of the population. The more recent data from Musings on Iraq shows no significant or sustained variation in 2019. As in other parts of the formerly contested areas, significant numbers of IDPs have returned home in Diyala. There are undoubtedly indicators of indirect violence, which we take into account pursuant to the inclusive approach required by HM2 but we do not consider that that an ordinary civilian faces such a high level of indiscriminate violence in any part of Diyala that substantial grounds exist for believing that he would, solely by being present there, face a real risk which threatens his life or person. Although certain parts of the governorate – Khanaqin in particular – have higher levels of ISIL activity, we do not consider that the scale of those operations, even when set against the assessed against the instability in the area, reaches the Article 15(c) threshold in the generality of cases.

#### **Anbar Governorate**

273. Anbar is not part of the Disputed Territories, lying as it does on the western side of Iraq, away from the IKR. 70% of it was contested, however, and AA (Iraq) was heard very shortly after the city of Ramadi fell to the militants. The governorate was reclaimed gradually and it was at the point that Raqa was liberated, at the end of 2017, that the government announced the military defeat of ISIL. The governorate suffered extensive destruction during this protracted process and, as in Mosul and other areas, houses in reclaimed areas were booby trapped by ISIL as they left.
274. The Musings on Iraq blog recently described Anbar as a 'secondary front' for ISIL and that description is consistent with the rest of the evidence before us, including that of Dr Fatah. That is not to say that the group has been eliminated from the area altogether. There was a recent upsurge in violence, as Dr Fatah and the Musings on Iraq blog both recount, but the area is not thought by any commentators to be a core area for ISIL activity. It is clear that the huge desert areas in Anbar continue to host a number of militants, and it continues to be an entry point from Syria, which shares a lengthy border with Anbar. Whilst the scale of their activities is more limited than in other parts of the formerly contested areas, the nature of their tactics is similar. They tend to target security figures in particular, although civilians have been killed in security incidents in 2019.
275. There is a large PMU presence in Anbar and there are extensive operations against the remaining pockets of ISIL fighters in the region. The largely Shia PMU presence in all of Anbar's cities causes friction with the largely Sunni population of the governorate, however, and there have been credible reports of serious abuses against Sunni civilians by the militia.
276. The IBC data does not indicate a serious threat to the life or person of civilians in Anbar. In a governorate of approximately 1.7 million, there were 86 civilian deaths in 2018, down from 761 in the preceding year. The intensity of civilian deaths was considerably lower in Anbar than in the other governorates considered above, standing at 5.1 per 100,000 of the population in 2018. 1.3 million people have returned to Anbar according to Joel Wing in late May 2019. The ISF, including the PMU, continue to exert pressure on the militants.

Challenges clearly remain in the area, and we take those into account as part of the inclusive approach. The largely Sunni civilians from this governorate face some risk from the Shia militia in addition to the remnants of ISIL and this is a governorate in which ethnic tensions are particularly apparent. Significant humanitarian concerns remain but we do not consider the population of any part of Anbar to live under the shadow of violence to an extent which engages Article 15(c) in the generality of cases.

### **Baghdad and the Baghdad Belts**

277. The vast majority of the population of Baghdad governorate live in Baghdad City. In AA (Iraq), the Upper Tribunal stated at [119] that the population of the city was around 6.5 million and the population of the governorate was just under 6.7 million, according to the UN's Joint Analysis Unit.
278. It will be recalled that the extant country guidance from AA (Iraq) is that the Article 15(c) threshold will not generally be reached in relation to Baghdad City but that certain areas of the Baghdad Belts do reach that threshold. In relation to Baghdad City, we can state our conclusions shortly. The sources before us speak with one voice about the security situation in the city. There is no proper justification in the 2018 and 2019 evidence for the statement in Dr Fatah's first report that the risk to all civilians in Baghdad is high. As he accepted in response to the respondent's written questions, the number of security incidents in Baghdad fell from 184 in January 2017 to 4 in March 2019. It is justifiably described by Joel Wing as ISIL's forgotten area. There is very limited ISIL activity in the capital and the actions of the Iraqi state in opening the previously restricted Green Zone to the public at the end of last year speak volumes. Whilst the Institute for the Study of War considers that ISIL remains capable of mounting attacks in the centre, there is very little such activity. The mortar attack reported in Joel Wing's 22-28 May blog was the first such attack for months. It is understandable that the UNHCR's May 2019 guidance refers to the situation in Baghdad having 'largely stabilised'.
279. As all sources recognise, there are other sources of conflict in Baghdad, particularly in relation to politics and sectarian divisions. It is those divisions which have led to Baghdad becoming a city divided on sectarian lines, as Dr Fatah explained in his evidence. Nevertheless, the statistics reveal a sharp decline in the number of casualties and in the intensity of violence. In a governorate of nearly 7 million people, there were 566 civilian deaths in 2018, down from 1032 in the preceding year. The intensity of civilians killed per 100,000 of the population was 7.36 in 2018. Neither that number nor the qualitative indications of indirect violence in Baghdad itself give any reason to depart from the ultimate conclusion reached in AA (Iraq) about the risk to civilians in Baghdad governorate. On the contrary, the situation in the governorate is actually considerably safer than it was when AA (Iraq) was decided.
280. The Baghdad 'Belts' are helpfully defined at [138] of AA (Iraq) in the following way:
- residential, agricultural, and industrial areas that encircle the city of Baghdad, as well as the "networks of roadways, rivers, and other lines of communication that lie within a twenty or thirty mile radius of Baghdad and connect the capital to the rest of Iraq. Beginning in the north, the belts include the cities of Taji, clockwise to Tarmiyah, Baqubah [Diyala governorate] , Buhriz [Diyala governorate] , Besmayah and Nahrwan, Salman Pak, Mahmudiyah, Sadr al-Yusufiyah, Fallujah [Anbar governorate] , and Karmah [Anbar governorate] . This "clock" can be divided into quadrants: Northeast, Southeast, Southwest, and Northwest".
281. The security situation in the Belts has changed dramatically since AA (Iraq) was decided. It

is likely, in our view, that this is for the reason suggested in the report from the Swedish Migration Agency's Country of Origin Information Agency ("Lifos") to which Dr Fatah was referred by Mr Thomann; a new Operations Commander in Baghdad had focused on the Belts and, in any event, ISIL largely withdrew from the area at the time of the battle for Mosul. That accords with the assessment of the UNHCR in May 2019. Dr Fatah accepted that the trends in the Baghdad Belts were the same as in Baghdad itself and he accepted that the situation in the Belts was more stable. As in AA (Iraq), at [146], our conclusion in respect of the Baghdad Belts overlaps with the conclusions we have drawn above. The situation in Baghdad governorate does not engage Article 15(c) in the generality of cases, nor does the situation in Diyala or Anbar. Whilst there is some ISIL activity in those areas, and therefore in the Baghdad Belts, it does not reach a level of intensity at which it can properly be said that a civilian would, solely on account of his presence in that area, face a threat to his life or person which requires the United Kingdom to afford him subsidiary protection under the Directive.

### **General Conclusions - Article 15(c)**

282. We have taken the extant country guidance in AA (Iraq) as our starting point. We have taken all of the evidence before us into account and have applied the inclusive approach required by the authorities to which we have referred. The evidence before us indicates that the situation in the formerly contested areas and the Baghdad Belts is fundamentally different from that which obtained in 2015. ISIL was in control of a third of the country at that time, and was in the process of perpetrating genocide and ethnic cleansing on a historic scale. It was rightly accepted by the respondent at that time that the situation in the contested areas engaged Article 15(c) of the Qualification Directive in the generality of cases. ISIL was finally defeated militarily in 2017. With the exception of one small mountainous area in Baiji, ISIL holds no territory in Iraq. ISIL's activities in Iraq have changed fundamentally in method and scale. Its focus is no longer on the civilian population but primarily on authority figures or those connected with the security apparatus.
283. Mr Bazini asked us to attach particular significance to the number of areas in which ISIL are known to have permanently operating attack cells and in which they are said to 'rule the night'. We decline to do so. With the exception of the small mountainous area we have identified, the scale of ISIL's actual operations - even in the worst affected rural areas to which these comments attach in the background material - do not justify a conclusion that there is a general Article 15(c) threat in those areas.
284. On behalf of the first and second appellants, it was submitted that the fact that the UNHCR had identified so many different groups as being potentially at risk in Iraq<sup>8</sup> was an indication that the situation generally, and in the formerly contested areas in particular, reached the Article 15(c) standard. We consider that submission to be misconceived. The fact that specific groups or those with particular profiles might be at particular risk in Iraq cannot establish that the baseline threat crosses the Article 15(c) threshold.
285. ISIL presents one of the dangers to the ordinary civilian in Iraq, which continues to suffer from sectarian tension, political insecurity, large scale displacement and extensive humanitarian need, all of which are inflamed by the Iranian-backed PMU which assisted the ISF (and the peshmerga) in the defeat of ISIL. Nevertheless, in the worst affected governorate (Ninewa), the intensity of the violence in 2018 stood at 46.46 civilians killed per 100,000 of the population, which is not indicative of a general level of threat which engages

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<sup>8</sup> These enhanced risk categories are considered below, as part of the sliding scale analysis required by Elgafaji

Article 15(c). The level of threat varies considerably by region, and is most acute in the rural parts of the Formerly Contested Area. With one exception, however, we do not consider that the risk to an ordinary civilian, even in parts of those territories in which ISIL exerts a degree of physical and psychological control over the population, is such as to engage Article 15(c) in the generality of cases. The evidence clearly shows that the degree of indiscriminate violence characterising the current armed conflict taking place in Baghdad, Diyala, Kirkuk, Ninewah, Salah Al-Din and Anbar is not at such a high level that substantial grounds have been shown for believing that any civilian returned there would solely on account of his presence there face a real risk of a threat to his life or person.

286. The one exception to the conclusion above is in respect of the area north of Baiji, in which ISIL is reliably said to be in doctrinal control of a small mountainous area. In respect of that area, we are satisfied that the Article 15(c) threshold is met in the generality of cases.
287. We are satisfied that the changes we have detailed above are well established and durable and that the previous country guidance in AA (Iraq) requires revision in accordance with the conclusions above. The principal threat to civilians at the time of that guidance was from ISIL's occupation of a third of the country and the horrific human rights abuses experienced by civilians as a result of that occupation. The occupation has come to an end, as have the wide-ranging human rights abuses. The evidence does not establish (and Dr Fatah refused to suggest) that ISIL are on the verge of a return. History, common sense and informed opinion suggest that any such resurgence is not foreseeable. ISIL numbers are currently at 10-25% of their 2014 numbers and recruitment is unlikely to be as easy for the group as it was previously, due to its heavy losses on the battlefield and its alienation of the Iraqi population. There is a large PMU presence in the Formerly Contested Areas and it is unlikely to leave in the foreseeable future. The ISF continues to target the militants in the areas in the remote areas in which they are now concentrated. As Dr Fatah put it, the ISF and the PMU maintain a 'boot on the throat' of the militants, preventing any general resurgence. The disaffected Sunni population of these areas remains disaffected but is unlikely to swell the ranks of ISIL, or to provide significant support, because it has experienced the brutality of life in the former so-called caliphate and is 'ideologically vaccinated' against the group.
288. We note and accept a view consistently made by Dr Fatah and endorsed by the UNHCR, which was that the Iraqi government has failed to find a lasting political solution to the problems which enabled the ISIL insurgency to take root in Iraq. The alienation of the Sunnis, the ongoing (although somewhat eased) tension over the Disputed Territories and the malign influence of Iran all simmer beneath the surface in Iraq. But we consider the significance of this point to be overstated at [3] and [58] of the appellants' conjoined skeleton and at [52] of the first and second appellant's written submissions. What is required by MST (Ethiopia) and the authorities considered within it, is a durable and evidentially well-established change to the country situation. For the reasons we have set out above, there has been such a change in Iraq and in the formerly contested areas in particular, even if Iraq is very far from being a settled and peaceful country which has found a lasting political solution to the full range of difficulties it has throughout its troubled history. It is a durable change, rather than a complete and final resolution of all the problems in the country, which justifies amendment to the country guidance. We agree with the respondent's submissions in this regard.
289. We acknowledge that there is a risk of an alternative militant group forming as a result of sectarian conflict in these areas, particularly as a result of PMU activity towards the Sunni population. There is no evidence of such a group forming at present, however, and we consider the risk to be too remote to contribute materially to our assessment of the situation

at present. The small White Flag group, of which there is some mention in the material before us, is not such a group, since its primary motive appears to be financial and its primary activity is stealing oil from pipelines.

### **Enhanced Risk Categories**

290. Our principal conclusion is (with the exception we have identified above) that the situation in the areas presently under consideration is not one in which the degree of indiscriminate violence is at such a high level that substantial grounds are shown for believing that a civilian, returned to those parts of Iraq, would, solely on account of his presence there, face a real risk of being subject to that threat.
291. As explained in Elgafaji and QD (Iraq), however, it is necessary as a result of the individualised assessment required by Article 4(3)(c) of the Qualification Directive, to consider whether an individual applicant might be able to show that he is specifically affected by reason of factors particular to his personal circumstances. In HF (Iraq) [2013] EWCA Civ 1276; [2014] 1 WLR 1329, Elias LJ (with whom Fulford and Maurice Kay LJJ agreed) explained the operation of this 'sliding scale' in this way: "where a person can show that he is at risk of being specifically targeted because of factors particular to his personal circumstances, this will lower the level of indiscriminate violence necessary to attract humanitarian protection.": [9].
292. In this section of our decision, therefore, we consider which particular factors might engage the sliding scale in this way. Before we do so, we note that there is potentially significant overlap with the Refugee Convention, in that an individual who is at risk of being specifically targeted because of factors particular to his personal circumstances might well be deserving of protection under the 1951 Convention on that account. It must, in other words, be recalled that a person who is at risk of persecutory ill treatment on account of their race, religion, nationality, membership of a particular social group or political opinion is, subject to countervailing considerations, a refugee whose appeal falls to be allowed on that basis. A decision maker who is minded to conclude, say, that an individual with an actual or perceived association with ISIL is more likely to be exposed to conditions contrary to Article 15(c) would be well advised to consider whether, in reality, it should be the 1951 Convention and not the Qualification Directive which should provide the appropriate protection against return. The UNHCR makes the same point at footnote 711 of its May 2019 document, as did the European Asylum Support Office, at page 24 of its 2014 Judicial Analysis on Article 15(c) QD: "if 'personal circumstances' are [membership of a particular social group] or any of the other four grounds of the 1951 Refugee Convention, then the appropriate framework to examine the claim may well be that of the refugee definition".
293. It was originally submitted in writing, on behalf of the first and second appellants, that we should provide guidance on the entitlement of various categories of individuals to protection under the 1951 Convention. Mr Knafler subsequently accepted orally and in his closing written submissions, however, that such protection fell outside the scope of our analysis. It was nevertheless submitted on behalf of the appellants, at [98]-[115] of their opening skeleton, that there were no fewer than seventeen personal characteristics which might be relevant to the sliding scale analysis under Article 15(c). The list was compiled, as we understand it, by taking the "Main Categories of Claim" from the UNHCR's May 2019 guidance and expanding upon it, particularly by adding additional categories of individuals who appear to be at enhanced risk as a result of the EASO reports. The list which was given in the skeleton was as follows (reproduced verbatim):
- (i) Civilians perceived to be supporting ISIS
  - (ii) Families/Tribes Associated/Affiliated with actual or perceived ISIS members

- (iii) Persons providing legal services to ISIS suspects or their families so affiliated (perceived or real)
- (iv) Persons associated/perceived as supportive of the government
- (v) Persons opposing (perceived or real) the government/KRG or those so affiliated.
- (vi) Members of religious and minority ethnic groups and persons contravening strict Islamic rules
- (vii) Journalists/media professionals engaging in critical reporting/sensitive issues.
- (viii) Humanitarian/Medical Workers
- (ix) Women/girls with certain profiles or in specified circumstances
- (x) Children with certain profiles/specific circumstances
- (xi) Persons of diverse sexual orientation and/or gender identities
- (xii) Individuals targeted as part of Tribal conflict/Blood feuds
- (xiii) Palestinians
- (xiv) Business owners/those perceived as wealthy
- (xv) Perceived collaborators of Western organisations/armed forces
- (xvi) People with disabilities
- (xvii) People displaying westernised behaviour

294. The respondent accepts that the following categories of individual are at enhanced risk: civilians perceived to be supportive of ISIL and families or tribes associated with ISIL; persons associated with central government, the PMU or those in civilian leadership positions; and civilians returning to areas in which ISIL retains a presence. Broadly, therefore, the respondent accepts that the first five categories identified by the appellants are at enhanced risk for the purposes of the sliding scale assessment. The respondent also enters caveats in respect of each category. In respect of Sunni Arab males, she highlights that the background evidence no longer suggests, as it did around 2017, a widespread practice of the PMUs targeting these individuals at checkpoints. In respect of those in civilian leadership positions and those returning to areas in which ISIL retains a presence, the respondent highlights the considerable reduction in ISIL activity and the corresponding reduction in risk to such individuals.
295. In respect of the remaining categories, the respondent simply states at [132] of her closing submissions that these categories are 'more appropriately considered under the Refugee Convention' and that they are consequently beyond the scope of the current Country Guidance assessment. We consider that to be correct, but only to a point. Each of the categories identified by the appellants is capable of engaging the Refugee Convention, mostly on the basis of actual or imputed political opinion or membership of a particular social group. An individual who falls for consideration under Article 15(c) will have been adjudged not to be deserving of protection under the Refugee Convention. That does not mean that these factors necessarily cease to be of relevance when assessing eligibility for subsidiary protection. A characteristic might, in other words, serve to enhance risk under Article 15(c) even though it is insufficient in itself to entitle an individual to protection under the 1951 Convention. We have therefore evaluated the categories advanced by the appellants with a view to providing some guidance on the bearing that the presence of such factors might have on the sliding scale analysis required by Article 15(c). Given the limited submission advanced by the Secretary of State, we note that we have not had the benefit of full argument on each of the categories.
296. The first three categories fall under the heading 'persons wrongly suspected of supporting ISIS' in the UNHCR guidance. Insofar as it might have been thought in the past that Sunni males would automatically fall under suspicion of ISIL sympathy, we agree with the respondent that that is no longer the case. It is apparent from the background material, however, that an individual might fall under suspicion of ISIL support for the most tenuous

of reasons including, for example, the fact that they remained in an ISIL-controlled area for a period of time (even though ISIL often inflicted harsh punishment on those who attempted to leave). Equally, there is unfortunately a clear basis in the background material for the suggestion that those providing legal services to ISIL suspects or their families might encounter difficulties on account of such actions. Suspicion of ISIL activity or association may place an individual at risk, particularly from the PMU and particularly at checkpoints, where it is clear that individual security actors maintain their own lists of individuals thought to have an ISIL association. Whilst we understand the basis upon which the appellants' representatives have attempted to define with greater specificity the types of individuals who might fall under such suspicion, we think it preferable not to do so and simply to state that those who are suspected of supporting ISIL for whatever reason might be at enhanced risk for the purposes of Article 15(c). Decision makers will wish to recall that those who actually supported ISIL might, as a result of a fact-specific enquiry into their actions, be excluded from the protection of the Refugee Convention or Article 15(c).

