

**RESPOND**

## **Working Papers**

### **Global Migration: Consequences and Responses**

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## **Iraq – Country Report**

### **Legal & Policy Framework of Migration Governance**

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Hammurabi Human Rights Organization

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William KhammooWarda

Iraq Team Leader

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## Executive Summary

The issues of migration, displacement and refugees have not received as much attention as they do today, because of the gravity, sensitivity and the heavy burden imposed on countries. After 2015, it became a collective trait as a result of the turmoil, instability and armed conflicts witnessed by many countries in the South, Syria, Yemen and others. The Arab Spring brought disappointment to the hopes of the people for change towards freedom and democracy. Fear, violence and instability are driving many frustrated young people to leave their countries and seek shelter in safer and more stable countries to ensure a better life for themselves and their families. Their destinations are European and Scandinavian countries, due to their closeness to the Middle East, through Turkey, Greece, and Eastern European countries, then to the United States of America, Australia etc. They took legitimate and illegitimate ways to reach their destination. Hundreds lost their lives as they crossed the sea, rivers, prairies and mine fields.

It is impossible to address the problem and grant the rights of refugees and asylum seekers without conducting an in-depth study of the problem in all its dimensions and levels, and without international cooperation and joint efforts to reach a satisfactory solution. This requires a deep understanding of the social and humanitarian factors, and of the importance of continuing the work to avoid tension in international relations.

International attention to the protection of refugees and displaced persons is not new. The international community demonstrated its interest in this issue by reaffirming its desire to reinstate, consolidate and widen the scope of the previous conventions on refugee status through the Convention of 28 July on the status of Refugees, known as the Geneva Convention, defines the conditions under which a state must grant refugee status to persons who so request, as well as the rights and duties of such persons. It was adopted on 28 July 1951 by a conference of Plenipotentiaries on the status of Refugees and stateless Persons convened by the United Nations, pursuant to General Assembly resolution 429(V) of 14 December 1950. This convention was completed in 1967 by the Protocol Relating to the Status of Refugees.

This Convention relating to the Status of Refugees should not be confused with the Geneva Conventions, which since 1949 codify the rights and duties of combatants and civilians in time of war.

The Convention of 28 July 1951 relating to the status of Refugees constitutes, after its adoption, the main legal framework defining the right of asylum in the signatory States. It gives a particular meaning to the thousand-year-old idea of asylum.

However, the major powers influencing the international system have an increasing concern for immigrants and asylum seekers, especially after the emergence of the phenomenon of terrorism and the exploitation by the terrorist groups of the humanitarian nature of immigration to infiltrate these countries in order to carry out acts of violence and influence the public security and the prevailing order.

The problem is that citizens or certain groups within their countries feel that they are in danger and live in constant fear or face a threat to their lives due to civil war or armed conflicts on a religious, racial, or ethnic basis.

In the absence of a state capable of protecting the life of its citizens or ensuring their rights; when the state itself violates these rights; and when national laws fail to address such matters; then, for humanitarian reasons, there is no recourse but to emigrate and to resort to other countries seeking safety and protection. The existence of cross-border relations, extensions and



contacts with citizens of other countries with whom they have religious, sectarian, national or linguistic links, facilitates the process of crossing borders to neighbouring states and seeking asylum or migration.

Exodus to certain countries may increase tension between neighbouring countries. Therefore, to control and manage the implications of the problem, the study needs to focus on the humanitarian aspects by understanding the socio-economic relations, on one hand; and the legal and political aspects related to the protection of refugees and asylum seekers and the nature of conflict between states or between a state and a certain group, on the other hand. The conflict in Syria since 2011, and in Yemen since 2015 are among many examples.

Iraq is one country that experienced a bitter internal conflict. In 1933, it witnessed the massacre of Assyrian Christians forcibly displacing thousands of Assyrians to Syria. In 1975, After the Kurdish revolution claiming the rights of Kurds in northern Iraq failed, thousands of Kurdish families fled to Iran and settled there. In 1988, Saddam's regime carried out the "Anfal operations" against the Kurds, the Assyrians and all other Christians in the North Region as well as Faili Kurds, forcing thousands of families to flee to Turkey. Moreover, the eight year Iraq-Iran war forced thousands of families to relocate to safer places within the country or flee to Europe, the United States, Canada, Australia, and New Zealand etc.

The crisis with Kuwait in 1991, followed by years of sanctions, drove Iraqis to leave their country and settle in neighbouring countries or seek asylum in Europe, the United States, or other countries. The change in 2003; the sectarian violence in 2005-2007; the invasion of the so called Islamic State in Iraq and the Levant (ISIL) which occupied one third of Iraq in 2014; and the subsequent military operations against ISIL in 2016-2017, triggered more waves of migrants and internally displaced Iraqis. Although instability and lack of security are the main drivers for migration among Iraqis, other factors cannot be neglected.

Iraq is seeking to develop its legal system in terms of immigration and asylum to live up to the international standards. Political divisions and instability undermine the ability of the government to set comprehensive legislative priorities. A new bill on refugees, which passed the first reading in January 2018, is still pending at the Council of Representative.

This report discusses the constitutional, legal, political and procedural framework applicable in Iraq; legal gaps; legal instruments in addressing migration and asylum rights; as well as protection.

## **The Importance of the Research**

Migration and asylum is becoming an important and sensitive issue, both on national and international levels. Since 2015, the nature of migration changed into mass migration. It increasingly became an issue of concern, especially for European countries, affecting international relations as well. The importance of this research stems from the following factors:

- The protection of refugees and displaced persons is closely linked to international stability, security and peace, especially after the growing phenomenon of terrorism. Reducing migration while guaranteeing refugee rights helps to create a more stable environment and reduce tension among nations.
- The existence of effective laws for the protection of refugees and displaced persons complying with the international law will promote stability and justice and will minimize the

sense of inferiority among refugees and displaced persons that exists in the absence of protection. Also, it will undermine the ability of terrorist organizations to recruit refugees or displaced persons, exploiting their suffering.

- Iraq, in its transition towards democracy, is still in search of peace and stability. It is struggling to manage its internal crisis with millions of internally displaced persons caused by years of violence; adding to that, it is hosting hundreds of thousands of refugees from Syria and other neighboring countries. This study seeks to draw a civilized model for Iraq to address migration and asylum, especially as it is located in a hot zone with severe internal and regional conflicts involving major international powers.
- Providing a legal environment and policies protective of human norms to the migrants and the displaced may reduce the likelihood of migration among Iraq's ethnic, religious, nationalistic and linguistic groups. Therefore, the number of asylum seekers from Iraq would be reduced gradually.

## Research Objective

This research aims to present the situation of refugees and displaced persons in Iraq, and to discuss the governance of this dossier through: understanding the socio-economic context; the constitutional and legal context; and policies and practices of the Iraqi government in terms of protection. Also, the research aims at discussing the evolution of both the legal and organizational framework as they relate to migration and asylum, the role of multiple governmental levels in providing protection to migrants and asylum seekers in Iraq in line with Iraq's internal and international commitments.

This research addresses the problem of rights and protection of refugees and displaced persons in Iraq from the perspective of legislation, mechanisms, and international obligations, especially since Iraq does not have an internationally recognized legal and procedural system for the protection of refugees and displaced people, and because the country is a source for migrants and asylum seekers. This raises many questions:

- Is Iraq, under its current conditions, capable of absorbing such a large number of refugees and asylum seekers?
- Do Iraq's own laws(internal laws) and policies relating to migration and asylum management measure up to the international standards?
- Are Iraq's laws and policies evolving to improve the management of migration and asylum?
- Does Iraq deal with migration and asylum for political reasons, or with religious, ethnic or regional sympathy?
- Will Iraq be a safe haven for asylum seekers in the future?
- Will Iraq be a tempting destination country for asylum seekers or will it be a transit country only?

## Research hypothesis

Iraq's legislative framework, procedures, and policies in terms of management of migration and asylum are incapable of responding to the volume of refugees and displaced persons. Despite the efforts to further develop existing policies and institutions, the Iraqi political system must commit to the related international conventions and laws in the provision of protection to the displaced and asylum seekers, or at least to develop its national laws and legislation to live up to the international standards on migration and asylum.

## Challenges and Difficulties

Iraq did not enact a law on access to information yet, and thus, the team faced difficulty collecting statistics and data as this requires the special approval of higher authorities. Also, officials were reluctant to provide the team with unpublished data and documents for fear of legal accountability within the frame of national security.

## Limitation

The research focuses on the situation of refugees and displaced persons in Iraq during the period following the turmoil in Syria and the Arab Spring Revolutions from 2011-2017.

## Research Methodology

The nature of this research required the use of the historical descriptive approach, where historical review of Iraq must be viewed as a country attracting people from neighbouring countries, to work and live, for its natural wealth and richness. This research also required the use of the comparative legal and political approach, whereby past and current laws and policies, in terms of migration and asylum, are reviewed. In addition this research relied on a systematic analysis method to better understand the internal and external factors controlling migration and asylum, thus leading to more objective results on the reaction, and the surrounding inputs and outputs.

## Structure of the Research

The body of this research is divided into eight parts. It begins with a brief overview of data and statistics about refugees and internally displaced persons in Iraq during the period covered by the research, their geographic distribution, affiliation, country of origin, age and sex (gender). The second part focuses on Iraq's social, economic, political and cultural context. The third part focuses on the constitutional organization of Iraq and the constitutional principles on migration and asylum. Part four focuses on the legislative and institutional frame work in the field of migration and asylum. Part five focuses on the legal status of foreigners in Iraq. Part six addresses reforms driven by the refugee crisis Part seven introduces the conclusion and recommendations, and part eight presents the references and sources used for this research.

