

RRNE IFA Assessment

Assessment of Finnish Immigration Service asylum decisions with reference to internal flight 1 January 2017 – 27 June 2018

Background

UNHCR Regional Representation for Northern Europe (RRNE) agreed on 9 May 2018 with the Finnish Immigration Service (Migri) to conduct an assessment of around 50 asylum decisions where the internal flight (IFA) assessment had led to a rejection of the asylum application. It was agreed that half of the decisions would cover Afghanistan and the other half Iraq. The assessment would be conducted by two RRNE staff fluent in Finnish. UNHCR is bound by confidentiality according to Sections 23 and 27 of the Act on the Publicity of Official Documents.

Methodology

RRNE assessed 53 asylum decisions by Migri with reference to IFA. The research material contained 28 decisions concerning Afghan applicants and 25 decisions¹ concerning Iraqi applicants. The material was selected through a random selection of cases from a certain time period initially planned to span 12 months. As RRNE asked the material to contain decisions issued both to single persons and families, the time period was extended to 18 months to ensure the research material also contained decisions issued to families. The timespan of the decisions reviewed is 1 January 2017 – 27 June 2018. During the said time period Migri issued asylum decisions for 12,570 applicants; 2,031 of them were from Afghanistan and 5,654 from Iraq. Internal flight decisions were issued to 159 Afghan applicants (7.83 %) and 65 Iraqi applicants (1.15 %).

The assessment aimed at answering three questions: 1. Is the quality of the decisions in line with UNHCR quality standards as set out in the UNHCR FDQ Manual² (The assessment used checklists available in the UNHCR FDQ Manual); 2. Are the decisions in line with UNHCR's Guidelines on Internal Protection no. 4 on IFA;³ 3. Are the decisions in line with UNHCR's Eligibility Guidelines on Afghanistan⁴ and Iraq⁵ in force at the time of the writing of the decisions subject to assessment? The main focus of the assessment is the analysis of the IFA. However, the convention refugee analysis as well as the subsidiary protection analysis was also assessed insofar it was contained in the study material.

¹ Two Iraqi cases provided were in fact the same case, bringing the number of Iraqi cases from 25 to 24.

² UNHCR, *Building In Quality: A Manual on Building a High Quality Asylum System*, September 2011, available at: <http://www.refworld.org/docid/4e85b36d2.html>.

³ UNHCR, *Guidelines on International Protection No. 4: "Internal Flight or Relocation Alternative" Within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, 23 July 2003, HCR/GIP/03/04, available at: <http://www.refworld.org/docid/3f2791a44.html>.

⁴ UNHCR, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan*, 19 April 2016, HCR/EG/AFG/16/02, available at: <http://www.refworld.org/docid/570f96564.html>

⁵ UNHCR, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq*, 31 May 2012, HCR/EG/IRQ/12/03, available at: <http://www.refworld.org/docid/4fc77d522.html>

The assessment is restricted to the quality of the decisions and does not contain any assessment of the outcome of the establishment of material facts. To this end, the study material was limited to written decisions and did not contain interview protocols or other material.

It must also be noted that the study material does not contain decisions where IFA has been analysed, but rejected as an alternative, which must be taken into consideration when interpreting the results.

Findings

General findings

RRNE found the decisions generally well structured. Most decisions analyses one credibility finding after another, eventually arriving at a conclusion for each one, leading to a conclusive finding on the eligibility as a whole.

Also the legal reasoning (oikeudellinen arvio) is usually well structured, and it is in most cases easy for the reader to understand the conclusions of the decision maker, firstly assessing eligibility under the 1951 Convention, followed by subsidiary protection and then eventually IFA. However, in three Afghan cases and one Iraqi, the finding of the applicant fulfilling the criteria for refugee status is limited to one sentence “based on your account and available COI...” which makes it more difficult to assess the legal reasoning behind the decision and, as a consequence, to assess the IFA analysis. In a similar fashion, three Afghan decisions identifying a need for subsidiary protection are reasoned with the wording “based on argumentation above...” without any explicitly written assessment of the real risk, which leads to similar difficulties assessing the legal reasoning and subsequently the IFA analysis. In one Afghan case the need for subsidiary protection based on Article 15 (a) and Article 15 (b) was dismissed only with reference to the analysis of facts with the wording “based on the above...”.