297. Categories (iv) to (xiii) are taken from the UNHCR guidance, although the appellants have sought to modify the UNHCR's mode of expression in parts. It is necessary to consider each of these proposed categories, since we consider that some revision of the appellants' proposed list is necessary.
298. Those who are associated with national or local government or the security apparatus, or perceived to be so, are likely to be at increased risk in those areas in which ISIL retains a presence. The respondent accepts that to be the case, albeit that she phrases her acceptance in slightly different terms from the appellants. The areas in which such targeting is likely to take place, and the types of individuals targeted, will be apparent from our analysis of the Formerly Contested Areas. In various parts of those areas, those associated with local government (such as village mukhtars) may be at particular risk from ISIL remnants which continue to operate. It is imperative that any claim to be at enhanced risk for this reason is evaluated by reference to the area of return. A village mukhtar who returns to a part of the Formerly Contested Areas in which ISIL remains active might be at increased risk, whereas a comparable individual who returns to a part of the country with negligible remaining ISIL presence would not be. Given ISIL's current modus operandi, we consider that a current actual or perceived association with government or the security apparatus is more likely to enhance risk than a former association. ISIL's primary goal is to unsettle the existing apparatus, rather than to punish former association.
299. Those who are opposed, or perceived to be opposed, to the Government of Iraq or the Kurdistan Regional Government may be at enhanced risk on return to territory controlled by those bodies. A detailed analysis is beyond the scope of this decision but there are credible reports, for example, of journalists who are critical of the KRG encountering difficulties as a result. There is also evidence of such intolerance on the part of the authorities in Baghdad, albeit to a lesser extent. As noted in Mr Thomann's cross-examination of Dr Fatah, the examples he gave in his report of such targeting were limited and outdated but it was not suggested by Mr Thomann that criticism of the authorities is wholly tolerated. The background evidence including the recent EASO report would not have supported such a submission. The fact that an individual is so opposed might serve to enhance the risk of specific targeting which is relevant to the assessment under Article 15(c), even where that risk is insufficient to found a claim under the Refugee Convention.
300. Members of religious and minority ethnic groups are considered by the UNHCR to be likely to be in need of international refugee protection in areas where ISIL retains a presence. As we have underlined throughout this decision, we emphasise our appreciation of UNHCR's unique position and expertise in such matters. There is some danger in applying too broad a

brush in trying to describe this cohort, however. The first danger is in the use of the word 'minority' in the context of Iraq. As we have endeavoured to explain, the ethno-religious demography of Iraq is varied by region. Whilst Sunni Arabs are in the minority across the country as a whole, for example, there are areas in which they comprise the majority. The same might also be said in respect of the Kurds. The second difficulty is to assume or potentially to assume that an ethnic group is at a disadvantage because it is statistically in the minority in a particular area. Whilst such an assumption might have been proper in the past, the proliferation of the PMUs has altered the balance of power in particular areas, often to the detriment of the majority. It was a familiar theme in Dr Fatah's written and oral evidence, for example, that the Shia militia had in certain areas renamed buildings and taken down Kurdish symbols. The third danger is in treating the presence or absence of ISIL from an area as a binary concept. As we have explained at some length above, ISIL retains a presence in a number of areas but the size and influence of that presence, and ISIL's levels of activity, vary significantly. Whenever it is submitted that an individual is at enhanced risk on this basis, therefore, it is necessary to evaluate the submission with particular care, with reference to the composition of the area in question, the local balance of power and the extent of ISIL activity in the area in question. With respect to the UNHCR, we consider it too simplistic to state that religious or ethnic minorities are likely to be at increased risk in areas in which ISIL retains a presence. Membership of an ethnic or religious minority may increase the risk to an individual but a contextual evaluation rather than a presumption is required.

301. The position in respect of those contravening strict Islamic mores is similar, although we note that there is comparatively little recent evidence (whether cited at footnotes 475-478 of the UNHCR guidelines or elsewhere) that individuals are presently at risk, or at enhanced risk, on this basis. Some, but not all, of the incidents described in those footnotes pre-date the military defeat of ISIL and we consider the general direction of travel in Iraq, in light of recent history, to be away from fundamentalism. Whilst there is some evidence of attacks against venues selling alcohol, we note the evidence in the respondent's document entitled *Iraq: Standards of Living* about the re-opening of such venues in Mosul. As with the other factors presently under consideration, we accept that a lack of adherence to strict Islamic mores is capable of giving rise to an increased risk for subsidiary protection purposes, although it will be necessary to have careful regard to the nature of the area in question before concluding that this factor actually serves to increase risk.
302. Journalists who engage in critical reporting on political or other sensitive issues. As we have already stated, any decision maker should first consider whether such an individual is deserving of protection under the Refugee Convention on grounds of actual or imputed political opinion or, conceivably, membership of a particular social group. Where they are not, it is possible that such an individual will be at enhanced risk for the purposes of Article 15(c). There is an appreciable overlap between this category and those who are opposed to the GOI or the KRG and those who fail to adhere to Islamic mores. As the UNHCR document makes clear, however, journalists and other media professionals might find themselves at risk or enhanced risk on account of criticism of a range of actors, including tribal leaders or the PMUs. As with the other categories, a full appreciation of the area in question is necessary if such a submission is to be assessed in its proper context.
303. Humanitarian and medical workers were previously targeted by ISIL, as reported at p85 of the UNHCR guidelines. Such attacks have significantly decreased since the military defeat of ISIL but there continue to be some reports of intimidation, physical assault, arrest and detention, and, in some cases, abduction and killing of such individuals. Those who operate in IDP camps are more susceptible and it is clear from the guidelines that the enhanced risk of violence emanates not only from remnants of ISIL in the Formerly Contested Areas but



also from other security actors. We are satisfied that such individuals might be at enhanced risk under Article 15(c) in specific areas, although the magnitude of risk will depend upon the nature of their role and the hostility of actors in that area to such activity.

304. The appellants' ninth and tenth categories are "Women/girls with certain profiles or in specified circumstances" and "Children with certain profiles/specific circumstances", both of which descriptions are uninformative without further explanation. As is clear from the text of the guidance, UNHCR's concern is to inform decision makers about the specific types of Refugee Convention risks to which women and children might be exposed, including the risks of trafficking, honour-based and domestic violence. Here, as in other respects, this guidance for the application of the Refugee Convention is ill-suited to simple transposition into the sliding scale analysis required by Article 15(c) of the Qualification Directive. We do consider, however, that women and children without genuine family support, including widows and divorcees, are likely to be at enhanced risk for the purposes of the assessment required by the Qualification Directive.
305. Individuals of diverse sexual orientations and/or gender identities are considered by UNHCR to be likely to be in need of international refugee protection. UNHCR reports, for example, that LGBTI organisations cannot operate openly and that most individuals keep their orientation or gender identity secret. Such considerations are to be assessed firstly under the Refugee Convention framework provided by HJ (Iran) [2010] UKSC 31; [2010] 3 WLR 386 and we do not purport to give country guidance on the situation for LGBTI individuals in Iraq. Where an individual with a diverse sexual or gender identity is found not to be in need of protection under the Refugee Convention, their identity might nevertheless be relevant to the sliding scale analysis required by Article 15(c), not least because UNHCR records increased difficulties for such individuals in accessing employment and medical care and in crossing checkpoints. We note also that EASO states in the *Targeting of Individuals* report that LGBTI individuals have been targeted by the PMUs for "deviating morality".
306. Those targeted as part of tribal conflict resolution and blood feud. Pages 106-108 of the UNHCR's guidance provides a detailed account of the types of tribal conflict resolution and blood feuds which may occur in Iraq. We think it unlikely that the existence of such a conflict - which relates to a state of affairs rather than an individual characteristic - would be relevant to the sliding scale assessment under Article 15(c).
307. Palestinian Refugees. UNHCR explains the risk to those of Palestinian origin in the following way: "Palestinian refugees continue to be faced with a sentiment or perception among some segments of the Iraqi population, including among law enforcement agencies, that they received preferential treatment from the former Government of President Saddam Hussein and/or that they are supportive of ISIS, or previously, Al-Qa'eda in Iraq". The number of Palestinians remaining in Iraq is small. As UNHCR explains in footnote 675 of its guidance, the pre-2003 population of more than 34,000 has fallen to 8,119 (who are registered with UNHCR). The vast majority live in Baghdad, although there are smaller population centres in Mosul and the IKR. UNHCR continues to record attacks against Palestinians in Baghdad based on their nationality and perceived affiliation with ISIL. Palestinians are particularly identifiable because they are not entitled to Iraqi civil status documentation and instead carry a special card from the Permanent Committee for Refugee Affairs of the Ministry of the Interior. The presentation of these cards can cause particular difficulty at checkpoints, where they are often not recognised or respected, leading to difficulties of the types we have considered earlier in this decision. Those in Mosul also have particular difficulties in securing employment. It was only in March this year that Palestinian nationals again became eligible to receive food through the PDS. The situation for Palestinians in the IKR is better than in GOI controlled Iraq, although some difficulties with freedom of

movement are noted by the UNHCR.

308. The UNHCR does not suggest that Palestinians are likely to be in need of international protection or that they may be in need of such protection. The difficulties faced by this small group are necessarily relevant in considering the entitlement of such an individual to subsidiary protection, particularly where return to Mosul is under contemplation.
309. The appellants' categories (xiv), (xv) and (xvii) draw upon the Upper Tribunal's assessment in BA (Iraq) CG [2017] UKUT 18 (IAC) and the EASO report entitled *Targeting of Individuals*. BA (Iraq) was heard in August 2016 and the decision was issued in January 2017, when ISIL remained in control of a significant proportion of Iraq. As we have previously explained, there have been well-established and durable changes to the situation in Iraq since then. In respect of business owners and those perceived as wealthy, however, we continue to regard the guidance given in BA (Iraq) as an accurate reflection of the position in Baghdad. Whilst there is not a general risk to the wealthy in any part of the country, kidnapping remains a problem in Iraq and there are reports, already considered above, of the PMU in the Formerly Contested Areas being involved in organised crime and corruption. Whilst we think it unlikely, on the evidence before us, that a returnee would be perceived as wealthy purely on account of having been in the UK, we do accept that those who are or are perceived to be wealthy are more likely to be at risk of being specifically targeted on that account. Being wealthy or being perceived as such is therefore a relevant characteristic for the purposes of the sliding scale assessment under Article 15(c) QD.
310. Perceived collaborators of Western organisations/armed forces. This group was considered in BA (Iraq) to be likely to be at risk in those parts of Iraq which were under ISIL control or had high levels of insurgent activity. The risk was thought to be lower in Baghdad, although there was evidence at that time to show that groups including ISIL were active and capable of carrying out attacks there. That assessment must be revisited because of several durable changes. Firstly, ISIL is no longer in control of swathes of territory in Iraq. Secondly, there is considerably less involvement of Western armed forces in what is accepted by the respondent to be an internal armed conflict in Iraq. Thirdly, there is considerably less evidence of ISIL and other insurgent groups carrying out attacks in Baghdad. We do not consider that this group would be at enhanced risk in Baghdad as there is insufficient recent evidence to support such a conclusion. In respect of the risk to such individuals in the Formerly Contested Areas, the situation is clearly different to that considered in BA (Iraq). As noted at 1.9 of the EASO report on *Targeting of Individuals* "working for the coalition was less sensitive than in the past." In areas where ISIL remains active, its primary target is those associated with central or local governance or the security apparatus and there is little recent evidence to show that those with a current or historical connection to Western organisations or armed forces would be at enhanced risk on that account alone. That is not to say that such an association is irrelevant for the purposes of the sliding scale analysis; were such an association to become known at a fake checkpoint, for example, then such an individual might well be at enhanced risk as compared to a civilian without such an association. We accept, therefore that a past or current association to a Western organisation or allied forces is a relevant factor in the Article 15(c) analysis, albeit one with less significance than before.
311. Our conclusions in respect of people displaying westernised behaviour reflect the trend we have considered immediately above, although we note reference at section 3.12 of the EASO report to the PMU enforcing 'conservative standards on personal appearance'. There are reports of women being targeted – including in Baghdad – for un-Islamic dress. We note that there is little recent evidence to support a claim that men displaying Westernised behaviour would be at significantly enhanced risk, even in the Formerly Contested Areas. In areas in which ISIL retains a presence, however, we consider that such behaviour may be a

relevant characteristic under Article 15(c).

312. The inclusion of category (xvi) – persons with disabilities – is justifiably premised on a section of the EASO report which records that there is sadly discrimination, inadequate provision of health care and a higher risk of violence, particularly against those with mental illness.
313. In summary, we consider that the appellants’ proposed list of seventeen factors can be somewhat condensed. Two personal characteristics are particularly important. Firstly, those with an actual or perceived association with ISIL are likely to be at enhanced risk throughout Iraq. Secondly, in those areas in which ISIL retains an active presence, those who have a current personal association with local or national government or the security apparatus are likely to be at enhanced risk.
314. Other personal characteristics which are capable of being relevant, individually and cumulatively, to the sliding scale analysis required by Article 15(c) are as follows:
- (i) Opposition to or criticism of the GOI, the KRG or local security actors;
  - (ii) Membership of a national, ethnic or religious group which is either in the minority in the area in question, or not in de facto control of that area;
  - (iii) LGBTI individuals, those not conforming to Islamic mores and wealthy or Westernised individuals;
  - (iv) Humanitarian or medical staff and those associated with Western organisations or security forces;
  - (v) Women and children without genuine family support;
  - (vi) Individuals with disabilities.
315. The impact of any of the personal characteristics immediately above must be carefully assessed against the situation in the area to which return is contemplated, with particular reference to the extent of ongoing ISIL activity and the behaviour of the security actors in control of that area.

### **Article 3 ECHR/Article 15(b) QD**

316. We have concluded that the situation in the Formerly Contested Areas and Baghdad is not such as to engage Article 15(c) in the generality of case. As a secondary submission, the appellants argue that the situation in those areas engages Article 15(b) of the Qualification Directive and that the return of an individual to those parts of the country would be in breach of Articles 3 and 8 ECHR.
317. The starting point for our consideration must be the respondent’s repetition, at [150] of her closing submissions, of her concession in previous cases that “it remains the position that a person returning to Iraq without either family connections able to assist him, or the means to obtain a CSID, may be at risk of enduring conditions contrary to Article 3 ECHR”. This section of our decision is therefore principally relevant to those who have or are able to obtain a CSID (or INID) within a reasonable time or have family members from whom they can secure assistance or support.
318. We note that it is UNHCR’s stance that individuals should not be returned to the formerly contested areas. In the May 2019 position paper, the position on forced returns is as follows:

In light of widespread destruction and damage to homes, basic infrastructure and agricultural lands, limited access to livelihoods and basic services, the contamination of homes and lands with [explosive remnants of war], ongoing

community tensions, including reprisal acts against civilians perceived to be supporting ISIS, as well as localized insecurity, UNHCR urges States to refrain from forcibly returning persons originating from areas previously controlled by ISIS or areas with a continued ISIS presence to their areas of origin. UNHCR also advises against the forcible return of these persons to other parts of Iraq if there is a risk that they may not be able to access to and/or reside in these areas, or that they will otherwise end up in a situation where they have no choice but to return to their area of origin. This guidance pertains to individuals who have been found not to be in need of international refugee protection.

319. For the reasons to which we have already referred, we attach significant weight to this position. However, it does not mandate a conclusion that the return of an individual to the areas in question would be in breach of the UK's obligations under the QD or the ECHR, or even that there would be very significant obstacles to the re-integration of an individual into these areas, under paragraph 276ADE(1)(vi) of the Immigration Rules. The Tribunal's focus is on the rights vouched safe by those provisions, whereas the UNHCR's position also reflects broader humanitarian concerns. The enquiry is necessarily fact-specific, taking into account the particular circumstances of the individual and the area to which it is proposed he should return.
320. We note that the written submissions made by the first and second appellants place particular reliance on section C of the UNHCR's Protection Considerations in submitting that the situation in Baghdad and the Formerly Contested Areas is in breach of Article 3 ECHR and/or such as to give rise to very significant obstacles to a returnee's integration. That part of the UNHCR's paper relates to internal relocation, however, and not to the question we consider in this section, which is the return of an individual to their home area in a formerly contested area. Whilst that guidance, and the evidence upon which it is based, is necessarily relevant to our consideration of the situation in those areas, the thresholds in relation to the two enquiries are different, as explained by Burnett LJ in Said and by the Upper Tribunal in AAH (Iraq). The fact that relocation to a particular area might be unduly harsh or an individual could not live a relatively normal life in that place does not, without more, mean that conditions in that area breach Article 3 ECHR. AH (Sudan) [2007] UKHL 49; [2008] 1 AC 678 shows that it is an error to assimilate the consideration of reasonableness with Article 3 ECHR.
321. An individual will only be able to return to his home area and to live there if he has, or is able to obtain within a reasonable time, a CSID or an INID. If an individual has such a document *and* has family upon whom he can rely for meaningful support, we think it generally unlikely that he would experience conditions which would be in breach of the QD or the ECHR, or that would engage paragraph 276ADE(1)(vi) of the Immigration Rules. The real question which arises is in respect of those who do have (or able to acquire) an acceptable form of identification but who do not have support to which they can turn. In referring to support, we endorse what was said in AAH (Iraq), about the collectivist nature of Iraqi society and the expectation that even extended members of the family would be obliged by Iraqi social custom to provide assistance. We also note, however, that Dr Fatah was very clear about the limitations of that custom, in stating that it would not extend to an individual's tribe outside the family. Whilst he explained that tribal connections might assist in 'opening doors' when it came to employment, for example, he stated that such assistance would not extend to providing accommodation or sustenance to a non-relative. We accept his evidence in that regard.
322. Applying the guidance in the domestic and European authorities we have set out at [213]-[219], we consider that we are bound to apply the approach in N v UK when examining the

appellants' submission that return to the Formerly Contested Areas would be in breach of Article 3 ECHR. We reach that conclusion for much the same reason as the Court of Appeal in Said and MA (Somalia). As in Somalia, it is evidently the case that the humanitarian situation in the Formerly Contested Areas was previously attributable to the direct and indirect actions of the parties to the conflict with ISIL. As we have stated above, however, that conflict has now ceased militarily, with ISIL reducing dramatically in size and in the tempo and type of its operations. With the exception of the small area near to Baiji, the GOI (supported by the PMU) and the Kurdish authorities are in control of the whole of the country. The government has made clear that its focus is now on rebuilding the country and the elements of the infrastructure which were damaged in the conflict. It does not have the funding to undertake that task alone and has appealed for significant assistance from the international community. As Dr Fatah explained, billions of dollars have been pledged but much more is required. There is a substantial presence of international aid agencies in the region and they are not, unlike in Sufi & Elmi, significantly hindered by actors to an ongoing conflict. It cannot be said, as it was at [25] of MI (Palestine) that the predominant cause of the humanitarian conditions in the region is an ongoing conflict. Whilst the conflict brought about the humanitarian situation in the Formerly Contested Areas, the predominant reason that it continues is the want of resources for rebuilding the country. As the Danish Immigration Service put it in its November 2018 report "the biggest challenge for the humanitarian response is the lack of funding". Whilst the situation in Iraq, and in the formerly contested areas in particular, remains far from perfect, there is no longer the element of intentionality which was said in MI (Palestine) to require the application of the less stringent approach in MSS v Belgium and Sufi & Elmi.

323. Dr Fatah was not asked in his written reports to comment on the humanitarian situation in Iraq. He answered a number of questions from the advocates, however, and he accepted that the situation was as described by the UNHCR at section F of the May 2019 report. There are, as submitted at [55A] of the first and second appellants' written submissions, positive and negative indications in the background material. It is also apparent that there is considerable variation in the situation on the ground in different parts of the formerly contested areas. As we have mentioned above, certain towns and cities were particularly badly affected by the conflict with ISIL. Dr Fatah doubted in his oral evidence that the cities in Ninewa 'functioned' and he emphasised that other places, such as Hawija and Sinjar had sustained particularly serious damage, physically and to their ability to provide basic services. Much depends on the length and severity of the conflict in the individual location. Whilst Hawija was badly affected, for example, nearby Kirkuk did not suffer extensive damage (although it now suffers from different problems, to which we have alluded above).
324. In common with Dr Fatah, the UNHCR and the advocates, we do not consider that we can feasibly consider the situation in each town in the formerly contested areas. We adopt the approach in section F of the UNHCR report, therefore, and consider the situation in the formerly contested areas and Baghdad as a whole, although we have had regard to all the material cited to us by the representatives including, in particular, that material which is extracted at sections F to H of the appellant's lengthy Schedule. Having done so, we note that it is not only the UNHCR which cautions against the return of individuals to the formerly contested areas. That recommendation is echoed, for example, by the International Office for Migration.
325. The reports by EASO and other commentators reflect the position adopted by the UNHCR. UNHCR considers that the humanitarian situation has stabilised since the end of major military operations against ISIL but that humanitarian needs remain high. 6.7 million people require some form of humanitarian assistance and protection, which equates to 18% of the Iraqi population. Most of those are in the areas most affected by the conflict, those being the

areas under consideration in these appeals. Rebuilding efforts have begun but will take 10 years or so and require \$88 billion. The process is slow and is rendered more complex by the presence and actions of the PMUs. The lack of proper identification documents compromises people's access to basic services and places them at risk of arbitrary arrest. 2.1 million children are thought to be at risk of being unable to access basic services due to a lack of civil identification documents. The chronic housing shortage has been exacerbated by years of conflict and it is estimated that 3.3 million people live in informal settlements, in Baghdad and Basrah in particular. Eight per cent of IDPs live in critical shelter arrangements, as described in [AAH \(Iraq\)](#), whilst the rest live in private arrangements (61%) and IDP camps (31%). Those in camps and critical shelter arrangements are particularly exposed to adverse weather conditions.

