

Note on the inquiries made by the Danish Refugee Council

It should be pointed out that UNHCR does not pursue a monitoring role with regard to the return of unsuccessful asylum seekers in Iraq. Moreover, UNHCR does not yet have independent and full access to Iraqi refugees who return from neighboring countries to Iraq.

20/2-02

The views below are based on the information currently available to UNHCR.

Q. Is it the position of UNHCR that risk of persecution can be excluded if the person concerned left Iraq legally (and do not give other reasons for applying for asylum than republikflucht) and that this is so even in the cases where it has come to the attention of the Iraqi authorities that the returnee in question lodged an application for while asylum abroad? Or is a position of UNHCR that Iraqis who left Iraq legally (and do not give other reasons for applying for asylum than republikflucht) as a rule can return without being at risk of persecution (still) based on a presumption that the Iraqi authorities do not know - or suspect - that an application for asylum has been lodged?

According to information available to UNHCR, in the absence of other factors, the decisive element to assess whether the returned individual would be put at risk at the hands of the Iraqi authorities would be the voluntary nature of the return. This is the key factor, rather than whether he/she departed from Iraq legally or illegally or whether he/she sought asylum abroad.

The position of the Iraqi Government towards the return of rejected asylum seekers as communicated to UNHCR in Iraq at a meeting on 19 January 2002 is as follows:

- The Iraqi authorities are ready to receive all Iraqi citizens who wish to return.
- There would be no prosecution for illegal departure upon return, as stipulated in the Decree No. 110 issued on 28 June 1999
- Iraqi Embassies abroad are authorized to issue passports for the returnees.
- **The return should be voluntary** and through official border crossing points.

There are numerous Iraqis who had either legally or illegally departed from Iraq returning safely to the Government-controlled area. Since August 1999, 5.710 Iraqis of Arab origin who are considered as having departed illegally from Iraq have returned voluntarily from Iran to the Government-controlled areas of Iraq. Similarly, it is known to UNHCR that throughout the 1990s, unsuccessful asylum-seekers continued to return from Jordan to Iraq.

Moreover, the Iraqi Ministry for Foreign Affairs issued instructions in December 2001 to the Iraqi Consular services abroad to deliver passports even to Iraqi holders of "humanitarian status", should they decide to give up their humanitarian status. According to various sources, some Iraqis granted complementary forms of protection in Europe and elsewhere approached Iraqi Embassies and /or returned to Iraq with valid Iraqi passports.

In recent years, it has been observed in Iraq that the mere fact of having applied for asylum abroad is not necessarily viewed by the Iraqi authorities as expressing a "negative" and dissident opinion by the Iraqi applicants. There has been a wide perception, due to the difficult humanitarian situation in Iraq, that applying for asylum is like immigration, a means to avoid the effects of the UN sanctions. The returnee movements from Iran have often involved Iraqis who had left their country after 1992-1993, following the worsening of the humanitarian situation in Iraq.

However, with regard to those forcibly returned, particularly when they are returned from Western countries, it should be emphasized that arbitrariness and uncertainty of the Iraqi government's attitude would still call for caution. *A fortiori*, the Iraqi authorities may arrest and possibly inflict other forms of degrading and inhuman treatments on forced returnees.

Q. With regard to the interpretation and implementation of Decree No 110 of 28 June 1999, has the position of UNHCR changed since the position referred to in the Foreign Ministry Note of 20 June 2000?

Since 1999, 5,710 Iraqis of Arab origin who had illegally departed from Iraq have returned voluntarily from Iran to the Government-controlled areas of Iraq. In this respect, the Government has explicitly applied the Decree No. 110 to these cases. We now have more established examples on the implementation of this Decree insofar as it involved exemption from prosecution for illegal departures.

Q. Does UNHCR find that there is now basis for Denmark to change its present asylum policy according to which Iraqis from government controlled areas are granted de facto-status and protected against forcible return to Iraq?

UNHCR is of the opinion that the return of rejected Iraqi asylum seekers to the Government-controlled areas of Iraq should be voluntary. Forced returns, especially from Western countries, may result in arrest, detention and possibly in degrading and inhuman treatment. Therefore, UNHCR would recommend continuation of granting de facto protection to failed Iraqi asylum seekers from forced return to the Government-controlled areas of Iraq.

Prepared by UNHCR HQ, January 2002

til navn l. fredag 28/9-01



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Dato 21-09-01
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Vedlagt til orientering generalsekretær Andreas Kamms brev af i dag til direktøren for
CASWANAME Bureau, UNHCR, Geneve.

Med venlig hilsen

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Att. Mr. Ekber Menemencioglu, Director

(BY LETTER AND FAX)

Dear Mr. Ekber Menemencioglu,

Re. Eligibility and return of Iraqi asylum seekers from government controlled areas of Iraq

I realise that the pending Afghan crises may make it very difficult to prioritise this request. However, given the consequences for the Iraqi caseload in Denmark that these questions have, please consider this request as urgent. We would very much appreciate an early reply from you.