Findings on Convention refugee analysis

In 14 out of 28 Afghan cases and 17 out of 24 Iraqi cases the decisions contained a convention refugee analysis. In the other cases the assessment was contained in earlier decisions and/or decisions by the Administrative Court. The finding on the convention refugee analysis is thus based on a more limited material than the IFA assessment. In general, convention refugee analysis is conducted with a correct and thorough analysis of the different elements of the refugee definition.

In UNHCR’s view, in a couple of cases the causal link would merit a more in-depth analysis. In one case the fact that the applicant had been forced by his step-father to accept the employment where he was assaulted by his employer was not discussed when the causal link to the persecution was analyzed. In another case, it was concluded that the risk was purely based on the security situation of the area of origin and the fact that the applicant was Hazara was not discussed. In a third case the causal link was seen as missing since the persecution was between family members due to a land conflict. In a fourth case it was argued that the particular social group criteria was not fulfilled under the social perception approach when the applicants were fleeing honor related violence. However, it must be noted that they fled honor related violence due to the fact that they had contravened the social mores of their community

by eloping. UNHCR considers that persons perceived as contravening social mores may in Afghanistan, depending on the individual circumstances of the case, be in need of international refugee protection on the grounds of religion, their imputed political opinion, membership of a particular social group, or other relevant grounds.⁶ UNHCR considers that the Finnish Immigration Service in this case has failed to identify the causal link for the persecution.

There are good examples of identification of a future risk of persecution in situations where the applicant has not yet experienced persecution. However, in one case where the applicant's detention, assault and torture in the hands of the Taliban was accepted as persecution, the future risk of persecution was denied with the argument that the applicant had been subject to persecution as part of a group, par hazard. However, there is no argumentation in the decision as to how the situation would have changed since the persecution took place.

In one Afghan case the applicant's fear of the Taliban was seen as objectively well-founded, but his fear due to his conversion to Christianity was not, as it was seen as lacking credibility. There was no analysis of what risk the "self-serving" conversion could put the applicant in. In UNHCR's view, so-called "self-serving" activities do not create a well-founded fear of persecution on a Convention ground in the claimant's country of origin, if the opportunistic nature of such activities will be apparent to all, including the authorities there, and serious adverse consequences would not result if the person were returned. Under all circumstances, however, consideration must be given as to the consequences of return to the country of origin and any potential harm that might justify refugee status or a complementary form of protection. In the event that the claim is found to be self-serving but the claimant nonetheless has a well-founded fear of persecution on return, international protection is required.⁷

In the legal analysis of one Iraqi case, in the context of the discussion about a possible causal link to one of the Convention grounds, it is concluded that "neither the level of wealth of a particular family nor the fact that the family is well-known in the area, can constitute a causal link to one of the Convention grounds". While this may be true in a specific case, UNHCR wishes to point out that it can by no means constitute a general rule. In highly politicized environments, having an elevated and well-known position in society, can, depending on the background of the person, be perceived as siding with one of the parties to the conflict and thereby be considered as a political opinion.⁸

Further in the same legal analysis, as the applicant also referred to his religion as a basis for his past persecution, the decision concludes that while religion indeed is a Convention ground, the persecution towards the applicant in this case was not conducted "primarily" due to his religion. Here UNHCR wishes to point out that the Convention does not make any requirements that the persecution would have had

⁶ UNHCR, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan*, 19 April 2016, page 65, see footnote 4.