326. There has been a rapid increase in poverty as a result of the decline in oil prices and the conflict. The poverty rate in the formerly contested areas did not reduce at the end of the conflict. The conflict also reversed a decline in unemployment, which is particularly high among women and young people. Access to a livelihood remains a problem for IDPs and returnees. Access to government programmes including the PDS reportedly remain challenging. Many IDPs resort to 'negative coping mechanisms' to address their most basic needs and the lack of income has led to secondary displacement. Water shortages in and around Basrah have led to problems with agriculture. Agricultural food production capacity has reduced by 40% as a result of the conflict. There has been inconsistent provision of food through the PDS, particularly in the formerly contested areas. Two million are thought to be in a situation of food insecurity, the majority of whom live in the formerly contested areas. The public healthcare system has seen a steady decline for various reasons and the conflict caused further degradation. Despite the rehabilitation of part of these facilities, capacity has not yet reached pre-war levels. There is a shortage of medicines and staff and although the situation is better in the KRI, its healthcare systems are stretched as a result of displacement to that area. Poor hygiene, damaged buildings and the presence of IEDs pose a risk to health in the liberated areas. The lack of health services in those areas is cited as a reason that people are reluctant to return. Schools across the country lack basic facilities, including access to electricity and water. Children without documents are unable to access education.
327. In areas previously affected by conflict, water and sanitation infrastructure have been badly affected. In areas which have received large numbers of IDPs, those facilities are overwhelmed. There is a nationwide scarcity of water, which brings with it additional risks to health. Electricity supplies are unreliable. There had been reports of ISIL targeting water and electricity supplies. Unexploded ordnance contamination is widespread.
328. Other difficulties highlighted by the material cited by the appellants orally and in writing, particularly at sections F-H of the Schedule, include pressure on IDPs to leave Baghdad, ethno-religious prejudice against displaced individuals, the presence of cholera, ongoing dissatisfaction and protests over perceived government inaction; restrictions on freedom of movement, corpses remaining in the rubble of conflict-affected areas, including Mosul, remaining ISIL activity, PMU abuse of IDPs, forced returns and secondary displacement.
329. In his oral evidence, Dr Fatah also highlighted the significant variations in food security and other problems faced by returnees, stating that there were areas such as Ninewa in which towns and cities had been destroyed in order to get ISIL out. In other areas the infrastructure was returning, although he emphasised the difficulties with funding. The resumption of oil exports was a positive step but IDPs still put a huge pressure on the country, and in particular on the IKR. He accepted that the humanitarian response had increased in former conflict areas but said that more needed to be done. Basic health services had been restored in some places but the scale of internal displacement remained significant, with 2.6 million in

the IKR alone. More people had been displaced in the aftermath of the referendum. The food situation was supported by humanitarian agencies but the aid did not reach everyone. People were not dying in the camps but it was a different story if the individual was a single person sleeping rough in a city. He accepted the suggestion by REACH (in 2017) that the majority of returnees had access to PDS assistance. He accepted that the Iraq Humanitarian Response Plan was one of the best funded globally but noted that significant funding shortfalls remained. He accepted that 42.7% of the population were employed. Unemployment figures amongst IDPS were high. The humanitarian situation in places like Hawija was challenging.

330. Mr Thomann echoed the position in the respondent's CPIN of November 2018 (Iraq: Security and humanitarian situation) when he submitted that the military defeat of ISIL had allowed greater penetration of humanitarian assistance into the formerly contested areas, bringing food aid and the restoration of services to those areas. He noted that half of the people who required humanitarian assistance were in Ninewa, which is described in a number of reports to be the 'epicentre' of the humanitarian problems. There had been improvements, even in Mosul, but critical gaps remained. The CPIN of May 2019, entitled Iraq: Standard of Living, highlights improvements to the standards of living in the formerly contested areas. It is apparent and we accept that humanitarian assistance is reaching areas it previously could not reach and that even in areas such as Mosul and Hawija, some services are being restored, including primary health services. Overall, however, we accept the position adopted by the UNHCR, that the humanitarian situation in the formerly contested areas remains very problematic, for all the reasons set out above. In parts of the formerly contested areas, including Western Mosul in particular, the situation is very challenging indeed. The photographs of the devastation in that side of the city underline what is already very clear from the reports before us.
331. Nevertheless, we remind ourselves that the threshold is that in N v UK and we accept the respondent's submission that the cumulative difficulties faced by a healthy, documented male returning to their place of origin in the formerly contested areas do not cross that threshold. Such an individual would be able to access food through the PDS or other humanitarian assistance programmes. They would have access to the limited employment options available. There is some primary healthcare available there. The risks of food insecurity and water scarcity, together with the risks from disease and unexploded ordnance, even in the worst affected areas and even in respect of those who would be required to live in a critical shelter arrangement, do not reach the high threshold required for us to conclude that there is a general risk of conditions which breach Article 3 ECHR, or engage Article 15(b) QD. A healthy, documented male returning to a home area in the formerly contested areas, therefore, will not generally be able to establish that theirs is a very exceptional case where the humanitarian grounds against removal are sufficiently compelling to require such protection.
332. It is imperative to recall that the minimum level of severity required by Article 3 is relative and depends on all the circumstances of the case, including the duration of the treatment, its physical and mental effects and the sex, age and state of health of the individual concerned: Saadi v Italy (2009) 49 EHRR 30. Although it is clear to us that a documented, healthy male would not, on return to a home area in the formerly contested areas, encounter conditions in breach of Article 3 ECHR, additional vulnerabilities including those considered under the 'siding scale' of Article 15(c) might conceivably combine to cross the N v UK threshold. In considering any such submission, decision makers will nevertheless wish to recall that that the combination of factors in Said, including mental health problems and a lack of family support, offset by clan support and remittances from the UK, were held by the Court of Appeal to be so short of the N v UK threshold that remittal to the Upper Tribunal would

serve no purpose: [32]-[33] refers.

### **Paragraph 276ADE(1)(vi) of the Immigration Rules**

333. The appellants submitted that an individual who was unable to succeed on Article 3 ECHR grounds on the basis of the conditions in their home area might nevertheless establish that there were very significant obstacles to their reintegration, thereby bringing themselves within the protection of paragraph 276ADE(1)(vi) of the Immigration Rules. We do not discount that possibility. Again, the enquiry will be intensely fact specific, and will take as its starting point any findings made in relation to the Qualification Directive and Article 3 ECHR: SA (Afghanistan) [2019] EWCA Civ 53. In Kamara [2016] EWCA Civ 813; [2016] 4 WLR 152, Sales LJ (with whom Moore Bick LJ agreed) explained that the concept of integration is a broad one and was not confined to the mere ability to find a job or to sustain life while living in the country of return. Instead:

The idea of “integration” calls for a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life.

334. In S [2017] EWCA Civ 1284; [2018] Imm AR 169, the court of appeal underlined the need for a broad, evaluative judgment under paragraph 276ADE(1)(vi), taking into account certain ‘generic’ factors such as an individual’s intelligence, employability and general robustness of character: [58]-[59], per Moylan LJ (with whom Rafferty and Irwin LJ agreed). In Parveen [2018] EWCA Civ 932, Underhill LJ (with whom Gloster and Asplin LJ agreed), disapproved the gloss placed by Treebhawon [2017] UKUT 13 (IAC) on the test. He emphasised that the task of the Secretary of State or the Tribunal in any given case is simply to assess the obstacles to integration relied on, whether characterised as hardship or difficulty or anything else, and to decide whether they regard them as “very significant”.

335. We do not propose to issue separate guidance in relation to paragraph 276ADE, precisely because the enquiry is so fact-sensitive. Although we have been able to reach the conclusions that we have in relation to the QD and Article 3 ECHR, the obstacles to an individual’s integration vary infinitely from one case to another and we do not consider that it would assist future decision makers to speculate whether, in some form of case, there would or would not be very significant obstacles to such an individual’s re-integration.

### SECTION F - (CSID and other documentation)

336. Iraq is a bureaucratic country which has suffered from a range of security concerns in the 21<sup>st</sup> century. For both of those reasons, issues surrounding the documents needed to return to Iraq and to survive in that country have played a prominent part in the country guidance cases decided to date. The first such case was MK (Iraq) CG [2012] UKUT 126 (IAC), in which the Upper Tribunal listed the three critical documents at [6]:

The first is the Civil Status Identity Card (CSID). The second is the Iraqi Nationality Certificate (Shahdat al-Jinsiya al-Iraqiya) (INC), the third is the Public Distribution System (PDS) card (food ration card).

337. It was common ground in MK (Iraq) that the most important of these documents is the CSID because “without the CSID card it is impossible to access any of the other documents listed



above, and this has a clear impact on ability to move around Iraq, to relocate within Iraq and to enjoy socio-economic rights, housing and food rations and to access aid and humanitarian support”: [22]. At [24], it cited Dr Fatah’s statement that the CSID is the physical manifestation of an individual’s official registration record, which is a record of the individual’s birth, held in manuscript ledgers in the local Civil Registry.

338. The Tribunal went on to consider how an individual is issued with a CSID in the first place and how, in the case of a returnee who has no CSID, they might obtain a replacement. It decided that the general position was that a person who required a replacement CSID would be required to travel to their home area in order to obtain one but that there were alternative means by which one could be obtained. It was thought that Iraqis could obtain a CSID from an Iraqi Embassy or that one could be obtained within Iraq, either by a family member or by a person who had been given power of attorney. It was also thought that a person could obtain documentation by being presented before a judge of the Civil Status Court (in Baghdad).
339. MK (Iraq) was decided in April 2012. HM1 was heard later that year, by which stage further information had come to light about the means by which an individual might obtain a replacement CSID. The country guidance given in MK (Iraq) was generally endorsed. The Upper Tribunal added, however, that the evidence then available established that there was a Central Archive maintained by the Iraqi authorities which retained civil identity records on microfiche. This, the Tribunal concluded, provided a further way in which a person could identify themselves and obtain a copy of their CSID, whether from abroad or within Iraq.
340. Whilst both cases went on appeal to the Court of Appeal, the aspects of the guidance which we have set out above were unaffected by the partial allowing of the appeal in MK (Iraq): [2013] EWCA Civ 1276; [2014] 1 WLR 1329.
341. In AA (Iraq), the Upper Tribunal underlined again the importance of the CSID, holding that it was required to access financial assistance from the authorities; employment; education; housing; and medical treatment and that if a returnee showed that no support would be available in Iraq then they would be likely to face a real risk of destitution amounting to serious harm if, by the time any funds provided them by the Secretary of State or her agents had been exhausted, it was reasonably likely that they will still have no CSID. This conclusion was based on a concession made by the respondent and considered at [151]-[152].
342. The Tribunal considered that an individual could as a general matter obtain a replacement CSID from the Civil Status Affairs (“CSA”) office for their home governorate, using an Iraqi passport, whether current or expired. Without a passport, the ability to obtain a CSID may depend, the Tribunal concluded, on whether the individual knew the page and volume number of the book holding the record of the individual and their family. An individual’s ability to satisfy the official that he was the person named on the relevant page was likely to depend on whether there were family members or others who could vouch for them. An individual’s ability to obtain a CSID would be likely to be severely hampered, however, if they were unable to go to the Civil Status Affairs Office of their home governorate because it was an area in which Article 15(c) serious harm was occurring. Alternative CSA offices for Mosul, Anbar and Salah al Din had been established in Baghdad and Kerbala. Reversing the country guidance in MK (Iraq), in light of evidence from Dr Fatah, the Tribunal concluded that the Central Archive in Baghdad was not in practice able to provide CSIDs to those in need of them. Whilst there was a National Status Court in Baghdad, the precise operation of the court was unclear.
343. Then came AA (Iraq), which led to the amendment of the country guidance in the way we

have already described. The Tribunal was criticised for equating the CSID with a return document such as a Laissez Passer or a passport. At [39], the court stated:

The position with a CSID is different. It is not merely to be considered as a document which can be used to achieve entry to Iraq. Rather, it may be an essential document for life in Iraq. It is for practical purposes necessary for those without private resources to access food and basic services. Moreover, it is not a document that can be automatically acquired after return to Iraq. In addition, it is feasible that an individual could acquire a passport or a Laissez-passer, without possessing or being able to obtain a CSID. In such a case, an enquiry would be needed to establish whether the individual would have other means of support in Iraq, in the absence of which they might be at risk of breach of Article 3 rights.

344. Then, in June 2018, came AAH (Iraq), which primarily concerned whether Iraqi Kurds could relocate internally to the IKR. At that time, it was agreed that there were no international flights to the IKR, which is not the position now. The Tribunal emphasised the intensely fact-sensitive nature of the enquiry into whether an individual would be able to obtain a replacement CSID and suggested that the possession of other relevant documents, the location of the Civil Registry Office and the availability of other male family members were all relevant considerations. In reaching these conclusions, the Tribunal recorded that the respondent had maintained the concession in AA (Iraq), regarding the likelihood of an individual without a CSID or other support encountering conditions contrary to Article 3 ECHR. It endorsed that concession, subject to two caveats regarding the possession of an INC and the availability of support from friends and family. At [98], it concluded that “a person who is unable to replace a missing CSID, *and* who has no family or others to whom he could turn for assistance, is likely to face significant difficulties in accessing housing, employment, healthcare and other services.” That concession was repeated at [150] of the respondent’s closing submissions before us, with the respondent accepting that “it remains the position that a person returning to Iraq without either family connections able to assist him, or the means to obtain a CSID, may be at risk of enduring conditions contrary to Article 3 ECHR.”

345. At [101] and [102], the Upper Tribunal in AAH (Iraq) set out a substantial extract from AA (Iraq). Given the evidence we have been asked to consider, it is also necessary for us to set out that part of the decision:

[178] The evidence before us in this regard is largely undisputed.

[179] Dr Fatah in his most recent report indicates that the starting position is that in order to obtain a new or replacement CSID a person usually had to return to the governorate where his or her birth was registered and where the primary family registration book is held i.e. in the local population registration/civil status office. He went on to explain that there are 300 population registration offices in Iraq which are responsible to a central Civil Status Affairs Directorate.

[180] Births are registered manually in volumes held at these local population registration offices and these offices are responsible for checking the manual register before issuing a CSID. They also send information on to the central population registry in Baghdad. USAID Iraq told Dr Fatah that the central population registry/central archive is not a searchable data base. Instead a "*search of the central archive needs an officer to open doors (literally or metaphorically). The search must be done by a government*

*official - members of the public cannot search through the "central archive". The key issue is whether the official is willing to do the search - or can be made willing. In addition, the individual would need to know his volume and page numbers or the official would have to trawl through a given governorate's entire archive of back-up files. As a consequence, if an individual does not have his volume and page number his only option will be to locate a close family member with the same details and hope that an official will assist him.*

[181] There is also some doubt as to whether a CSID could be handed over to anyone but the individual whose details it contained, even if an individual did hold a power of attorney. In addition, if the person is outside Iraq the details of an individual's CSID would have to be sent to him and he would have to ask the Iraqi Embassy to send any application for a CSID through the Ministry of Foreign Affairs to Iraq. The Ministry of the Interior would then need to issue the CSID and send it to the Ministry of Foreign Affairs who would send it back to the Iraqi Embassy in London.

[182] UNHCR-Iraq told Dr Fatah that there is no database or any electronic system in place to issue CSIDs. Scanned copies of local paper records are archived in the General Directorate of Civil Status Affairs in Baghdad. Having discussed the situation with Landinfo Dr Fatah concluded that registration is undertaken in the local area and that the Civil Status Affairs Directorate or central population registry in Baghdad does not generally issue CSIDs.

[183] This is confirmed to some extent by the fact that the Iraqi government has set up two Alternative Civil Status Affairs Offices to issue CSIDs to IDPs from governorates which have been captured by ISIL. One office has been set up in Najaf to issue copies of CSIDs archived from Mosul, and another office has been set up in Baghdad to issue copies of CSIDs to individuals from Anbar and Salahaddin. These offices are only authorised to issue CSIDs to IDPs from these governorates.

[184] Dr Fatah was further informed by a source at the Norwegian Refugee Council that the Ministry of the Interior had refused to open up more alternative Civil Status Affairs offices so as to protect civil records from fraud, to protect confidentiality and to avoid duplication, as there was no database or electronic system.

[185] UNHCR-Iraq provides some support to those without a CSID through its Protection, Assistance and Re-integration Centres ("PARC"), but such support is limited to providing guidance and legal advice on required procedures and documents needed to obtain a CSID. It did not issue these or other documents itself. It also confirmed that Harikar and Qandil [8] have indicated that they do not issue CSIDs. The Norwegian Refugee Council told Dr Fatah that there is a network of legal aid clinics in Iraq, which is funded as part of USAID's Iraq Access to Justice Programme. They also provide legal advice, but do not issue CSIDs.

[186] Drawing all of this together we conclude that an Iraqi national should as a general matter be able to obtain a CSID from the Civil Status Affairs Office for their home Governorate, using an Iraqi passport (whether

current or expired), if they have one. If they do not have such a passport, their ability to obtain a CSID may depend on whether they know the page and volume number of the book holding their information (and that of their family members). Their ability to persuade the officials that they are the person named on the relevant page is likely to depend on whether they have family members or other individuals who are prepared to vouch for them.

[187] An Iraqi national's ability to obtain a CSID is likely to be severely hampered if they are unable to go to the Civil Status Affairs Office of their home Governorate because it is in an area where Article 15(c) serious harm is occurring. As a result of the violence, alternative CSA Offices for Mosul, Anbar and Saluhaddin have been established in Baghdad and Kerbala. The evidence does not demonstrate that the "Central Archive", which exists in Baghdad, is in practice able to provide CSIDs to those in need of them. There is, however, a National Status Court in Baghdad, to which a person could apply for formal recognition of identity. The precise operation of this court is, however, unclear".

346. Dr Fatah entered two caveats to the evidence he gave in AA (Iraq). Firstly, at [104] he is recorded as having stated that the civil registration system was in disarray due to the presence of ISIL between 2014 and 2017. He emphasised that there were many people without a CSID but that this problem was considered 'totally insignificant' by the authorities and that no procedures had been implemented in order to assist in the redocumentation of returnees. Secondly, the anecdotal evidence on the willingness of officials to assist undocumented IDPs was 'not promising': [105].
347. The Tribunal concluded that either a CSID or a valid Iraqi passport would be needed to leave Baghdad airport by road: [111]. It is important to note that this paragraph also records the existence of innumerable checkpoints on the roads from Baghdad to the IKR and the expectation by the security forces that an individual would be in possession of a CSID. There was a submission by the respondent in that case that 'the Iraqi authorities have assured the Home Office they will 'assist with any onwards travel documentation' but the Tribunal had 'been shown no evidence that this had actually happened, or what such documentation might be'. It was Dr Fatah's uncontested evidence in that case that a failure to produce a CSID or, in the environs of the airport a valid passport, would be likely to result in detention until the authorities could be satisfied of an individual's identity. An internal flight to the KRG was possible but an individual would need either a valid passport or a CSID: [112]. In the same paragraph, the Tribunal accepted Dr Fatah's evidence that an INC could not be used and that one 'could certainly not use a Laissez-passer, since these documents are confiscated on arrival'.
348. At [113]-[116], the Tribunal concluded that an individual with a CSID or a valid passport would usually be able to travel to the IKR by land or air but that the position for an individual without such documents was entirely different and would require fact-specific assessment.
349. We have set out the development of the country guidance in some detail because we are invited to depart from it significantly, and particularly in relation to the documentation which an individual returnee might use for onward travel from the location of return (which may now be either Baghdad, Erbil or Sulaymaniyah). With one exception (which relates to the introduction of a new, digital ID card called the Iraqi National Identity Document), it is the respondent who invites us to depart from the current country guidance. The evidential

basis upon which she invites us to do so is as follows.

350. Firstly, there is a witness statement which was made by an Assistant Director in the Home Office Returns Logistic Unit named Diane Drew. This statement was made in a case which is reported as R (SS) v SSHD [2019] EWHC 1402 (Admin). We will return to the judgment of HHJ Coe QC in that case in due course.
351. Ms Drew records that an Iraqi delegation visited the UK between 29 July 2018 and 2 August 2018. It consisted of senior officials from the National Security Department, the Ministry of Justice, the Ministry of Foreign Affairs and the Chief of Police at Baghdad Airport. Home Office officials discussed the CSID with the Iraqi delegation at length. The latter felt 'strongly that the information in the country guidance case law was out of date' and that a CSID was 'easily obtainable'. Ms Drew also stated that the Chief of Police had told her that a person is able to travel from Baghdad to the KRI using a Laissez Passer.
352. Further communication between the Home Office and the Iraqi authorities continued after the delegation had returned. On 5 September 2018, the Iraqi Ambassador to the UK (Dr Salih Husain Ali) responded to a letter which had been sent to him on 4 September. We have only been provided with a very poor copy of his letter but it is in the following terms:

In reference to your letter dated 4<sup>th</sup> September, I would like to assure you that all the returnees' papers are checked on arrival and they are received with courtesy at Bagdad International Airport and may be provided with a certification letter.