## Means for Data Collection

The Iraqi national team collected the data for this report through direct and indirect meetings with governmental officials involved in the management of migration and asylum in Iraq. Desk review of laws, regulations and reports produced by the government of Iraq and international organizations and agencies working within the country.

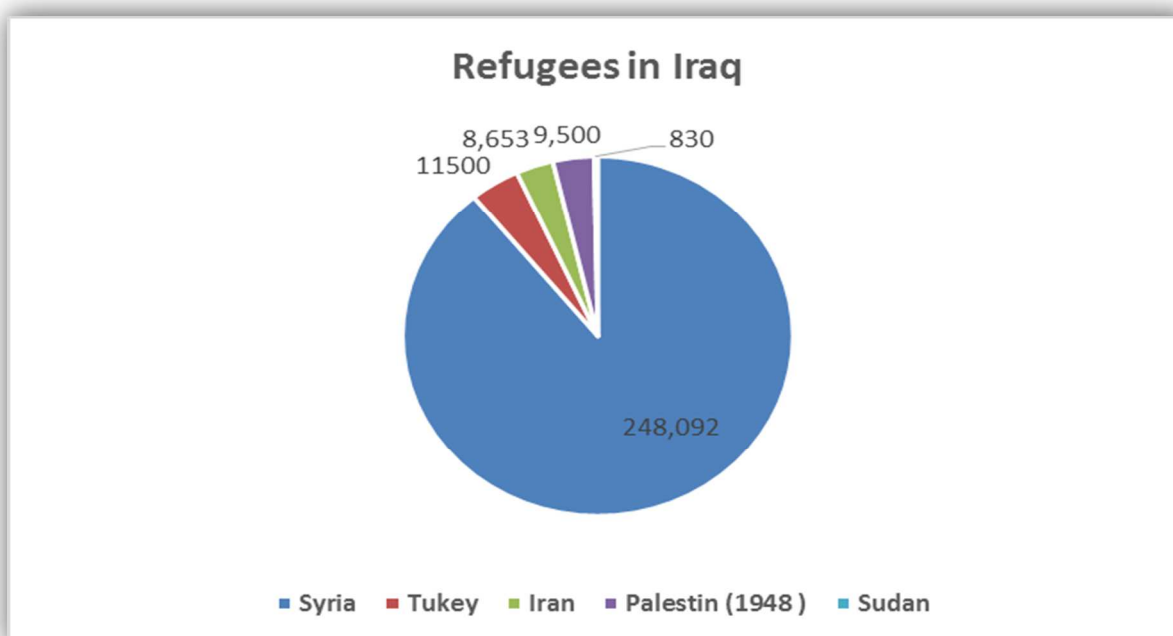
## 1. Statistics and Data Overview

Conflict and other forms of violence are the main reasons for migration among Iraqis, as well as Syrians. Some had been directly impacted by the conflict, with many experiencing the death of family members and the destruction of their homes, while others had feared that conflict escalation would negatively impact their livelihoods and security.

According to the UN High Commissioner for Refugees (UNHCR), the total population of concern in Iraq reached 7,169,117 as of February 28, 2018. This includes internally displaced Iraqis (IDPs); Iraqi refugees who have returned from Syria after the Syrian civil war in 2011; Syrian refugees; non-Syrian refugees; and the stateless<sup>1</sup>.

Iraq is currently hosting refugees from Syria; Turkey, Iran, Palestine, and Sudan. The distribution of refugees, as well as IDPs within Iraq, highly depends on the ethnic and religious background of the host community, as well as the relative stability and security of the area. As such, the Kurdistan Region of Iraq is hosting the majority of refugees and asylum seekers.

**Figure 1: Refugees in Iraq-Data Overview**



Since 2014, UN agencies and other international organizations have worked in collaboration with both Iraqi national and regional governmental authorities to better respond to the multiple waves of internally displaced Iraqis; as well as to the influx of Syrian refugees.

There are multiple governmental authorities involved in the registration of refugees and asylum seekers, as well as IDPs and returnees, and these are: the Ministry of Migration and Displacement; the Directorate of Residency at the National Ministry of Interior; the Directorate of Residency at the Ministry of Interior of the Kurdistan Regional Government; the Joint Crisis

<sup>1</sup><http://reporting.unhcr.org/sites/default/files/UNHCR%20Iraq%20Factsheet%20March%202018.pdf>

Coordination Centre (JCC) at the Ministry of Interior of the Kurdistan Regional Government; and the Asayish which is the primary security agency operating in the Kurdistan region of Iraq.

Each authority collects the data based on their specialty and area of focus. Data collected by governmental authorities are not public. UN agencies, such as UNHCR, produce periodic reports including monthly fact sheets on populations of concern, including Syrian and non-Syrian refugees in Iraq.

The UNHCR keeps an expanded database for all refugees and asylum seekers, segregated by gender, age groups, geographic area, and types of shelters, and whether or not the refugee is in camp or out of camp. It is the primary source for data. On the other hand, the International Organization for Migration (IOM) keeps an updated Displacement Tracking Matrix, or the DTM. The DTM is a tool that helps IOM Iraq actively monitor on-going displacements and track movements of people uprooted from violence across Iraq. It records those who fled their place of origin since January 2014 and have since returned.

As such, collecting detailed information (such as the number of cases in which entry at the border was refused, migratory balance, expulsion, etc.) requires the approval of multiple higher authorities from both national and regional governments, which is time consuming due to bureaucratic system.

## **1.1 Non-Syrian Refugees and Asylum- Seekers**

Before the large influx of Syrian refugees in 2012, Turks and Iranians (most of Kurdish descent), made up the majority of refugee communities in camps, settlements and urban areas in Erbil, Duhok, and Sulaymaniyah governorates of the Kurdistan Region in addition to Palestinian and Sudanese refugees living out of camps mostly in (Baghdad) and other Iraq governorates.

They have been granted humanitarian residency permits by the Iraqi government and renewed on fixed basis, but some of them granted political residency as Palestinians because of the Palestinian situation, there are quite few Iranians and Turks who have been granted residency for political reasons because they are opponents or are families of PKK fighters opposed to Turkey.

**Table 1: Non-Syrian Refugees in Iraq**

	Country of Origin	# Refugees	Background	Place of Residency in Iraq
1	Turkey	11,500	Kurdish Descent	Kurdistan Region of Iraq
2	Iran	8,500	Kurdish Descent	Kurdistan Region of Iraq
3	Iran	153	Arab Descent	Baghdad, Basra and Qadisyia Governorates
4	Palestine (1948)	9,500	Arab Descent	Mostly in Baghdad
5	Sudan	830	Arab Descent	Mostly in Baghdad

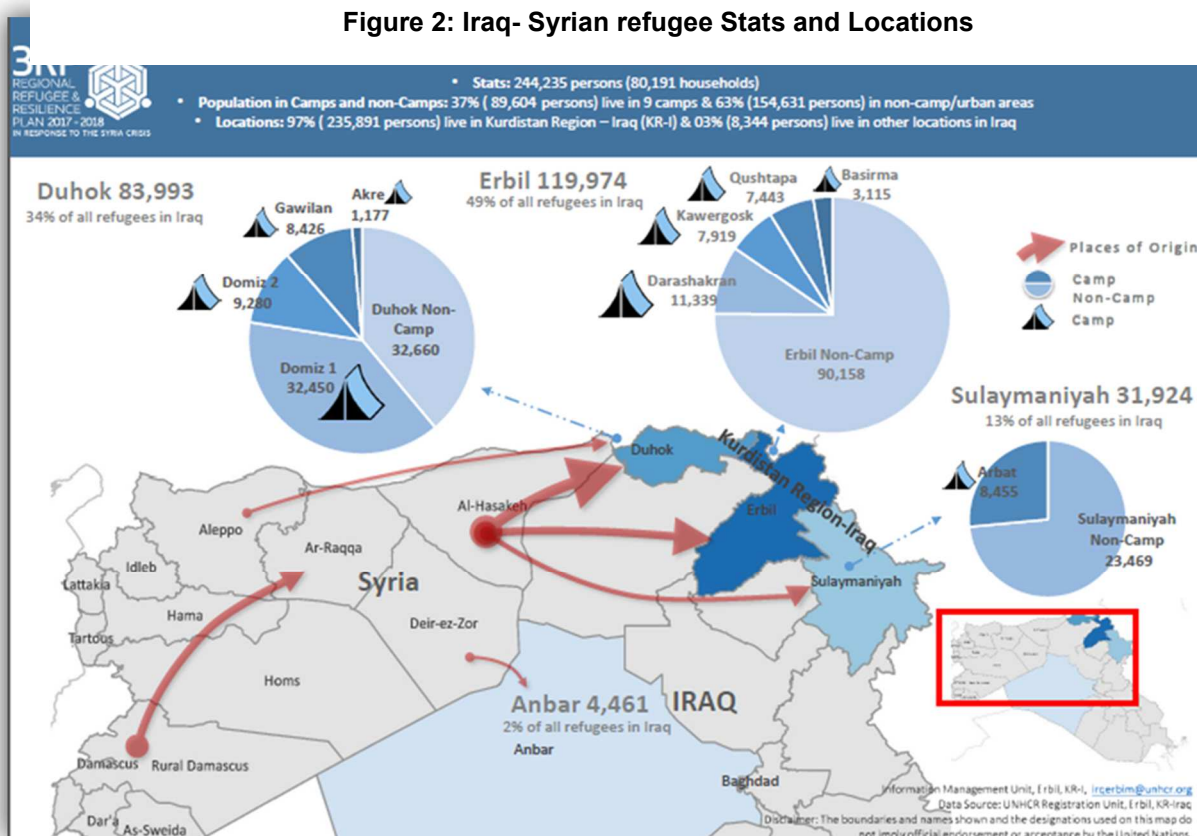
(Dosa, 2017)

## 1.2 Syrian Refugees and Asylum- Seekers

The Syrian refugees constitute the largest group of refugees in Iraq. They took several routes to Iraq. Some have directly crossed the borders from Al-Hasakeh to the Kurdistan Region of Iraq, others have crossed from DierEzor to Anbar Governorate, or from Turkey to the Kurdistan Region of Iraq. Fewer have entered Iraq with a valid visa for religious tourism and have stayed in the southern governorates of Najaf and Karbala. In general, they have settled in the areas where they share close ethnic and cultural affinities with the host population.

