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Legal Status of Asylum Seekers and Refugees in Iraq and Kurdistan Region of Iraq

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Abstract:

Iraq and Kurdistan Region of Iraq host more than 295,000 refugees and asylum seekers and yet do not have an inclusive national law to grant refugee status thorough fair and efficient refugee status determination (RSD) procedure. In the absence of such legal procedure, the majority of refugees in Iraq and KR-I enjoy a temporary status called "asylum seeker" status. The Political Refugee Law no. 51 of 1971 however, recognizes political and military refugees excluding categories of persons seeking asylum in Iraq for reasons of race, religion, ethnicity, membership of a particular social group and finally persons fleeing conflicts and wars. The fact that Iraq is not a party to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol makes protection of non-political refugees more problematic mainly because their status is tied in short and long terms to protection matters such as admission, *Non-Refoulement*, detention and access to rights and durable solutions. In practice, the United Nations High Commissioner for Refugees (UNHCR) and KR-I authorities grant asylum seeker status to those who do not fall under the 1971 Law in Iraq. It is witnessed however, that these non-political asylum seekers are at risk of denial to admission, detention and *Refoulement* because of the lack of an inclusive refugee law to recognize them and the existence of residency related laws that penalize illegal border crossing and illegal presence in Iraq. Moreover, Iraqi asylum system do not establish a comprehensive approach with regard to durable solutions representing in local integration, voluntary repatriation and resettlement because firstly it does not grant refugee status to all refugees which is considered the first brick in securing refugee rights and self-reliance toward durable solutions, and secondly, Iraq has taken measures to restrict essential rights of refugees including right to movement, right to work and right to naturalization. This research analyzes granting and denying asylum seeker and refugee statuses to persons seeking asylum in Iraq and Kurdistan Region in the light of applicable laws and regulations and its un-unified implementation and then examines the protections risks associated to these issues aiming at reaching some solutions.

Keywords: Refugee and Asylum Seeker Status, Iraqi Asylum System, *Non-Refoulement*, Political Refugee Law, Iraqi Refugees.

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الخلاصة :

يستضيف العراق وإقليم كوردستان- العراق أكثر من 295000 لاجئ وطالب لجوء في ظل غياب قانون وطني شامل لمنح مركز "اللاجئ" بعد إجراء فعال وعادل لتحديد مركز اللاجئ (Refugee Status Determination). في غياب مثل هذا الإجراء القانوني، تتمتع غالبية اللاجئين في العراق واقليم كوردستان بمركز القانوني المؤقت يُطلق عليه "طالب اللجوء". ومع ذلك، يعترف قانون اللاجئين السياسيين رقم 51 من عام 1971 في العراق باللاجئين السياسيين والعسكريين بمنحهم مركز "اللاجئ" ويحرم فئات اخرى من الأشخاص الذين يطلبون اللجوء في العراق لأسباب تتعلق بالاضطهاد على اساس العرق اوالدين اوالقومية اوانتماء إلى المجموعة الاجتماعية المعينة او أخيراً الأشخاص الفارين من النزاعات والحروب. كما ان العراق ليس طرفًا في اتفاقية عام 1951 المتعلقة بوضع اللاجئين وبروتوكول عام 1967 وهذا يجعل حماية اللاجئين غير السياسيين في العراق أكثر صعوبة لأن المركز القانوني للاجئ مرتبط على المدى القصير والطويل بمسائل الحماية الرئيسية منها القبول (Admission) وعدم الاعادة (*Non-Refoulement*) والاعتقال بسبب عبور غير القانوني للحدود والوصول إلى الحقوق والحلول الدائمة.

وعلى ارض الواقع، تمنح المفوضية السامية لشؤون اللاجئين للامم المتحدة والسلطات المختصة في اقليم كوردستان مركز "طالب اللجوء" لأولئك الذين لا يندرجون تحت قانون اللاجئين السياسيين لعام 1971 في العراق وفي ظل هذا يظهر أن طالبي اللجوء غير السياسيين في العراق واقليم كوردستان معرضون لخطر الحرمان من الدخول والاعتقال والاعادة الى البلد الاصلي وذلك لعدم وجود قانون شامل للاعتراف بهم وكذلك وجود قوانين الاقامة التي تعاقب العبور غير القانوني للحدود او الوجود غير القانوني في العراق. اضافة الى ذلك، فإن نظام اللجوء العراقي لا يضع نهجاً شاملا فيما يتعلق بالحلول الدائمة التي تمثل في الاندماج المحلي والعودة الطوعية وإلاعادة التوطين لانه أولاً لا يمنح مركز "اللاجئ" لجميع طالبي اللجوء في العراق الذي يعتبر أول لبنة في تأمين حقوق اللاجئين والاعتماد على الذات تجاه حلول دائمة ، وثانياً ، لاتخاذ العراق تدابير معينة لتقييد الحقوق الأساسية للاجئين بما في ذلك الحرية في التنقل والحق في العمل والحق في التجنس حرصاً لعودتهم في النهاية الى البلد الاصل. يقوم هذا البحث بتحليل موضوع منح و رفض مركز "طالب اللجوء" و "اللجوء" للأشخاص الذين يطلبون اللجوء في العراق وإقليم كردستان في ضوء القوانين والتعليمات النافذة وتنفيذها غير الموحد ومن ثم يبحث في مخاطر الحماية المرتبطة بهذه القضايا بهدف الوصول إلى بعض الحلول.

پوختە :

عێراق و هەرێمی کوردستانی عێراق میوانداری نزیکەی ٢٩٥٠٠٠ پەنابەر و پەناخواز دەکەن لە کاتێك دا کە خاوەنی یاسایەکی نیشتیمانی گشتگیر نین بۆ پێدانی سیفەتی پەنابەری لە رێگەی پرۆسەیەکی کاریگەر و دادپەروەرنەی یەکلایکردنەوەی سیفەتی پەنابەری (Refugee Status Determination). بە هۆی نەبوونی ئەم پرۆسەیە زۆربەی ئەو کەسانەی داوای پەنابەری دەکەن لە عێراق و هەرێمی کوردستانی عێراق سیفەتێکی یاسایی کاتی یان پێدەدرێت کە پێی دەوترێت (پەناخواز) وە هەروەها یاسای پەنابەرانی سیاسی ژمارە ٥١ ی ساڵی ١٩٧١ لە عێراق داندەنێت بە سیفەتی پەنابەری بە تەنها بۆ ئەوانەی کە بە هۆکاری سیاسی یان عەسکەری پەنایان بۆ عێراق هێناوە، بەڵام ئەم یاسایە ئەو کەسانە بێبەش دەکات لە پەنابەری کە بە هۆکاری چەوسانەوە لە سەر بنەمای ڕەگەز یا ئایین یا نەتەوە یا ئەندامبوون لە کۆمەڵێکی کۆمەڵایەتی یان هەڵهاتن لە کارەساتەکانی جەنگ داوای پەنابەری دەکەن. ئەو ڕاستیەی کە عێراق لایەن نیە لە پەیمانامەی ساڵی ١٩٥١ی تایبەت بە یەکلایکردنەوەی سیفەتی پەنابەری و پرۆتۆکۆڵی ساڵی ١٩٦٧ بۆتە هۆی ئەوەی کە پاراستنی پەنابەرانی غەیرە سیاسی قورستر بێت بە هۆی ئەوەی کە پێدانی سیفەتی پەنابەری لە نزیك مەودا و دوور مەودا دا پەیوەندارە بە کێشە سەرەکیەکانی پاراستن کە بریتین لە رێگەپێدان (Admission) و بە زۆر نەگەڕانەوە (*Non-Refoulement*) و دەستبەسەرکردن بە هۆی سنوور بەزاندن وگەیشتن بە چارەسەرە هەمیشەیەکان (Durbale Solutions). لە ڕاستیدا کۆمسیاری باڵای نەتەوەیەکگرتووەکان بۆ پەنابەران و دەسەڵاتە تایبەتمەندەکانی هەرێمی کوردستان سیفەتی (پەناخواز) دەدەن بەو کەسانەی کە یاسای ساڵی ١٩٧١ سیفەتی پەنابەریان پێنابەخشێت وە بەم هۆی ئەمەشەوە ئەم گروپە لە پەناخوازان دەکەونە ژێر مەترسی ڕێگەپێنەدان بۆ هاتنە ناوەوەی عێراق و دەستبەسەرکردن و گەڕانەوە بۆ وڵاتی ئەسڵی (Country of Origin)بە هۆی نەبوونی سیفەتی پەنابەری و بوونی یاسای نشینگە کە سزای هاتنە ناوەوەی نایاسایی و مانەوەی یاسایی دەدات.