The arriving returnees can continue their onward journey to their final destination in Iraq by domestic flights or road using their Laissez Passer or letter (if provided) which help them to pass through our designated checkpoints. Please note that most of them may be in possession of copies of their national IDs which may not have been disclosed previously.

The returnees can re document themselves and apply in their local Civil Status Departments for national ID card on arrival using copies from his/her old documents or family records with reference to the page and register number holding the returnees information or that of their family.

We can confirm that all the Civil Status Records are preserved and held digitally by each Governorate Directorate of Civil Status Affairs and are accessible to assist in determining a returnee's identity with reference to the register and page.

353. The reference to a 'certification letter' led to further discussions within the Home Office, following which a further letter was received from the Iraqi authorities on 2 October 2018. This letter was from Dr Wael Alrobaaie, the Counsellor of the Iraqi Embassy in London. It reads as follows:

In addition to our clarifications outlined in our letter of the 5<sup>th</sup> of September, please note that same procedures are applied to all the returnees onward travel from Baghdad to KRG or any city in Iraq. [T]he certification letter is issued on a case-by-case basis and depending on the availability,/unavailability documentations (sometimes requested by the returnee), the letter is issued by Baghdad International Airport Police, and contains information about the returnee including name, date of birth and clarification that the returnee landed with a Laissez Passer and his repatriation procedure is completed at the Airport, this letter is sufficient to pass through checkpoints in case of inquiry, please note

that in rare occasions they may be questioned at checkpoints. This letter usually not always issued for all the cases, but individually case-by-case. All Civil Status Records have been preserved nationally and there is a central register back up in Baghdad that includes all the civil records of all the provenances [sic] in the event of any form of damages or destruction. This civil registration backup (Microfilm) covers all records from 1957.

Representatives from the repatriation committee would be available at Baghdad International Airport and ready to receive a returnee even at the weekends if we are informed in advance that a returnee is on board of a flight. The officers are fully qualified in dealing with the repatriation process and they can deal with it with the last minutes notes.

354. This information led the respondent to update the Country Information and Policy Note (“CPIN”) regarding internal relocation in Iraq. At [9]-[11], Ms Drew relates this information to the facts of SS’s case. He was removed to Iraq on 18 November 2018, holding a Laissez Passer which had been obtained from the Iraqi Embassy. Contact had been made with the Iraqi Embassy in April 2019, as a result of which it had been confirmed by email that SS had not attempted to apply for a CSID since his return to Iraq. A letter upon which the claimant had relied, purportedly from the Directorate of Civil Status in Karkh, was confirmed by the Iraqi authorities not to be genuine. Ms Drew concluded her statement by confirming her belief that the claimant could obtain a CSID but had not made any attempt to do so. She also confirmed her belief, based on the documents above, that the claimant would have been able to travel from Baghdad to the IKR using his Laissez passer.
355. This was the material before HHJ Coe QC in R (SS) v SSHD. In that case, the claimant had arrived as a minor and claimed asylum. Asylum had been refused but he had been granted Exceptional Leave to Remain, followed in due course by ILR. He had then committed a serious criminal offence and received a lengthy sentence of imprisonment, following which the Secretary of State decided to deport him. An appeal against that decision was ultimately unsuccessful in 2013. He absconded thereafter and, having been prevented from entering the UK clandestinely on one occasion, he then succeeded in entering. He was discovered and recalled to prison, from where he made further representations which the respondent refused to treat as a fresh claim for asylum under paragraph 353 of the Immigration Rules. The respondent did not accept, in particular, that he had realistic prospects of persuading a judge of the FtT(IAC) that his appeal should be allowed on protection or human rights grounds. The respondent removed him from the UK after stays on removal were refused by the Upper Tribunal and the Administrative Court.
356. The claimant in SS (Iraq) submitted that the Secretary of State had been wrong to conclude that he did not have realistic prospects of success before a putative judge of the FtT<sup>9</sup> and that his further representations consequently satisfied the somewhat modest test in paragraph 353 of the Immigration Rules. In reliance on AA (Iraq) and AAH (Iraq), he submitted that he did not have a CSID and that he would rapidly find himself in a situation which infringed Article 3 ECHR. In reliance on the material above, however, the respondent submitted that there was no realistic prospect of success before the hypothetical judge, who would inevitably find that there were strong grounds to depart from the country guidance decisions. It was the Secretary of State’s case, in reliance on the material we have described above, that the claimant could attend the CSA office in Baghdad and could find his entry in the civil register, thereby enabling him to obtain a new CSID without needing to attend his

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<sup>9</sup> WM (DRC) [206] EWCA Civ 1495; [2007] INLR 126

local Civil Status Affairs Office in Mosul.

357. HHJ Coe noted the importance of a CSID in the Iraqi context and noted that the issue had been 'front and centre' in the CG cases to which she had referred: [77]. She considered that it would require fresh, clear and cogent evidence to amount to strong grounds sufficient to supersede guidance as recent as AAH (Iraq): [79]. HHJ Coe QC did not accept that the letters set out above amounted to clear cogent evidence amounting to strong grounds to say that a CSID is now easily obtainable in Iraq by a returnee: [85]. At [86]-[91], she gave extensive reasons for that conclusion. HHJ Coe QC did not consider the evidence about the central archive with microfilm records in Baghdad to take matters any further: [86]. It was accepted that the archive did not issue CSIDs. It was not said to be searchable, in which case it was of little use to a person who did not know their page and reference number. If it was the same central archive considered in AAH (Iraq), the position was the same. If it was not, the Secretary of State had not explored how it would enable the claimant to obtain a new CSID. AAH (Iraq) had explained that it was difficult to obtain a CSID without other documentation or the need to 'trace back' to the family record and family details were seemingly still required: [87]. Dr Ali did not refer to the microfilm backup in Baghdad and still referred to a need to know the page and register number. Many records had been destroyed and there was no information about the records held in the alternative CSAs or whether they were searchable and, if so, by whom. It was not known whether any records existed for the claimant and the Secretary of State had not considered the backlog from 2014-2017. There had been no attempt to address what Dr Fatah had said about the attitudes of officials dealing with returnees: [88].
358. There was nothing in the correspondence to indicate any certainty in the 'certification letters'. The correspondence relied upon by the Secretary of State,
- "taken at its face value establishes no more than that there is a digital record in each governorate accessible to assist in determining a returnee's identity but it is not clear when this was created or if or how it can be searched or if it contains the claimant's records. There is a backup central register in Baghdad on microfilm but it is not clear whether that is searchable, what records it holds, whether it would include the claimant's records, whether it is the same as the archive referred to in the CG cases, or whether it is can be accessed by a returnee to establish identity sufficient to acquire a CSID.": [89]
359. So it was that HHJ Coe QC concluded that the new information was relevant but that it was not sufficiently clear and coherent to supersede the CG: [91]. If the CG had been applied 'unadorned and unamended', the further submissions would undoubtedly have given rise to a fresh claim:[97] The refusal to treat the representations as such was unlawful and it bore on the decision to detain, which was consequently unlawful. We understand there to have been no appeal against Judge Coe's decision, although an appeal against her subsequent decision to order the claimant's return to the UK is pending.
360. The respondent engaged in further correspondence with the Iraqi authorities between the decision in SS (Iraq) and the hearing of these appeals. A witness statement made by Robert Pickles, also based in the Returns Logistics Unit, noted that Amnesty International had expressed doubt about the use of a Laissez Passer or a "certification letter" in order to negotiate checkpoints. In response, Mr Pickles had sent a letter to the Iraqi Embassy on 22 May 2019 to seek clarification on several points. He had received a response by letter on 23 May 2019, in the following terms:

Certainly the certification letter at Baghdad Airport allows returnees to continue

their onward journey and in most cases they keep the LP as well with them to use it during their onward journey. So the letter will be something additional to the LP if they need it or ask for it.

Unfortunately we don't have a specific number for the certification letters which have been issued before but we can write to Baghdad and hopefully we will receive the answer soon.

The certification letter usually issued to those who are without CSID and need to travel through checkpoints to their home area and if they have the LP or a copy of any Iraqi ID, this will be enough for them to travel everywhere in Iraq.

The individuals when they arrive the airport, they will ask them whether they have any Iraqi ID or not, and if they don't have it, they will be provided the certification letter and as we explained, they will keep the LP also with them.

The certification letter and Laissez Passer recognised throughout the country in all cities including the checkpoints controlled by the central government and the Iraqi military.

In all the previous cases, there was no problem or obstacles at Baghdad International Airport to the individuals who had returned to Iraq already, and all the process went smoothly and they returned to their families without any issues.

Most of the individuals have original Iraqi ID or a copy from the ID and they keep the Laissez Passer as well, and in some cases they will obtain the certification letter, all of these documents will be enough for them to travel anywhere in Iraq including Iraq's Kurdistan region.

361. There was yet further correspondence with the Iraqi authorities thereafter. This is described in a witness statement from a third official in the Returns Logistics Team named Declan O'Neill. There are two emails, the first of which is from Ms Drew to Counsellor Alrobaaie dated 13 June 2019, expressing concern that without an answer to certain questions the Home Office might 'lose the [country guidance] case, which could have serious consequences on being able to return to Iraq in future'. Eight detailed questions, composed by counsel, were put. The response from the counsellor was exactly as follows:

I hope this email finding you well, in general, any person can visit the Civil Status Office in his city and provide them with the page number and reference number of their records as family, usually it's the same number for him, brother, sister, and father. So in this case he can get any copy from his family ID or only submit the family number for the ID, and then can ask them to get new National ID card or something called Civil Status electronic document which includes all his details with new national ID reference or something called Civil Status document for 1957 includes the page number and reference number of his records. This is just a step to the next step to issue a new National ID.

The individual does not need any prior permission to visit any Civil Status Office and he can go in person with his relatives or without to follow his case with the official Departments.

If an individual is able to find their Civil Status Records in the central archive, they use this to apply for a new national ID card in his local Civil Status office



and while the case is in process, they will give him the Civil Status document for 1957 or Civil Status electronic document as I explained above.

After the stability and the liberation now, the work resumed in all Civil Status Affairs Offices and Civil Status Records offices for Mosul, Anbar and Saluhaddin and the activities now in a normal way in their provinces and the individuals can apply directly in the [sic] their offices and they will be dealing with the request according to the law, any application will only take the normal time (maybe 1 to 5 working days) according to each request without any delay.

As we explained before, we can assure you that we didn't see any problem or issue for all individual returned on a Laissez Passer, and all of them returned to their homes without any problem and they didn't submit any request to the MFA or to the return logistic team in Baghdad for assistance to issue new documents and this is a very clear message that they have no difficulties in the process of issuing new Iraqi documents.

In all the previous cases, there was no problem or obstacles at Baghdad International Airport to the individuals who had returned to Iraq already, and all the process went smoothly and they returned to their families with out any issues.

...

362. Mr O'Neill also stated in his statement of 20 June 2019 that Counsellor Alrobaaie had told Ms Drew on the telephone that he would be unable to answer questions about the central archive in Baghdad as it was run by the Ministry of the Interior and that the answers to such questions would take months.
363. In his first report, Dr Fatah stated that Civil Status Affairs Offices in the formerly contested areas had started working again, but with great difficulty, and that obtaining documents from these offices could take a long time, particularly if there was some doubt over a person's entitlement: [933]-[937]. A new ID card was replacing the INC and the CSID. The CSID was still a very important document but it could not be renewed or obtained any more. The new Iraqi National ID card<sup>10</sup> would replace it and the CSID was only valid to the end of 2019: [938]-[941]. The INID was not compulsory as at March 2019 but there were certain circumstances in which it had to be applied for. An individual would be told to apply for an INID instead of a CSID at a local Civil Status Affairs Office: [947]. An individual who married or who had a child would be required to apply for an INID: [948]-[949].
364. Dr Fatah stated that the INID process was centralised, whereas the CSID process was regional: [950]. The procedure for obtaining the new card was that the individual would go to their local Civil Status Affairs Office and provide their CSID, INC and Residency Card, although the document of a close male relative may also be used (as it would enable the entry in the Family Book to be located). The scribe who took the applicant's details would send the application form to the relevant office and present a copy to the applicant. The applicant would be required to provide their photograph, an iris scan and fingerprints in order to complete the application process. It would take two weeks for the INID to become available. The application had to be made in person due to the need to provide iris scans and fingerprints, although it could then be collected by a proxy: [953]-[954]. Dr Fatah

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<sup>10</sup> Dr Fatah uses the abbreviations NIDC and INID in his reports. We prefer the latter abbreviation and will use it throughout.

provided an image of a redacted card and explained the security features in the document: [955]-[958].

365. At [960]-[967], Dr Fatah stated that there were a number of difficulties associated with issuing documents. Civil Status Affairs Offices had been destroyed and many people had been displaced without their documents. The Iraqi authorities were not managing the problem and the lack of good calibre civil servants was an ongoing problem. Restrictions on IDP movement had further compounded the difficulties. The UNHCR had recognised the severity of the problem, describing undocumented individuals as being in a 'legal limbo', and had assisted some 2,500 Iraqis whose documents had become lost or destroyed. Courts had been set up within camps to provide certificates of births, deaths and marriages and notaries had been sent to camps so that they could be granted power of attorney and assist with documentation problems. No such procedures had been put in place for returnees and Dr Fatah believed that this was because the Iraqi authorities believed their situation to be "trivial".
366. Dr Fatah did not believe that a CSID could be obtained from abroad any more, since it had been replaced by the INID. At [968]-[980], however, he described how a CSID could have been obtained in the past from an embassy. At [981]-[984], he describes the process for applying for a passport and at [985]-[990], he considers the Laissez Passer. At [991]-[100], he considers whether it would be possible to instruct a lawyer to assist with obtaining documentation in Iraq, emphasising that this would not assist in the case of the INID and that the applicant would, in the case of a CSID, still be required to know their page and ledger number. An individual's family might be able to assist even if a lawyer could not, and would not need power of attorney.
367. At [1001]-[1019], Dr Fatah set out his response to the suggestions that an individual could use a Laissez Passer or a "certification letter" in order to get from an airport to their home area. He emphasised that checkpoints are manned by a variety of armed actors and that they are only used to seeing certain forms of documentation. Without any or any familiar documentation, an individual would be likely to be detained until they could establish their identity, either by documentation or by somebody else vouching for them. As for the "certification letter", Dr Fatah had never heard of this document but it was unlikely, given the way in which checkpoints were manned, that such a document would offer safe passage to a returnee's home area. The Laissez Passer was a single use document which was retained at the airport of return. It could not be used for onward travel. Nor could a passport unless the traveller was international.
368. In advance of the hearing, the Secretary of State posed a number of questions to Dr Fatah about documentation. He maintained that the letters from the Iraqi Embassy contained political statements and that travel using a Laissez Passer or a certification letter would not be possible. He had explained in AA (Iraq) that the Baghdad Central Archive was not publicly available and would not assist in obtaining documentation in Baghdad.
369. In answer to questions from Mr Knafler, Dr Fatah reiterated his view that a Laissez Passer would not assist a returnee and that it was for a single trip. It would not assist at checkpoints, for the reasons he had explained in his report. If they tried to present a Laissez passer, they would be detained until they could prove who they were. The militia were in charge of checkpoints, particularly those around towns, and were concerned about ISIL and Kurdish forces entering. Kurds and Sunnis might be at greater risk at such checkpoints, although the reports of Sunnis being targeted in that way had reduced since the defeat of ISIL. The CSID was generally expected in Iraqi transactions, even buying a car. You might be able to stay in a hotel by presenting a professional ID, such as a teacher's, but the

presumption was always the CSID document. He had never heard of anyone being able to obtain accommodation, food and employment with a Laissez passer. Nowadays, a returnee would have to apply for an INID because the lack of security features on the CSID meant that it was being phased out. It would take two weeks to obtain the INID once an individual had attended the Civil Status Affairs Office in person. You could not obtain this document from London and that had been made clear to him. You had to go to your local Civil Status Affairs Office to get the INID. There were flights from the UK to Sulaymaniyah on Wednesdays and to Erbil on Thursdays. A person who flew to one of these airports with only a Laissez Passer would not be allowed to leave the airport without a CSID but he might be allowed to use the telephone in order to contact people who could vouch for him. There was no set procedure. In the event that a person from the Disputed Territories was able to leave one of these airports, they would not be able to cross the Green Line between the IKR and the GOI territory without proper ID; that was very clear to him. If they were unable to leave the IKR for that reason, they would not even be able to move around but if he had links in Kirkuk, he could ask a lawyer to assist him in obtaining a CSID. If he was from Mosul and his family was dispersed, he would be in difficulty. If a returnee had been in the UK for fifteen or twenty years, they might have nobody they could contact and no record. If somebody had been in the peshmerga, for example, then they might not be able to get a CSID. Asked whether he was aware of examples of family books having been destroyed, Dr Fatah said that he did not. Some places had suffered badly, and Ninewa was 'bombed to the ground' but he did not know whether records had been destroyed. It was possible that records could be intact. He was not aware of ISIL having targeted Civil Status Affairs Offices intentionally.

370. In answer to questions from Mr Thomann, Dr Fatah agreed that there were about 300 Civil Status Affairs Offices and it was significant that those in the formerly contested areas had been re-opening. There had been no registration under ISIL. Dr Fatah doubted whether the CSID was still being issued as the Iraqi government clearly wanted to implement the INID, although he still used his old CSID and had been asked to show it at the airport. If he wanted to get a new passport, he would have to get an INID first. Certainly it was his information that you would be required to get an INID for such official interactions. All that was required for the processing of the INID application was a terminal and he knew that the central authorities had rolled out the programme for the INID and expected it to be completed in 2019. Dr Fatah was asked about the Baghdad Central Archive. He said that he thought this issue was 'dead'. He did not believe that the archive issued identity documents and he had made that clear in [AA \(Iraq\)](#). There was just one person in the office and they would need to be 'persuaded' to render any assistance. If you turned up at the archive and gave your name and your place of birth only, how were they supposed to assist? There were so many people and so many entries, dating from 1957 and organised according to the place of registration. The new INID required an iris scan and other biodata. He had seen the system in operation and it was very simple; you provided all the relevant information and returned for the card in 2 weeks. He did not understand why the central archive was relevant. If you wanted a CSID, you attended your *local* Civil Status Affairs Office. If ISIL had destroyed it, maybe the records were backed up in Baghdad. It was illogical to suggest that a person could get a CSID to tide them over whilst they waited for an INID because the former took five weeks to issue, whereas the latter took two. He thought it was probably easier to get the new card compared to the old one.
371. Dr Fatah was not aware of people using Laissez Passers in the way suggested by the Iraqi authorities. He had never heard of anyone getting documents of any description using a Laissez Passer. His sister, who is a judge in Sulaymaniyah, had lost her passport and had been given a Laissez Passer after she had shown all of her copied documents to the Embassy. She had returned to Iraq using this document but it had been confiscated on arrival; she was

expected to get a formal type of ID. He was sure, with reference to the Iraq Embassy email, that they would try to assist a person who had only a Laissez Passer but the question was how they could help. If a British citizen lost all their documents in Barcelona, and had nothing to link them to the UK, what could the Embassy do? If an individual had no Iraqi documents and no family, the Iraqi authorities could not help them. Family or other connections might be of assistance. The statement made by the Chief of Police at Baghdad International Airport was merely political. He might control some of the checkpoints but not all of them. In the UK, the Home Office was able to publish policy to which its staff would adhere. In Iraq, however, this was not the case because there were many actors and there was no homogenous approach. He disagreed with the suggestion that a Laissez Passer was a document which would help an individual to pass through designated checkpoints. He had never heard of a certification letter and asked Mr Thomann what it was. His sister had returned to Iraq using a Laissez Passer and she had been able to show a professional ID document in place of a CSID. He had seen the Laissez Passer for himself, as he was with her when she checked in, and it said clearly that it was valid for one trip only. He was simply not aware of the people described by the Embassy, who were said to have returned using LPs and experienced no difficulties.

372. In answer to our own questions, Dr Fatah stated that he knew about the process for applying for an INID from three sources. He knew two people who had obtained such documents and he knew a solicitor in Iraq who helped people to obtain them. She would help people complete the formalities. He had never heard of anyone other than his own sister who had been returned to Iraq using a Laissez passer. He confirmed that he was not aware of ISIL specifically targeting Civils Status Affairs Offices. The queue for the reopened offices in places such as Mosul was very long and these were people who already had their own ID cards. He had attended a conference three or four years ago at which the question of documentation for IDPs was discussed. The judges who had been in attendance did not know what to do to help these unregistered people who had been born in camps and thought that legislation would be necessary.