Out of a total of 248,092 Syrian refugees, the Kurdistan Region of Iraq hosts 231,000, with 38% sheltered in 10 camps, while the remaining 62% live in urban areas among local communities.

**Figure 2: Iraq- Syrian refugee Stats and Locations**



(UNHCR, 2017)

**Table 2: Syrian Refugees in Iraq Segregated by Age and Gender (%)**

Age Group	Male	Female	Total
0-4	8.32%	7.96%	16.28%
5-11	8.61%	8.28%	16.89%
12-17	5.3%	4.56%	9.86%
18-59	30.54%	23.99%	54.53%
60+	1.12%	1.32%	2.44%
Total	53.89%	46.11%	100%

(Meften, 2017)

Most Syrian refugees in Iraq come from the governorates of Hassakeh in Northeast Syria, Aleppo and Damascus in addition to rural Damascus, Homs, Deir es Zour and other places.

**Table 3: Syrian Refugees in Iraq by Governorate of Origin (%)**

Governorate of Origin	Percentage of Refugees
Hassakeh	57.81%
Aleppo	24.5%
Damascus	9.51%
Rural Damascus	0.74%
Homs	0.25%
Darah	0.1%
DeiresZour	2.18%
Other	4.91%
Total	100%

(Meften, 2017)

## 2. The Socio-Economic, Political and Cultural Context

### 2.1 Brief Migration History

Iraq is a country with a civilization deeply rooted in history. It has witnessed many conflicts and wars in its history. Also in modern times, the country witnessed occupations by British and American, wars and siege leading to significant political changes and a security vacuum. As a result, the country has been faced with an influx of immigrants as well as the migration of its own population, and thus changing the demographic composition of Iraqi society.

The migration of North Caucasians to Iraq goes back many centuries, peaking during the Caucasian War (1817–1864) and in the aftermath of the Russian–Circassian War with the Circassian Exile of the 1860s. The number of Iraqis of Circassian, Dagestan and Chechen origins is estimated to be between 30,000 and 50,000. They have integrated into Iraqi society while preserving their traditional North Caucasian culture and customs. These include traditions during wedding and birth ceremonies, and other special occasions. In addition to these, they have preserved their traditional languages and traditional cuisine (alDagestani, 2016).

Armenian history in Iraq has been documented since late Sumerian and Babylonian times. During the Ottoman Empire, some Armenians were forced to relocate to Iran in 1604, and then subsequently moved on to settle in Iraq. An additional 25,000 Armenians arrived in Iraq during the early twentieth century as they fled the persecution of the Armenian Genocide. Armenians have traditionally played an important role in Iraqi culture, particularly in literature, music and art in general. They have also established schools, athletic and cultural clubs, and political and religious institutions in urban centres across Iraq (Jamil, 2010).

In addition, Palestinians have been residing in Iraq since 1948. Before the change in 2003, there were approximately 34,000 Palestinians in Iraq, concentrated mainly in Baghdad. However, after 2003<sup>2</sup>, the figure dropped to only 10,000. They have been the target of persecution and violence. Several hundred of them have been living in border camps since 2003, after having been refused entry into neighbouring countries Jordan and Syria. In other cases, Palestinians have been resettled to third countries (Hantook, 2018).

In the 1990s, thousands of families of PKK fighters moved to Iraq and were embraced by Iraq for humanitarian reasons and placed in special compounds in northern Iraq. Since the end of the 1970s and during the 1980s, Iraq embraced thousands of Iranian refugees who fled Iran after the regime change in 1979. Some who were loyal to the Shah of Iran, others are families of those opposing Iran's new regime. Iraq granted them political asylum status (Guardian, 2016).

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<sup>2</sup>After the fall of the regime in 2003, Iraq state institutions collapsed. Security and military services were dissolved by a US decision. This led to chaos in the administration of the country and successive waves of conflicts starting with the conflict between the American forces and the so-called resistance; the emergence of terrorist groups such as al-Qaeda; and the sectarian violence between Sunnis and Shia that almost amounted to a civil war. As a result, waves of internal/forced displacement led to demographic changes in many areas in Iraq. In the absence of security, refugees from Palestinian, Syrian and Iranian origins, once enjoying protection by the former regime, were targeted and faced a lot of pressure by different influential groups and the new ruling parties. Some of them had to flee the country, and many others were protected by the American forces until arranging their resettlement in a third country after coordination with the relevant UN agencies.



The escalation of violence in Iraq from 2005 to 2007 because of the terrorist activity of Al-Qaeda and the sectarian tension between Sunni and Shia and then the subsequent control of the so called Islamic State in Iraq and the Levant (also known as: ISIL, ISIS, IS, or Daesh in Arabic) over large swaths of Iraq in 2014, has led to the internal displacement of more than 3.3 million people, in addition to hundreds of thousands emigrants.

The effects of the economic crisis caused by the drop in oil prices, combined with the internal displacement and the heavy influx of Syrian refugees, placed a huge socio-economic burden on Iraq in general and on its resources, infrastructure and in particular the services of the Kurdistan governorates, as Syrian refugees and IDPs today constitute about 23 per cent of the population in the Kurdistan Region of Iraq (MPC, Iraq, 2015). This results in a strain on employment and livelihood opportunities, as well as on services. The demands for education facilities, sanitation, housing, and public transport has increased in parallel as well. The arrival of Syrian refugees has had a negative impact on local economies and labour markets, leading to a significant decline in job opportunities. Increased competition for housing outside the camps drove up costs and led to overcrowding and resorting to substandard accommodations, which significantly strained the Iraqi Government's budget (MPC, Iraq, 2015). At the same time, some positive accounts of the influx of Syrian refugees have been reported in Erbil, where host community members describe how the arrival of Syrians has bolstered the labour market by bringing in new skills and capacities (brain-gain)(MPC, Iraq, 2015).

Host community residents have generally welcomed Syrian refugees, often providing support in the form of food and clothing. In some cases Syrian refugees are hosted within their houses until alternative accommodation is located (MPC, Iraq, 2015).

Syrian refugees often mention feeling welcomed and having good relations with their host community. In turn, host community members frequently demonstrate solidarity, speaking of an obligation to provide for the needs of Syrian refugees due to the past hospitality shown to Iraqi refugees in Syria (MPC, Iraq, 2015). Syrian families arriving in Iraq predominantly chose their final locations according to ethno-religious similarities with the members of the host community. This partly mitigates the difficulties of integration, positively impacting the relations with host communities (MPC, Iraq, 2015).

## 2.2 Iraq Profile

Iraq is composed of many national, ethnic, religious, sectarian, linguistic, and cultural groups that form a mosaic of many colors, shapes and characteristics. The Muslim Arab makes up the overwhelming majority. Non-Arab Muslims include the Kurds, Turkomans, Faili Kurds and Shabaks. Muslims in Iraq are divided into two main sects, Shia and Sunnis. In the absence of census, unofficial sources claim that Shia in Iraq make up the majority of Muslim Arab. They mostly live in Iraq southern provinces, in addition to many neighborhoods in Baghdad. The majority of Kurds and Turkomans are Sunnis, while the majority of the Shabak and the Faili Kurds are Shia. In addition, there are other Islamic movements and methods, such as the kakais, Sarlah, Naqshbandis, Ismailis, Baha'is, and others.

There are non-Muslim and non-Arab minority groups in Iraq, such as the Chaldeans, Syriacs, Assyrians, Armenians, Yezidis and SabeanMandaeans. The Chaldeans, Assyrians and

Syriacs<sup>3</sup> are the same people affiliated to different churches, such as Catholic (Chaldean Catholic, Syriac Catholic), Syriac Orthodox and Assyrian Church of the East, and other more recently established churches such as the Protestant and the Evangelical Churches (Warda, 2013). They use various dialects of Aramaic as their mother tongue, although in big cities they have adopted majority languages (e.g. Arabic).

Armenians are another ethnic group who are divided into different churches, such as Catholics and Orthodox. Armenians came to Iraq in multiple exoduses throughout the history (Warda, 2013).

Other non-Muslim and non-Christian minorities in Iraq are the Yazidis and SabeanMandaeans. Yazidis mostly live in the northern provinces of Nineveh and Dohuk. They speak Kurdish language with Kirmanji dialects (Warda, 2013). SabeanMandaeans live in central and southern Iraq provinces, mostly in Baghdad, Misan and Basra. They speak Arabic. Their native language is one of the ancient Aramaic dialects, which is used in the Mendi<sup>4</sup> by their clerics and by those who have special interest in this minority group (Warda, 2013).

Iraq is a *rentier* state. Its economy has been dominated by the oil sector, which historically has generated more than 95% of export earnings. In contrast, agricultural productivity has continuously declined. Iraq's population is 39,192,111 (July 2017 est.) with 2.55% population growth. Its population is among the youngest in the world.