سەرەڕای ئەوانەش سیستەمی پەنابەری لە عێراق پلانی تۆکمەی نیە لە یاساکانی دا بۆ دۆزینەوەی چارەسەری هەمیشەیی (Durable Solution) بۆ پەنابەران لە تێکەڵ بوون لە گەڵ کۆمەڵگەی میواندار و گەڕانەوەی ئارەزوومەندانە و نیشتەجکردن لە

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وولاتی سێیەم لە بەر ئەوەی کە یەکەم سیفەتی پەنابەری نادات بە هەموو پەنابەران وە یاساکانی هەوڵی سنوردارکردنی ئازادی و مافە سەرەتایەکان دەدات وەکو ئازادی هاتووچۆ و نیشتەجێوون و مافی کارکردن و مافی وەرگرتنی ڕەگەزنامە (Nationalization) لە پێناو ئەوەی پەنابەران بە هەر جۆرێك بێت بگەڕنەوە وولاتی ئەسڵی خۆیان و نەگەن بە چارەسەرەکانی تر. ئەم توێژینەوەیە پێدانی سیفەتی پەنابەری و پەناخوازی و بێبەشکردنی گروپە جیاوازەکان لە عێراق و هەرێمی کوردستان بە پێی یاسا و ڕێنماییەکان و چۆنیەتی و جیاوازی لە جێبەجێکردنی یاسا و ڕێنماییەکان شیدەکاتەوە بە پشتبەستن بەو مەترسیانەی پاراستن کە ڕووبەڕووی ئەم کەسانە دەبێتەوە بۆ دوزینەوەی چارەسەرکردنیان.

1-**Introduction**:

Seeking asylum is not a new issue in the world however, it got the attention of the international community mainly as result of wars and armed conflicts that caused mass displacements in different areas around the world particularly in Europe after the World War I and II. At the international level, following some international instruments addressing this concern for specific categories of refugees and in different regions, the 1951 Convention Relating to the Status of Refugees and its Protocol of 1967 became the main source of international refugee law and then the United Nations Office of High Commissioner for Refugee (UNHCR) has legally been mandated to provide international protection to refugees. At the national level, Iraq received Palestinian refugees back in 1948, 1967 and 1990s, Iranian refugees in 1980s and then very recently refugees from Syria, Turkey and Iran. Iraq is not a party to the 1951 Convention, and it has a refugee law that recognizes very limited categories of refugees. In the face of recent refugee influxes in Iraq particularly in Kurdistan Region of Iraq, the question of legal status of persons seeking asylum strongly presents itself. The question is considered essential for refugees due to its impacts on many protection matters including admission, recognition, access to rights and services and, durable solutions in longer term. The importance of this research appears in examining the effectiveness of the asylum system in Iraq and KR-I in providing protection to those who have well-founded fear of persecution in the country of origin and its conformity with standards of international protection.

The research uses an analytical and comparative method in presenting and analyzing laws and practices in KR-I and Iraq and then international standards in order to examine the conformity of these laws and practices with international standards.

The research is planned to cover a short history of refugee issues in the world and Iraq at first and to explore the international and national legal framework for refugees. After that, it examines refugee protection concerns such as admission, detention, the principle of *Non-Refoulement* and its limitations in Iraq and KR-I and then study refugee and asylum seekers' rights and durable solutions in Iraq. The research is closed with some conclusions and recommendations.

2 -**Definition of Refugees and Asylum Seekers in the International Refugee Law:**

Throughout history, the definition of refugees has evolved very much and it was believed during a time that the right to seek asylum was born with a religious character as the religious places were privileged to protect them from persecution and this was adopted by ancient Egyptians, Greeks, Romans and Arabs (Al-Shukri, 2010, 3). After that the protection of individuals fleeing persecution for reasons of political opinions emerged with the French Revolution where it granted asylum to foreigners who abandoned their homeland for the cause of liberty (see Article 120 of the Constitution Act of 1793 of France).

The Scientific Journal of Cihan University – Slemani **PP: 105-127**
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At international level states started to address this concern within their territories particularly for humanitarian reasons however, the protection at this point was deliberately limited geographically and by certain dates (UNHCR, 1967, 5). That is considered the first attempt by the international community to protect refugees and solve their issues. With this regard, the Revolution of Russia and Collapse of Ottoman Empire after World War I witnessed international solidarity to deal with mass movements of refugees, so the League of Nations established the Office of the High Commissioner for Russian refugees (UNHCR, 1992, 1). Following the World War II, the Inter-Governmental Committee on Refugees was established in 1938 for mass movements from Germany and Austria. In 1947 the Committee was replaced by the International Refugees Organization (IRO) that had a mandate for particular categories of refugees. The Constitution of the International Refugee Organization defines "refugee" as a person who departed or is outside the country of nationality or habitual residence and is included in three categories of victims of *Nazi* and *Nazi* ally regimes, victims of *Falangist* regime in Spain and, persons who were recognized as refugees before the occurrence of World War II (see Article 1 and Annex I, Constitution of the International Refugee Organization, 1946). Due to the IRO's departure from repatriation to resettlement solution and an increase of refugee influxes during that period of time, efforts began in 1947 to establish a convention to provide international protections to all refugees on the recommendation of the United Nations Human Rights Commission (UNHCR, 1992, 9 and 10). As a result, the 1951 Convention Relating to the Status of Refugees was signed by the United Nation Conference in 1951 (hereinafter 1951 Convention). The 1951 Convention and its 1967 Protocol are considered the cornerstone of international refugee law because it determines the scope and limitation of refugee definition, refugees' rights and protections and, finally the obligation of contracting states toward refugee concerns (UNHCR, 2006, 20). According to the UN General Assembly resolution 319 (IV) of 3rd December 1949 and resolution 428 (V) of 1950, the United Nations High Commissioner for Refugees is legally mandated to provide international protection to refugees and find durable solutions via voluntary repatriation, integration into local communities and resettlement to third countries.

With regard to the definition of refugee, the 1951 Convention provides in Article 1 (A) 2 that the term "refugee shall apply to any person who as a result of events occurring before 1 January 1951 and owing to well- founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is out- side the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it". The Convention also states that the term "events occurring before 1 January 1951" means the events occurred before that date in Europe and elsewhere. With this regard, states becoming a party to the Convention were able to limit their protection to refugees from Europe exclusively (UNHCR, 1992, 10).

Considering new refugee situations occurred around the world that they will not fall under the time limit set in the 1951 Convention and to affirm that all refugees enjoy the same rights and status, the Protocol of the 1951 Convention Relating to the Status of Refugees was adopted in 1967. The 1967 Protocol omitted the time limit of "events occurring before 1 January 1951" and relevant geographical limitations in the definition of "refugee" set forth in Article 1A (2) to ensure that all refugees have equal access to international protection without any geographical or time limitations (see Article 1 of the Protocol Relating to the Status of Refugees of 1967).

