

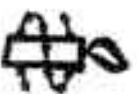
JOURNAL
IRAQ (26)

KAP1

10/998

(163)

Telefax / Fax Message



amnesty international

Dansk Afdeling / Danish section

Dyrkebo 3

DK-1166 København K

Tlf / Phone: 33 11 75 41

Telefax: 33 93 37 46

Til: / To:	Flygtningeævnet
Fax nr./no.:	33 91 94 00
Fra: / From:	Charlotte Olsen
Dato: / Date:	10. december 1998
Antal sider inkl. denne:	7
Number of pages including this:	

Besked / Message:

Til orientering fremsendes hermed til Flygtningeævnet to dokumenter, som Amnesty International har udarbejdet angående Nordirak.

Lande-notatet af september 1998 redegør for Amnesty Internationals vurdering af tilstedeværelsen af et internt flugt-alternativ i Nordirak. Amnesty International er af den opfattelse, at selv om der i visse tilfælde skulle eksistere et internt flugt-alternativ for irakiske kurdere, der stammer fra regeringskontrollerede områder, er det snarere undtagelsen end regelen.

Kurdere i Nordirak er i alvorlig fare for overgreb på deres menneskerettigheder. Personer, der kritiserer situationen i områder, der er kontrolleret af KDP eller PUK, personer, der mistænkes for at være medlemmer af, eller sympatisere med et rivaliserende parti, eller personer, hvis familie vidnes at have forbindelser til et rivaliserende parti, er i særlig stor risiko for chikane, vilkårlige anholdelser, tortur og "forsvindinger". Ifølge Amnesty Internationals oplysninger er de turkmeniske og kristne minoriteter i Nordirak ofte og i stigende grad udsat for krænkelse, oftest fra kurdere.

Ved Excom-mødet den 5.-9. oktober 1998 forelagde Amnesty International medlemstaterne medsendte notat af 30. september 1998. I dette notat udtryktes vores bekymring over, at UNHCR's *Observations on the EU Action Plan on the Influx of Irregular Asylum-seekers* blev forelagt EU's K.4 Komité som et fortroligt dokument og dermed udelukkede en behørig offentlig debat om UNHCR's vurdering af situationen i Nordirak.

Det er dybt foruroligende, at de danske myndigheder har lagt UNHCR's *Observations* til grund for at afvise et relativt stort antal asylansøgninger fra personer fra Nordirak. Ifølge Amnesty Internationals oplysninger er Danmark indtil videre den eneste EU-medlemsstat, der giver afslag på asylansøgninger med henvisning til UNHCR's *Observations*. Det er foruroligende ikke mindst i lyset af, at der tilsyneladende har været uoverensstemmelse mellem UNHCR's offentlige og fortrolige vurdering af tilstedeværelsen af et internt flugt-alternativ i Nordirak - en uoverensstemmelse, som Amnesty International da også i en skriftlig henvendelse af 1. juni 1998, men uden held, har anmodet UNHCR om at afklare.

Med venlig hilsen
AMNESTY INTERNATIONAL, dansk afdeling


Charlotte Olsen
Flygtningekoordinator

**amnesty international**

L A N D E N O T A I

SEPTEMBER 1998

Internal Flight Alternative in Northern Iraq

It should firstly be noted that there is no internal flight alternative in Government-controlled Iraq for people fleeing from the Iraqi authorities. This text concerns only the availability of protection within Northern Iraq (i.e. areas controlled by the two main Kurdish parties, KDP and PUK) for those people who are fleeing from the Iraqi authorities.

General situation

While open fighting between the two armed factions has abated and some prisoners exchange has taken place, major differences between the two groups still exist, and as long as these have not been properly addressed, the risk of further conflict is not remote. Indeed, the last fighting, which erupted in October 1997, was in violation of a cease-fire agreement which the KDP and PUK had signed a year earlier in Ankara. It should also not be forgotten that armed conflict involving Turkey is still a possibility, for example, recurrent Turkish incursions in northern Iraq and heavy bombardment of PKK targets in the vicinity of civilian areas show the instability of the current situation.

Perhaps more importantly however, the rule of law has essentially broken down in the area, and even members of the judiciary have fled abroad because the authorities are unable or unwilling to give them protection. For example, AI has received reports that some judges who passed sentences against individuals involved in criminal cases have received death threats.

In addition, the Iraqi Government, which lost control of most of northern Iraq in 1991, has been increasing its influence in the area, through its intervention in the north in August 1996 and by the increased presence of Iraqi Government agents. Other factors, such as the fact that Iraqi Kurdistan is the main passage route for Iraqi oil to Turkey, make effective control of Northern Iraq an important objective, and this has contributed to the instability of the area. For example, one of the main opposition groups, the INC, which was based in northern Iraq, has been completely decimated. Their members have either been arrested, executed or "disappeared" by Iraqi Government forces, fled abroad with the help of the US, or pressurised by the Kurdish parties to flee abroad.