Major cities population: Baghdad (capital) 6.643 million; Mosul 1.694 million; Erbil 1.166 million; Basra 1.019 million; Sulaymaniyah 1.004 million; Najaf 889,000 (2015). Urban population constitute 69.7% of total population (2017) with 2.97% annual rate of change. Net migration rate is -1.2 migrant(s)/1,000 populations (2017 est.) (Iraq Demographics Profile, 2018).

Iraq's HDI value for 2015 is 0.649— which put the country in the medium human development category— positioning it at 121 out of 188 countries and territories. Its Multidimensional Poverty Index (MPI) is 0.052; Employment to population ratio (% ages 15 and older) is 35.3; youth unemployment rate (% ages 15-24) is 35.1 (UNDP, 2016).

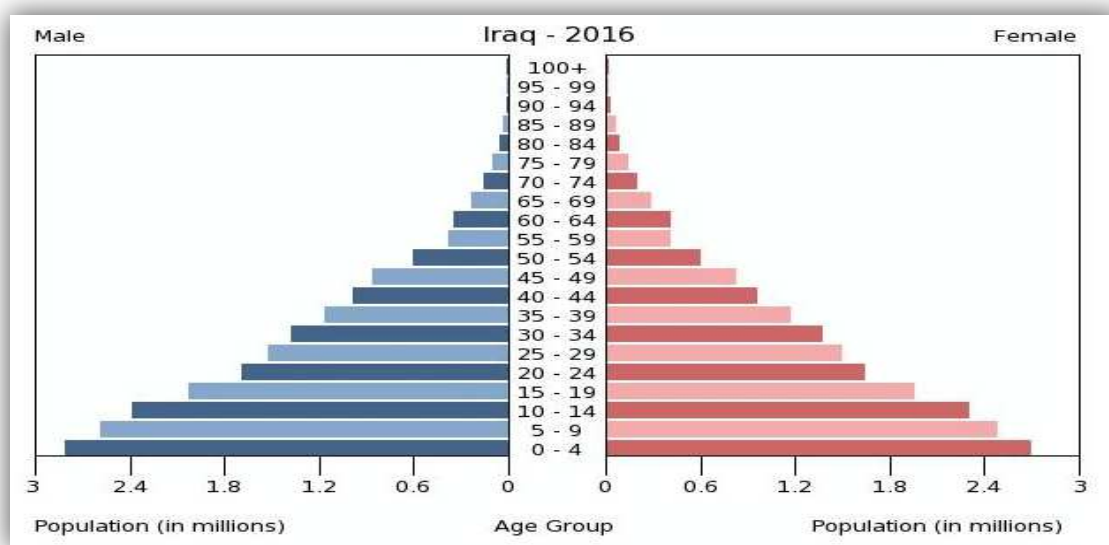
Ethnic groups: Arab 75-80%, Kurdish 15-20%, other 5% (includes Turkmen, Yezidi, Shabak, Kaka'i, bedouin, Romani, Assyrian, Circassian, Sabaeen-Mandaeen, Persian). The data is based on a 1987 government estimate; no more recent reliable numbers are available (ibid.).

Religions: Muslim (official) 95-98% (Shia 64-69%, Sunni 29-34%), Christian 1% (includes Catholic, Orthodox, Protestant, Assyrian Church of the East), other 1-4% (ibid.).

Languages: Arabic (official), Kurdish (official), Turkmen (a Turkish dialect), Syriac (Neo-Aramaic), and Armenian are official in areas where native speakers of these languages constitute a majority of the population (ibid.).

<sup>3</sup>Due to their long history and to the ecclesiastical and sectarian divisions, different names have been used for the same people. Scholars and writers have used many names, such as Chaldean; Aramaic; Assyrians; Syriac; Chaldo Assyrians; and most recently the (Chaldean Syriac Assyrians).

<sup>4</sup> Place of worship for SabeanMandaeans.

**Figure 3: Iraq population pyramid illustrates the age and sex structure of the country**

## 2.3 Iraq Socio-Political Structure

Iraq is a pluralist state encompassing several ethnic, religious, nationalistic, linguistic and cultural groups. Each has its own cultural and religious concerns as well as demands of the political system. Decades of a totalitarian Arab nationalist regime (The Baath Arabic Socialist Party) has obliterated the diverse ethnicities of Iraqi society. The Arabization policy adopted by the regime undermined the ability of various groups to exercise their rights, including the right to use their own languages.

For example, the Assyrian Christians, the oldest of the original Iraqi groups were considered as Arab according to the Baath Doctrine, their education was prohibited in their Syriac Aramaic language, the language of Jesus Christ, as they still retain and speak. Thus, the national identity of Turkmen, Chaldeans, Shabaks and others was changed in the framework of the policy of Arabization.

The 2003 changes in Iraq undertaken to dismantle a regime that had long threatened its own population and regional peace, as well as to establish a stable, democratic state in the heart of the Middle East gave a way to establishing a multi-party political system. The most enduring parties were those that had flourished in opposition during Saddam's era. Other parties emerged afterwards. Almost all these parties were formed along ethnic, sectarian or nationalist lines.

The struggle to forge a new identity for the political system provided these parties the opportunity to assert their own identities and the interests of their communities in the new political system in Iraq.

The 2005 elections institutionalized sectarian dynamics, given the parties' organization into ethno-sectarian blocs to maximize their electoral power. Ethnicity and sectarianism was used to mobilize citizens for voting purposes. Following the destruction of the al-Askari mosque in Samarra in a terrorist attack in February 2006, the country descended into sectarian tension that

resembled a civil war between the Sunnis and the Shia. As a result, millions of Iraqis were displaced; thousands were murdered.

Iraqis get to elect a new parliament in May 2018, and new Provincial Councils in December 2018. The country's party system is highly fragmented as Iraq's three major political camps – Shia, Sunnis and Kurds – have each splintered into factions that have little in common.

## 2.4 Iraq Minority Communities

For nearly a half century, Iraq has experienced on-going conflicts that have caused severe destruction and under-development. Internal and external warfare have taken a heavy toll on citizens leaving many in need of immediate and long-term assistance. Violence, sanctions, insecurity, and economic stagnation have inhibited progress while ethno-religious tensions, extremism, and discrimination have intensified violence over the years.

Particularly, Iraq's minorities have experienced consistent challenges to their security and livelihood. While the country at large remains in a fragile state, the situation for minorities like Yazidis, Christians, Sabean-Mandeans, Shabaks, Turkmans, etc. has been especially distressing. Overtime, these vulnerable communities have experienced extreme persecution leading to voluntary or forced relocation of many families to safer areas inside Iraq or causing them to seek refuge in other countries.

Reports by the UN and human rights organizations implicate ISIS in attacks against the civilian population, murder (including execution without due process), abduction, torture, rape and other forms of sexual violence, sexual slavery against women, captivity, forced religious conversion and the conscription of children. These acts may amount to war crimes, crimes against humanity, and, in the case of certain communities, including the Yazidi religious community, possibly genocide (UN High Commissioner for Refugees, 2016).

In fact, what happened to the Yazidis in Sinjar and the Christian in the Nineveh Plains by ISIS is daunting and constitutes several crimes against humanity, including genocide.

Recent reports indicate a sharp drop in the number of religious minorities in Iraq. The overall Christian population may have dropped from 1.5 million to 0.5 million since the fall of the Saddam Hussain regime in 2003. Sabean-Mandeans face extinction as a people. Since the outbreak of violence in 2003, most Sabean-Mandeans have either fled the country or have been killed. Of the 30,000 in mid-1990s, there are fewer than 5,000 remaining in Iraq today (MRG, 2017). As their small community is scattered throughout the world, the Sabean-Mandeans' ancient language, culture and religion face the threat of extinction (MRG, 2017). In 2006, UNESCO listed the Sabean-Mandaeans' language in its Atlas of the World's Languages in Danger of Disappearing. The departure of many Sabean-Mandean religious leaders from Iraq also threatens the ability of the remaining community to retain their rituals (ibid.).

It is clear that ethno-religious minorities continue to be under threat in Iraq. Civic activists repeatedly expressed concerns about the extinction of minorities in Iraq<sup>5</sup>. Due to weak government protection, security concerns, and discrimination including in laws and legislations. Article 2- First of Iraq constitution (Constitution, 2005) states that Islam is the official religion of the State and is a foundation source of legislation. Clause A of the same article states that no law may be enacted that contradicts the established provisions of Islam (ibid.).

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<sup>5</sup><https://edition.cnn.com/2016/12/14/middleeast/iraq-minority-voices/index.html>

Article 26 of the Unified National Identity Law<sup>6</sup> No. 3 of 2016 is one example of discrimination against the non-Muslim minorities like Chaldeans/Assyrians/Syriacs, Armenians, Yazidis, and SabeanMandeans. It constitutes a violation to the Iraqi Constitution, which in Article 37<sup>7</sup> protects the individual from intellectual, political and religious coercion; in Article 41<sup>8</sup> grants freedom in commitment to personal status choices; in Article 42<sup>9</sup> grants freedom of thought, conscience, and belief; and in Article 14<sup>10</sup> grants all Iraqis equality before the law(Constitution, 2005).

Article 26 of the Unified National Identity Law also makes it permissible for a non-Muslim to change his religion in accordance with the provisions of the Unified National Identity Law, while acknowledging that it is not permissible to change the religion of a Muslim because it is considered apostasy according to the concept of Islamic law (Shari'aa).The article providesfor changing the civil record of a minor indicate his religion as a Muslim once one of the parents converts to Islam. Also, the article contradicts with the Islamic Shari'aaLaw which states "no compulsion in religion".