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In the light of the dentition set in the 1951 Convention and its 1967 protocol, the research breaks down the refugee "inclusion" criteria into the following elements:

1. "well-founded fear of persecution" is considered the key element of the refugee definition in the Convention because it depends on "fear" in determining refugee status. "Fear" is a subjective element of the definition and it should be associated with an objective element of "well-founded" in order to establish a comprehensive test in the refugee determination (UNHCR, 1967, 11). In other words, "well-founded fear" is a combination of subjective and objective circumstances in a particular refugee claim.
   The term "persecution" is not defined in the Convention however, it can be inferred that threats to life or freedom, and human right violations constitute persecution within the meaning of the term of "refugee".
2. "for reasons of race, religion, nationality, membership of a particular social group or political opinion" is the second element and here the definition requires that a well founded fear is on account on one or more of the five reasons also known as five convention grounds. With the emergence of gender related claims, the "membership of a particular social group" have evolved significantly as states included women, families, tribes and queers in this group which in return advanced the frame of refugee definition (see UNHCR Guideline on International Protection: Membership of a particular social group within the context of Article 1 A (2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees).
3. Another element is that the person is "unable or, owing to such fear, is unwilling to avail himself [herself] of the protection of that country". In such case, a person who seeks international protection cannot return to the country of origin or s/he does not trust the protection of the country of origin.
4. "Outside the country of nationality or habitual residence" means that the person seeking asylum is outside the territories of the country of nationality or, in case if the person does not have a citizenship of a particular state, the country of habitual residence.

These elements of refugee definition need to be met in order to fall under the "inclusion" criteria of the Convention. The "inclusion" criteria guarantees the inclusion of a person with the scope of refugee definition however there are "exclusion" and "cessation" criteria to exclude or cease refugee status and these are assessed simultaneously with the "inclusion" criteria in refugee status determination (RSD).

The term "exclusion criteria" refers to situations where individuals are excluded from international protection regardless of the "inclusion" criteria, while the term "cessation" criteria means that a refugee, due to changes in circumstances in the country of origin, is not in need of international protection. With regard to the "exclusion" clause, the Convention does not apply to persons receiving protection from other UN agencies such as United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), persons receiving protection from the country of refugee having the same rights and obligations as nationals and persons committing a crime against peace, a war crime or a crime against humanity. Moreover, the Convention excludes any person who has committed a serious non-political crime outside the country of refuge prior to his/her admission or committed acts in conflict to the purpose and principles of the United Nations (Article 1D, 1 E, 1 F

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of the Convention). As a result, if one or more of the above clauses is met, the concerned person does not benefit from international protection.

With regard to the "cessation" clause, the Conventions states in Article 1 C (1,2,3,4,5 and 6) that a refugee status ceases to apply to a refugee, if s/he re-availed him/herself to the protection of the national country, re-acquired the nationality of the country of origin, acquired a new nationality, returned to the country of nationality or habitual residence, and finally if the circumstances because of which a national/ stateless person was recognized as a refugee cease to exist.

Although the 1951 Convention and its 1967 Protocol are the core legal basis for refugee protection, it should be noted that there are other sources of protections included in different global and regional instruments, conventions, resolutions such as International Human Rights Law e.g. the Universal Declaration of Human Rights, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention of the Rights of the Child, International Humanitarian Law (Laws of War) e.g. Geneva Conventions of 1949 and Additional Protocols, Regional Refugee Conventions e.g. the Organization of African Unity [OAU] 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa and Cartagena Declaration on Refugee in Latin America in 1984**,** Customary International Law e.g. *Non-Refoulement* principle, UN General Assembly resolutions and the Executive Committee of UNHCR Conclusions. These sources of refugee law have played a significant role in the evolution of refugee protections around the world particularly for countries which are not parties to the 1951 Convention and its Protocol. The research discusses some of the protection in the above mentioned instruments in different sections throughout the research.

After the exploration of the scope of the "refugee" term, the term of "asylum seeker" is explored. Asylum seeker status is a temporary status that is given to a person seeking international protection prior to the refugee status determination (RSD) procedure. It is argued that having asylum status does not necessarily mean that the person will be recognized as a refugee, rather refugee status is in general granted to a person if it is determined in the RSD procedure. The right to asylum is mentioned in the preamble of the 1951 Convention however, it is not dealt with by the Convention. The Universal Declaration of Human Rights and Declaration on Territorial Asylum adopted by the UN General Assembly in 1948 and 1967 respectively guarantees the right to seek asylum. With this regard, the UDHR provides in Article 14/1 that "(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution".

From the same prospective and as per its mandate to provide protection to refugees, UNHCR highly encourages states to establish their asylum policies and systems in the spirit of the UDHR and relevant UN General Assembly Declarations particularly with respect to admission of asylum seeker and granting the status on their territories (UNHCR, 2011, 8). In mass migrations during the recent refugee influxes from Syria, however, it was observed that some states did not grant admission to persons seeking asylum at their frontiers in order to avoid any obligation that the *Non-Refoulement* principle may create (Sanderson, 2013, 782). This question will be addressed in further detail in section 3 and 4.

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1. Refugee Status in Iraq and Kurdistan Region of Iraq:

Iraq and KR-I host refugees and asylum seekers mainly from Syria, Iran, Turkey and Palestine. According to the recent figures from UNHCR in November 2018, there are 251,793 Syrian refugees and 44,325 non-Syrian refugees including Iranian, Turkish and Palestinian refugees (UNHCR, 2018, 1). This section presents the history of asylum, status granted to refugees and asylum seekers in Iraq and then examines the legal framework for asylum in Iraq.

Throughout history, Iraq did not have an inclusive asylum law addressing the issue of persons seeking asylum, rather the question has been addressed in different times with different approaches. At the time of the first movement of Palestinian refugees to Iraq in 1948, Iraq did not have any legal act to protect refugees and it agreed with the United Nations Relief and Works Agency for Palestinian Refugees in the Near East (UNRWA) which was mandated to provide protections and assistance for Palestinian refugees, not to include Iraq because the government of Iraq promised to provide protection to all Palestinian refugees in Iraq (Euro-Mid Observer for Human Rights, 2012, 6). The government of Iraq provided rights and protections to Palestinian refugees similar of nationals only excluding them from naturalization in order to guarantee their return to Palestine in the future (see Article 1 of the Law of Granting Iraqi Nationality to Arabs no. 5 of 1975).

In the first attempt to protect refugees in Iraq, the Temporary Constitution of 1958 provides that the government has an obligation not to extradite any political refugee to the place of persecution (see Article 19 of the 1958 Constitution). Due to the existence of many political refugees in Iraq and reference to Article 19 of the Constitution of 1958, the Law of Refugees no. 114 of 1959. The Law defines the term "refugee" as a foreigner who seeks asylum in Iraq for political or military reasons and also forbids *refouleing* political refugees (see Article 3 of the Law of Refugees). It is observed that the 1958 Constitution and Law of Refugees provides a number of protections and rights to refugees however, the scope of the "refugee" term was very narrow because it only recognized political and military refugees and excluded several categories of refugees.

After that, the Law of Political Refugees no. 51 of 1971 (hereinafter 1971 Law) replaced the Law of Refugees of 1959. Similar to its preceding law, the new law provides protection to certain categories of refugees. The new law defines the term "refugee" as a person who seeks asylum in the territories of Iraq for political or military reasons (see Article 1/3 of the Political Refugee Law of 1971). The same approach was adopted in the Constitution of Republic of Iraq-2005 (hereinafter the 2005 Constitution), which provides in Article 21 that "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. 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."

In the light of Article 21, it is noted that only political asylum seekers are recognized as refugees in Iraq and they are protected from *Non-Refoulement.* It also adopted exclusion criteria for some refugees who fall under the meaning of political refugees because they are accused [emphasis added] of committing international or terrorist crimes or caused a damage to Iraq. Reference to Article 130 of the 2005 Constitution, until a new law is issued in Iraq, the Iraqi asylum system will be run by Article 21 of the 2005 Constitution and the 1971 Law.

The Scientific Journal of Cihan University – Slemani **PP: 105-127**
Volume (3), Issue (2), December 2019
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As stated earlier, the 1971 Law only recognizes political and military refugees that fled the country of nationality or habitual residence for political and military reasons. The Law did not define what constitutes political and military reasons rather it is left for the refugee status determination procedure mandated to the Permanent Committee for Political Refugee Affairs (hereinafter PCMOI) established by the 1971 Law. In majority of cases, political and military refugees fled persecution because they committed a political crime however it should be clarified what acts constitute political crimes and what law applies in determining an act as political. Generally, the direction of jurisprudence and lawmakers in Iraq has been going toward narrowing the scope of political crimes (Ibrahim, 1998, 59). As a result, many political refugees may be excluded from the scope of political and military refugees in Iraq.