### **Submissions**

373. The comparatively brief submissions made by the appellants and the respondent on this subject can be found above.

### **Analysis**

374. The most significant respect in which we are asked to depart from the extant country guidance concerns the Laissez Passer and the "certification letter". The respondent's contact with the Iraqi delegation and the communications with the Iraqi authorities which followed caused the respondent to conclude that an individual could travel internally using one or both of these documents. With very little hesitation indeed, we do not consider the evidence adduced by the respondent to be sufficiently cogent to cause us to depart from a clear and consistent line of country guidance authority. We reach that conclusion for the following reasons.
375. The Laissez Passer has been a feature of the Iraq CG landscape for years. In AA (Iraq), the Tribunal considered the feasibility of return in some detail, which in turn necessitated consideration of the ways in which an individual might obtain a passport or a Laissez Passer. At that stage, Dr Fatah explained that an individual who wished to obtain a Laissez Passer was required to produce "either a CSID or INC or a photocopy of a previous Iraqi passport and a police report noting that it had been lost or stolen is required in order to obtain a Laissez-passer". Further enquires made by Dr Fatah with the Iraqi Consulate in London suggest that this is no longer the case, and that an individual must simply be able to establish their nationality in order to obtain a Laissez Passer. In the absence of documentation, an

Iraqi national can request family members in Iraq to present documents to the Ministry of Foreign Affairs to prove the individual's nationality or, failing that, "legal procedures will then be started to prove the Iraqi nationality of the failed asylum seeker through a list of questions in relation to their life in Iraq". These details are checked against Iraqi records, and once verified the individual will be issued with a document enabling the individual to return to Iraq. Dr Fatah goes on to state in his report that the website of the Iraqi Ministry of Foreign Affairs states that the resulting document is valid for six months and that it 'permits a single entry into Iraq'.

376. Dr Fatah had not heard of a person being returned to Iraq on a Laissez Passer and being able to use that document for onward travel. He had personal experience of his sister using such a document to return to Iraq because she had lost her passport. He said that the document was taken from her at the airport in the IKR. It is notable, in our judgment, that there is no evidence to show that returnees have been able to travel to their home areas using a Laissez Passer. That is despite the fact that returns to Iraq continue to take place from around the world and that the situation in Iraq is the subject of close scrutiny on the part of various respected organisations. We have reports from a wide range of NGOs and other bodies before us and they speak with one voice about the importance of the CSID and the difficulties faced by those that do not have such documents. If those difficulties were not faced by returnees with a Laissez Passer, we would have expected that to have been said rather earlier than 2018. The reason that there is no evidence which serves to confirm the claim made by the Iraqi authorities is as confirmed by Dr Fatah and as held in AAH (Iraq): they are confiscated upon arrival. That is the position stated at 5.23 of the Australian Department of Foreign Affairs and Trade October 2018 report on Iraq and we consider it to be correct.
377. The certification letter is a more recent concept. We note that there was some reference to such a document in AAH (Iraq), in which the respondent recorded that the Iraqi authorities had undertaken to "assist with any onwards travel documentation" but matters had not progressed any further at that stage. Dr Fatah had never heard of such a document. The respondent was not able to produce one before the Tribunal. Frankly, we doubt that any such document exists and we are strongly attracted to Dr Fatah's suggestion that the statements made by the Iraqi authorities in this respect, unsupported as they are by any further evidence, are merely political.
378. Let us assume for present purposes, however, that an individual who arrives at Baghdad International Airport or an airport in the IKR with a Laissez Passer and nothing else is allowed to continue his journey with the blessing of the airport police and a certification letter issued by them. We consider whether an individual equipped with those two documents would be able to make his way to his home area. Amnesty International, which retains a presence in the region, wrote to Mr Cole on 14 May 2019. It stated, inter alia, that it had not seen a certification letter or documented their use. It expressed 'some scepticism regarding the use of such a certificate, combined with a Laissez Passer in order to pass through checkpoints.' We share that scepticism, for the same reasons as those given by Dr Fatah and by Amnesty International. It is very clear, not only from Dr Fatah's reports but from every other item of source material to which we have been referred, that security checkpoints and particularly those outside Baghdad are manned by a variety of armed actors. In the Formerly Contested Areas in particular, an individual is very likely indeed to encounter checkpoints which are manned by Iranian backed Shia militia. In the IKR, they will certainly encounter checkpoints which are manned by the Peshmerga. These are not individuals who fall under the supervision of the Chief of Police in Baghdad and we think it highly unlikely such a document would be sufficient to satisfy them of an individual's identity. In light of the other evidence which we have about the behaviour of the PMU, we

accept what was said by Dr Fatah about their likely attitude to alternative forms of identity. He reminded us that they are often religious zealots with the most rudimentary training. If, as is very likely to be the case, they have been trained to ask people for a CSID or an INID, there is every reason for them to insist upon seeing such a document. All of the evidence shows that those who do not have one of these recognised forms of identification are likely to encounter difficulty at checkpoints. The letter from the Iraqi Embassy to Ms Drew fails to deal with that point, despite having been asked specifically to consider whether 'the certificate and/or Laissez Passer would not be accepted by the Popular Mobilisation Units'.

379. In his closing submissions, Mr Thomann suggested that Dr Fatah's evidence showed that alternative forms of ID document might be accepted. He cited the example of Dr Fatah's sister being able to travel from the airport using her judicial identity document. Dr Fatah's evidence was not only that she had her judicial ID card. He stated in terms that she had shown copies of her misplaced documents to the Iraqi Consulate in London. We consider there to be a significant difference between a judge returning to their local airport with a Laissez passer, a judicial ID card and copies of her CSID and other documents and a failed asylum seeker seeking to travel from an international airport to another part of the country holding a Laissez Passer and a certification letter, even if the latter document does exist.
380. We consider the position in relation to passports to be equally clear, and we accept the evidence given by Dr Fatah that this is perceived as a document for international use, rather than for domestic travel or accessing domestic services. We recognise that this represents a slight departure from the extant country guidance, in which it was accepted that a passport could be used for internal travel. In our judgment, however, the clear expectation is that an individual who is travelling internally by land must produce either a CSID or an INID at a checkpoint. We are supported in that conclusion by the EASO document entitled *Targeting of Individuals*, which refers to difficulties encountered by Palestinians in Iraq on account of the fact that they are not eligible for the CSID. They are instead issued with a formal document by the Ministry of the Interior but even that document is often not recognised at checkpoints, according to EASO. As stated by Dr Fatah and Amnesty International, an individual who is unable to produce a recognised Civil Status document is reasonably likely to be detained until they can produce a CSID or an INID or their identity can be confirmed by a family member. The position is obviously different in respect of internal travel by air, which is controlled by the formal authorities of the country rather than a range of different armed actors. In the case of internal air travel, either an Iraqi passport or a CSID will suffice. Because a Laissez Passer would be confiscated upon arrival, we do not consider that it would be of any assistance in facilitating onward travel by air.
381. We note that the statement from the Iraqi embassy states that former returnees had been able to return to their families 'without issues'. At [166] of her written submissions, the respondent invited us to attach significance to this statement. We decline to do so. We have no information about the circumstances of these individuals and it would be wholly improper to conclude, for example, that they experienced 'no issues' in respect of internal travel because they were able to use a Laissez Passer or a Certification letter for onward travel. Many of those who were returned might have had a pre-existing CSID or access to it, even if they had not made that fact known to the country in which they had sought protection. Many of them might have had family members who could have assisted them in Baghdad and arranged for the issuance of a CSID by proxy. We simply do not know, and even if this vague statement about other returnees is correct, it does not assist the respondent without further information about the way in which those individuals were able to return to their families without difficulty.
382. The second respect in which the respondent asks us to depart from the current country

guidance in relation to documentation is in relation to the ease with which a replacement CSID may be obtained.

383. We have not been asked to revisit the extant country guidance on the way in which an individual might obtain a replacement CSID from within the UK, for which see [173]-[177] of AA (Iraq) and [26] of AAH (Iraq). We add only this: whilst the INID is clearly replacing the CSID in Iraq, consulates do not have the electronic terminals necessary to issue the INID and continue to issue the CSID instead, as confirmed in a Canadian Immigration and Refugee Board report which is quoted at 5.6.9 of the respondent's CPIN entitled Internal Relocation, civil documentation and returns, dated February 2019. An Iraqi national in the UK would be able to apply for a CSID in the way explained in AA (Iraq) and, if one was successfully obtained, we find that it would be acceptable evidence of the individual's identity throughout Iraq. Notwithstanding the plan to replace the old CSID system with the INID by the end of 2019, we accept what was said by EASO (in February 2019) and the Danish Immigration Service and Landinfo (in November 2018), that implementation was delayed and that the CSID was still being used in Iraq, and that it continues to be issued in those parts of the country in which the INID terminals have not been rolled out. Given this evidence, and the fact that the CSID has been a feature of Iraqi society for so long, we do not accept that there will come a time at the end of this year when the CSID suddenly ceases to be acceptable as proof of identity.
384. What of the position of those who will return to Iraq without a CSID or INID? We have already explained why we do not consider that individual would be able to travel internally without these documents, and why a Laissez Passer or Certification Letter would certainly not assist. The respondent's submission is that such an individual could obtain a replacement document in Baghdad, and that they will not have to attempt the journey from the capital to their home area without acceptable evidence of identity. With reference to the further evidence we have set out above, she submits that such an individual could secure assistance from the Baghdad Central Archive and/or the replacement CSA offices which were set up between 2014 and 2017.
385. There are a number of relevant considerations. Potentially the most important is the location in which a person is able to apply for a new or replacement CSID or INID. The clear expectation – and this strand runs consistently through the country guidance decisions – is that an individual should apply for a new or replacement document in the place where their family is registered, that being the location of the Family Book ledgers in which the family record is made and retained. That expectation remains clear in the more recent evidence before us. Dr Fatah refers in his first report to an individual going to 'the local office' in order to obtain a replacement. The DIS and Landinfo report which is quoted by EASO refers to an individual applying (for an INID) in their place of origin. One of the sources quoted by the DIS stated that if an individual 'lost their documents, they must travel to the area of origin to have them re-issued'. We note that the respondent's evidence serves generally to reinforce that expectation. Dr Ali refers in his letter to a person attending their 'local office' and Dr Alroobaie states that an individual should attend the Civil Status Office in their "home city" in his letter and in his email of 17 June 2019. That expectation is underpinned by the way in which records are generally kept and accessed in Iraq. As explained in previous country guidance decisions, this process has for decades taken place at a very localised level, at one of the hundreds of CSA offices around the country.
386. There is no evidence before us which satisfactorily establishes that a returnee who is not from Baghdad would be able to apply for a CSID or an INID in that city. Dr Fatah's oral evidence was that only those from Baghdad would be able to apply for replacement documents there. The Danish Immigration Service report of November 2018 records the

Kafkaesque consequence of the requirement to apply for a replacement document in one's own area in the following paragraph:

In order for the IDPs to return, they must have ID-documents that are issued in the areas of origin. If they have lost their ID-documentation, they must travel back to the area of origin to have them re-issued. However, without documents it is very difficult to travel anywhere and pass the checkpoints, because people without documents more often face arbitrary arrests and detentions.

387. The evidence from the Iraqi authorities does not establish that identity documents can be issued from the Central Archive, which is simply a repository for copies of records on microfiche. That evidence does not satisfactorily address the concerns expressed about the Central Archive in the previous country guidance decisions, or the concerns expressed by HHJ Coe QC in *R (SS) v SSHD*. Nor do we consider it to be established that the alternative CSA offices which were established during the ISIL occupation of certain parts of the country would provide any, or any prompt, assistance to a returnee from abroad. It remains the case that the operation of these centres is unclear. The EASO report on Internal Mobility reports that the process of applying for reissuance is “complex, non-standardised and fraught with allegations of corruption.” Also at section 2.4.4 of that report, however, it records that the re-documentation centres had assisted thousands of IDPs and vulnerable Iraqis to receive legal documents. There is no adequate evidence to show that this assistance is available to those who have been returned from abroad, and the assistance provided by the Ministry of Migration and Displacement alongside the UNHCR appears, instead, to be provided to those who are internally displaced within Iraq. Our view in that respect is confirmed by a UNHCR report from May 2016 which is quoted at 6.1.10 of the respondent's Internal Relocation CPIN, which records that the ‘administrative procedures involved to recover lost identification documents is reportedly filled with obstacles’, before providing a list which shows the relevant CSA office for individuals, depending on ‘IDP Place of Origin’. Despite the respondent's request for clarification from the Iraqi authorities, there is certainly no data before us to show that returnees from abroad have benefited from the services provided at these centres. We accept what was said by Dr Fatah in this regard, that the difficulties of an individual returnee from abroad would likely be seen as a trivial matter by these offices and that they would be unlikely to receive any assistance in re-documentation. Certainly, given the well-documented problems experienced by IDPs in this regard, it is highly unlikely that an individual returnee without a CSID or an INID would receive prompt assistance from such a place, even assuming that they would assist a returnee, rather than an IDP.
388. Given that a returnee without a CSID or an INID could not apply for one in Baghdad, the next question is whether they might obtain such a document by the use of a proxy, whilst they remain in Baghdad. The question must be framed in that way because we have already concluded that the individual would be unable to travel onwards without adequate documentation. In respect of the INID, the position is absolutely clear. Because the application for that card requires the enrolment of biodata including fingerprints and iris scans, it must be applied for in person. That was Dr Fatah's evidence and was also reflected in the EASO and DIS/Landinfo reports.
389. In respect of the CSID, the position remains as it was before, subject to the introduction of the INID and the gradual phasing out of the old forms of identification. We are satisfied that the CSID is still being issued in parts of Iraq. That is clear from the section 2.4.4 of the EASO report. We consider it to be clear from that report, and from Dr Fatah's evidence about the practice in the IKR, that an individual who is registered in a city in which the INID process has been rolled out would be unlikely to secure a replacement CSID there. The logic which underpins Dr Fatah's evidence is irrefutable, and was implicitly accepted by the respondent



at [151] of her closing submissions, which spoke only of the CSID still being issued 'in rural areas'. The Iraqi government wishes to have a more secure identity system and has spent large sums to implement that new system. The implementation is behind schedule. In the event that CSID documents were issued by the CSA offices in which the INID terminals have already been located, that would further delay the implementation of the new system. In the event that an individual CSA office has no terminal, the position is obviously different and it is individuals who are registered at those offices who might be able to secure a CSID by the use of a proxy. We have no list of the CSA offices which do and do not have an INID terminal, however, and any such list would be quickly outdated as the INID programme continues to expand. It will consequently be for an individual appellant who does not have an CSID or an INID to establish on the lower standard that they cannot obtain a CSID by the use of a proxy, whether from the UK or on arrival in Baghdad.

390. The process for obtaining a replacement CSID by the use of a proxy (or a power of attorney) has been considered in previous cases and there is no reason to depart from the guidance given in those cases. As explained at [25] of AAH (Iraq), a number of documents are ordinarily required and, if those documents are available, and a suitable proxy can present them to the relevant CSA office, a CSID should be issued within three days: [27]. In the event that some of the documents are missing, it might nevertheless be possible to obtain a replacement CSID and the key piece of information which is required is the family's volume and page reference in the civil register: [28]. A great deal of effort has been expended, both in the preparation of these cases and in previous country guidance decisions, on considering how this information might be obtained if it is not known to the individual. We do not consider the evidence collated by the respondent in defence of R (SS) v SSHD or in these appeals to take matters any further. The evidence does not establish that the Central Archive is accessible to individuals, or that its microfiche records are searchable. Given the number of records it contains, we think it highly unlikely that the Central Archive would be of any assistance to an individual who finds themselves in such a position.
391. We consider the number of individuals who do not know and could not ascertain their volume and page reference would be quite small, however. It is impossible to overstate the importance of an individual's volume and page reference in the civil register. These details appear on numerous official documents, including an Iraqi passport, wedding certificate and birth certificate, as well as the CSID. It was suggested in a report from the British Embassy in Baghdad, quoted at 6.1.9 of the Internal Relocation CPIN of February 2019, that "[a]ll Iraqi nationals will know or be able to easily obtain this information". We find the former assertion entirely unsurprising. The volume and page reference in the civil register is a piece of information which is of significance to the individual and their family from the moment of their birth. It is entered on various documents and is ever present in that person's life. We do not lose sight of the fact that there remain a significant number of people in Iraq who are undocumented. We do not consider that problem to be attributable to a difficulty with recalling the relevant information. It is instead attributable to the closure - until comparatively recently - of the local CSA offices at which people were required to obtain replacement documents and to their reluctance to return to those areas from a place of relocation.
392. There will of course be those who can plausibly claim not to know these details. Those who left Iraq at a particularly young age, those who are mentally unwell and those who have issues with literacy or numeracy may all be able to make such a claim plausibly but we consider that it will be very much the exception that an individual would be unaware of a matter so fundamental to their own identity and that of their family. The letter from the Embassy also suggested that most Iraqis would be able to obtain this information easily. Again, that assertion is unsurprising when viewed in its proper context. As is clear from

AAH(Iraq), Iraq is a collectivist society in which the family is all important. It is also a country with a high prevalence of mobile telephone usage amongst the adult population. Even when we bear in mind the years of conflict and displacement in Iraq, we would expect there to be only a small number of cases in which an individual could plausibly claim to have no means of contacting a family member from whom the relevant volume and page reference could be obtained or traced back.

393. If an individual genuinely has no relevant documents to present, via a proxy, to the relevant CSA office, if they genuinely do not know the volume and page reference in the civil register, and if they genuinely cannot contact a family member from whom those details cannot be obtained, there will be no realistic prospect of that person obtaining a CSID remotely upon return to Baghdad. The respondent's evidence does not establish to our satisfaction that the Central Archive would present an alternative way of accessing the relevant information; the alternative CSA offices in Baghdad are not established to be for the use of returnees from abroad; and officials in the local civil registry would be unwilling to trawl through the entire record for the area in order to retrieve that information. Set in context, we think Dr Fatah's evidence that an individual returnee would be considered trivial and might be met with sarcasm to be more likely than the rather different picture presented by the Iraqi authorities. And we consider the evidence of the Iraqi authorities, as currently presented, to fall very short of establishing that there is a realistic route for an otherwise undocumented individual in Baghdad, who is not from that city, to acquire a CSID or INID there. As HHJ Coe concluded in R (SS) v SSHD, the earlier evidence leaves many questions unanswered, and the later evidence fails to provide those answers. It is still not clear whether there is, in addition to the Central Archive, an additional database. It is still not clear whether that database is searchable and, if so, by whom. Nor have the Iraqi authorities stated whether, contrary to our conclusion above, the alternative CSA offices which undoubtedly exist in Baghdad (and elsewhere) might accept and process an application for a CSID or an INID from an individual returnee, as opposed to an IDP. If, as suggested in Dr Alrobaaie's final email, an individual returnee might apply to the Ministry of Foreign Affairs or the Returns Logistics Team for assistance in securing an alternative document, there must be greater clarity in the way in which such an application may be made by an otherwise undocumented individual, the way in which their identity might be satisfactorily concerned, and the likely timescale for the processing of such an application. We note that a number of relevant questions were posed by the respondent to the Iraqi authorities and that they were referred to the Ministry of the Interior for answers which are still awaited.
394. There is a further *potential* limitation on the ability of an individual to obtain a CSID remotely, whether from the UK or upon return to Iraq, in that some of the civil registries and the records they contained might have been damaged during the conflict with ISIL. The respondent submitted at [163] of her closing submissions that all of the CSA offices had reopened and that there was no evidence of any records having been destroyed. The evidence before us does not suggest that any of the offices were destroyed, or that any remain closed, or that any records were destroyed during the conflict. Given the scale of the devastation in some parts of Iraq, however, we recognise the possibility that some offices or records might have been destroyed
395. In the event that an individual's 'local' CSA office has been destroyed, the likelihood of their obtaining a CSID remotely is slim at best. Despite the statements made by the Iraqi authorities in their communications with Ms Drew and her department, we do not consider that such an individual would be able to secure any prompt or meaningful assistance in Baghdad, whether it be to locate their volume and page reference or to secure the issuance of a CSID. Of course, the burden is on an individual who asserts that they are in such a position to establish on the lower standard that to be the case. In the case of individuals

registered in areas which experienced significant infrastructure damage, it will be easier to establish by inference that the relevant CSA office was destroyed. In the case of areas in which less damage occurred, decision makers might legitimately expect to see more specific evidence.

396. There is one final matter which we must mention in connection with the possibility of obtaining replacement documents in one of the ways considered above. It is a recurring theme in the background material, particularly in the valuable guidance provided by the UNHCR, that those who have or are suspected to have ties to ISIL are routinely denied documents on account of that fact or suspicion. Even where it appears to a decision maker that an individual might be able to obtain a replacement CSID whilst in the UK or (via a proxy) on return to Baghdad, it will be necessary to consider whether such a document might be denied on account of such an actual or perceived association.