The forceful conversion of minors to Islam has had its negative social consequences, creating problems to many Christian, SabeanMandaean, and Yazidi families. For years, non-Muslim Iraqis have sought to amend the law so children can maintain their religion at birth and to be given the right to choose to change their religion after reaching adulthood but with no luck(HHRO, 2016).

On the other hand, provisions of Article 2 of the Personal Status Law No. 188 of 1959, states that the law is applicable to all Iraqis excluding those who have a special law to regulate their personal status affairs. Since thenon-Muslim communities in Iraq do not have a special law to regulate their personal status affairs, as such, Law No. 188 of 1959 which is mainly derived from the Islamic Shari'aa applies to non-Muslim communities as well in all matters including marriage, divorce, inheritance, custody over children, adoption...etc, in spite of the fact that non-Muslim communities have different provisions in their respective jurisprudence.

These laws place considerable pressure on non-Muslim minorities, who often feel their religious freedom is constrained, and a driving factor for considering immigration in search of an environment where they can enjoy religious freedom and exercise it openly(HHRO, 2016).

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<sup>6</sup> Article 26: Minors should follow the religion of the parent whom converted to Islam.

<sup>7</sup>Article 37- Second of the constitution: Second: The State shall guarantee protection of the individual from intellectual, political and religious coercion.

<sup>8</sup>Article 41 of the constitution: Iraqis are free in their commitment to their personal status according to their religions, sects, beliefs, or choices, and this shall be regulated by law.

<sup>9</sup>Article 42 of the constitution:Each individual shall have the freedom of thought, conscience, and belief.

<sup>10</sup> Iraqis are equal before the law without discrimination based on gender, race, ethnicity, nationality, origin, color, religion, sect, belief or opinion, or economic or social status.

### **3. The Constitutional Organization of the State and Constitutional Principles on Immigration and Asylum**

#### **3.1 Constitutional Organization of the State**

The Republic of Iraq is a single federal, independent and fully sovereign state in which the system of government is republican, representative, parliamentary, and democratic.

Article 1: The Republic of Iraq is a single federal, independent and fully sovereign state in which the system of government is republican, representative, parliamentary, and democratic, and this Constitution is a guarantor of the unity of Iraq.

Article 47: The federal powers shall consist of the legislative, executive, and judicial powers, and they shall exercise their competencies and tasks on the basis of the principle of separation of powers.

The Judiciary is independent. The federal judicial power is comprised of the Higher Juridical Council, the Federal Supreme Court, the Federal Court of Cassation, the Public Prosecution Department, the Judiciary Oversight Commission, and other federal courts as regulated by law.

Article 87: The judicial power is independent. The courts, in their various types and levels, shall assume this power and issue decisions in accordance with the law.

Article 88: Judges are independent, and there is no authority over them except that of the law. No power shall have the right to interfere in the judiciary and the affairs of justice.

Article 89: The federal judicial power is comprised of the Higher Juridical Council, the Federal Supreme Court, the Federal Court of Cassation, the Public Prosecution Department, the Judiciary Oversight Commission, and other federal courts that are regulated in accordance with the law.

The constitution gives the Federal Supreme Court jurisdiction to oversee the constitutionality of laws and regulations in effect; interpreting the provisions of the Constitution; settling disputes that may arise between the federal government and the regional or provincial governments; settling accusations against the President, the Prime Minister or the Ministers; and ratifying results of national elections (Articles 93)<sup>11</sup>. Decisions of the Federal Supreme Court are final and binding for all authorities (Article 94)<sup>12</sup>.

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<sup>11</sup>Article 93: The Federal Supreme Court shall have jurisdiction over the following: First: Overseeing the constitutionality of laws and regulations in effect. Second: Interpreting the provisions of the Constitution. Third: Settling matters that arise from the application of the federal laws, decisions, regulations, instructions, and procedures issued by the federal authority. The law shall guarantee the right of direct appeal to the Court to the Council of Ministers, those concerned individuals, and others. Fourth: Settling disputes that arise between the federal government and the governments of the regions and

The Iraq federal system is composed of a decentralized capital (Baghdad); the Kurdistan Region; governorates; as well as local administrations.

The constitution clearly identifies the exclusive powers of the federal government. Among other issues, the federal government has exclusive powers over: Formulation of foreign policy and diplomatic representation; Formulation of and the execution of national security policy and the security of borders; Formulating fiscal and customs policy; and Regulating issues of citizenship, naturalization, residency, and the right for political asylum. The constitution gives supremacy to the region and governorates on all matters that do not constitute an exclusive power to the federal government<sup>13</sup>.

The decentralization process in Iraq is facing many challenges due to power overlap and conflicts over the distribution and management of wealth and revenues between the central, regional and provincial government. The Kurdistan region of Iraq is enjoying more autonomy comparing with other areas of Iraq, for its own pre-2003 status as a None Fly Zone, which puts the region outside the jurisdiction of Baghdad and enjoys international protection.

### **3.2 Constitutional Entrenchment of the Principle of Asylum**

The Constitution of Iraq guarantees the right for political asylum in Iraq. Article 110 gives the federal government the exclusive power over governing issues of citizenship, naturalization, residency, and the right for political asylum. Provisions of Article 21 sets the scope as follow:

Article 21-Second states “A law shall regulate the right of political asylum in Iraq. No political refugee shall be surrendered to a foreign entity or returned forcibly to the country from which he fled”.

Article 21-Third states “Political asylum shall not be granted to a person accused of committing international or terrorist crimes or to any person who inflicted damage on Iraq”.

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governorates, municipalities, and local administrations. Fifth: Settling disputes that arise between the governments of the regions and governments of the governorates. Sixth: Settling accusations directed against the President, the Prime Minister and the Ministers, and this shall be regulated by law. Seventh: Ratifying the final results of the general elections for membership in the Council of Representatives. Eighth: A. Settling competency disputes between the federal judiciary and the judicial institutions of the regions and governorates that are not organized in a region. B. Settling competency disputes between judicial institutions of the regions or governorates that are not organized in a region.

<sup>12</sup>Article 94: Decisions of the Federal Supreme Court are final and binding for all authorities.

<sup>13</sup>Article 110: The federal government shall have exclusive authorities in the following matters: First: Formulating foreign policy and diplomatic representation; negotiating, signing, and ratifying international treaties and agreements; negotiating, signing, and ratifying debt policies and formulating foreign sovereign economic and trade policy. Second: Formulating and executing national security policy, including establishing and managing armed forces to secure the protection and guarantee the security of Iraq’s borders and to defend Iraq. Third: Formulating fiscal and customs policy; issuing currency; regulating commercial policy across regional and governorate boundaries in Iraq; drawing up the national budget of the State; formulating monetary policy; and establishing and administering a central bank. Fourth: Regulating standards, weights, and measures. Fifth: Regulating issues of citizenship, naturalization, residency, and the right to apply for political asylum. Sixth: Regulating the policies of broadcast frequencies and mail. Seventh: Drawing up the general and investment budget bill. Eighth: Planning policies relating to water sources from outside Iraq and guaranteeing the rate of water flow to Iraq and its just distribution inside Iraq in accordance with international laws and conventions. Ninth: General population statistics and census

Although the Iraqi Constitution and laws guarantee rights to citizens and all who live on Iraqi territory, as stated by the Rights and Liberties in Section Two of the constitution, but the practice is totally different.

Political instability and fragile security undermine the ability of the executive authorities to enforce the law and to ensure the rights. Also, the independency of the Judiciary is questionable due to high political pressure without enough protection. Judges fearing for their lives and the lives of their families cannot enforce the law and achieve justice especially when many of them became victims to terrorism. (Bayazid, 2016)

The same applies to the refugees, their legal status, rights and scope of protection. In light of this reality, one can imagine the level of vulnerability of refugees and displaced persons in terms of their rights and protection.



## 4. The Relevant Legislative and Institutional Framework in the Fields of Migration and Asylum

Iraq does not have an integrated plan on immigration and asylum seekers. Iraq has not enacted a relevant law until now. But Iraq has a law regulating the residency of foreigners only.

Prior to the change in 2003, the government only recognized asylum for political or military reasons. Also, the government then offered some groups special treatment, such as the Palestinians who fled their homeland in 1948, granting them all the benefits that Iraqi nationals are entitled to except citizenship. The same was extended to the Iranian Opposition known as Mujahedeen-e-Khalq (MEK) based in Iraq since the 1980s. On the other hand, it stripped thousands of Iraqis of their Iraqi citizenship on the grounds of their affiliation with other countries, especially Iran, and took forceful measures to deport them.

Before 2003 Iraq also embraced Turkish refugees of Kurdish origin, most of them the families of PKK and settled in camps. The most important is the camp of Makhmour, 25 kilometers east of Mosul on the way to Erbil.

Similarly, Iranian Kurds opposed to the regime of Iran were placed in the Tash camp near Ramadi, some fifty kilometres from Fallujah, which was closed in 2006 by the order of the Ministry of Interior in coordination with Kurdistan Regional Government of Iraq where UNHCR transferred the refugees to the Kurdistan Region of Iraq and were then merged into the Kurdish community there, where low-cost houses established within the residential complex of Barika near Sulaymaniyah, some of them were resettled in Sweden by the relevant UN agencies.