Under the 1971 Law, thousands of political Iranian Kurds recognized as refugees since their movement to Iraq in 1980s due to Iraq and Iran wars in 1980s under the 1971 Law (Danish Immigration Service, 2011, 6). Additionally, after 2003, the PCMOI categorized the Palestinian refugees under the 1971 law and provided them with protection as refugees in Iraq however, it may be questioned whether Palestinian refugees fall under the definition set forth in the 1971 Law. In fact, Palestinian refugees are mostly not political refugees in literal meaning of the "refugee" term in 1971 Law rather they fled persecution for other reasons such as discrimination based on ethnicity, race or religion or left Palestine to escape from armed conflicts. It is believed that the 1971 Law is not even able to properly address the issue of existing refugee caseload in Iraq.

The fact is that the political refugees in Iraq were among the majority of refugees for a period of time and this urged the government to address their concerns under the 1971 Law. However, the common definition of "refugee" does not limit only to political or military refugees rather there are other categories of refugees who are in need of protection. The founders of the 2005 Constitution also mentioned the protection of political refugees disregarding the development of the scope of refugee protection at international law level. The following groups of persons will not fall under the definition of refugee under the valid laws in Iraq.

1. A person who has a well-founded fear of persecution for reasons of race and/or ethnicity. Unless political, any person flees the country of nationality or habitual residence because of well-founded fear of persecution based on race and/or ethnicity in Iraq, s/he does not fall under "refugee" definition in Iraq. For instance, many of Iranian Kurds, Syrian Kurds, Turkish Kurdish and Palestinians will not fall under "refugee" definition in the 1971 Law if they flee the country of origin because of discrimination based on race or ethnicity, rather they need to establish that they have a political or military reason. It is worth mentioning that a non-political person may face serious discrimination on racial/ ethnicity grounds severely affecting the person's dignity in a way that s/he is not able to enjoy the most basic and inalienable human rights in the country of origin (UNHCR, 1967, 16).
2. A person who has a well- founded fear of persecution for a reason of religion. Religion based persecution are various and common within the area where Iraq is located. A person may flee the country of nationality or habitual residence because s/he is prohibited to exercise his/her religion or prohibited to join religion communities etc.
3. A person who has a well- founded fear of persecution for a reason of membership of a particular social group. This happens when the government does not believe the loyalty of a particular

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The Scientific Journal of Cihan University – Slemani **PP: 105-127**
Volume (3), Issue (2), December 2019
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social group or prohibits their activities, as a result its members flee the country and seek asylum in another country. Moreover, gender-related claims have been analyzed within the scope of this category because gender discrimination may amount persecution for the reason of membership of a social group (see Guidelines on International Protection no. 1, 2002, 28).

4. War refugees do not also fall under the definition of "refugee" in Iraq. Although, war refugees do not normally fall into the "inclusion" criteria of 1951 an its Protocol, armed conflict may result in persecution for one of the five convention grounds. Many Syrian refugees fled Syria to Iraq because of the Syrian war since 2011 and it can be said that they have well-founded fear of being persecuted for reasons of race, religion, ethnicity, membership of a particular social group or political opinions. Unless these Syrian have political or military reasons, they do not fall under the definition of "refugee" under the 1971 Law as explained earlier.

The fact that the 1971 Law and 2005 Constitution do not recognize these refugees and there are many of them in Iraq especially in KR-I, the research examines their legal and practical status.

Generally, residency affairs including residency of refugees are among the enumerated powers of the federal government in Iraq not the regions as per Article 110/5 of the 2005 Constitution however, in practice Kurdistan Region of Iraq has some de facto jurisdiction on the matter of residency since its establishment in 1991 (See the Statement no. 7 of Ministry of Interior- KR-I). Categories of refugees who do not fall under the "refugee" term of 1971 are registered as asylum seekers by UNHCR and then KR-I government provides them with refugee based residency documents. KR-I authorities do not have legal authorities to grant refugee status to its asylum seekers in KR-I because of the Article 110 of the 2005 Constitution and also absence on an inclusive refugee law recognizing non-political refugees. Until a new refugee law is enacted in Iraq and authorize a decision making body to conduct RSD, the status of these categories of refugees in KR-I does not change to refugee status. It is worth mentioning that there are refugees in KR-I that may fall under the 1971 Refugee Law but they never approached the PCMOI in Iraq and also because PCMOI does not conduct RSD in KR-I.

Refugees who are recognized by PCMOI but reside in KR-I may also face complex issues because they are required to have the residency documents of KR-I beside their PCMOI card. This process puts burdens on these refugees because they have to possess different documentations by KR-I and Iraq authorities for the same reason.

2. Refugee and Asylum Seeker Statuses and Protection Risks in Iraq and KR-I :

Protection risks includes all protection concerns regarding "activities aimed at obtaining full respect for the right of individual in accordance with the letter and spirit of international human rights, refugee and humanitarian law" (Global protection cluster, 511). In this section, refugee protections risks such as non-admittance, detention and prosecution for immigration related crimes will be examined in the light of asylum system at international and national level.

Seeking asylum is not worded in the Convention of 1951 as a "right" however, the Universal Declaration of Human Rights states clearly in Article 13 that every person has a right to seek and enjoy asylum in another country. In this sense, refugees and asylum seekers benefit from the right of asylum as human beings and to be treated as humans (UNHCR, 2017, 23). The fact is that states did not have an unanimity to include the right to grant asylum in the 1951 Convention in an attempt not

The Scientific Journal of Cihan University – Slemani **PP: 105-127**
Volume (3), Issue (2), December 2019
ISSN 2520-7377 (Online), ISSN 2520-5102 (Print)

to create an obligation to admit many persons in mass refugee influxes. This is considered a restrict view by some states that they do not have an obligation to admit at their frontiers and the Non-Refoulement principle only applies to refugees who are physically on the territories of that state, so states are not obliged to protect persons when admission has not yet granted at the frontiers (Gill, 1996. 121). However, it is essential to note that the interpretation of the Non-Refoulement principle for borders cases established since long time ago in mass refugee influxes in Africa, Europe and East Asia considering a good faith of states' obligation to protect refugees because of the fact that persons seeking asylum at the frontiers are within states sovereignty regardless of their physical admission (Gill, 1996, 123). To support this view, the Executive Committee of UNHCR reaffirms in Conclusion no. 6 (XXVIII) of 1977 and no. 15 (XXX) in 1979 the essential importance of the principle of Non-Refoulement both at the border and within the territories of states and any action in contrary of this will be a grave violation of the Non-Refoulement.

In Iraq, the Constitution does not incorporate the right to grant asylum, rather it provides that political refugees are not subjected to return to the foreign country. The 1971 Law however, provides in Article 2 that "*asylum* to Iraq will be through a claim submitted to the competent authorities by: 1 - Arab citizens or foreigners residing outside Iraq. 2 - Arab citizens or foreigners residing in Iraq. 3 - displaced from the border areas to Iraq territories". It is clear from this article that the right to seek asylum for political and military reasons is part of the protection provided by 1971 Law regardless of their physical presence. This protection however, does not extend to persons who seek asylum in Iraq for reasons of race, ethnicity, religion or membership of a particular social group and these categories remain outside the legal framework of the Law and the Non-Refoulement principle of the Constitution. Such persons with non-political asylum claims need to receive a visa in order to cross the border and enter the territories of Iraq. As a result, if these categories of asylum seekers illegally cross the borders they may be subjected to detention and punishment. In the same time, the return of such asylum seekers is very likely as the research covers in detail in section 4.