### SECTION G - INTERNAL RELOCATION

397. Since the conclusions we have reached in relation to the background situation and documentation necessarily feed into the internal relocation analysis, we have taken this issue last.

398. In circumstances in which an individual establishes a risk of persecution or treatment which engages the protection of the QD in one part of Iraq, it might be submitted by the respondent that there is – in the words of Article 8(1) of the Qualification Directive and paragraph 339O of the Immigration Rules – a part of the country of origin in which there is no well-founded fear of being persecuted or no real risk of suffering serious harm and the applicant can reasonably be expected to stay in that part of the country. Where that is asserted, the Senior President of Tribunals stated at [33] of SC Jamaica [2017] EWCA Civ 2112; [2018] 1 WLR 4004 that the issue of the reasonableness of internal relocation involves three separate questions. Firstly, what is the location to which it is proposed the person could move? Secondly, are there real risks of serious harm or persecution in this place? Thirdly, if not, is it reasonable or not unduly harsh to expect the person to relocate to this place? At [36] of SC (Jamaica), the Senior President (with whom Henderson and Davis LJJ agreed) stated that the evaluative exercise is intended to be holistic and that no burden or standard of proof arises in relation to the overall issue of whether it is reasonable to internally relocate. We understand that dictum to apply to each of the three questions posed by the Senior President at [33].

399. At [141]-[149] of her written submissions, and at [55] of the first and second appellant's written submissions, the parties consider the possibility of relocation with reference to three areas: within the Formerly Contested Areas, to the IKR or to Baghdad. We consider each in turn.

#### **Relocation within the Formerly Contested Areas (and Disputed Territories)**

400. As a result of the respondent's concession in AA (Iraq) (that situation in the Contested Areas, as they then were) generally reached the Art 15(c) threshold, the possibility of relocation *within* the Formerly Contested Areas has not previously arisen for consideration in a country guidance decision. That concession having been withdrawn, however, the respondent made it clear in her written submissions, at [148]-[149] in particular, that relocation within the Formerly Contested Areas was a possibility upon which she relied, albeit that she recognised the 'particular care' which was necessary in doing so.

401. The UNHCR urges more than particular care in this respect. Under the sub-heading '*Areas of Iraq where an IFA/IRA is not available*', the UNHCR straightforwardly discounts the possibility of relocation within the Formerly Contested Areas or the Disputed Territories for the

following reasons:

UNHCR considers that an IFA/IRA is not available in areas formerly controlled by ISIS or otherwise affected by conflict in light of continued human rights violations and abuses by state and non-state actors, continued ISIS presence and ongoing anti-ISIS military operations in these areas.

UNHCR further considers that an IFA/IRA is not available in the disputed areas due to these areas' sensitive security, political and demographic dynamics and the risk of further destabilizing the situation through population movements, including in the Districts of Kirkuk, Khanaqin (Diyala Governorate) and Tuz Khurmatu (Salah Al-Din Governorate).

402. Whilst we are required to attach significance to the views of the UNHCR, we consider these statements to be somewhat too prescriptive and to apply too broad a brush to the situation in the areas under consideration. We have concluded that the situation in the formerly contested areas does not in general (with one exception) engage Article 15(c). And we do not consider that the return of an individual to those areas would in general breach Article 3 ECHR. In so concluding, however, we have recognised that the situation is different in each of the governorates under consideration and at a more localised level. For example, although the situation in Western Mosul will not generally contravene Article 3 ECHR, it might be thought that relocation to an area with such badly damaged infrastructure and other such problems would be unduly harsh or unreasonable under Article 8 QD. We respectfully disagree with the UNHCR's view that relocation within the Formerly Contested Areas must be ruled out in all cases; there may be some cases in which an individual could safely and reasonably relocate within the Formerly Contested Areas.
403. All must depend on the facts and there must, in the context of Iraq, be an assessment of the three factors. As in any assessment of internal relocation under the Refugee Convention or the Qualification Directive, a decision maker must assess whether a place of relocation would be safe for the individual applicant and whether he can reasonably be expected to stay in that part of the country. Whether as part of the latter enquiry or as a freestanding consideration, it will also be necessary to consider whether the individual can feasibly access and reside in the place of relocation. The UNHCR provides valuable guidance on each of these issues (safety, feasibility and reasonableness), and we rely significantly on that guidance in our analysis.
404. *Safety*. There is, as we have explained at length, no general Article 15(c) or Article 3 ECHR risk throughout the Formerly Contested Areas. Where an individual originates from that small part of the Formerly Contested Areas in which there is a general Article 15(c) risk, or where it is found as a result of the sliding scale analysis that the article is engaged by reference to their particular circumstances, relocation within the Formerly Contested Areas or the Disputed Territories may obviate the risk to that individual. In the latter type of case, a decision-maker will be required to consider whether the specific circumstances which engaged the sliding scale in the home area will continue to be relevant in the place of relocation. The significance of ethno-religious identity will vary from area to area, for example.
405. *Feasibility*. On 25 April 2019, the UNHCR issued a position paper entitled *Access and Residency Requirements in Iraq: Ability of Persons Originating from Formerly ISIS held or Conflict-Affected Areas to Legally Access and Remain in Proposed Areas of Relocation*. It made clear that people from these areas (particularly Sunni Arabs) were likely to require the following in order to settle in another area: a sponsor, a recommendation from the local mukhtar and

security clearance from the relevant agencies. (These documents are over and above the ordinary requirement for civil status documentation, without which freedom of movement and subsistence are impossible in any event). In Diyala, these were known to be the requirements but in Khanaqin District, an individual would be required to produce letters from National Security and Intelligence in addition. In Kirkuk, sponsorship requirements had been lifted but a support letter from the local mukhtar in the proposed areas of settlement would be required. The respondent's February 2019 CPIN on Internal Relocation, civil documentation and returns serves, at 8.1.1 to confirm that the situation regarding entry to Kirkuk is somewhat restrictive. The material cited therein is from the Danish Fact Finding Report. We note that the UNHCR's May 2019 guidance underlines the importance of considering whether an individual can take up residency and 'durably remain' in the area under consideration, particularly with reference to Sunni Arabs and Sunni Turkmen.

406. Viewed in context, we find these statements unsurprising. As we have demonstrated with reference to qualitative and quantitative data, the situation in Iraq is incomparable to how it was in the period 2014-2017. A (massively depleted) threat from ISIL and other security challenges remain, however, and it is clear that the security agencies including the PMU are rigorous about checking the identities of individuals who travel from one area to another. That they should make further checks in the event that an individual seeks not merely to travel, but to settle, is the understandable product of this environment, and particularly so in the Formerly Contested Areas. In the event that an individual has a connection with a proposed place of relocation in the Formerly Contested Areas, we see no reason why they would be unable to secure the necessary documentation in order to settle in such an area. In the event that there is no such connection, however, we consider it is unlikely to be feasible for a person from within the Formerly Contested Areas to relocate within that area.

407. *Reasonableness*. We record that we were not presented with extensive argument on the correct approach to this question. Insofar as the speeches in Januzi [2006] UKHL 5; [2006] 2 AC 426 and AH (Sudan) [2007] UKHL 49; [2008] 1 AC 678 generated controversy which was considered at length in AAH (Iraq), the argument has been settled by the decision of the Court of Appeal in AS (Afghanistan) [2019] EWCA Civ 873. The dominant test is as expressed by Lord Bingham at [21] of Januzi:

The decision maker, taking account of all relevant circumstances pertaining to the claimant and his country of origin, must decide whether it is reasonable to expect the claimant to relocate or whether it would be unduly harsh to expect him to do so.

408. We bear in mind, but shall not set out, the additional guidance given by Underhill LJ (with whom King and Singh LJ agreed) at [61] of AS (Afghanistan). In particular, we bear in mind the injunction that the assessment must be holistic, taking account of all the circumstances of the proposed place of relocation and the circumstances of the particular individual. It is in the context of that instruction that we hesitate before giving guidance which might be thought too prescriptive; what might be unduly harsh or unreasonable (these being two sides of the same coin) for one individual, might not be for another. We nevertheless consider that the general position in respect of the Formerly Contested Areas is as set out by the UNHCR. Given the multitudinous problems faced by those in the Formerly Contested Areas and the Disputed Territories, it will often be unreasonable for an individual to relocate within that area. Whilst the conditions in those areas do not cross the threshold for Article 15(c) or Article 3 ECHR protection, the humanitarian considerations in those areas are such that it will often be unreasonable to expect an individual to resettle there.

409. The position in respect of those who are able to access a viable support network in a

proposed place of relocation within the Formerly Contested Areas is potentially different. An individual who seeks to relocate, for example, from the mountainous area near Baiji in which ISIL have doctrinal control could potentially relocate to Baiji city without undue hardship if he is found to have a supportive family network there. In any such case, decision-makers will need to undertake a holistic assessment, taking into account the personal characteristics of the individual in question and the situation in the area of proposed relocation. Whilst relocation within this area is likely to be the exception rather than the rule, we agree with the respondent that the assessment requires particular care, and disagree with the UNHCR's conclusion that it is to be ruled out altogether.

### **Relocation to Baghdad**

410. *Safety*. Section D of the country guidance given in AA (Iraq) has been in place since 2015. We will not quote that guidance here; it is reproduced at Annex A. As a general matter, the Tribunal concluded that relocation to Baghdad would not generally be unreasonable but it suggested a list of factors which should be considered in assessing the possibility. BA (Iraq) Iraq CG [2017] UKUT 18 (IAC) supplemented that guidance; it did not replace it. Both decisions were issued at a time when ISIL remained in control of a significant part of Iraq, prompting and perpetuating massive population movements across the country.
411. The safety in Baghdad City and the Baghdad Belts has improved immeasurably since the previous country guidance decisions were issued and we anticipate that it will often be submitted by the respondent that an individual who is at risk in another part of Iraq can relocate to the capital or its environs. Whether such relocation is safe is a fact-specific assessment; we do not consider there to be any general risk contravening the QD or the ECHR in this area. The presence of any of the enhanced risk factors at [313]-[315] above will necessarily be relevant when considering the specific risk to an individual in the capital, however. As we have stated above, the identification of those risk factors by the UNHCR and EASO serves to confirm the ongoing application of the country guidance in BA (Iraq).
412. *Feasibility*. It is in the respondent's closing written submissions, at [145], that we find reference to background material which identifies the documents required by an individual from the Formerly Contested Areas who wishes to remain in Baghdad. The document cited in that paragraph is a letter from the UNHCR in Jordan to the Legal Counsel in the Netherlands regarding 'Guidance on the Application of an Internal Flight Alternative or Internal Relocation Alternative (IFA/IRA) in Baghdad, Iraq. The letter is dated 5 February 2018; a matter of months after the military defeat of ISIL. At that stage, UNHCR stated that those originating from ISIL-held areas or areas affected by conflict and who seek to settle in these areas of Baghdad (be it with host families or in rented apartments) must, in principle, meet the following cumulative requirements:
- (a) A support letter from the Mukhtar and the Local Council confirming that the individual is residing (or intending to reside) in the particular neighbourhood/local council area;
  - (b) Security clearance from five different security authorities (National Security, Federal Police Intelligence, Local Police Intelligence, Baghdad Operations, ISF Intelligence); and
  - (c) Sponsorship from a resident of the neighbourhood in which s/he seeks to settle. The sponsor must present four pieces of personal documentation, i.e. ID card, nationality certificate, address card (only accepted if issued in the sponsor's name) and ration/PDS (Public Distribution System) card. In some cases, the sponsor is reportedly asked for additional documentation such as a support letter

from the Mukhtar or Local Council confirming that the sponsor is a resident of that area.

413. This information is attributed to a previous UNHCR publication in April 2017, as cited at footnote 9 of the report. In the EASO report on Internal Mobility, the same UNHCR report is cited at 3.1.1, and we see the same three bullet points under the sub-heading 'Legal and Practical Requirements to stay in Baghdad'. On 25 April 2019, the UNHCR published the paper on relocation on relocation from the Formerly Contested Areas which we have already cited above. This paper begins by stating that it was intended to update the April 2017 information. It continues with the following reflection on the changing situation:

In the face of large-scale displacement of people due to ISIS' expansion and subsequent anti-ISIS military operations between 2014 and 2017, many local authorities introduced stringent entry and residency restrictions, including, among others, sponsorship requirements and, in some areas, near-complete entry bans for persons fleeing from ISIS-held or conflict areas, particularly Sunni Arabs. At the time of writing, security screenings remain in place for persons from formerly ISIS-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 ISIS-held areas. At the time of writing, persons from formerly ISIS-held or conflict-affected areas, particularly Sunni Arabs (including persons who returned to Iraq from a third country) require a sponsor for access to the following governorates: [Basrah, Dhi-Qar, Missan, Muthanna, Qadisiyah and Dohuk]

414. The report states that no sponsor is required for *entry* to Baghdad, Babel, Diyala, Erbil, Kerbala, Kirkuk, Najef, Sulaymaniyah and Wassit Governorate. It continues, however, that the position as regards *residency* is different. In order to reside in Baghdad, an individual from the Formerly Contested Areas will require security clearance and "two sponsors from the neighbourhood in which they intend to reside as well as a support letter from the local mukhtar". We have little evidence about the operation of those requirements in practice and are compelled to draw our own inferences. When considering the feasibility of an individual complying with these requirements, we think that the position in Baghdad is very likely to be different from the position in the Formerly Contested Areas or the Disputed Territories. The security situation in those areas is decidedly more tense than it is in Baghdad, in which security and freedom of movement is such that the Green Zone has opened to the public. There is *some* evidence of IDP camps around Baghdad being closed and some evidence of individuals from areas formerly controlled by ISIL being pressured to return to those areas (the UNHCR letter of 25 April 2019 refers, for example). But there is nothing before us to suggest that a documented individual of working age who is returned to the capital, potentially with a grant under the Voluntary Returns Scheme, would be unable to secure two sponsors and a support letter from the local mukhtar of the area in which they propose to reside. Were there any such problem, we would have expected there to be more evidence of people in this category being refused residence in Baghdad. The UNHCR in particular does not refer to any such difficulties, and the evidence presented to us about Baghdad does not reflect the extensive concern over secondary displacement which has been voiced in respect of other areas.
415. Reasonableness. The UNHCR's May 2019 position in relation to Baghdad is that 'external support' is necessary in all cases except "Arab Shi'ite and Arab Sunni single able-bodied men and married couples of working age without children and without identified specific vulnerabilities". External support is defined as "a support network of members of his or her family, extended family or tribe in the area of prospective relocation, who have been

assessed to be willing and able to provide genuine support to the applicant in practice”.

416. The UNHCR’s position was adopted by the appellants before us, and section G of the first and second appellant’s Schedule was directed to supporting this position. We take the respondent to agree with the conclusion of the UNHCR in this respect. At [146] of her closing submissions, she submits that relocation to Baghdad is ‘likely to remain a viable and reasonable area of relocation for both Sunni and Shia Arab male and/or married returnees of working age’. We endorse the broad agreement between the parties and the UNHCR as regards this category of individuals. Although Baghdad continues to host a significant number of IDPs, we see no reason why it would be unduly harsh or unreasonable in the generality of such cases for an such an individual to relocate to Baghdad. In respect of those who are not Arab Shi’ite and Arab Sunni single able-bodied men or married couples of working age without children and without identified specific vulnerabilities, the respondent did not positively assert that relocation to Baghdad would be reasonable in the absence of external support there. In the absence of any such submission, we endorse the appellants’ submission, drawing as it does on the expertise of the UNHCR. It will remain necessary in any case to consider an individual’s ability to relocate to Baghdad holistically, even where they fall into this category or where they have viable support in the capital.

### **Relocation to the IKR**

417. The Country Guidance given in AAH (Iraq) was a little more than a year old when we heard these appeals. The respondent’s only submission in relation to relocation there (made at [147] of her closing written submissions, was that the evidence suggested that there had been a relaxation of the requirements for obtaining sponsorship on the part of ethnic Kurds from the Formerly Contested Areas wishing to relocate there. On the appellants’ behalf, it was submitted that relocation to the KRI was only possible in a limited number of cases and that Kurds from the Formerly Contested Areas might be at risk of serious harm in the IKR: [56]-[57].
418. The significant change since AAH (Iraq) was decided is that there are now flights directly to the IKR from the UK and that removal from the UK to Erbil or Sulaymaniyah is therefore possible. This is confirmed by EASO and by Dr Fatah, who has travelled to Sulaymaniyah on such a flight. This might be of particular significance in two respects. Firstly, it may have an impact on the ability of an individual to obtain replacement civil status documentation from his home area, particularly where that is in the IKR or the Disputed Territories. Secondly, it will (in a case in which the respondent gives proper notice that this is to be the route of return) obviate the need for decision makers to consider what risk, if any, might arise between Baghdad and an individual’s home area. When it is suggested by the respondent that an individual who is not from the IKR can relocate there, however, the critical questions of safety, feasibility and reasonableness remain, regardless of the location to which the individual would actually be returned.
419. Safety. Whilst a comprehensive assessment of the level of security in the IKR lies beyond the scope of this decision, there is nothing in the evidence which suggests that the position in the IKR is materially different from the assessment in AAH (Iraq). There is no general risk there, whether under Article 15(c) or Article 3 ECHR. Dr Fatah agreed during his oral evidence that it is “almost completely violence free”. It is quite clear that certain individuals might have a specific profile which would cause them to be at risk, however, and decisions makers should once again turn to the enhanced risk factors listed at [313]-[315] above in order to consider whether an individual fleeing another part of Iraq might nevertheless be at risk in the KRG. The importance of three such factors (actual or implied association with ISIL, coming from an ISIL area, and being of fighting age) was highlighted in AAH (Iraq) and



those factors continue to be potentially significant depending, as always, on the other facts of the case in question.

420. *Feasibility.* We are particularly assisted by the UNHCR document from 25 April 2019, which confirms that on-entry sponsorship requirements for Erbil and Sulaymaniyah were lifted in early 2019. (This represents the latest information, and is of greater assistance than earlier material cited at section E of the appellants' Schedule). In respect of Dohuk, the third of the governorates in the IKR, the position is said by the UNHCR to be as follows:

Dohuk Governorate: Arabs from formerly ISIS-held or conflict-affected areas and Turkmen from Tal Afar (Ninewa Governorate) require a sponsor in order to enter, unless they obtain a temporary travel authorization from the checkpoint near Hatara village. This authorization is issued for short-term visits for medical or similar reason.

421. In respect of residency, the UNHCR describe the position to be as follows in the IKR:

Dohuk Governorate: Arabs from formerly ISIS-held or conflict-affected areas and Turkmen from Tal Afar (Ninewa Governorate) must regularize their stay by obtaining the approval from the local Asayish, based on which they obtain a residency permit. When approaching the Asayish, the individual must be accompanied by the sponsor who had facilitated his/her entry into Dohuk.

In Erbil and Sulaymaniyah Governorates, persons originating from outside the KR-I 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 card. Holders of a one-month residency card face difficulties in finding regular employment due to the short duration of their permits.

422. There is nothing before us which contradicts the views of the UNHCR in this respect, and we treat those views as conclusive of the issue. As regards Kurds, therefore, the position remains as it was at the time of AAH (Iraq): there is no requirement for a sponsor in any of the three IKR governorates, whether for entry or residency. As regards non-Kurds, there are no sponsorship requirements for entry or residence in Erbil and Sulaymaniyah, although single Arab and Turkmen require regular employment in order to secure residency. Arabs from former conflict areas and Turkmen from Tal Afar are subject to sponsorship requirements to enter or reside in Dohuk.

423. *Reasonableness.* In their May 2019 paper, the UNHCR expressed serious concerns about the ability of the KRI to absorb more internally displaced people. It noted that the region hosts 40% of the 1.7 million IDPs from Iraq, and nearly all of the 250,000 Syrian refugees in the country. As Dr Fatah emphasised before us, the region is also experiencing a period of significant economic decline, rising poverty levels and decreasing international assistance. IDPs find it difficult to find employment which covers their basic needs, and this problem is felt particularly amongst Arabs, against whom there is discrimination. As the Tribunal held in AAH (Iraq), patronage and nepotism continue to be important factors in securing employment, placing those who do not originate from the area at further disadvantage. Relocation to IDP camps is not necessarily available, as they are subject to space limitations and waiting lists. Individuals without support may therefore be required to live in critical

shelter arrangements. The UNHCR's stance is therefore that internal relocation within the IKR is not generally available as a result of the humanitarian situation. The only exceptions to that general stance are where it can be established that the individual would have access to:

(i) Adequate shelter in the proposed area of relocation in the KR-I, noting that IDP camps or informal settlements would not qualify as "adequate shelter";

(ii) Access to essential services in the proposed area of relocation in the KR-I, such as potable water and sanitation, electricity, health care and education; and

(iii) Livelihood opportunities; or in the case of applicants who cannot be expected to provide for their own livelihood (for example female-headed households, elderly applicants or applicants with disabilities), proven and sustainable support to enable access to an adequate standard of living.