“Given the Arab nationalist ideology of the Baath regime that promotes for the development and creation of a unified Arab state, the government did not provide the status of refugees to asylum seekers from Arab countries. Instead, they were treated as cross-border displaced”. (Hantook, 2018)

After the change in 2003, the US military in Iraq signed an agreement with the MEK in 2004, promising that members would be treated as “protected persons” under the Fourth Geneva Convention. In 2009, Iraqi forces raided Camp Ashraf, the group’s long-time base north east of Baghdad (Khalis Area), shortly after US-led forces handed over responsibility for the camp to the Iraqi government. The group was later relocated to Camp Liberty, a former military base in the capital. The UN repeatedly expressed concern about the safety and security of residents of these camps. (UNAMI, 2011)

In December 2011, a Memorandum of Understanding was reached between the United Nations and the Government of Iraq, and brokered by the Government of the United States, for the express purpose of resettling these individuals as refugees in third countries. The camp was officially closed after the last 280 residents were flown to Albania in September 2016. ( The Guardian, 2016)

UNHCR supervised the camp of Makhmour for Turkish refugees of Kurdish origin until 2008, and later came under the supervision of the Iraqi state, supervised directly by Kurdistan Regional Government of Iraq at present. The camp administratively follows the province of Nineveh, 45Km from Erbil, "where the number of refugees is more than (10000) Turkish refugees, and that their legal status is considered asylum seekers" (Hantook, 2018)

## 4.1 The National Policy on Immigration and Asylum

While Iraq is not a party to the Refugee Convention of 1951 or its protocol of 1967, the Iraqi government has issued two legislative instruments related to refugees in Iraq: Law No 21 of 2009 establishes the Ministry of Migration and Displacement to provide assistance and services to both internally displaced persons and foreign refugees inside Iraq; and the Political Refugee Act No. 51 of 1971 regulating political asylum in Iraq. Nevertheless, Iraq does not have a national system for the protection of refugees and asylum seekers.

The government generally cooperates with the UNHCR and other humanitarian organizations to provide protection and assistance to the refugees, IDPs, asylum seekers, and stateless residents in the country. Since the beginning of the crisis in 2014, after ISIL invasion of Iraq and Syria, the UNHCR took the lead in the registration and determination of refugee status for asylum-seekers.

The humanitarian community - under the leadership of the UNHCR, 10 UN sister agencies and some 34 partner organizations - has been working closely with the government of Iraq and the Kurdistan Regional Government in order to provide a coordinated response to the protection and access to services for Syrian refugees in Iraq. The Ministry of Migration and Displacement is a key government partner and the Ministry of Interior of the Kurdistan Regional Government is the main partner for the refugee response specific to the Kurdistan Region of Iraq, while the Ministry of Planning is playing an increasingly important and dynamic role in the design and monitoring of the refugee response programme.

The need for effective coordination between the UN and the KRG has resulted in the establishment of a Joint Crisis Centre (JCC) in May 2015, which has been operationally equipped with support from UNDP, the objective of which is to effectively coordinate government actions in response to the crisis and to liaise with the international community. (UNHCR, 2016)

Since January 2016, there are on-going efforts to handover responsibility of primary health care in camps to governmental health departments. The goal is to integrate provision of primary health care in the national system.

**Table 4: Sector Support by Agency**

Sector	Lead/ Co-lead
Protection	UNHCR
Food	WFP/FAO
Education	UNICEF/Save the Children
Health	WHO/UNHCR
Shelter	UNHCR
Basic Needs	UNHCR
WASH	UNICEF/UNHCR

(UNHCR, 2016)

UNHCR is leading the Registration process; Protection; Camp Coordination and Camp Management (CCCM); Shelter/Non-Food items clusters, as part of the cluster coordination mechanism for IDP response; and leading the humanitarian response for Syrian refugees in coordination with the authorities through the Regional Refugee and Resilience Plan (3RP).

The Government formed a Relief Committee, chaired by the Minister of Migration and Displaced, as well as support committees to facilitate procurement, camp constructions, and provision of health services.

On the other hand, The KRG has granted residency permits to Syrian refugees that grant freedom of movement within the Kurdistan Region of Iraq; right to education free of charge in public schools on par with Iraqi nationals as well as right to work. Refugees holding a residency permit are also granted free access to health services in the Kurdish region. Those without residency permits find free services in refugee camps.

## **4.2 The National Legislation on Immigration and Asylum**

While Iraq is not a party to the Refugee Convention of 1951 and the protocol of 1967, the Iraqi government has issued two legislative instruments related to refugees in Iraq: The Ministry of Migration and Displacement Law No 21 Of 2009; and The Foreigners' Residency Law No. 76 of 2017. (The Council of Ministers)

### **4.2.1 The Ministry of Migration and Displacement Law No 21 Of 2009**

The law sets the scope of work of the Ministry as providing assistance and services to both internally displaced persons and foreign refugees inside Iraq.

Article 2- Sixth of the law defines Palestinian refugees as those who have been forced to leave their homeland since 1948 and who have been legally residing in Iraq and whose asylum has been accepted until the date of enforcement of the law. While Article 2- Seventh recognizes refugees of other nationalities as a result of persecution due to race, religion, nationality, belonging to a particular social group or political view, or as a result of exposure to violence or events seriously undermining public security and threatening their lives, physical safety or freedoms, whose asylum has been accepted in accordance with the law and international conventions to which Iraq is a party.

Article 3 of the law sets the framework of support, facilitation, coordination and provision of services in emergency circumstances to the categories recognized by the law, including internally displaced Iraqis and Iraqis in the Diaspora; in addition to refugees from Palestinian descent and other nationalities. Article 3- Second provides for improving their conditions to reach the minimum basis determined based on clear and specific criteria in light of the guidelines of the United Nations and international laws, charters and conventions taking into account national interest and internal considerations. While Article 3- Fifth focuses on coordination and cooperation with the concerned parties inside and outside Iraq to provide solutions and services.

Article 7 of the law provides for the formation of a National Committee for Migration and Displaced Persons' Affairs, under the chairmanship of the Minister and the membership of a number of experts and specialists from within the Ministry, for coordination with other ministries. It gives the Minister the authority to regulate the work of the committee.

Article 8 of the law provides for the formation of an Emergency Operation Room headed by the Minister or his designee. The Emergency Operation Room is responsible for coordination with other ministries and competent authorities; civil society organizations; and international organizations to create adequate resources and take the necessary action in response to emergency situations facing the categories identified in Article 2 of the Law.

In addition, Article 12 of the law gives the Ministry the power to open offices, in coordination with the Ministry of Foreign Affairs, in Iraqi embassies and consulates in countries where there is an Iraqi community, for the purpose of extending its services to Iraqi refugees in those countries.

In general, Law No. 21 of 2009 constitutes the first legal instrument for the Iraqi government to identify the beneficiaries from refugees and internally displaced persons as recognized by Article 2 of the law. But the implementation of the law is facing setbacks to the extent that the ministry cannot achieve its main objectives in terms of providing the protection required to the categories covered by the law.

The law repeats expressions like care, provision of services, solutions, etc. but does not mention the term Protection in any of its clauses, nor the type and quality of services provided. Ambiguity folds all aspects related to the legal status of refugees and asylum seekers. It left open all matters related to requirements for protection such as identification papers, temporary residency...etc.

The law also grants the ministry the right to form a committee specialized in the affairs of migrants and displaced persons, while the ministry as a whole is responsible for providing its services to migrants and displaced persons.

Article 3- first of the law focuses on addressing the affairs of the categories identified in Article 2 of the law as groups and not as individuals. It gives an exception to individuals with special cases without identifying the standards, that the phrases in it are generally opened .

The law in its current form is vague and fails to provide specific remedies to many of the problems facing migrants and asylum seekers in Iraq as well as facing internally displaced Iraqis.

#### **4.2.2 The Political Refugee Law No. 51 of 1971**

The law addresses political refugees in Iraq. Article 1- Third of the law defines the Refugee as any person who resorts to the Republic of Iraq for political or military reasons.

Article 2 allows for Arab citizens or foreigners residing outside Iraq, residing in Iraq, or displaced from the border area to Iraqi territory to apply for asylum in Iraq.

Article 3 lists the conditions for accepting an application for asylum when the following is ascertained: Being a refugee, his good intention to resort to the Republic of Iraq is proved, the sole purpose of the asylum is not only to find a way to earn and live, and no warnings and doubts in his request.

Article 4 prohibits the extradition of a refugee to his country under any circumstance. An applicant may be deported to another country in case the application is rejected.

Article 5 of the law provides for the formation of a Permanent Committee for Political Refugees' Affairs in Baghdad. It is responsible for examining refugee cases in accordance with the instructions issued by the Minister. The Committee is headed by the Deputy Minister of Interior or his designee. Its membership is composed of representatives from: the Revolutionary Command Council; the Ministry of Interior; the Directorate of Military Intelligence; the Directorate

of Public Security; and the General Directorate of Nationality. The Committee is administratively and financially linked to the Ministry of Interior, including salaries, allowances and expenses for the refugees. The Committee may assign Iraqi diplomatic missions the task of investigations on persons residing outside Iraq.

Article 6 sets the responsibility of the committee to submitting recommendations with justifications on each case to the Minister of Interior for final decision. The decision of the Minister can be appealed before the President of the Republic within 15 days from the date of notification. Decisions of the President of the Republic are final.

Article 8 the provisions of the Foreigners' Residence Act shall be exempted from: A person his asylum has been accepted or has entered Iraq as refugee. When a request is denied to a person covered by provisions of article 2 of this law regarding admission of asylum in Iraq, the Minister (Interior Minister) may accept his residence application according to the Foreigner's Residence Law or reject it and the decision of the Minister shall be final.

Article 16 of the law grants the Minister of Interior the power to revoke the decision of asylum if the refugee breaches the security or political interest of the state. He may order the deportation thereof, in addition to referral to the court if his act is punishable by law. The Minister may issue an order to detain a refugee in the event of his breach of security or the order for a period not exceeding two months pending the decision to deport him.