The Residency Law no. 76 of 2017 determines legal entrance requirement to Iraqi territories and then sets punishment if a foreigner violates these conditions for whatsoever reasons including seeking asylum. The Law provides that a foreigner may enter Iraq only if s/he holds a valid passport or travel document with no less than 6 months' validity, a valid visa and enter through an official border points (see Article 3). The Law penalizes acts of illegal border crossing in violation of Article 3 by stating that "a term of imprisonment of not more than (3) years and a fine of not less than (500000) five hundred thousand [Iraqi] dinars and not exceeding (3 million) three million dinars or one of the two punishments any person who violates the provision of Article (3) …of this law" (see Article 40 of the Residency Law). The Law of Passport no. 32 of 2015 is another law that penalizes illegal border crossing without a valid passport. In this regard, the Passport Law provides in Article 15 that "a term of imprisonment not less than (3) years shall be imposed on: first… fourth: a person who left or tried to leave the Republic of Iraq or entered or tried to enter it not through the designated routes and places to examine the documents".

In the light of these laws, there are certain legal requirements for any foreigner to enter and leave the territories of Iraq and any violation of these requirements subjects the person to punishment. It is also noted that the laws did not mention any exception for asylum seekers who cross the borders.

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The Scientific Journal of Cihan University – Slemani **PP: 105-127**
Volume (3), Issue (2), December 2019
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The Ministry of Interior is concerned with the application of the Residency Law in Iraq however, in KR-I this issue is shared between the Ministry of Interior and the Security Agency [Asayish] pursuant to the Law of Security Agency of Kurdistan Region of Iraq no. 5 of 2011. The Law of Security Agency provides that the Security Agency exercises an authority with other relevant departments to monitor the issue of refugees, migrants, residents and foreign visitors in the region (see Article 3/14). When an asylum seeker illegally crosses the borders in KR-I, they may be held in the Security Agency [Asayish] Detention Centers at the stages of investigation and then transferred to the Police Detention Centers for the purpose of Residency Law application (The Independent Commission for Human Rights in Kurdistan Region, 2017, 12). The situation in KR-I for refugees and asylum seekers is different than Iraq from the prospective of admission, detention, punishment and Non-Refoulement. Syrian refugees regardless of their ethnicity, religion and sect are registered as asylum seekers by the UNHCR and provided with refugee based residency cards in KR-I. Syrian refugees may not subject to detention because of the border crossing violations as there is a general understanding that they fled the country of origin because of the continued war and armed conflict (see the International Protection Considerations with Regard to People Fleeing the Syrian Arab Republic of 2017). In 2018, the Ministry of Interior in KR-I in decree no 7174 and 10041 described the right to seek asylum as a natural right and instructed the Residency Departments in KR-I to grant asylum to all Syrian persons who left KR-I and then returned to KR-I again. From the decree, it is understood that in practice Syrian refugees shall be granted asylum without subjection to detention for border crossing under the Residency Law. Other categories of asylum seekers such as Iranian and Turkish may also be registered with UNHCR as asylum seekers and are provided with the residency refugee based card, however these categories of asylum seeker may subject to detention if they illegally cross the borders to seek asylum in KR-I.

3. The Scope of the *Non-Refoulement* Principle in Iraq and KR-I

Non-Refoulement is a concept understood as the obligation of the states not to return (refouler) a refugee or an asylum seeker in any manner whatsoever to the place where his life or freedom is in danger for reasons of race, religion, ethnicity, membership of a particular social group or political opinions (Boed, 1994, 16). The principle is considered the backbone of international protection for refugees and asylum seekers in the contemporary international refugee law and acknowledged as a principle having roots in customary international law (Riyanto, 2010, 736). The above acknowledgement about the principle means that all states regardless of whether or not parties to the 1951 Convention and its protocol have a duty under the customary international law not to expel or return refugees and asylum seekers to the place of persecution.
With regard to the principle, the 1951 Convention states in Article 33 that"

1. No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, member- ship of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country”.

The Scientific Journal of Cihan University – Slemani **PP: 105-127**
Volume (3), Issue (2), December 2019
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The Non-Refoulement principle is not only guaranteed in the international refugee law rather the principle should be understood in the wider context of human rights laws. In this sense states have obligations of Non-Refoulement under the international refugee law or international human rights laws or the customary international law which means that if a particular state is not a party to the 1951 Convention, it still has the Non-Refoulement obligations under other international laws. The principle has been accepted as a customary law by the international community as the whole and this view is supported by international legal experts (Riyanto, 745). It is also believed that its derogation hinges on human dignity and safety. The fact that many states accept this principle long time before the birth of the 1951 Convention supports this view. With regard to other international instruments, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984 provides in Article 3/1 that "No State Party shall expel, return ("*refouler*") or extradite a person to another state where there are substantial grounds for believing that he would be in danger of being subjected to torture". The Geneva Convention Relative to the Protection of Civilian Persons in the Time of War of 1949 prohibits transfer of a protected person to a country where s/her has fear of persecution (see Article 45). Moreover, the principle of *Non-Refoulement* is embodied in regional human right instruments including the American Convention of Human Rights of 1969 (see Article 22), the Organization of African Unity (OAU) Convention (see Article 2), finally in UN resolutions including the 1967 Declaration on Territorial Asylum.

It is very important to note the prohibition on the *Refoulement* includes extradition agreements because the Convention of 1951 did not leave any room for any exception on the principle (Lauterpacht and Bethlehem, 2003, 112). Moreover, the *Non-Refoulement* applies equally to refugees and asylum seekers including persons seeking asylum at the frontiers of a particular country but not admitted yet and this is view is reaffirmed by the ExCom Conclusions no. 6 (XXVIII) and no. 15 (XXX) of 1977 and 1979 respectively as mentioned earlier.

With regard to Non-Refoulement limitations, the 1951 Convention in Article 33/2 provided two exceptions on the principle of Non-Refoulement where a refugee or an asylum seeker is considered a danger to the security of the country or when s/he is convicted by a final judgment of a serious crime.

It is argued that there is an overlap between this article and the exclusion criteria in Article 1F (b) however, Article 1F(b) excludes any person from refugee status for committing a serious non-political crime outside the country of refuge prior to admission, while the exception in Non-Refoulement indicates that it applies to future commissions of such serious crimes (Lauterpacht and Bethlehem, 129). In the meantime, the Non-Refoulement does not protect persons who are excluded from international protection at the first stage.

If a state decides to apply the exceptions of *Non-Refoulement* it must be very restrictive and decide on individual case basis (Riyanto, 2010, 752-753). The application of such exceptions must guarantee that the refugee/ asylum seeker is not subjected to a danger of torture, cruel or inhuman treatment and states are also obliged to take all available steps to ensure that the concerned person is granted admission in the third country (Lauterpacht and Bethlehem, 2003, 134).

In Iraq, the 2005 Constitution states in Article 21/2 that political refugees shall not be extradited to a foreigner side or shall not be returned to the country in which s/he fled from. It is clear that the 2005

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The Scientific Journal of Cihan University – Slemani **PP: 105-127**
Volume (3), Issue (2), December 2019
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Constitution and applicable laws in Iraq establishes the Non-Refoulement principle and due to its significance it is guaranteed in the Constitution therefore the legislative power does not have the authority to enact a law in conflict of this article. However, it is essential to note that firstly, the Non-Refoulement here is only applicable to Political Refugee and secondly, the Non-Refoulement is not absolute, rather refugees who was accused a terrorism or international crimes or caused damage to Iraq, do not befit from the Non-Refoulement. The main concern is that this Non-Refoulement only protects political refugees excluding refugees who have well-founded fear of persecution for reasons of race, ethnicity, religion or membership of a particular social group or war refugees because as examined in the second section Iraqi laws do not recognize these categories of refugees.

From the same prospective the 1971 Law provides that refugees who fall under the law shall not be returned to the country of origin under no circumstances (see Article 4). Also, Asylum seekers whose claims rejected by the competent authority under the 1971 Law are removed to another country other than the country of origin in accordance to the decision of the competent authorities and approval of the Minister (see Article 4).