424. We consider the position to be as follows. An Arab with no viable support network in the IKR is likely to experience unduly harsh conditions upon relocation there. We think it unlikely that the respondent would submit that such an individual could reasonably relocate to the IKR and certainly no such submission was actively pursued before us. In respect of a Kurdish individual from the Formerly Contested Areas, the UNHCR's stance essentially replicates the guidance given in AAH(Iraq), albeit in a more compressed form. Decision makers must consider whether a Kurdish returnee has a viable support network in accordance with that decision. In the event that they do not, consideration must be given to their individual's specific circumstances with a view to determining their ability to secure accommodation and employment in the IKR. It will be unreasonable for a Kurdish individual to relocate from the Formerly Contested Areas to the IKR in the absence of a viable support network or the means to find accommodation and employment in accordance with the guidance in AAH (Iraq), the ongoing application of which is confirmed.

#### SECTION H - COUNTRY GUIDANCE

425. We were not asked to revisit Part B of the existing country guidance, which will remain in place. As a result of the durable changes in Iraq, however, the remainder of the guidance issued in AA (Iraq) requires significant revision and the guidance in BA (Iraq) can no longer stand. As we have explained, the more recent guidance issued in AAH (Iraq) requires only limited revision, reflecting the resumption of direct flights to the IKR and the introduction of the INID, amongst other matters. The amended guidance, in full, is as follows:

#### **B. INDISCRIMINATE VIOLENCE IN IRAQ: ARTICLE 15(C) OF THE QUALIFICATION DIRECTIVE**

30. There continues to be an internal armed conflict in certain parts of Iraq, involving government forces, various militia and the remnants of ISIL. Following the military defeat of ISIL at the end of 2017 and the resulting reduction in levels of direct and indirect violence, however, the intensity of that conflict is not such that, as a general matter, there are substantial grounds for believing that any civilian returned to Iraq, solely on account of his presence there, faces a real risk of being subjected to indiscriminate violence amounting to serious harm within the scope of Article 15(c) QD.

31. The only exception to the general conclusion above is in respect of the small mountainous area north of Baiji in Salah al-Din, which is marked on the map at Annex D. ISIL continues to exercise doctrinal control over that area and the risk of

indiscriminate violence there is such as to engage Article 15(c) as a general matter.

32. The situation in the Formerly Contested Areas (the governorates of Anbar, Diyala, Kirkuk, Ninewah and Salah Al-Din) is complex, encompassing ethnic, political and humanitarian issues which differ by region. Whether the return of an individual to such an area would be contrary to Article 15(c) requires a fact-sensitive, “sliding scale” assessment to which the following matters are relevant.
33. Those with an actual or perceived association with ISIL are likely to be at enhanced risk throughout Iraq. In those areas in which ISIL retains an active presence, those who have a current personal association with local or national government or the security apparatus are likely to be at enhanced risk.
34. The impact of any of the personal characteristics listed immediately below must be carefully assessed against the situation in the area to which return is contemplated, with particular reference to the extent of ongoing ISIL activity and the behaviour of the security actors in control of that area. Within the framework of such an analysis, the other personal characteristics which are capable of being relevant, individually and cumulatively, to the sliding scale analysis required by Article 15(c) are as follows:
  - Opposition to or criticism of the GOI, the KRG or local security actors;
  - Membership of a national, ethnic or religious group which is either in the minority in the area in question, or not in de facto control of that area;
  - LGBTI individuals, those not conforming to Islamic mores and wealthy or Westernised individuals;
  - Humanitarian or medical staff and those associated with Western organisations or security forces;
  - Women and children without genuine family support; and
  - Individuals with disabilities.
35. The living conditions in Iraq as a whole, including the Formerly Contested Areas, are unlikely to give rise to a breach of Article 3 ECHR or (therefore) to necessitate subsidiary protection under Article 15(b) QD. Where it is asserted that return to a particular part of Iraq would give rise to such a breach, however, it is to be recalled that the minimum level of severity required is relative, according to the personal circumstances of the individual concerned. Any such circumstances require individualised assessment in the context of the conditions of the area in question.

#### **B. DOCUMENTATION AND FEASIBILITY OF RETURN (EXCLUDING IKR)**

36. Return of former residents of the Iraqi Kurdish Region (IKR) will be to the IKR and all other Iraqis will be to Baghdad. The Iraqi authorities will allow an Iraqi national (P) in the United Kingdom to enter Iraq only if P is in possession of a current or expired Iraqi passport relating to P, or a Laissez Passer.
37. No Iraqi national will be returnable to Baghdad if not in possession of one of these documents.

38. In the light of the Court of Appeal's judgment in HF (Iraq) and Others v Secretary of State for the Home Department [2013] EWCA Civ 1276, an international protection claim made by P cannot succeed by reference to any alleged risk of harm arising from an absence of a current or expired Iraqi passport or a Laissez passer, if the Tribunal finds that P's return is not currently feasible on account of a lack of any of those documents.
39. Where P is returned to Iraq on a Laissez Passer or expired passport, P will be at no risk of serious harm at the point of return by reason of not having a current passport.

### C. CIVIL STATUS IDENTITY DOCUMENTATION

40. The CSID is being replaced with a new biometric Iraqi National Identity Card - the INID. As a general matter, it is necessary for an individual to have one of these two documents in order to live and travel within Iraq without encountering treatment or conditions which are contrary to Article 3 ECHR. Many of the checkpoints in the country are manned by Shia militia who are not controlled by the GOI and are unlikely to permit an individual without a CSID or an INID to pass. A valid Iraqi passport is not recognised as acceptable proof of identity for internal travel.
41. A Laissez Passer will be of no assistance in the absence of a CSID or an INID; it is confiscated upon arrival and is not, in any event, a recognised identity document. There is insufficient evidence to show that returnees are issued with a 'certification letter' at Baghdad Airport, or to show that any such document would be recognised internally as acceptable proof of identity.
42. Notwithstanding the phased transition to the INID within Iraq, replacement CSIDs remain available through Iraqi Consular facilities. Whether an individual will be able to obtain a replacement CSID whilst in the UK depends on the documents available and, critically, the availability of the volume and page reference of the entry in the Family Book in Iraq, which system continues to underpin the Civil Status Identity process. Given the importance of that information, most Iraqi citizens will recall it. That information may also be obtained from family members, although it is necessary to consider whether such relatives are on the father's or the mother's side because the registration system is patrilineal.
43. Once in Iraq, it remains the case that an individual is expected to attend their local CSA office in order to obtain a replacement document. All CSA offices have now re-opened, although the extent to which records have been destroyed by the conflict with ISIL is unclear, and is likely to vary significantly depending on the extent and intensity of the conflict in the area in question.
44. An individual returnee who is not from Baghdad is not likely to be able to obtain a replacement document there, and certainly not within a reasonable time. Neither the Central Archive nor the assistance facilities for IDPs are likely to render documentation assistance to an undocumented returnee.
45. The likelihood of obtaining a replacement identity document by the use of a proxy, whether from the UK or on return to Iraq, has reduced due to the introduction of the INID system. In order to obtain an INID, an individual must attend their local CSA office in person to enrol their biometrics, including fingerprints and iris scans. The CSA offices in which INID terminals have been installed are unlikely - as a result of the phased replacement of the CSID system - to issue a CSID, whether to an individual in

person or to a proxy. The reducing number of CSA offices in which INID terminals have not been installed will continue to issue CSIDs to individuals and their proxies upon production of the necessary information.

#### D. INTERNAL RELOCATION WITHIN GOI-CONTROLLED IRAQ

46. Where internal relocation is raised in the Iraqi context, it is necessary to consider not only the safety and reasonableness of relocation but also the feasibility of that course, in light of sponsorship and residency requirements in operation in various parts of the country. Individuals who seek to relocate within the country may not be admitted to a potential safe haven or may not be permitted to remain there.
47. *Relocation within the Formerly Contested Areas.* With the exception of the small area identified in section A, the general conditions within the Formerly Contested Areas do not engage Article 15 QD(b) or (c) or Article 3 ECHR and relocation within the Formerly Contested Areas may obviate a risk which exists in an individual's home area. Where relocation within the Formerly Contested Areas is under contemplation, however, the ethnic and political composition of the home area and the place of relocation will be particularly relevant. In particular, an individual who lived in a former ISIL stronghold for some time may fall under suspicion in a place of relocation. Tribal and ethnic differences may preclude such relocation, given the significant presence and control of largely Shia militia in these areas. Even where it is safe for an individual to relocate within the Formerly Contested Areas, however, it is unlikely to be either feasible or reasonable without a prior connection to, and a support structure within, the area in question.
48. *Relocation to Baghdad.* Baghdad is generally safe for ordinary civilians but whether it is safe for a particular returnee is a question of fact in the individual case. There are no on-entry sponsorship requirements for Baghdad but there are sponsorship requirements for residency. A documented individual of working age is likely to be able to satisfy those requirements. Relocation to Baghdad is likely to be reasonable for Arab Shia and Sunni single, able-bodied men and married couples of working age without children and without specific vulnerabilities. Other individuals are likely to require external support, ie a support network of members of his or her family, extended family or tribe, who are willing and able to provide genuine support. Whether such a support network is available is to be considered with reference to the collectivist nature of Iraqi society, as considered in AAH (Iraq).

#### E. IRAQI KURDISH REGION

49. There are regular direct flights from the UK to the Iraqi Kurdish Region and returns might be to Baghdad or to that region. It is for the respondent to state whether she intends to remove to Baghdad, Erbil or Sulaymaniyah.

##### *Kurds*

50. For an Iraqi national returnee (P) of Kurdish origin in possession of a valid CSID or Iraqi National Identity Card (INID), the journey from Baghdad to the IKR by land is affordable and practical and can be made without a real risk of P suffering persecution, serious harm, or Article 3 ill treatment nor would any difficulties on the journey make relocation unduly harsh.

51. P is unable to board a domestic flight between Baghdad and the IKR without either a CSID, an INID or a valid passport. If P has one of those documents, the journey from Baghdad to the IKR by land is affordable and practical and can be made without a real risk of P suffering persecution, serious harm, or Article 3 ill treatment nor would any difficulties on the journey make relocation unduly harsh.
52. P will face considerable difficulty in making the journey between Baghdad and the IKR by land without a CSID or an INID. There are numerous checkpoints en route, including two checkpoints in the immediate vicinity of the airport. If P has neither a CSID nor an INID there is a real risk of P being detained at a checkpoint until such time as the security personnel are able to verify P's identity. It is not reasonable to require P to travel between Baghdad and IKR by land absent the ability of P to verify his identity at a checkpoint. This normally requires the attendance of a male family member and production of P's identity documents but may also be achieved by calling upon "connections" higher up in the chain of command.
53. Once at the IKR border (land or air) P would normally be granted entry to the territory. Subject to security screening, and registering presence with the local mukhtar, P would be permitted to enter and reside in the IKR with no further legal impediments or requirements. There are no sponsorship requirements for entry or residence in any of the three IKR Governorates for Kurds.
54. Whether P would be at particular risk of ill-treatment during the security screening process must be assessed on a case-by-case basis. Additional factors that may increase risk include: (i) coming from a family with a known association with ISIL, (ii) coming from an area associated with ISIL and (iii) being a single male of fighting age. P is likely to be able to evidence the fact of recent arrival from the UK, which would dispel any suggestion of having arrived directly from ISIL territory.
55. If P has family members living in the IKR cultural norms would require that family to accommodate P. In such circumstances P would, in general, have sufficient assistance from the family so as to lead a 'relatively normal life', which would not be unduly harsh. It is nevertheless important for decision-makers to determine the extent of any assistance likely to be provided by P's family on a case by case basis.
56. For Kurds without the assistance of family in the IKR the accommodation options are limited:
  - (v) Absent special circumstances it is not reasonably likely that P will be able to gain access to one of the refugee camps in the IKR; these camps are already extremely overcrowded and are closed to newcomers. 64% of IDPs are accommodated in private settings with the vast majority living with family members;
  - (vi) If P cannot live with a family member, apartments in a modern block in a new neighbourhood are available for rent at a cost of between \$300 and \$400 per month;
  - (vii) P could resort to a 'critical shelter arrangement', living in an unfinished or abandoned structure, makeshift shelter, tent, mosque, church or squatting in a government building. It would be unduly harsh to require P to relocate to the IKR if P will live in a critical housing shelter without access to basic necessities such as food, clean water and clothing;

(viii) In considering whether P would be able to access basic necessities, account must be taken of the fact that failed asylum seekers are entitled to apply for a grant under the Voluntary Returns Scheme, which could give P access to £1500. Consideration should also be given to whether P can obtain financial support from other sources such as (a) employment, (b) remittances from relatives abroad, (c) the availability of ad hoc charity or by being able to access PDS rations.

57. Whether P is able to secure employment must be assessed on a case-by-case basis taking the following matters into account:

(vii) Gender. Lone women are very unlikely to be able to secure legitimate employment;

(viii) The unemployment rate for Iraqi IDPs living in the IKR is 70%;

(ix) P cannot work without a CSID or INID;

(x) Patronage and nepotism continue to be important factors in securing employment. A returnee with family connections to the region will have a significant advantage in that he would ordinarily be able to call upon those contacts to make introductions to prospective employers and to vouch for him;

(xi) Skills, education and experience. Unskilled workers are at the greatest disadvantage, with the decline in the construction industry reducing the number of labouring jobs available;

(xii) If P is from an area with a marked association with ISIL, that may deter prospective employers.

#### *Non-Kurdish Returnees*

58. The ability of non-Kurdish returnees to relocate to the IKR is to be distinguished. There are no sponsorship requirements for entry or residence in Erbil and Sulaymaniyah, although single Arab and Turkmen citizens require regular employment in order to secure residency. Arabs from former conflict areas and Turkmen from Tal Afar are subject to sponsorship requirements to enter or reside in Dohuk. Although Erbil and Sulaymaniyah are accessible for such individuals, particular care must be taken in evaluating whether internal relocation to the IKR for a non-Kurd would be reasonable. Given the economic and humanitarian conditions in the IKR at present, an Arab with no viable support network in the IKR is likely to experience unduly harsh conditions upon relocation there.

## **F. EXISTING COUNTRY GUIDANCE DECISIONS**

30. This decision replaces all existing country guidance on Iraq.

### SECTION I - THE INDIVIDUAL APPEALS

426. *The First Appellant -SMO*. This appellant is from Abu Mohammed in the Daquq District of Kirkuk. His appeal was not pursued before the FtT on the basis that he was eligible for protection under the Refugee Convention but his account of having been attacked by ISIL whilst working as a shepherd was nevertheless rejected. The judge in the FtT departed from AA (Iraq) and concluded that the appellant's return to his home area would not engage

Article 15(c). He concluded that the appellant's family remained there and that he could return to them and that there would be no breach of Article 3 ECHR.

427. In the Upper Tribunal, the judge was found to have erred in his decision to depart from the extant country guidance, which decision was in part based upon a decision of the Administrative Court - R (on the application of QA) v SSHD [2017] EWHC 2417 - which he had failed to draw to the attention of the parties. The Upper Tribunal Judge did not accept that the FtT had erred in reaching its findings of primary fact, however, and directed that the appeal should be remade in the Upper Tribunal, based upon the findings of fact reached at first instance.
428. We have concluded that the conditions in the appellant's home area do not cross the Article 15(c) threshold in the generality of cases. The appellant is from Kirkuk, however, and the judge reached his findings that the appellant's case disclosed no enhanced risk factors two years ago. It is appropriate that the appellant should have the opportunity to make submissions on whether any of the enhanced risk factors we have set out do apply to him and, if so, whether it would be reasonable for him to avoid such a risk by relocating internally. We might have been able to undertake that task for ourselves on the basis of the judge's findings, with the benefit of further written submissions.
429. We are unable to decide the Article 3 ECHR ground of appeal on the basis of the findings of fact reached by the FtT, however. The judge concluded that the appellant could return to Kirkuk but he carried out an inadequate consideration of the appellant's ability to get there. As we have explained, the appellant would require a CSID or an INID in order to return to his home area. Without either of these documents, he would not be able to navigate the checkpoints within and en route to Kirkuk. The judge concluded that the appellant's CSID is 'possibly' still at the family home in Kirkuk. He concluded that the family were still at the family home in Kirkuk and that the appellant would be able to use documents from the family home in order to obtain a CSID from the CSA office in Kirkuk.
430. The starting point, in considering this issue, must always be to consider and to make a finding about the actual availability of a CSID or INID. In the event that the appellant's CSID is at home in Kirkuk, it can be sent to him in the UK or taken to him upon arrival in Iraq and there will be no breach of Article 3 ECHR as he travels to Kirkuk. The judge's conclusion that the CSID is "possibly" at the appellant's home represents no finding on this crucial issue. Nor, with respect, was the judge's alternative analysis of whether the appellant can obtain a replacement document adequate. He failed to consider whether the appellant has or could obtain the necessary information and evidence to obtain a replacement CSID whilst he is in the United Kingdom and he failed thereafter to consider whether the appellant has or could obtain the necessary information to obtain a replacement CSID on return to Iraq.
431. In any event, as we have noted, matters have moved on as the CSID is being phased out and replaced by the INID. If, as appears to be the case, the judge in the FtT concluded that the appellant would be able to use a proxy to obtain a replacement CSID from the CSA office in Kirkuk, we cannot be sure that this represents the position in 2019. It is likely, to our mind, that the CSA office in Kirkuk has an INID terminal and that it would not be willing to issue a CSID to the appellant through a proxy. In the circumstances, we consider that there must be further findings made regarding this appellant's access to or ability to obtain a CSID card. In the event that he does not have access to an existing CSID card and is unable to obtain a replacement whilst he is in the UK, we think it likely that his return to Iraq would be in breach of Article 3 ECHR. As we have explained, we do not consider that he would be able to obtain either a CSID or an INID in Baghdad because he is not from that city.



432. Mr Knafler invited us to remit the first appellant's appeal to the FtT for further findings of fact in light of the country guidance we were minded to issue. We do adopt that course, since the assessment of the Article 3 ECHR ground will require further evidence
433. *The Second Appellant – KSP.* The second appellant is a Sunni Kurd from Tuz Khurmato in Salah al-Din. He claimed to have run a barbershop and to have been approached by a Kurdish client who tried to recruit him to ISIL. His account was that he informed the police about these advances and that an attempt was made to arrest the man and his fellow ISIL members, two of whom were then arrested. The appellant stated that his shop was then blown up by ISIL and that he left Iraq after spending two weeks with family in Laylan.
434. In the FtT, the judge rejected the appellant's primary account of difficulties with ISIL. He found that the appellant could return to Tuz Khurmato in safety, or that he could relocate to his family in Laylan. The judge (who also decided the case of the first appellant) concluded that he could depart from the existing country guidance in reaching that conclusion. In relation to documentation, the judge concluded that the appellant would have documents at his home, 'possibly' including his CSID. In any event, the judge concluded that the appellant would be able to obtain a replacement CSID with the assistance of his documents and his friends.
435. The appeals brought to the Upper Tribunal by the first and second appellants were decided by different judges. Like the judge in the first appellant's appeal, however, the Upper Tribunal judge in the case of KSP concluded that the FtT had erred in departing from the existing country guidance. Although he preserved the findings of fact regarding the appellant's account, he set aside the risk assessment conducted by the FtT in relation to the Refugee Convention, HP and Article 3 ECHR.
436. Mr Knafler invited us to remit this appeal to the FtT so that further findings of fact can be made. We consider that to be the appropriate course. Although the appellant has been found incredible in relation to his account of first-hand difficulties with ISIL, it was accepted that he is a Kurd from Tuz Khurmato which is, as we have recorded above, an area with particular ethno-sectarian conflict. It is arguable (we put it no higher than that) that the appellant might, as a result of his particular profile, demonstrate that he has a sufficiently enhanced risk profile that he is entitled to a conclusion that his return to Tuz Khurmato would engage Article 15(c) and that considerations of internal relocation arise. We could potentially have resolved those questions ourselves but we received no specific argument on the points. That is not a criticism of the appellant's legal team; as Mr Knafler noted in his submissions, he was unable to make submissions on the assessment of risk before he knew how we would decide the CG issues.
437. Nor do we consider that we have the findings necessary in order to resolve the appellant's Article 3 ECHR claim satisfactorily. As in the case of the first appellant, the judge of the FtT stated that the appellant's CSID was 'possibly' at the family home in Tuz Khurmato. That does not represent a satisfactory resolution of such an important issue. Nor, with respect to the judge, did he proceed to consider whether the appellant either has or has access to the documents or the information he would require in order to obtain a replacement document from within the United Kingdom or on return to Iraq. As will be clear from our conclusions, these matters are absolutely central to the appellant's ability to survive upon return to Iraq, since any replacement identity document would have to be obtained from his local CSA office and he would not be able to reach that office without an identity document: [369] above refers.

