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UNHCR Return Advisory Regarding Iraqi Asylum Seekers and Refugees

United Nations High Commissioner for Refugees
Geneva, September 2004

1. Despite the handover of power and restoration of Iraqi sovereignty by the Coalition Provisional Authority (CPA) to the Interim Iraqi Government on 28 June 2004, Iraq continues to be extremely unstable with a dangerous security situation. The Iraqi security bodies as well as foreign troops remain unable to provide adequate physical protection. The general lack of law and order is exacerbated by the absence of a properly functioning judicial system. As a result, many crimes are never reported to the police and disputes are often settled through tribal justice mechanisms or by persons who decide to take the law directly into their own hands. In addition, daily life is characterized by the irregular provision of basic services such as electricity and water, an unemployment rate exceeding 50% and a shortage of available housing.
2. While most security incidents prior to the handover directly targeted soldiers and or nationals of countries participating in the Coalition Forces, threats and attacks over the past six months have been increasingly aimed at Iraqi civilians employed by the UN, NGOs and foreign contractors as well as foreign nationals who work for any of the above. Furthermore, Iraqi intellectuals, medical staff, doctors, journalists, artists, as well as anyone associated with or perceived as supporting the new Interim Iraqi Government (IIG) have also become frequent targets of both harassment and violence. Members of the Iraqi police force, as well as potential police recruits are often the victims of lethal attacks.
3. Many of these acts of violence are perpetrated by Islamic extremist groups who subsequently announce them via internet websites. Others may be carried out by persons or armed groups who are either still loyal to the previous government or who continue to protest the presence of the Multinational Forces in Iraq and the legitimacy of the IIG, while still others are simply acts of personal vendetta. One main goal appears to be the destabilization of the authorities in Iraq as well as the exertion of pressure on foreign governments to pull their troops out of Iraq. Several IIG members and other political figures have already been either killed or narrowly escaped direct attacks on their lives, the most recent of which took place on 24 August 2004 and targeted the Iraqi Environment Minister and the Education Minister in two separate car bombings. Five persons were killed and four others wounded in this incident.
4. Moreover, over the last few months, the security situation in and around Najaf and Falluja has become particularly dangerous due to the on-going conflict which has various armed groups pitted against Iraqi police and US forces, and has resulted in hundreds being killed or displaced.
5. While the dire security situation in the Baghdad area is widely acknowledged and publicized, the security conditions in other Iraqi cities, including Diala, Erbil, Falluja, Kirkuk, Mosul, and Sulaymaniyah have also deteriorated, raising the concern of the humanitarian community for the well-being of civilians and their access to health care, food and water. In addition to rising casualties among Iraqi civilians, the impact of protracted clashes impedes reconstruction efforts and hampers the provision of international aid and assistance projects.

6. In the North, although the overall conditions seem to be better than in the rest of the country, the situation remains tense due to a number of factors. These include the political agenda of and relations between the two main Kurdish parties (PUK and KDP) as well as that of the Kurdish Regional Government authorities (KRG) with the IIG, the on-going debate linked to the modalities of the constitutional process, as well as the establishment of a representative government, and the degree of autonomy for the Kurdish populated areas. The situation in Mosul and Kirkuk has been very tense over the past few months and a number of security incidents including explosions, attacks on police stations and pipelines, assassinations or assassination attempts of political figures have occurred in both cities. The most recent was a car bombing which took place on 18 September in Kirkuk and left 23 persons dead and over 60 others wounded.
7. Furthermore, despite the establishment of the Iraqi Property Claims Commission (IPCC), this institution is still in its infancy and much remains to be done (including the establishment and equipping of IPCC offices throughout Iraq, nomination and training of IPCC staff as well as the establishment of a compensation mechanism) before the IPCC will be in a position to begin adjudicating property claims and thus enable refugees and displaced persons to regain their previous homes. In this context, recent reports that KDP and PUK authorities have started re-distributing land located in Kirkuk confiscated during the Arabization process to residents from Erbil and Sulaymaniyah is particularly worrying given the extremely sensitive political implications of such distribution.
8. Although the UN continues to review the possibility of re-deploying international staff to Iraq and at the end of August 2004 sent a small team to Baghdad for six weeks, under the auspices of the Special Representative to the Secretary-General, in order to assess the humanitarian situation, it is unlikely, in light of continued security concerns, that any type of sustained international presence will be possible in the near future. UNHCR's ability as well as that of its partners to engage in any type of protection, returnee monitoring, and/or re-integration activities towards sustainable return in Iraq thus remains severely limited. It should furthermore be noted that the Ministry for Displacement and Migration is still in the process of building up its own operational capacity, and is currently in no position to offer any type of accommodation or other assistance to returning Iraqis. Within this context, the new Minister for Displacement and Migration recently paid a visit to several European capitals and reiterated her predecessor's plea to host countries to refrain from placing additional burdens on Iraq, and especially her Ministry, by rushing or forcing Iraqis to return to Iraq in the current circumstances. There is a risk that significant return to any part of Iraq could undermine efforts to establish a more secure environment and that returns under current conditions could prove unsustainable and lead to renewed displacement.