⁷ UNHCR, *Guidelines on International Protection No. 6: Religion-Based Refugee Claims under Article 1A(2) of the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees*, 28 April 2004, HCR/GIP/04/06, para. 36, available at: <http://www.refworld.org/docid/4090f9794.html>.

⁸ See for example UN High Commissioner for Refugees (UNHCR), *Guidelines on International Protection No. 12: Claims for refugee status related to situations of armed conflict and violence under Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees and the regional refugee definitions*, 2 December 2016, HCR/GIP/16/12, para. 38, available at: <https://www.refworld.org/docid/583595ff4.html>.

to be done “primarily” for a Convention reason, but it is sufficient that the persecution is linked to a Convention ground.⁹

Findings on subsidiary protection analysis

Only 7 of the Afghan and 10 of the Iraqi decisions contained a subsidiary protection analysis. In the rest of the cases, the subsidiary protection analysis was either redundant due to a positive finding in the convention refugee analysis or it was contained in earlier administrative court decisions. The low number limits the validity of the findings. Subsidiary protection analysis are in the decisions usually made with a less structured approach than the convention refugee analysis either by referring to rights violations (for example in cases where a risk of future persecution is identified, but the causal link to a persecution ground is argued to be lacking) or with reference to the security situation of the area of origin, sometimes without a real risk analysis, usually with only one standard phrase.

Findings on Internal Flight Alternative Analysis

Identification of the area for internal flight

Out of the 28 Afghan cases, in 24 cases Kabul was identified as an area for internal flight, in one case Mazar-i-Sharif and one case Kabul and Mazar-i-Sharif. In two cases it is not clear what area has been identified, but as in most cases, Herat, Kabul and Mazar-i-Sharif are mentioned as potential areas for internal flight. Out of the 24 Iraqi cases, in 12 cases (50%) Baghdad was identified as the area for internal flight, followed by 8 where the KRG was identified as the area for internal flight. The rest were either to Southern Iraq (3) or elsewhere (1).

Among decisions analyzed, the question arises what is required in terms of the size of the area for internal flight. In the cases referred to Southern Iraq for example, “Southern Iraq” is in itself defined as the area for internal flight, thus leaving the area for internal flight very wide and unspecified. This is also the case with many cases to KRG, where “the KRG” is referred to as the area for internal flight. The complete opposite is the case with Sunni cases directed to Baghdad, where a mostly unspecified Sunni-majority area within Baghdad, serves as the designated area for internal flight.

Another question that arises is how the applicant has been presented with possibility that IFA is under consideration. Whereas it should be an integral part of the Finnish asylum procedure that all applicants are asked to give their view on a potential IFA, it seems that in many cases, the question is asked on a general level considering “other parts of the country” and not necessarily focusing in the area that actually is or will be under consideration. The assessment identified one case where, based on the study material, it is not clear what the applicant has put forward as arguments against IFA.

⁹ UN High Commissioner for Refugees (UNHCR), Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, December 2011, HCR/1P/4/ENG/REV. 3, paras. 66 and 67, available at: <https://www.refworld.org/docid/4f33c8d92.html> and UN High Commissioner for Refugees (UNHCR), Guidelines on International Protection No. 12: Claims for refugee status related to situations of armed conflict and violence under Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees and the regional refugee definitions, 2 December 2016, HCR/GIP/16/12, para. 34, available at: <https://www.refworld.org/docid/583595ff4.html>.

Accessibility

In most cases where Baghdad is identified as an area for internal flight, the decisions cite COI containing the following information when it comes to whether Baghdad may be considered a relevant area for internal flight:

1. The Iraqi constitution grants freedom of movement to all Iraqis.
2. According to UNHCR, there is access to Baghdad airport regardless of place of origin within Iraq.
3. Persons aiming to access Baghdad by road have occasionally been either denied access altogether, or have been asked to provide the name of a sponsor in order to enter. Decisions given in 2018 further specify, saying specifically Sunni Arabs and Turkmens have been subjected to arbitrary arrest between the airport and Baghdad due to being suspected as ISIS affiliates.
4. In decisions from 2018, it is also stated that moving to Baghdad requires the consent from the local mukhtar. These requirements have been reported as more stringent in Sunni neighbourhoods with lots of IDPs. In practice Sunnis have predominantly moved to Sunni-majority areas since they may face problems at checkpoints between areas and pressure from the Shia majority population to leave.