Amnesty International has also received reports of cases of Iraqis fleeing government-controlled Iraq to areas controlled by the KDP being arrested and handed over to Iraqi officials. Conversely, those fleeing to PUK-controlled territory may well be suspected of being agents of the Iraqi Government, and subjected to abuse.

Specific Groups

It is nearly impossible to make general statements regarding the availability of protection in Northern Iraq, and each case must be assessed on its own merits. While certain Iraqi Kurds who have strong family and/or political links in Northern Iraq may be able to find protection, it is more an exception rather than a rule.

Several factors could result in a heightened risk for an particular Kurdish individual. Generally speaking, people who criticize the situation in the areas controlled by one party, who are suspected of being disloyal or of being members or sympathisers of the rival party, or whose family or ethnic group is known to have links with a rival party, may be targeted for harassment, arbitrary arrest, torture and "disappearance". It goes without saying that prominent members of the rival party are more prone to these abuses. Members of smaller political groups can be targeted either by one of the two major parties, or by another small political group. On 18 April 1998 two members of the Iraqi Workers' Communist Party (IWCP) were killed in Arbil allegedly by members of an Islamist group.

Turkmen and Christians are a minority in northern Iraq, exposed to human rights violations mostly from the larger Kurdish community, and over the years their number in the area has decreased.

Individuals may also be targeted by other individuals for all sorts of reasons, such as tensions between different ethnic groups, civil disputes, and domestic arguments. The Kurdish authorities are often unable or unwilling to afford any protection to the individuals concerned. The issue of domestic violence has become prominent since 1991, and has reportedly affected a large number of women. Some are said to have been killed or subjected to serious abuses, in some cases with the tacit support of the authorities.



amnesty international

30 September 1998

SUBMISSION TO THE 49th SESSION OF THE
EXECUTIVE COMMITTEE OF THE HIGH COMMISSIONER'S PROGRAMME

OCTOBER 5 - 9, 1998
GENEVA

1. Amnesty International seeks to ensure that the right to seek and to enjoy asylum is upheld, and that the cornerstone of international refugee protection, the principle of *non-refoulement*, is respected by States. Amnesty International urges governments at this year's Executive Committee of the United Nations High Commissioner for Refugees (Excom) to reaffirm their commitment to respect these fundamental rights and principles.
2. Over the past year, governments in all regions continued to violate these most fundamental principles of refugee protection. Refugees and asylum seekers have been obstructed from or denied entry to countries, expelled summarily at international frontiers, and forcibly returned to situations where they face grave human rights violations. Amnesty International is also concerned that states have increasingly resorted to the use of detention, in the hope that it will deter future asylum seekers. In some countries asylum seekers are detained together with common criminals in harsh conditions; in other countries there is no effective judicial control of the detention.
3. Effective monitoring of states' implementation of the Convention is crucial, if states are to be held accountable for compliance with international standards. UNHCR is mandated to "[supervise] the application" of the 1951 Convention relating to the Status of Refugees (Refugee Convention), as well as "other international conventions for the protection of refugees" (UNHCR Statute paragraph 8a). Effective monitoring requires that monitoring of compliance with legal standards be subject to public scrutiny. Such is the case for many other human rights treaties, where states submit public reports on implementation of that treaty, and these reports are assessed by treaty monitoring bodies in public meetings.

4. Amnesty International is concerned that UNHCR is not always able to make public its concerns regarding a certain country's asylum policies, and is therefore not always able to perform its supervisory function in the most effective manner. As an inter-governmental organisation, UNHCR can be vulnerable to political pressure, from donor states, from host states, and from countries of origin. UNHCR's access to a country's territory is granted only at the consent of that government, making UNHCR's ability to perform operations and to protect refugees in a particular country at times vulnerable. Governments have been known to, with varying degrees of subtlety, threaten UNHCR with expulsion, if that organisation engages in public criticism of that country's

policies or practices towards refugees. In addition, the funding structure of UNHCR can constrain its ability to speak out and fulfill its role as advocate for refugees and asylum seekers.

UNHCR's Observations on the European Union Action Plan on the Influx of Iraqi Asylum-seekers

5. The following example serves as an illustration of how important matters regarding refugee protection are determined without effective public scrutiny. The UNHCR document *Action Plan on the Influx of Iraqi Asylum-seekers: UNHCR Observations (Observations)*, dated 21 April 1998 and submitted to the European Union's (EU) K4 Committee¹, provides UNHCR's views regarding an "internal flight alternative" in northern Iraq, i.e. the possibility for some groups of Iraqi asylum seekers to find safety in northern Iraq. An EU Action Plan had been drafted in response to an increase of predominantly Kurdish asylum seekers to the EU, during late 1996 and early 1997. *Observations* was submitted by UNHCR on a confidential basis to the governments represented on the K4 Committee. However, a number of organisations and persons received *Observations* through informal sources, and the paper was subsequently widely reported on in the press of several countries.