9. Against the aforementioned backdrop, UNHCR therefore maintains its advice as follows:

- UNHCR strongly advises States to suspend the forced returns of Iraqi nationals to all parts of Iraq until further notice.
- UNHCR asks States to postpone the introduction of measures which are intended to induce voluntary returns, including of rejected cases. This includes financial or other incentives and particularly deterrent or punitive measures.
- UNHCR further reiterates its request that, within the framework of international solidarity and burden-sharing, asylum-seekers from Iraq should not be returned to other countries in the region, regardless of their prior stay in or transit through these countries.
- In countries outside the region where international protection is not granted on a group-basis (*de jure* or otherwise), UNHCR continues to encourage the resumption of refugee status determination so that international protection needs are identified. Priority should be given in particular to individuals who are in an uncertain, precarious situation or deemed to be especially vulnerable (e.g. single female headed households without support or medical cases).
- When determining refugee status under the 1951 Convention, both compelling reasons arising out of past persecution as well as current international protection needs should be taken into consideration. It should be noted that persecution related to Convention grounds continues to take place in Iraq in addition to the widespread civil strife. This is particularly so as the authorities are, in a climate of increasing violence, currently unable to provide effective national protection and because certain groups are targeted on the basis of real or perceived political affiliation, ethnic or religious differences. In addition to persons within the groups at risk mentioned in paragraph 2 above, there will be other categories of persons who may be able to establish a well-founded fear of persecution despite the change of regime in Iraq and who will thus merit refugee status rather than a lesser form of protection. These may include, but are not limited to, those fleeing persecution related to honor crimes, religious minorities, and others targeted by various non-State agents for reasons linked to the five Convention grounds. If an asylum-seeker is not recognized as a refugee, UNHCR further recommends that he or she be granted some form of complementary protection in keeping with international human rights principles. For recent country information, please refer to the UNHCR paper on Iraq of August 2004.

- Furthermore, UNHCR recommends that cases not be rejected simply on the internal flight or relocation alternative.¹ Relocation to certain areas of Iraq is not practical or safe due to logistical constraints and/or security risks. Moreover, as effective national protection is currently unavailable, relocation is not likely to address the threat of persecution established. Due to the pervasive and influential clan and tribal structures in Iraq, relocation without prior acceptance of the local tribal/clan leaders would expose the individual to a serious risk of rejection by the community, resulting in physical insecurity and/ or undue hardship. Such concerns are especially acute in the North and in rural areas.

10. UNHCR will continue to inform potential voluntary returnees about the situation in Iraq and of the fact that, due to the lack of staff on the ground, UNHCR can neither monitor returnees, nor provide them with any assistance in Iraq. Further, while UNHCR does not yet promote voluntary returns, the Office will continue to facilitate, in close co-ordination with the Iraqi authorities and host governments, the return of individuals who voluntarily express their wish to return to Iraq despite and with full knowledge of the current conditions. To this end, and where feasible, UNHCR shall continue to use its Voluntary Repatriation Form. At this stage, facilitation of return may consist of transmitting requests for return to the Iraqi authorities for clearance, as well as other types of assistance such as transport and exit formalities.

¹ See, UNHCR, "Guidelines on International Protection: "Internal Flight or Relocation Alternative" within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees", HCR/GIP/03/04, 23 July 2003, particularly para. 7.