Regardless of the above reflected, and in particular points 3 and 4, the conclusion on the accessibility, including for Sunnis from ISIS areas and Shia Turkmens, is a brief statement that the person in question has legal access to the area for internal flight. Most decisions provide no assessment as to how the information in points 3 and 4 affect whether the area for internal flight is indeed safely, practically and legally accessible.

With regards to cases where the KRG (one specifically assessed towards Erbil) is identified as the area for internal flight, all analyzed cases except one concern individuals of Sunni faith and Kurdish ethnicity. In these cases it is concluded that legal direct access to KRG is available through airports in Erbil and Suleimaniyah and that there are no sponsor requirements for Kurds. As most decisions designate the KRG as a whole as the area for internal flight, the decisions do not generally distinguish between requirements in the different governorates.

One Sunni Arab family is also directed to the KRG, as the family had resided in Dohuk for five years prior to leaving the country, and reportedly at some stage in the Finnish procedures expressed a will to voluntarily return there. Also the fact that the family was familiar with a man who had stated to be ready to sponsor the family in the KRI if paid 400 \$, was interpreted as something facilitating access.

One decision designating Kirkuk as the area for internal flight, refers to access to Kirkuk airport (KIK). Reference is also made to reports of occasional pressure on non-Kirkuk Kurds to return home, but the decision concludes this is not with regards to all Kurds.

In the Afghan cases practical access to Kabul is usually taken for granted and not always even mentioned. Legal access is connected purely to the citizenship of the applicant. Safety of the access is however usually discussed and argued in detail.

State protection / Risk of future persecution

In most cases where Baghdad is identified as an area for internal flight, the decisions cite COI containing the following information:

1. Shia is the majority population (80%) in Baghdad, and Shia militia man checkpoints within the city together with Government forces and conduct home visits (razzias).
2. People from outside Baghdad face problems and rights violations at checkpoints, if they do not have official documentation or if it is clear from their IDs they are Sunni from ISIS areas.
3. Individuals from Salah al-Din, Diyala and Nineve cannot renew ID cards in Baghdad.
4. Shia militia has been guilty of kidnapping, torture, and killings of especially Sunni males, and particularly so within Baghdad and adjacent areas.
5. Also Iraqi government forces have reportedly conducted arbitrary arrests targeting primarily Sunni males with the help of terrorism legislation.
6. The most vulnerable group, which is also at the particular attention of Shia militia, is Sunnis from outside Baghdad.
7. The Sunni population frequently face (occasionally violent) pressure from the Shia majority population to leave.
8. Accessing State protection in Baghdad for a Sunni, is in most cases unlikely.

Despite the above mentioned, the assessments conclude that an (unspecified) Sunni-majority area qualifies as an area for internal flight for Sunnis. In most cases, this seemingly contradictory approach is not explained to any greater detail. Some applicants may have resided for some time in Baghdad previously, or left the country through Baghdad airport, which is used as an indication of less problems returning there.

As a non-state agent is the persecutor in all cases analyzed, the decisions mostly conclude that it is unlikely that this agent will be interested in the applicant also in Baghdad (not “profiled enough”). Several decisions also conclude that while Sunnis indeed may face problems, COI does not support the claim that all Sunnis would face problems. Further indications that the standard of proof for the applicant is set very high (and that the risk threshold for persecution is set very high), is that the decisions use language justifying the IFA such as: “Sunnis can live in the area since the risk is lower”, and that Sunnis may be able to live “predominantly without problems”.