In KR-I, it was examined earlier that the authorities are not bond with the limitation of the refugee definition in the 1971 Law, rather there are many categories of refugees who are recognized as asylum seekers by UNHCR and received refugee-based residency documentations of KR-I. The legal basis of the status given by KR-I to asylum seeker is not framed in a federal refugee law, the protection against Refoulement is a very hard task to track in KR-I because there is no national legal obligation in the Constitution and applicable laws deterring the authorities from refoulering non-political asylum seekers. What legal basis can a refugee build an argument? It is argued that Iraq is not a party to the 1951 Convention and its 1967 protocol, however, Iraq has an obligation under the customary international law not to refouler refugees to the territories where his/her life or freedom is in danger because the Non-Refoulement Principle is a rule of jus cognes (Gill, 1996,129). Moreover, the principle as mentioned earlier is mentioned in many international human rights instruments which Iraq is a party to including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment which obliges Iraq not to return any person to territories where there is a reasonable ground to believe that he/she will be at the threat of torture or other cruel treatment. Furthermore, it is considered a grave violation to refouler an asylum seeker without conducting a fair and efficient refugee status determination (see UNHCR ExCom Conclusion no. 6 (XXVIII) of 1977 and no. 15 (XXX) in 1979).

4. Rights and Protections Entitled to Asylum Seekers and Refugees in Iraq and KR-I

Refugees and asylum seekers are entitled to a set of rights and protections guaranteed under international refugee law and human rights laws, but the extent of these rights may be different depending on the context (UNHCR, 2017, 200 and 201). There is no doubt that receiving a significant number of refugees and asylum seekers causes pressure and stress on the host country and discussion of access to rights and protections of such significant population is a burden. Access to rights and protection may have a legal dimension where the legal system does not recognize certain rights to refugees or it has a practical dimension where a particular country unwills or is not able to ensure access to certain rights and protections for refugees. It is also noted that in practice refugees who are granted asylum have access to extensive rights and protections that other persons with asylum seeker status may not have access to.

The Scientific Journal of Cihan University – Slemani **PP: 105-127**
Volume (3), Issue (2), December 2019
ISSN 2520-7377 (Online), ISSN 2520-5102 (Print)

Refugees also have general obligations in the country of refuge requiring them to respect and abide the laws and regulations (see Article 2 of the 1951 Convention). However, non-obedience of the laws and regulations does not subject a refugee or an asylum seeker to *Refoulement* to the country of origin unless the refugee falls under the exclusion criteria of refugee law e.g. committed a crime against humanity, or falls under the exception of the *Non-Refoulement* principle e.g. convicted of a serious crime that amounts a danger to the community of the country.

5.1. Protection against *Refoulement*: This is considered the most important protection for refugees and asylum seekers because it refrains a state from returning a refugee or an asylum seeker to the territories where his/her life or freedom is in danger. Section 4 of this research examined this issue in Iraq and KR-I, therefore there is no need to repeat it here.

5.2. Protection against detention for immigration related crimes: The 1951 Convention states in Article 31 that refugees who entered illegally or are present illegally in a particular state because they have a well-founded fear of persecution in the country of origin or habitual residence should be exposed to punishment for illegal border crossing or illegal presence. In Iraq, the 1971 Law did not address the issue illegal border crossing or illegal presence of refugees and asylum seekers, rather the regulation of this matter is left for the residency related laws. The Residency Law no. 76 of 2017 sets punishment on illegal border crossing and illegal presence of all foreigners including asylum seekers however, in practice the law is not applied to all asylum seekers and refugees due to contextual considerations for categories of asylum seekers such as Syrian asylum seekers, some of Iranian asylum seekers in KR-I (see Article 3 and 40 of the Residency Law no. 76 of 2017).

5.3. Protection against discrimination: at the international level, there are many international instruments that prohibits discrimination such as the 1951 Convention (see Article 3), Universal Declaration of Human Rights of 1948 (see Article 2), International Convention on Civil and Political Rights and International Convention on Economic, Social, and Cultural Rights of 1966 (see Article 2/1 and 26 of ICCPR and Article 2 and 3 of ICESCR), International Convention on Elimination of All Forms of Racial Discrimination of 1965 (see Article 1), Convention on Elimination of All Forms of Discrimination Against Women of 1979 (see Article 1) and finally the Convention on the Right of Child of 1989 (see Article 1). Due the significance of non-discrimination to guarantee equal access to rights and protection, it is reintegrated in many international instruments. Iraq has ratified the above conventions except the 1951 Convention and accordingly has international duties to refrain from any kind of discriminations on whatsoever basis.

The non-discrimination protection is not incorporated in the 1971 Law and the 2005 Constitution guarantees it only for Iraqi citizens. Lack of effective measures to prevent discrimination against refugees increase discriminatory and xenophobic behaviors and this in return leaves negative impacts on the integration of refugees in the context of local integration (UNHCR, 2017, 217). Lastly, it must be noted that acts of discrimination are generally criminalized under the criminal codes in Iraq, however the state is encouraged to take further actions to address this issue in its roots and ensure tolerance toward refugees and asylum seekers. This can better be addressed if the relevant refugee law clearly guarantees the non-discrimination protection.

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The Scientific Journal of Cihan University – Slemani **PP: 105-127**
Volume (3), Issue (2), December 2019
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5.4. Right to documentation: Refugees have a right to receive a valid travel documents to travel outside the the country of refuge and a right to be provided with identity documents for their movements within the territories of the country of refuge. These rights usually are guaranteed either by a refugee law or a residency law in a particular state (Basheer and Mahmood, 2015, 266).

In Iraq, refugees who fall under the definition of refugee under the 1971 Law are provided with a valid identity document for the duration they reside within the territories of Iraq, while refugees who are not recognized as refugees under the 1971 Law are provided with asylum seeker certificate with UNHCR and then the Residency Departments in KR-I provide them with the refugee based residency card. It is noted that the refugee based residency documents that provided to refugees in KR-I is not framed in a national refugee law, therefore the research believes that a unifying asylum system in Iraq and KR-I under one federal refugee law solves this double documentation issues in Iraq and KR-I.

5.5. Freedom of movement: In the context of refugees, the right to freedom of movement means that refugees have a right to choose their place of residence and to move freely within the territories of the country of refuge on equal basis with foreigners (see Article 26 of the 1951 Convention). Any restriction on refugee movements should be based on a national law and aimed to protect legitimate interests such as security and public order (UNHCR, 2017, 204). It is noted that these limitations on freedom of movement should be narrow and states ensure that it does not prejudice access to other rights such as right to work, education and other basic services.

In Iraq and KR-I, the Ministry of the Interior in Iraq and the Security Agency in KR-I are legally mandated to monitor the situation refugees in Iraq and KR-I (see Article 14 of 1971 Law and the Law of Security Agency Law of Kurdistan Region of Iraq no 5 of 2011). The Minister of Interior in Iraq is given an authority to determine and change the place of residence of refugees when necessary and a refugee may leave his/her place of residence to move within Iraq with the approval of the Director of the Office of Political Refugee Affairs (see Article 15/1 and 2). The authorities in Iraq also instructs to restrict movement of refugees and asylum seekers in KR-I especially who do not fall under the 1971 Law. For instance, the Directorate of Deportation and Removal/ Residency Department/ Ministry of Interior directed a letter in 2018 to the Civil Status, Passport and Residency Department in KR-I stating the Directorate observed that some Syrian asylum seekers in KR-I are displaced to other governorates in Iraq but Syrians asylum seekers should not be allowed to leave the camps and any movement of them is a violation and they will be detained and returned to their camps. In order to control the movement of them, the authorities in KR-I was requested instructions regarding all required measures to restrict this trend and in case of movement outside the camp an action of removal from Iraqi territories will need to be taken. From this prospective, it is observed that the law presumed an interest of the state to restrict movement of refugees within the territories of Iraq including KR-I. These restrictions have very substantial consequences when it comes to integration of refugees with the host community and self-reliance of refugees in longer term because it leads to denial of access to many other rights most importantly access to work. It may also encourage the encampment of refugees and in return it means that the government takes the main responsibility to provide services and assistances to all refugees which is close to 300,000 refugees and asylum seekers. This approach burdens the state budget especially in the economic hardship that KR-I has gone through since 2014. In practice, however refugees particularly in KR-I to a great extent have freedom of movement within KR-I.