Although, Articles 11, 12 and 13 of the law grant the political refugee many benefits; Articles 14, 15, 17 and 18 oblige the Ministry of Interior and other security agencies to follow up on all matters related to the political refugee. Changes to place of residence or movement inside and outside of Iraq require the approval of the Minister of Interior, and the approval of the President of the Republic for a trip outside Iraq exceeding one month.

The law has some flaws especially in Article 8, it is not clear about the status of residency of applicants, the law is excluding applicants for asylum from the provisions of the Foreigners' Residency Law and also excludes those whose application is approved. In addition, the law does not grant asylum applicants whose application is denied the right to appeal the decision before the judicial court, while the draft of a new law on refugees proposed by the Ministry of Migration and Displacement to the Parliament for discussion and voting indicate in Article 5 Sixth, that those who has been refused for asylum have the rights to challenge the decision in the administrative court. Unfortunately, the draft is still not passed in the Iraqi Parliament (Hantook, 2017).

In a meeting with Major General Retired, Dr. Mared Abdulhasan Hasoun, he said:

“Although Iraq has a Law for Political Refugees since 1971, but its implementation is totally controlled by Saddam. Political refugees in Iraq were either leaders of Bath Party from other countries (like Syria), or members of oppositional parties in other neighboring countries who did not have good relations with Iraq (like the Iranian opposition MEK)”.

### **4.2.3 The Foreigners' Residency Law No. 76 of 2017**

The Iraqi Council of Representatives passed a new law to regulate the residency of foreigners in Iraq: the Foreigners' Residency Law No. 76 of 2017

The law aims to regulate the entry and exit of foreigners to and from the Republic of Iraq; identify types of entry and exit visas for foreigners to the Republic of Iraq; and regulate the residency of foreigners inside Iraq.

Articles 3 and 8 of the law give the right to a foreigner to enter Iraq according to specific conditions and criteria. The law provides for the foreigner to have a passport or a travel document with not less than six months validity; having an entry visa stamped in his passport or travel document upon his arrival, and a stamped exit visa upon his departure; a proof for being free of communicable diseases, infectious diseases and HIV; and to enter and exit the country through the official border crossing points (Art.3).

A visa applicant must submit proof on being: financially able to cover the costs during his stay in the country; there is no impediment to his entry into Iraqi territory related to public health, public morals, or public security; not being accused of or convicted of a crime outside Iraq; has not been deported or expelled from the country before unless the causes are removed provided the passage of two years on the deportation or expulsion; and being free of communicable diseases, infectious diseases and HIV (Art 8).

Article 9 of the law allows for the granting of a renewable one-year entry visa in the following cases: for the purpose of joining the head of the household or the guardian; for the purpose of studying in one of Iraq's educational institutions or trainings in one of the public institutions, uniting the family; a foreigner widow or divorcee of an Iraqi husband; and to the foreign passport holder spouse and children of an Iraqi (man or woman).

Article 10 of the law provides for the applicant to provide evidence on the reason for his entry to Iraq and on the entity that will sponsor his stay in the event that he becomes financially dependent.

Article 11, 12, 13 and 15 of the law set the entry and exit visa requirements for foreigners working in Iraq.

Article 19- First of the law provides that a foreigner with a regular visa and who wishes to extend his stay in Iraq may apply for a residency permit of one year, renewable as long as the requirements for granting the permit stand. Article 19- Second grants the Director General of the General Residency Directorate at the Ministry of Interior the right to reject or approve the extension of the residency permits according to public interest. The applicant may appeal the decision before the Minister of Interior within 15 days from the day of notification provided that he receives an answer to his appeal within 30 days. Article 19- Third grants the Minister of Interior the right to withdraw a valid residency permit for reasons related to public interest. Article 19- Fourth, provides that a foreigner return his expired residency permit when applies for the exit visa. Article 19- Fifth states that if a foreigner leaves Iraq for a period exceeds six months, the remaining period of his residency permit will be cancelled and he must apply for a new residency permit upon his return.

Chapter Five of the law (Articles 24-35) regulates the process of deportation and expulsion of foreigners from Iraqi territories. Article 26 grants the right to the officer in charge to expel a foreigner who has illegally entered the country. Article 27 gives the right to the Minister of Interior, or his designee, to deport a foreigner who has legally entered Iraq but is not complying with the visa requirements; or a foreign resident who lost one of the conditions for his residency in Iraq. Article 28 and 29 gives the right to the minister, or his designee, to restrict the place of residence of a foreigner, a stateless person, or one who presents a threat to public security for a period specified in the decision for expulsion or deportation. Article 30 states that a decision to deport a foreigner may include the deportation of his dependents. Article 31 states that a deported foreigner cannot enter Iraq without a prior decision from the minister. Article 34 gives

the right to the foreigner to ask for a period not exceeding 60 days to settle his affairs in the country before deportation provided that he has an Iraqi grantor.

When the Minister or his representative issues a decision of deportation or expulsion against a foreigner, the foreigner shall be held in the detention centre until deportation to his country or to a third country in the event of a danger to his life in his country is arranged because Iraq does not have special centres for the deportation of foreigners. The level of respect to human rights depends on the police measurements of the detention centre in which the foreigner is being held. One of the disadvantages of this law is not granting the right to a foreigner to appeal the decision of deportation or expulsion before the judiciary.

Chapter Seven of the law (Articles 38-48) sets penalties in case of violations to its provisions. Penalties vary from imposing fines to imprisonment or both penalties; as well as deportation.

Article 44 of the law sets the penalty in the case of the expiration of residency permit. Penalties start from a fine of 100,000 Iraqi Dinars and increases by 10,000 Iraqi Dinars for every day, provided that the total penalty does not exceed 5,000,000 Iraqi Dinars.

The new Foreigners' Residency Law No. 76 of 2017 is more acceptable and relatively in line with human rights laws and norms. The law reduced the penalty for a foreigner illegally staying in Iraq from life imprisonment and confiscation of movable and immovable property in the annulled law No. 118 of 1978 to a fine of 5 million Iraqi dinars (equivalent to 4 thousand U.S dollars).

Under the current circumstances in Iraq, the law can be exploited especially by foreign terrorists to access Iraq and carry out their terrorist attacks.

### **4.3 The sub-National Legislation**

The Iraqi Constitution gives the federal government the exclusive power over regulating issues of borders, citizenship, naturalization, residency, and the right to political asylum. Nevertheless, there are procedural discrepancies between the region and the central government of Iraq.

The central government does not issue residency permits, nor work permits to asylum seekers. While the Kurdistan Regional Government issues residency permits that grant the right to work; freedom of movement within the three governorates of Kurdistan region of Iraq; and the right to education free of charge in public schools on par with Iraqi nationals. Refugees holding a residency permit are also granted free access to health services in the Kurdistan region. Those without residency permits find free services in refugee camps.

## 5. The Legal Status of Foreigners

### 5.1 Asylum applicants

Syrians and other citizens of the Arab countries in Iraq are treated as Defacto Refugees. In the absence of a law regulating the situation of refugees, Iraq treats arrivals to Iraq without political asylum or residency as displaced persons and are treated as refugees (Hantook, 2018).

According to Law 21 of 2009 Iraq adheres to the guidelines of the United Nations. The UNHCR registers Syrian and non-Syrian migrants as asylum seekers.

A Syrian migrant must pass the security check at the border cross point with Kurdistan Region of Iraq. The Asayish is in charge of security in border cross points in the region. In case of any doubts or security concerns, the migrant will be expelled immediately. Those who are admitted entrance will be referred to a joint committee composed of a representative of the security forces in the region and of the Camp Management Authority in the area to finalize the requirements for registration as asylum seekers.

Then, applicants will be transferred to the camps and provided with aid and assistance. Applicants who wish not to stay in camps must apply for a residency permit in order to live and work in any of the governorates within the Kurdistan Region of Iraq. The residency permit entails right to work; freedom of movement within the three governorates of Kurdistan Region of Iraq<sup>14</sup>; and the right to education free of charge in public schools on par with Iraqi nationals. Refugees holding a residency permit are also granted free access to health services in the Kurdish region. Those without residency permits find free services in refugee camps.

Syrians who wish to stay outside the Kurdistan Region must have a valid visa. The central government may grant a three-month visa for Syrians. They face immense challenges with applications for asylum upon expiry of the entry visa. (Hantook, 2018)

Increasing security concerns have also led to some instances of refoulement of refugees without their ability to access courts or benefit from legal assistance.

The Ministry of Migration and Displacement with the support of UNHCR is taking over registration of Syrian and non-Syrian asylum seekers in the rest of the Iraqi governorates. The central government does not issue residency permits, nor work permits to asylum seekers.

However, local authorities in the holy provinces of Najaf and Karbala have granted residency to Syrians who arrived these provinces for religious visits. The local authorities are turning a blind eye for Syrians working without work permit. The two provinces consider Syrians as tolerant refugees. (Hantook, 2018)

Iraq laws related to asylum do not give role to the judiciary in deciding on asylum application. They grant such authority to the Minister of Interior or his representative. If the Minister refuses the application for asylum in Iraq, the asylum seeker may apply for residency. The judiciary has no role in the process<sup>15</sup>.

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<sup>14</sup>Erbil, Duhuk and Sulaimania

<sup>15</sup>Law No. 51 of 1971



## **5.2 Beneficiaries of international protection**

According to the policy of the Iraqi Government, all non-Iraqis registered by the UNHCR and holding the Protection Document are treated as asylum seekers. Those who do not possess the Protection Document are subject to the provisions of The Foreigners' Residency Law No. 76 of 2017.