6. Amnesty International concurs with some of the conclusions drawn in *Observations*, such as the lack of opportunities for protection in many countries of the region. However, Amnesty International differs in view on some of the other conclusions regarding the safety of returning asylum seekers to northern Iraq. The organisation has pointed out these differences, and has requested UNHCR to issue *Observations* publicly, to ensure the widest possible range of debate on this important issue. However, UNHCR has stated that they are unable to issue *Observations* as a public document. The information available to Amnesty International indicates that in a subsequent communication to the K4 Committee, UNHCR requested governments of the EU to use *Observations* only as general background information, and that it was not to be cited as a source.

7. In *Observations*, UNHCR states that while "the situation is volatile and may change at any time", its assessment is that "as a result of a gradual stabilisation of the situation in northern Iraq, an internal flight alternative may be applied in certain cases"². Citing mainly a cease fire between the two warring Kurdish parties and an exchange of prisoners of war, UNHCR also states that there is "an improved political and security atmosphere in northern Iraq, which has recently eased UNHCR's worries about internal flight alternatives and the return of rejected asylum-seekers"³. As a result, it is stated, "[Turkmen], Kurds and Christians will frequently be considered to have an internal flight alternative in northern Iraq"⁴.

8. Those conclusions apparently contradict an opinion issued publicly by the UNHCR less than a month earlier. Amnesty International notes that in this year's *Update on Regional Developments in Europe*, submitted to the April 1998 meeting of the Standing Committee of the UNHCR Executive Committee and obtainable from the UNHCR world wide web site, UNHCR stated that for Iraqi

¹ A committee made up of high ranking civil servants of EU Member States, the K4 Committee discusses various policy matters, including those pertaining to immigration and asylum.

² Page one.

³ Page seven.

⁴ Page eight.

asylum-seekers, "internal flight was not a realistic alternative to crossing international borders". Amnesty International has not been able to obtain clarification of this point from UNHCR, and remains concerned about the apparently conflicting opinions given by UNHCR, one given in public, and the other in confidence with a group of governments.

9. The assessment of the situation in northern Iraq expressed in *Observations* also does not accord with the information available to Amnesty International. According to Amnesty International's information, although an internal flight alternative may exist in some cases of Iraqi Kurds originating from government-controlled areas, this is more an exception rather than a rule. Although the two main Kurdish political groups, the Kurdistan Democratic Party (KDP) and the Patriotic Union of Kurdistan (PUK), have recently agreed to settle their differences and elect a new Parliament by mid 1999, the information available to Amnesty International indicates that it is premature to see this as a return to stability and an end to human rights abuses. Though recent developments give reason for some optimism, the risk of further conflict is anything but remote, a fact proven on many occasions since 1991.

10. The rule of law has essentially broken down in northern Iraq, and even members of the judiciary have been forced to flee the country because the Kurdish authorities are unable or unwilling to afford them protection. In addition, our information indicates that since 1996, the Iraqi Government has been regaining influence in northern Iraq, and that many government agents operate in that area (a fact recognised by UNHCR in *Observations*, on page eight). With regards to the Turkmen and Christian minorities, our information indicates that they are often exposed to human rights violations, mostly from the larger Kurdish community. For example, on 10 August 1998 in Arbil, several offices belonging to Turkmen organisations were attacked by KDP forces.

11. Amnesty International has received reports that at least one EU Member State has started to reject the claims of Iraqi asylum seekers on the basis of UNHCR's assessment of northern Iraq, as expressed in *Observations* and other confidential communications of UNHCR to the K4 committee. While Amnesty International does not have full details of these particular cases, we are concerned that asylum claims are already being determined on the basis of this assessment of UNHCR.

12. If effective monitoring of states' obligations under the Refugee Convention is to be possible, important assessments of the human rights situation in refugee producing countries should be made open to public scrutiny. Amnesty International calls on UNHCR to clarify publicly its position with regards to northern Iraq.

13. Amnesty International also urges governments to ensure adequate public accountability in the international system for the protection of refugees. States should comply with their international obligations under Article 35 of the Refugee Convention, and facilitate the role of UNHCR in supervising the Refugee Convention. Under no circumstances should states exert political pressure on UNHCR, and constrain it from making public its concerns regarding asylum policies in particular countries.

10

11

12

13

14

15

16