The Scientific Journal of Cihan University – Slemani **PP: 105-127**
Volume (3), Issue (2), December 2019
ISSN 2520-7377 (Online), ISSN 2520-5102 (Print)

5.6. Family life, including family unity: by looking at the reasons of seeking asylum, it is observed that persecution, wars and conflict may result in separation of family members. Separated family members may face risks such as violence and exploitation especially women and children, therefore the right to family unity is guaranteed in the international refugee law (UNHCR, 2017, 205). The 1971 Law in Iraq adopts a similar approach and guarantees refugees a right to be reunified with their family members. Family members who are reunified under this law in Iraq receives a derivative refugee status unless they have a separate political claim (see Article 11).

5.7. The right to work: As the main international instrument for refugee protection, the 1951 convention states that the right to work is composed of wage-earning employment, self-employment and liberal professions (see Article 17-19 of the 1951 Convention). In addition, the International Convention of Economic Social and Cultural Rights of 1966 recognizes the right to work to everyone in a particular state and states need to take appropriate actions to safeguard this right (see Article 6). With this regard, Iraq ratified the ICESCR in 1971 and has an obligation to take steps to ensure this right to any person on its territories including refugees and asylum seekers.
At the national level, the 1971 Law states that refugees recognized under the law have the same rights as Iraqis with regard to "practicing professions and works" and official employment with the minister's approval (see Article 11 of the 1971 Law).

5.8. Right to Housing, Land and Properties:
The 1951 Refugee Convention requires that refugees are treated as favorable as possible but not less favorable than accorded to the foreigners with regards to the acquisition of moveable and immoveable property as well as of lease or related contracts on moveable and immoveable property (see Article 13).

In Iraq, the Constitution of 2005 provides in Article 23 that only Iraqis citizens are entitled to own immovable properties throughout Iraq and non-Iraqis are not allowed to own properties in Iraq except as exempted by law. In 1994 the Iraqi Revolutionary Command Council issued Resolution No. 23 that prohibited the transfer of immovable ownership to non-Iraqis. For refugees, the 1971 Law recognizes a very limited access of refugees to use agricultural land in Iraq but it will not be registered in their names until they are naturalized (see Article 11).

In KR-I, the Resolution 23 of 1994 is not applicable as it is not ratified by the KR-I Parliament. As per Decree No. 11 of 1992, any laws, regulations and instructions issued by Iraq after 22 October 1991 is not applicable unless ratified by the Parliament. Except what stated in the 1971 Law, other refugees and asylums seeker are treated as foreigners with regard to the right to own immovable properties. Unlike Iraq that is bond by Resolution No. 23, KR-I is run by pre-1994 laws which are Law No. 38 of 1961 on Foreigner's Real Estate Ownership in Iraq and Law No. 72 of 1978 on Arab Citizens' Ownership of Immoveable Properties in Iraq. Law No. 38 of 1961 on Foreigner's Real Estate Ownership in Iraq only applies to citizens of non-Arab countries, gives foreigners the right to own real estate in Iraq in article 4 with following conditions:

1) With regards to ownership rights, the foreigner shall be treated in a similar manner as an Iraqi in that country (reciprocity);
2) Continuous residency for seven years;
3) Real estate is situated at least 30 kilometers from the international borders of Iraq;

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The Scientific Journal of Cihan University – Slemani **PP: 105-127**
Volume (3), Issue (2), December 2019
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4) Real estate is not state-owned or classified as agricultural; and
5) There are no military or administrative issues

While Law No. 72 of 1978 on Arab Citizens' Ownership of Immoveable Properties in Iraq,[1] which applies to non-Iraqi Arabs (excluding Palestinians), provides that foreigners with permanent residency can own immoveable property in Iraq.

5.9. The right to education: The contracting states of the 1951 Convention is obliged to provide free education for all refugee children at the elementary stage and as favorable as possible, but in any event, not less favorable than foreigners with regard to higher levels of education (see Article 22 of 1951 Convention).

The Convention of on the Rights of the Child is another international instrument that protects this right and provides in Article 28 that "All children have the right to a primary education, which should be free…". It must be noted that Iraq ratified the Convention of on the Rights of the Child in 1994 and has a duty to fulfill this obligation. The 2005 Constitution provides in Article 34 that "…Primary education is mandatory and the state guarantees that it shall combat illiteracy", however the 1971 Law is silent on the right of refugees to education, therefore the Constitution and Iraq's obligation under the CRC are considered the legal basis for refugees' right to education.

There are other rights that this research does not touch on it due to the research limitations including the right to access to courts, right to social welfare and health care, right to rationing etc. It is essential to note that throughout the explanation of the rights and protections, Iraqi laws provides limited protection and rights to limited categories of refugees. Iraqi laws mostly protect and provide rights to refugees who fall under the 1971 Law and the issue has gotten very difficult in the light of the fact that Iraq is not a signatory state of the 1951 Convention, therefore a question that is raised is about the legal basis for protections and rights of asylum seekers who do not fall under 1971 Law. To answer that question, the research finds that the Iraqi Constitution, Iraqi laws addressing foreigner issues and Iraqi international obligations in ratified conventions and customary international laws obliges Iraq to protect whoever is on its territories as human beings.

6. Refugee Status and Durable Solutions

International protection as described above is all activities aimed to secure refugee and asylum seeker rights in the light of international human rights laws, international refugee law and international humanitarian laws (UNHCR 2005, 3). International protection has a long term dimension to find permanent solutions for refugee issues that is called durable solutions and these solutions need to be taken into account in all protection programs. Durable solutions end the cycle of displacement by ensuring that refugees reach the point to start their normal lives and this is mandated to UNHCR since its establishment (UNHCR, 2011, 28).

There are three main durable solutions for refugees which are voluntary repatriation, local integration and resettlement (UNHCR, 2007, 185 and 186). Firstly, voluntary repatriation is the process of return of refugees to the country of origin voluntarily and safely with dignity when the reason of persecution is ceased to exist. Secondly, local Integration is to integrate the refugees within the local host communities and finally, resettlement is to resettle refugees in a third country. Durable solutions are not hierarchy-formulated and they should be seen as complementary solutions (UNHCR, 2011, 30).

The Scientific Journal of Cihan University – Slemani **PP: 105-127**
Volume (3), Issue (2), December 2019
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It is true that through history many refugees resettled to the third country or locally integrated, however, voluntary repatriation appeared to work in some contexts. Moreover, if these solutions are applied together, they form a very comprehensive strategy for different categories of refugees. (UNHCR, 2011, 30). From this prospective, voluntary return may be a viable solution for part of the refugee population in a certain context, while for other groups resettlement or local integration are more effective.

Since these solutions are aimed to resolve refugee issues in long term, the refugee status determination (RSD) has a significant impact on them because RSD ensures that asylum seekers are granted refugee status and are no longer at protection risks of detention, punishment or *Refoulement*. Durable solutions are usually sought and strategized after guaranteed access to immediate protections needs. As asylum seeker status is a temporary status, it is important that their cases are determined before taking steps toward permanent solutions. With regard to resettlement for instance, RSD is a precondition because a person needs to be recognized as a refugee through RSD in order to be resettled (UNHCR, 2011, 31). Moreover, it is proved that these three solutions are significantly associated with self-reliance of refugees in a particular context. Self-reliance is "the social and economic ability of an individual, a household or a community to meet essential needs (including protection, food, water, shelter, personal safety, health and education) in a sustainable manner and with dignity" and refugees may not be able to reach this without a recognized legal refugee status (UNHCR, 2006, 1). In other words, to ensure that refugees are self-reliant, they need to have access to the rights and protections and the research clarified how this is related to refugee status determination (RSD). Once asylum seekers are granted refugee status and short term protection needed provided, the concerned states and UNHCR seek to find durable solutions.