## **5.3 Regular migrant**

The Iraq Foreigners' Residency Law No. 76 of 2017 regulates all matters related to granting visas and residency permits to non-Iraqis. A work permit to a foreigner is regulated by the Labour Law No. 37 of 2015; Directives No.18 of 1987 and Resolution of the Ministry of Labour and Social Affairs No. 80 of 2013. In the Kurdistan Region of Iraq, a residency permit entails the right to work in the region.

## **5.4 Undocumented migrants**

All undocumented migrants are subject to the Iraq Foreigners' Residency Law No. 76 of 2017, that previously discussed .

## **5.5 Unaccompanied foreigner minors**

The UNHCR protection team at the border cross points is responsible for the registration of all migrants. It establishes family composition, documentation, identification of specific needs and vulnerabilities, and allows for the referral of persons with specific protection needs, such as those with medical needs, the elderly, unaccompanied and separated children, and so forth. It also provides access to assistance and protection, including protection from refoulement.

Unaccompanied minors either live with their relatives or with people who are comfortable with them. They may have formerly been a neighbor to them, or have had prior relationship with them in the mother country or camp. They are provided with social and psychiatric care by International Organizations and the Ministry of Migration and Displacement.. Families hosting unaccompanied minors take priority in the provision of services. Orphan minors take priority in the resettlement process.

## 6. Refugee Crisis Driven Reforms

In response to the refugee crises, the Iraqi Government took significant steps to reform its national legal and procedural system in terms of migration and asylum.

The government established mechanisms for close coordination with UNHCR and sister organizations, the Kurdistan Regional Government, as well as with local NGOs. The government, with the support of the UNHCR, focused on building capacity of staff of the Ministry of Migration and Displacement in terms of international protection to migrants and asylum seekers.

On October 31, 2016, the UNHCR, the UN Refugee Agency, and the Permanent Committee for Refugees at the Ministry of Interior signed a Memorandum of Understanding to enhance the protection of refugees and asylum seekers in Iraq. Under the terms of the Memorandum, the Government of Iraq will provide registration and documentation to refugees, asylum seekers and persons of concern. The UNHCR will provide advice, technical and other support to the Permanent Committee for Refugees to facilitate the management of refugee affairs in Iraq.

The Government has been deeply involved in the planning and design of the Iraq 3RP Regional Refugees & Resilience plan 2017-2018 in response to the Syria crisis.

On the legislative side, the Iraqi Council of Representatives passed a new law to regulate the residency of foreigners in Iraq, the Foreigners' Residency Act No. 76 of 2017. Also, in 2017 the Iraq Council of Ministers approved a new bill on refugees. The bill came after consultation with many stakeholders in order to meet international requirements for the protection of refugees. However, political division crippled the enactment of the new law. The bill passed the first reading in the Council of Representatives, and is still pending.

## 7. CONCLUSION

Though Iraq has not acceded to Geneva Convention for the year 1951 on Refugees and annexed thereto the Protocol of 1967, however it is devoting effort to implement its previously mentioned national laws, such as the law of the Ministry of Displacement and Migration Act No. 21 of the year 2009 and the Foreign Residence Act No. 76 of the year 2017, to fill the void.

In addition to the fact should not be ignored that the declarations and international conventions on human rights ratified by Iraq and published in the Iraqi Gazette have the force of law in Iraq, such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights of the year 1966 (ICCPR), International Covenant on Economic, Social and Cultural Rights of the year 1966 (ICESCR), the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), the International Convention on the Elimination of all forms of Racial Discrimination (ICERD) and other international instruments ratified by Iraq and published in the official Gazette, have the force of Iraqi law, and can be used by the perpetrators of the law in the judiciary and administration, as well as in dealing with humanitarian commitment to refugees within the framework of respect for human rights, however the mechanisms of implementation according to the international rules often in the field were deficient in the application due to a lack of expertise and experience.

Iraq is a country with a new experience in reception of huge number of refugees. Regional conflicts drove the citizens of surrounding countries, especially the Syrians, to seek asylum in Iraq and mostly in the Kurdistan Region of Iraq. The majority of asylum seekers are Syrian Kurds and they find sympathy from the regional authorities.

In spite of hosting a considerable number of asylum seekers, Iraq lacks the financial, organizational and administrative capacity to respond to the influx of refugees at a time when the country is facing political instability and security challenges. The invasion of the so called Islamic State in Iraq and the Levant (ISIL) into large swaths of Iraq in 2014 forced the internal displacement of over three million Iraqis and the migration of thousands to other countries. The Iraqi forces could not defeat ISIL unless the support of international forces led by the US.

Iraq has all the elements required for being a destination country for refugees, but decades of a totalitarian ruling regime intolerant to his own people forced members of ethnic and religious communities to flee the country and seek refuge in other countries.

Following the fall of previous regime in 2003, there was a significant change in Iraq's governing system and in policy directions requiring the revision of the applicable laws and the development of new legislative priorities to respond to the constitutional context and to upgrade the legal system in order to live up to the international standards in terms of migration and asylum.

The role of UN agencies and the International and National particularly Non-Governmental Organizations proved vital in the protection of millions of internally displaced Iraqis and hundreds of thousands of Syrian and non-Syrian migrants and in responding to their urgent needs. Host communities were very supportive and hospitable towards the new comers and contributed to the support efforts.

Building on the above factors, more effort needs to be made to invest in the progress achieved so far in terms of migration and asylum in Iraq.

## 8. Appendices

### 8.1 ANNEX I: Overview Of The Legal Framework On Migration, Asylum And Reception Conditions

Legislation title (original and English) and number	Date	Type of law (i.e. legislative act, regulation, etc...)	Object	Link/PDF
<b>Law No. 21 of 2009</b> Ministry of Migration and Displacement قانون وزارة الهجرة والمهجرين رقم 21 لسنة 2009	11/1/2010	Law	For the purpose of forming a ministry to carry out the task of providing care for migrants, displaced persons, and refugees, and find solutions to address their situation and secure their livelihood.	<a href="http://www.iraqld.iq/LoadLawBook.aspx?page=1&amp;SC=&amp;BookID=29035">http://www.iraqld.iq/LoadLawBook.aspx?page=1&amp;SC=&amp;BookID=29035</a> Al Waqa'a al Iraqyah, vol. 4141, 11 Jan. 2010, P:1
<b>Law No. 51 of 1971</b> Political Refugee Law قانون اللاجئين السياسيين رقم 51 لسنة 1971	10/4/1971	Law	To regulate political refugee in Iraq and the formation of a permanent committee to examine and study refugee cases and to deal with them.	<a href="http://www.iraqld.iq/LoadLawBook.aspx?page=1&amp;SC=&amp;BookID=8823">http://www.iraqld.iq/LoadLawBook.aspx?page=1&amp;SC=&amp;BookID=8823</a> Al Waqa'a al Iraqyah, vol. 1985, 10 Apr. 1971, P:8
<b>Law No. 76 of 2017</b> The Foreigners' Residency قانون اقامة الاجانب رقم 76 لسنة 2017	23/10/2017	Law	To regulate the entry to, and exit of foreigners the Republic of Iraq; identify types of entry and exit visas for foreigners to the Republic of Iraq; and regulating the residency of foreigners inside Iraq.	Al Waqa'a al Iraqyah, vol. 4466, 23 Oct. 2017, P:1

## 8.2 ANNEX 2: List of Authorities Involved In The Migration Governance

Authority	Tier of government	Type of organization	Area of competence in the fields of migration and asylum	Link
The Ministry of Migration and Displacement وزارة الهجرة والمهجرين	National	Provide assistance and services to refugees, asylum seekers, internally displaced population, and returnees.	<p>It is responsible for proposing policies and legislations as related to and internally displaced population.</p> <p>It leads the humanitarian and assistance services provided to internally displaced Iraqis, returnees, refugees and asylum seekers.</p> <p>It performs its duties in close coordination with the UN agencies; national and international organizations; authorities in Kurdistan Region of Iraq; and other ministries.</p> <p>It collects data on internally displaced Iraqis, returnees, refugees and asylum seekers.</p> <p>It has offices in all governorates except in the Kurdistan Region of Iraq.</p>	
The Permanent Committee of Refugees' Affairs- The Ministry of Interior اللجنة الدائمة لشؤون اللاجئين في وزارة الداخلية	National	Responsible for deciding on refugee application in Iraq	<p>It includes representatives from all security agencies in Iraq, Ministry of Foreign Affairs, and other ministries.</p> <p>It is responsible for reviewing all applications for refugees and proposes recommendations to the minister of interior.</p>	
The Directorate of	National	Responsible for issuing visas and	It is responsible for admittance of foreigners	

Residency at the Ministry of Interior المديرية العامة للإقامة –وزارة الداخلية		residency permits for all foreigners in Iraq except in the Kurdistan region of Iraq	to Iraqi territories at border cross point; issue residency permits, and has the power to deport or expel foreigners.  It does not issue a residency permit to asylum seekers.	
The Directorates of Residency in the Kurdistan Region of Iraq Government مديريات الإقامة في إقليم كردستان	Governorates	They are responsible for issuing residency permits in the Kurdistan region of Iraq. They are linked administratively to Iraq Ministry of Interior.	It provides asylum seekers in Kurdistan Region of Iraq with a residency permit that entail the right to work in the region.	
The Asayish الاسايش	Regional	The primary security agency operating in the Kurdistan region of Iraq	Responsible for the security check at border cross points	
The Joint Crisis Coordination Centre (JCC) at the Ministry of Interior of the Kurdistan Regional Government مركز العمليات المشتركة في إقليم كردستان	Regional		It is responsible for Collecting, collating and analyzing information about all crisis and humanitarian developments.	

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