A concluding assessment of the risk of persecution vis-à-vis the availability of state protection, as both elements arguably speak against any application of an IFA (in particular in Sunni cases), is not conducted.

Also in all Afghan cases the agent of persecution is a non-state agent. Whereas the UNHCR Eligibility Guidelines for Afghanistan state that “[H]igh levels of corruption, challenges to effective governance and a climate of impunity are all reported by observers as factors that weaken the rule of law and undermine the ability of the State to provide protection from human rights violation” most Afghan decisions state that state protection is available in Kabul.¹⁰ The notion of state protection being available is however never a lone decisive factor in the decisions as it is prior in the decisions found that there is no interest or ability on the part of the agent of persecution to follow the applicant into the proposed area of internal flight. The capacity of armed groups to carry out attacks in all parts of the country, including areas that are not under the effective control of them is not discussed.

Reasonableness

In a majority of decisions, the security situation of the proposed area of internal flight is discussed thoroughly, but other aspects of reasonableness are assessed very briefly. Primary elements considered are whether the persons are of working age (most are) and fit to be employed. Another element is whether they may already have resided in the proposed area for internal flight or if they have (extended) family members living there. Belonging to the majority (Iraq) or big/important (Afghanistan) population in terms of ethnicity and language is also referred to. Sometimes the level of education of the applicant is discussed. The question of existing support networks is usually not discussed at all, only possible existing “ties” to the proposed area of internal flight. Only in one Afghan case, concerning a single female, her family (her parents and minor siblings, who were also supposed to be returned to Kabul based on IFA) was seen as her support network. However, the family itself lacked a support network in Kabul.

With regards to past persecution, based on the study material, it seems the question is mostly not taken into consideration when assessing reasonableness.¹¹ In four Afghan cases, past experiences of persecution were accepted as facts, but were not taken into consideration when assessing the reasonableness of IFA. As a worst case example, a Sunni Arab woman from Basrah who had been kidnapped and sexually abused by Shia militia (perceived credible as well to this effect), was nevertheless directed to a Sunni-majority area in Baghdad. No analysis was made as to how the past persecution suffered may impact the reasonableness.

In one case (as also referred to above), the fact that the family had previously expressed intent to voluntarily return to the KRG, was considered an indicator that it would not be unreasonable to settle there. COI also making references to “IDPs having difficulties leading a normal life” and that the “IDP situation has rapidly become burdensome to the local communities”, was not reflected in the reasonableness assessment.

¹⁰ UNHCR, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan*, 19 April 2016, page 25, see footnote 4.

¹¹ However, as the study material does not contain decisions where IFA has been rejected as an alternative, the assessment does not have a full picture of how past persecution is taken into consideration.

Whereas the current security situation is usually discussed in detail, in none of the decisions assessed is a concrete forward-looking, durability analysis conducted with regards to the stability of the political situation or security situation.

The human rights situation is generally reflected in the COI presented in the decisions. However, as a part of the reasonableness test, none of the decisions contains any analysis of how specific fundamental rights which are important to the individual are respected in the proposed area of internal flight.

In four Afghan cases, in fact all decisions concerning families with children, UNHCR's position in force at the time of the decisions on IFA for persons without a support network is misquoted. It is misinterpreted to cover also families (with children) while it only mentions single men and married couples (without children).¹² As a consequence, IFA is applied to families without identified support networks, which goes against UNHCR's guidance in force at the time of the decisions. These decisions cover the period 26 January 2017 – 28 June 2017; after this period the study material does not contain decision on families with children. In later decisions UNHCR's position is correctly quoted.

In a minority of the Iraqi cases, reference is made to UNHCR's guidance "Relevant COI for Assessments on the Availability of an Internal Flight or Relocation Alternative (IFA/IRA) in Baghdad for Sunni Arabs from ISIS-Held Areas".¹³ The decisions, probably confusing it with other UNHCR guidance, asserts it says that with regards to the requirement of extended family support in the IFA, exceptions can be made to this requirement when it concerns single men and married couples of a working age.