438. As with the first appeal, the resolution of these issues requires further oral evidence to be taken from the appellant. We are not in a position simply to resolve matters on the basis of the findings previously made. In those circumstances, we accept Mr Knafler's submission that the appropriate course is to remit the appeals to the FtT, with the primary findings of fact on the appellant's protection claim intact.
439. *The Third Appellant – IM*. This appeal has a complicated history, a summary of which appears at the start of this decision. The appellant is a Sunni Kurd from Mosul who entered the UK in the year 2000 when he was 13 years old. He was granted ILR in 2008. He then committed a series of serious drug offences and a deportation decision was made. The appellant appealed to the FtT and his appeal was dismissed by First-tier Tribunal Judge Spencer. The judge found that the appellant had failed to rebut the presumptions in s72 of the Nationality, Immigration and Asylum Act 2002 that he had committed a particularly serious offence and that he represented a danger to the community of the UK. He dismissed the appeal on asylum grounds on that basis. The judge found that the appellant would face an Article 15(c) risk in Mosul but that it would not be unduly harsh, despite the absence of a support network there, for the appellant to relocate to Baghdad. In relation to the issue of documentation, the judge accepted that the appellant did not have and could not hope to obtain a CSID on the particular (and unusual) facts of his case.
440. Permission to appeal against the decision of the FtT was refused by the FtT and the UT. The appellant pursued an application for judicial review under CPR 54.7A. He was unsuccessful at first instance but successful in obtaining permission from the Court of Appeal. In light of the grant of permission in AA (Iraq), Sir Stephen Richards was concerned about the sustainability of the Tribunal's conclusions regarding the appellant's ability to survive in Iraq without a CSID. It was then accepted, in a form of consent which was sealed by Master Bancroft-Rimmer on 19 January 2018, that the appeal should be remitted to the Upper Tribunal as a result of the decision of the Court of Appeal in AA (Iraq).
441. Permission to appeal to the Upper Tribunal was duly granted and it was agreed between the parties that the decision on the appeal was to be remade in the Upper Tribunal on Article 15(c) and Article 3 ECHR grounds. The scope of that remaking exercise was agreed between the parties in a consent order which was approved by Upper Tribunal Judge O'Connor on 28 November 2018. It was agreed between the parties that only certain of the findings of the findings of fact made by the FtT would be preserved. Those findings included the absence and inability to obtain a CSID and the absence of any support in Baghdad. They did not include the acceptance that the appellant would be at risk of Article 15(c) conditions in Mosul. Nor did they include the judge's finding – made in relation to the Refugee Convention but relevant to his eligibility for Humanitarian Protection – that the appellant had failed to rebut the presumptions in section 72 NIAA 2002.
442. The circumstances in this case are highly unusual and the respondent has recognised that by granting the appellant leave to remain on the basis that his removal would be contrary to Article 3 ECHR. On the basis of the facts found by Judge Spencer, and preserved by the Upper Tribunal consent order, there remains an arguable claim under Article 15(c). We are in no position to resolve that claim, though, for two reasons. Firstly, there is no preserved finding as to whether or not the appellant should be excluded from Humanitarian Protection under paragraph 339D of the Immigration Rules. There were relevant findings made under s72 in 2016 but those findings were not preserved for the purposes of the Humanitarian Protection assessment and cannot, in any event, be determinative of the question – three years later – of whether the appellant represents a danger to the community or security of the UK, under paragraph 339D(iii) of the Immigration Rules. Secondly, whilst the judge concluded in 2016 that the appellant's return to Mosul would engage Article 15(c), he

reached that conclusion because - and only because - AA (Iraq) had concluded that the conditions there engaged Article 15(c) in the generality of cases. The judge did not consider whether there are any enhanced risk categories in the appellant's case which might presently engage Article 15(c) on a sliding scale analysis. In the event that such a conclusion were to be reached in respect of Mosul, it is appreciably clear that the appellant - who does not have and cannot obtain - a CSID could not relocate to avoid such a risk. Even if those two questions were resolved in the appellant's favour, however, it would remain to assess whether he should be excluded from HP. Each aspect of that enquiry requires further oral evidence, in our judgment, and the proper course in the circumstances is to order that the appeal shall be remitted to the FtT for these findings to be made in light of the guidance we have issued.

### **Notice of Decision**

The appeals are remitted to the First-tier Tribunal for further findings of fact to be made in light of the revised country guidance.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

Unless and until a Tribunal or court directs otherwise, the appellants are granted anonymity. No report of these proceedings shall directly or indirectly identify them or any member of their family. This direction applies both to the appellants and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

A handwritten signature in black ink, appearing to be 'MB', with a long horizontal stroke extending to the right.

MARK BLUNDELL  
Judge of the Upper Tribunal

## Annex A

### AA (Iraq) CG [2015] UKUT 544 (IAC) guidance, as amended on appeal - [2017] EWCA Civ 944 - and supplemented in AAH (Iraq) CG [2018] UKUT 212 (IAC)

#### **A. INDISCRIMINATE VIOLENCE IN IRAQ: ARTICLE 15(C) OF THE QUALIFICATION DIRECTIVE**

1. There is at present a state of internal armed conflict in certain parts of Iraq, involving government security forces, militias of various kinds, and the Islamist group known as ISIL. The intensity of this armed conflict in the so-called "contested areas", comprising the governorates of Anbar, Diyala, Kirkuk, (aka Ta'min), Ninewah and Salah Al-din, is such that, as a general matter, there are substantial grounds for believing that any civilian returned there, solely on account of his or her presence there, faces a real risk of being subjected to indiscriminate violence amounting to serious harm within the scope of Article 15(c) of the Qualification Directive.
2. The degree of armed conflict in certain parts of the "Baghdad Belts" (the urban environs around Baghdad City) is also of the intensity described in paragraph 1 above, thereby giving rise to a generalised Article 15(c) risk. The parts of the Baghdad Belts concerned are those forming the border between the Baghdad Governorate and the contested areas described in paragraph 1.
3. The degree of armed conflict in the remainder of Iraq (including Baghdad City) is not such as to give rise to indiscriminate violence amounting to such serious harm to civilians, irrespective of their individual characteristics, so as to engage Article 15(c).
4. In accordance with the principles set out in Elgafaji (C-465/07) and QD (Iraq) v Secretary of State for the Home Department [2009] EWCA Civ 620, decision-makers in Iraqi cases should assess the individual characteristics of the person claiming humanitarian protection, in order to ascertain whether those characteristics are such as to put that person at real risk of Article 15(c) harm.

#### **B. DOCUMENTATION AND FEASIBILITY OF RETURN (EXCLUDING IKR)**

5. Return of former residents of the Iraqi Kurdish Region (IKR) will be to the IKR and all other Iraqis will be to Baghdad. The Iraqi authorities will allow an Iraqi national (P) in the United Kingdom to enter Iraq only if P is in possession of a current or expired Iraqi passport relating to P, or a Laissez passer.
6. No Iraqi national will be returnable to Baghdad if not in possession of one of these documents.
7. In the light of the Court of Appeal's judgment in HF (Iraq) and Others v Secretary of State for the Home Department [2013] EWCA Civ 1276, an international protection claim made by P cannot succeed by reference to any alleged risk of harm arising from an absence of a current or expired Iraqi passport or a Laissez passer, if the Tribunal finds that P's return is not currently feasible on account of a lack of any of those documents.
8. Where P is returned to Iraq on a Laissez Passer or expired passport, P will be at no risk of serious harm at the point of return by reason of not having a current passport.

#### **C. THE CSID**

9. Whilst it remains possible for an Iraqi national returnee (P) to obtain a new CSID whether P is able to do so, or do so within a reasonable time frame, will depend on the individual circumstances. Factors to be considered include:
- i) Whether P has any other form of documentation, or information about the location of his entry in the civil register. An INC, passport, birth/marriage certificates or an expired CSID would all be of substantial assistance. For someone in possession of one or more of these documents the process should be straightforward. A Laissez-Passer should not be counted for these purposes: these can be issued without any other form of ID being available, are not of any assistance in 'tracing back' to the family record and are confiscated upon arrival at Baghdad;
  - ii) The location of the relevant civil registry office. If it is in an area held, or formerly held, by ISIL, is it operational?
  - iii) Are there male family members who would be able and willing to attend the civil registry with P? Because the registration system is patrilineal it will be relevant to consider whether the relative is from the mother or father's side. A maternal uncle in possession of his CSID would be able to assist in locating the original place of registration of the individual's mother, and from there the trail would need to be followed to the place that her records were transferred upon marriage. It must also be borne in mind that a significant number of IDPs in Iraq are themselves undocumented; if that is the case it is unlikely that they could be of assistance. A woman without a male relative to assist with the process of redocumentation would face very significant obstacles in that officials may refuse to deal with her case at all.

#### **D. INTERNAL RELOCATION WITHIN IRAQ (OTHER THAN THE IKR)**

10. As a general matter, it will not be unreasonable or unduly harsh for a person from a contested area to relocate to Baghdad City or (subject to paragraph 2 above) the Baghdad Belts.
11. In assessing whether it would be unreasonable/unduly harsh for P to relocate to Baghdad, the following factors are, however, likely to be relevant:
- (a) whether P has a CSID or will be able to obtain one (see Part C above);
  - (b) whether P can speak Arabic (those who cannot are less likely to find employment);
  - (c) whether P has family members or friends in Baghdad able to accommodate him;
  - (d) whether P is a lone female (women face greater difficulties than men in finding employment);
  - (e) whether P can find a sponsor to access a hotel room or rent accommodation;
  - (f) whether P is from a minority community;
  - (g) whether there is support available for P bearing in mind there is some evidence that returned failed asylum seekers are provided with the support generally given to IDPs.
12. There is not a real risk of an ordinary civilian travelling from Baghdad airport to the southern governorates, suffering serious harm en route to such governorates so as engage Article 15(c).

#### **E. IRAQI KURDISH REGION**

13. There are currently no international flights to the Iraqi Kurdish Region (IKR). All returns from the United Kingdom are to Baghdad.
14. For an Iraqi national returnee (P) of Kurdish origin in possession of a valid CSID or Iraqi passport, the journey from Baghdad to the IKR, whether by air or land, is affordable and practical and can be made without a real risk of P suffering persecution, serious harm,

Article 3 ill treatment nor would any difficulties on the journey make relocation unduly harsh.

15. P is unable to board a domestic flight between Baghdad and the IKR without either a CSID or a valid passport.
16. P will face considerable difficulty in making the journey between Baghdad and the IKR by land without a CSID or valid passport. There are numerous checkpoints en route, including two checkpoints in the immediate vicinity of the airport. If P has neither a CSID nor a valid passport there is a real risk of P being detained at a checkpoint until such time as the security personnel are able to verify P's identity. It is not reasonable to require P to travel between Baghdad and IKR by land absent the ability of P to verify his identity at a checkpoint. This normally requires the attendance of a male family member and production of P's identity documents but may also be achieved by calling upon "connections" higher up in the chain of command.
17. Once at the IKR border (land or air) P would normally be granted entry to the territory. Subject to security screening, and registering presence with the local mukhtar, P would be permitted to enter and reside in the IKR with no further legal impediments or requirements. There is no sponsorship requirement for Kurds.
18. Whether P would be at particular risk of ill-treatment during the security screening process must be assessed on a case-by-case basis. Additional factors that may increase risk include: (i) coming from a family with a known association with ISIL, (ii) coming from an area associated with ISIL and (iii) being a single male of fighting age. P is likely to be able to evidence the fact of recent arrival from the UK, which would dispel any suggestion of having arrived directly from ISIL territory.
19. If P has family members living in the IKR cultural norms would require that family to accommodate P. In such circumstances P would, in general, have sufficient assistance from the family so as to lead a 'relatively normal life', which would not be unduly harsh. It is nevertheless important for decision-makers to determine the extent of any assistance likely to be provided by P's family on a case by case basis.
20. For those without the assistance of family in the IKR the accommodation options are limited:
  - Absent special circumstances it is not reasonably likely that P will be able to gain access to one of the refugee camps in the IKR; these camps are already extremely overcrowded and are closed to newcomers. 64% of IDPs are accommodated in private settings with the vast majority living with family members;
  - If P cannot live with a family member, apartments in a modern block in a new neighbourhood are available for rent at a cost of between \$300 and \$400 per month;
  - P could resort to a 'critical shelter arrangement', living in an unfinished or abandoned structure, makeshift shelter, tent, mosque, church or squatting in a government building. It would be unduly harsh to require P to relocate to the IKR if P will live in a critical housing shelter without access to basic necessities such as food, clean water and clothing;

- In considering whether P would be able to access basic necessities, account must be taken of the fact that failed asylum seekers are entitled to apply for a grant under the Voluntary Returns Scheme, which could give P access to £1500. Consideration should also be given to whether P can obtain financial support from other sources such as (a) employment, (b) remittances from relatives abroad, (c) the availability of ad hoc charity or by being able to access PDS rations.
21. Whether P is able to secure employment must be assessed on a case-by-case basis taking the following matters into account:
- Gender. Lone women are very unlikely to be able to secure legitimate employment;
  - The unemployment rate for Iraqi IDPs living in the IKR is 70%;
  - P cannot work without a CSID;
  - Patronage and nepotism continue to be important factors in securing employment. A returnee with family connections to the region will have a significant advantage in that he would ordinarily be able to call upon those contacts to make introductions to prospective employers and to vouch for him;
  - Skills, education and experience. Unskilled workers are at the greatest disadvantage, with the decline in the construction industry reducing the number of labouring jobs available;
  - If P is from an area with a marked association with ISIL, that may deter prospective employers.

#### **F. EXISTING COUNTRY GUIDANCE DECISIONS**

22. This decision replaces all existing country guidance on Iraq

## Annex B

### Guidance in BA (Iraq) CG [2017] UKUT 18 (IAC)

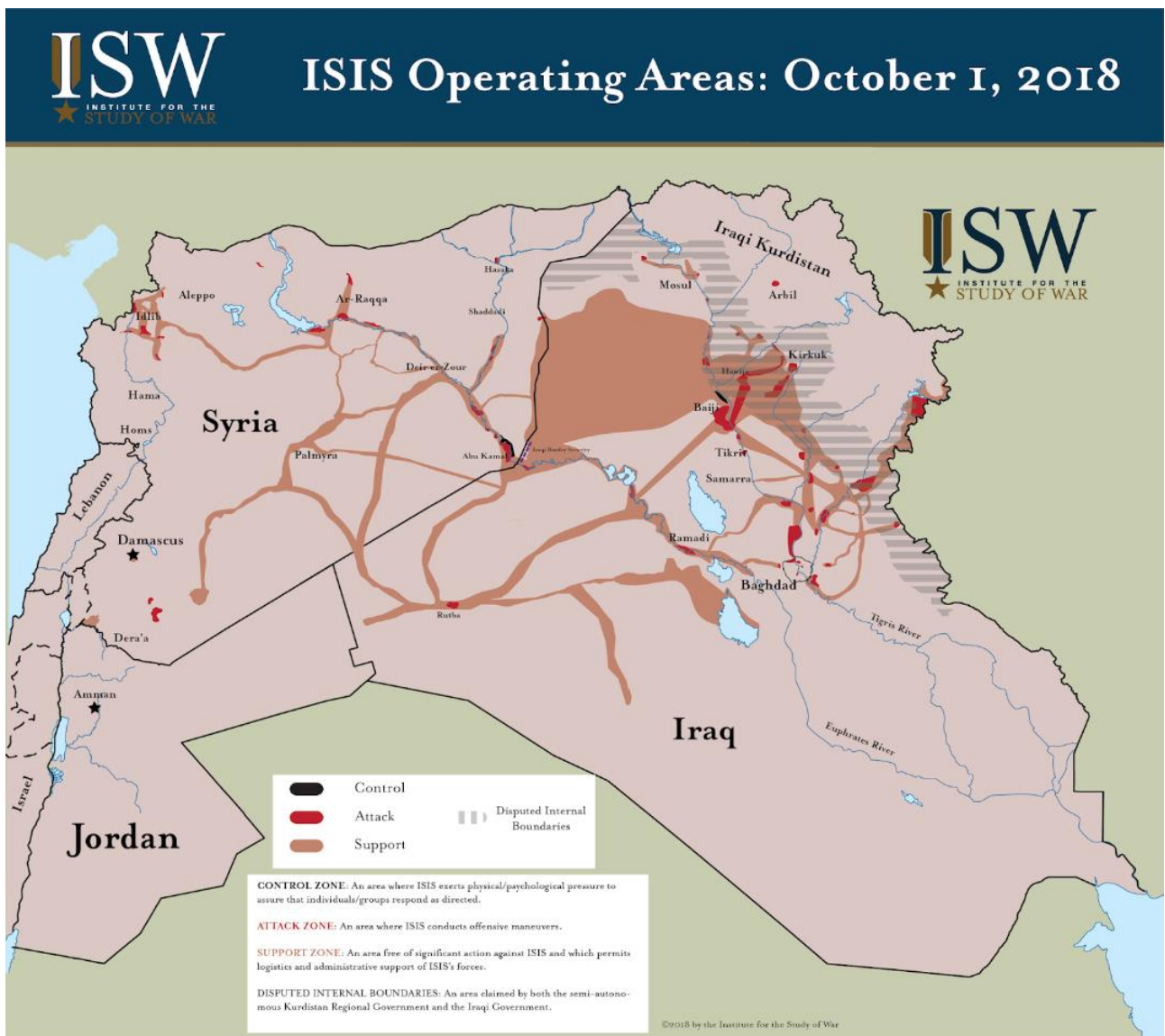
- (i) The level of general violence in Baghdad city remains significant, but the current evidence does not justify departing from the conclusion of the Tribunal in [AA \(Article 15\(c\)\) Iraq CG \[2015\] UKUT 544 \(IAC\)](#).
- (ii) The evidence shows that those who worked for non-security related Western or international companies, or any other categories of people who would be perceived as having collaborated with foreign coalition forces, are still likely to be at risk in areas which are under ISIL control or have high levels of insurgent activity. At the current time the risk is likely to emanate from Sunni insurgent groups who continue to target Western or international companies as well as those who are perceived to collaborate with the Government of Iraq.
- (iii) The current evidence indicates that the risk in Baghdad to those who worked for non-security related Western or international companies is low although there is evidence to show that insurgent groups such as ISIL are active and capable of carrying out attacks in the city. In so far as there may be a low level of risk from such groups in Baghdad it is not sufficient to show a real risk solely as a perceived collaborator.
- (iv) Kidnapping has been, and remains, a significant and persistent problem contributing to the breakdown of law and order in Iraq. Incidents of kidnapping are likely to be underreported. Kidnappings might be linked to a political or sectarian motive; other kidnappings are rooted in criminal activity for a purely financial motive. Whether a returnee from the West is likely to be perceived as a potential target for kidnapping in Baghdad may depend on how long he or she has been away from Iraq. Each case will be fact sensitive, but in principle, the longer a person has spent abroad the greater the risk. However, the evidence does not show a real risk to a returnee in Baghdad on this ground alone.
- (v) Sectarian violence has increased since the withdrawal of US-led coalition forces in 2012, but is not at the levels seen in 2006-2007. A Shia dominated government is supported by Shia militias in Baghdad. The evidence indicates that Sunni men are more likely to be targeted as suspected supporters of Sunni extremist groups such as ISIL. However, Sunni identity alone is not sufficient to give rise to a real risk of serious harm.
- (vi) Individual characteristics, which do not in themselves create a real risk of serious harm on return to Baghdad, might amount to a real risk for the purpose of the Refugee Convention, Article 15(c) of the Qualification Directive or Article 3 of the ECHR if assessed on a cumulative basis. The assessment will depend on the facts of each case.
- (vii) In general, the authorities in Baghdad are unable, and in the case of Sunni complainants, are likely to be unwilling to provide sufficient protection.





Annex D

Institute for the Study of War Map of ISIL's Operating Areas



## Annex E

### List of Sources By Date

Date	Title	Author /Source
17.07.19	Musings on Iraq blog	Joel Wing
21.06.19	Final Report	Dr Rebwar Fatah
20.06.19	Witness Statement	Declan O'Neill (HO Returns Logistics)
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