In Iraq, the 1971 Law secures some rights and protections for refugees falling under the law including right to receive assistance, right to work, right to employment with the MOI approval and benefit from agricultural land without ownership however, the law did not include any steps toward durable solutions and the government has not engaged in large-scale solution strategies for refugees and asylum seekers. For instance, Palestinian Refugees and Iranian Kurdish refugees who have been living in Iraq for decades but most of them still did not find durable solutions. Palestinian refugees displaced to Iraq in the years of 1948, 1967 and 1990s and they enjoyed rights and protections similar to national Iraqis until 2003 where the new government registered them under the 1971 Law that does not include any durable solution for refugees (Euro-Mid Observer, 2012, 6). It should be noted here that the Iraqi Nationality Law also prohibits granting nationality to Palestinians in order to ensure their return to the place of origin in the future (see Article 6 of the Nationality Law no 26 of 2006). It is observed that Iraq does not to want to create legal duties on itself to integrate the refugees, rather it expects that they will be returned to the country of origin. For Iranian refugees who came to Iraq because of Iran-Iraq wars in 1980s, many Kurdish families were displaced and settled in the Al-Altash camp, however in 2005 the vast majority of 12,000 residents of the camp moved to KR-I (Danish Immigration Service, 2011, 6). Although the Iranian refugees have access to many rights and services, after decades, they live in the settlements and are not locally integrated into the local community (Danish Immigration Service, 2011, 6 and 7).

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Naturalization is considered one of the ways that secure local integration and self-reliance in longer time and this process in Iraq is very complex one for refugees. Article 6 of the Nationality Law provides that "

I-The Minister may approve naturalization of non-Iraqis subject to the following conditions: a. That the person concerned has come of age;

b. That the person concerned has legitimately entered Iraq into and has residing within Iraq at the time of applying for naturalization;

c. That the person concerned has been legitimately residing within Iraq for ten consecutive years prior to applying for naturalization;

d. That the person concerned is of good conduct and reputation and was not convicted on an offense or dishonorable misdemeanor;

e. That the person concerned has conspicuous means of livelihood; and

f. That the person concerned is free of communicable diseases.

II- Iraqi nationality shall not be granted to Palestinians as a guarantee to their right to return to their homeland.

III- Iraqi nationality shall not be granted for the purposes of population settlement policy prejudicial to demographic composition".

In the light of the above, the Minister has a discretionary power to accept or reject regardless of the fact that the conditions met or not. Also, Article 6/ III may categorize most of refugees in Iraq as such and exclude them from naturalization, for instance, the majority of Syrian Kurdish refugees, Iranian refugees, Turkish refugees have Kurdish originality and can be excluded from naturalization very easily because of demographic change fears.

The next question will be with regard to durable solutions for KR-I asylum seekers who are not recognized as refugees in Iraq under the applicable laws. It was explained earlier that Refugee Status Determination and self-reliance are essentials for long term solutions because RSD grants refugee's status to asylum seekers and secures access to the rights that lead to self-reliance at the end. In KR-I, the majority of refugees including Syrian, Iranian and Turkish refugees have not gone through RSD due to the lack of an inclusive refugee law in Iraq and KR-I is not legally authorized to conduct Refugee Status Determination. In the absence of such status, some of durable solutions including local integration and resettlement may not be achieved for asylum seekers in KR-I. For instance, asylum seekers as long as reside in KR-I with residency permits, they will not be eligible for naturalization under the Nationality Law of Iraq, because they are not recognized as refugees in Iraq. Lack of refugee status means that no national law provides protection for them and their residency in KR-I may not lead to integration as a durable solution, rather it is seen as a temporary situation that leads only to repatriation at the end. Furthermore, The Iraqi government approach in restricting the movement of all refugees as stated earlier supports the view that the government does not have a comprehensive durable solution plan. The restriction of movement may end up encamping the

The Scientific Journal of Cihan University – Slemani **PP: 105-127**
Volume (3), Issue (2), December 2019
ISSN 2520-7377 (Online), ISSN 2520-5102 (Print)

refugees and in return it produces a refugee population that relies on the government and humanitarian aids as long as they remain in KR-I and Iraq.

Conclusions:

At the end of this research, it is concluded that:

1. As per the the Convention of 1951 Relating to the Status of Refugees, the term "refugee" applies when the following elements are met:

1.1. Establishment of well-founded fear of persecution in the country of origin or habitual residence.

1.2. Existence of one or more of five convention grounds of race, religion, nationality, membership of a particular social group or political opinion

1.3. Presence of the person outside the country of nationality or habitual residence

1.4. Causal link between fear and inability to return.

2. Refugee status is granted to a person that seeks asylum in a particular state following a fair and efficient refugee status determination (RSD), while Asylum seeker status is a temporary status given to persons seeking asylum until their claims are determined through refugee status determination.
3. The Iraqi asylum system is run by the Political Refugee Law no. 51 of 1971 providing protection only to persons seeking asylum for political and military reasons. Accordingly, many categories of refugees are excluded from the definition of refugee in Iraq including persons who have well-founded fear for reasons of race, ethnicity, religion, membership of a particular social group or persons fleeing wars and conflicts.
4. Iraq is a party to the 1951 Convention and its Protocol of 1967, however Iraq has international obligations to provide protection to refugees under other international instruments including International Convention on Civil and Political Rights of 1966 and International Convention on Economic, Social and Cultural Rights of 1966, Convention against Torture and Other Cruel or Degrading Treatment or Punishment, 1949 Geneva Conventions and finally under the customary international law.
5. Refugees who do not fall under the definition of the "refugee" term in the 1971 Law in KR-I, are recognized as asylum seekers by the Office of the United Nations High Commissioner for Refugees and provided with refugee based residency documents by KR-I authorities. These categories of refugees are mostly Syrian, Iranian and Turkish asylum seekers.
   KR-I authorities do not have authority to conduct RSD for its asylum seekers so it is not able to grant refugee status because the power to grant asylum is among the enumerated powers of the federal government.
6. In the absence of an inclusive refugee law in Iraq, many protection matters arise and most importantly denial of admission at the frontier, detention for illegal border crossing under the Residency and Passport Laws and also the risk of *Refoulement* to the county of persecution.
7. The Legal status of refugees and asylum seekers has strong ties to durable solutions [permanent solutions] for refugees which are local integration, voluntary repatriation and resettlement. The refugee laws in Iraq, either do not recognize non-political refugees who compose very large number of refugee population, or do not provide means toward durable

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solutions. It is believed that durable solutions are preceded by refugee status determinations and self-reliance of refugees, so then refugees can be lead to one of the permanent solutions.

Recommendations :

1. In the light of Article 110 of the Constitution of Iraq, the federal legislature reserves a jurisdiction to regulate asylum in Iraq, therefore, it is recommended that Iraq enacts an inclusive refugee law. The recommended law must at least include the following:

1.1. Definition of "refugee" that reads as (a refugee is any person who owing to well- founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, political opinion or disrupted conflict and wars, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence for the mentioned reasons above is unable or, owing to such fear, is unwilling to return to it).

1.2. Non-penalization of border crossing and illegal presence of an asylum seekers on the territories of Iraq. The suggested statement reads as (the authorities in Iraq shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of the definition set in above definition, enter or are present in their territory without authorization).

1.3. *Non-Refoulement* principle as stated in Article 33 of the 1951 Convention.

2. It is highly recommended that the potential law identifies the authorities in Iraq and KR-I that conduct refugee status determination. The law needs to provide procedural safeguards including, but not limited to, right to interpretation, right to legal assistance and right to appeal.
3. It is recommended that the law adopts a comprehensive approach regarding durable solutions through granting refugee status, securing access to rights and increasing self reliance of refugees toward durable solutions.
4. Finally, it is recommended that the Ministry of Interior in Iraq and KR-I work closely to capacitate the potential authority that will conduct RSD in the future and seek support and advice from the United Nations High Commissioner for Refugees (UNHCR).

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