Procedural issues

In two Afghan cases the sentences "You have not been able to justify why the agent threatening you would target you for rights violations also in Kabul" and "You have not presented clear justifications why you could not move to live somewhere else." seems to put the burden of proof on the applicant. In one case, the threat referred to has not been accepted as fact. In the other case, the rejection of refugee status is not contained in the study material.

Conclusions:

UNHCR welcomes Migri's approach with a clearly structured analysis of different elements of the applications as well as a clearly structured legal reasoning, which can be found in most of the 53 decisions reviewed. The Convention refugee analysis is generally conducted with a systematic analysis of the different elements of the refugee definition. The reviewed decisions contain examples where the future risk of persecution was well identified. In the IFA analysis, there is a clear focus on the security aspects of internal flight.

¹² UNHCR, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan*, 19 April 2016, page 86, see footnote 4.

¹³ UNHCR, *Relevant COI for Assessments on the Availability of an Internal Flight or Relocation Alternative (IFA/IRA) in Baghdad for Sunni Arabs from ISIS-Held Areas*, May 2016, available at: <http://www.refworld.org/docid/575537dd4.html>.

UNHCR recommends Migri to improve decision making in the asylum procedure based on the following findings:

On IFA:

1. Internal flight cannot be assessed without a proper explanation of the **grounds for inclusion**. Whereas this was made in most cases, in a couple of cases it was not clear what the need for refugee status or subsidiary protection was based on, as the legal reasoning only referred to “above stated grounds”.¹⁴
2. **Access** to the area for internal flight is a vital part of the relevance test. Decisions cite COI indicating great challenges to legally and safely access Baghdad (for Sunnis in particular but also Turkmens), but no separate access analysis is made.¹⁵
3. **Burden and standard of proof** in an IFA context. Decisions say that COI does not indicate that all Sunnis (as an example) would have problems, which is not the correct standard of proof to be used. The burden to prove that IFA would not be available cannot be put on the applicant alone.¹⁶
4. The key importance of the **availability of state protection**. For Sunnis in Baghdad, many decisions refer to state protection (for Sunnis in particular) as most likely not being available in the area for internal flight. This factor should be given much more weight (or dismiss any IFA consideration altogether) in a relevance assessment, given that the COI implies risks of human rights breaches in the city.¹⁷
5. Existence of **support networks** is crucial in the reasonableness test and was largely overlooked.¹⁸ In some decisions concerning families UNHCR’s position was misquoted in a way that affected the outcome.¹⁹
6. **Past experiences of persecution** and their effect on the reasonableness of IFA have in the decisions not been discussed at all.²⁰
7. The effect of the **human rights** situation which has an impact on the individual are not discussed in the decisions.²¹
8. There is a lack of concrete **forward-looking, durability analysis** conducted with regards to the stability of the political situation or security situation.²²

Outside the scope of IFA:

¹⁴ See UNHCR, *Guidelines on International Protection No. 4: "Internal Flight or Relocation Alternative"*, para. 7, see footnote 3.

¹⁵ *Ibid.*, paras. 10 – 12.

¹⁶ *Ibid.*, paras. 33 – 35.

¹⁷ *Ibid.*, paras. 15 – 17.

¹⁸ *Ibid.*, para. 29.

¹⁹ See UNHCR, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan*, 19 April 2016, page 86, see footnote 4.

²⁰ See UNHCR, *Guidelines on International Protection No. 4: "Internal Flight or Relocation Alternative"*, para. 26, see footnote 3.

²¹ *Ibid.*, para. 28.

²² *Ibid.*, para. 8.

1. The **causal link** between persecution and persecution ground is dismissed lightly in some decisions and is in at least one case rejected incorrectly.²³

²³ See UNHCR, *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan*, 19 April 2016, pages 62 – 65, see footnote 4.