The Danish Refugee Council is contacting you in consequence of the conclusions regarding eligibility and return of Iraqi asylum seekers to Iraq, which the Danish Immigration Service has drawn on basis of a fact-finding mission to Bagdad and Amman in March 2001.

We understand that the below issues have been discussed in UNHCR Headquarters and we would like to share our concerns with you. As we assume that UNHCR Headquarters have been consulted by the Danish Immigration Service prior to publication of the report¹ and the position of your organisation in this matter until now has been one of the important decisive factors for Danish asylum practice in these cases, we shall moreover request you to clarify your position with regard to eligibility and return of Iraqi asylum seekers to government controlled areas in Iraq.

The terms of reference of the mission of the Danish Immigration Service to Iraq in March 2001 were, *inter alia*, to obtain information on exit and entry procedures and, in particular, the pattern of reaction, which the Iraqi authorities display towards asylum seekers who return from abroad. The background for the mission should be understood in the context of a yearlong Danish asylum practice according to which *de facto*-refugee status has been granted on a *prima facie* basis to all asylum seekers from government controlled areas of Iraq as they have been considered republik flucht refugees. It is clear that the purpose of the fact-finding mission for the Danish Immigration Service was to find out whether this practice ought to be abided by or there would be basis for a change.

¹ In the introduction to the report it is stated that "the Immigration Service subsequently [i.e. after the mission to Iraq and Amman] presented a summary of the report to a refugee organisation in Geneva. The organisation stated that the information contained in the report is in accordance with the information available to the organisation about the situation in Iraq, including the situation for Iraqis who return to Iraq upon a stay abroad." (p. 4)

The findings, but not the conclusions were published in a report in June 2001. Prior to publication, a delegation from the Danish Immigration Service went to Geneva to share and discuss with UNHCR Headquarters the conclusions that the Immigration Service had arrived at on basis of the findings of the fact-finding mission.

One conclusion, which the Immigration Service drew on basis of the fact-finding mission was that Iraqi asylum seekers who do not have unsettled conflicts with the authorities and who have left Iraq *legally* can return - or be returned - to government controlled areas as the mere fact of *having been abroad* will *not* put them at risk of persecution.

Accordingly, the Immigration Service have rejected a number of asylum claims from Iraqis who left Iraq *legally* and whose fear of persecution on return solely has been based on the fact that they have applied for asylum abroad (the *republikflucht* argument). The decisions include an order to leave Denmark and a decision that the IC can be forcibly returned to government controlled area if he or she does not leave Denmark voluntarily. The cases have been sent as test cases to the Danish Refugee Appeals Board, which is the final instance in the refugee status determination procedure.

The Board is scheduled to make the first decisions in these cases on Friday 28 September 2001. These decisions will set a precedent for the future Iraqi caseload.

Below, I shall first go through the background for asylum practice hitherto and 'quote the general background information, which until now has been decisive for the Danish asylum authorities when making the relevant risk assessments in the cases. Then I will go through the information described in the June 2001 fact-finding mission report of the Danish Immigration Service. Finally, I will direct your attention to the problems and outstanding questions with regard to the conclusions drawn by the Danish Immigration Service on basis of the information in the report, which the Danish Refugee Council feels need urgent attention and clarification.

Asylum practice

Since 1994 Iraqi asylum seekers, who come from Central Iraq, have on a *prima facie* basis as a rule been granted *de facto*-refugee status under Article 7 (2) of the Danish Aliens Act on the grounds that Iraqi asylum seekers who have applied for asylum and therefore been abroad for a longer period of time will be at risk persecution on return as the authorities may have learned about the asylum application. This practice adopted by the Danish Refugee Appeals Board was based on information from UNHCR and other sources contained in Ministry of Foreign Affairs note of 2 September 1994. Based on corroborating information in subsequent notes up until June 2000, regarding the situation for rejected asylum seekers from Central Iraq, this practice has been abided by since then and until new conclusions were arrived at on basis of the fact-finding mission in March 2001. The only exception to granting asylum to Iraqis at large has comprised the relative few cases where Northern Iraq has been considered a viable internal flight alternative.

The provision on *de facto*-refugee status is contained in Article 7 (2) of the Danish Aliens Act which reads: "Upon application, a residence permit will also be issued to an alien who does not fall within the provisions of the Convention relating to the Status of Refugees, 28 July 1951, but who, for reasons similar to those listed in the Convention or for other weighty reasons resulting in a well-founded fear of persecution or similar outrages, ought not to be required to return to his country of origin." In accordance with the preparatory works republik-flucht refugees have always been one of the core target groups of this provision. It should also be noted that as a matter of principle the Danish *de facto*-refugee concept gives the Danish authorities a possibility to grant more benefit of the doubt to asylum cases than does the 1951 Convention, in situations where it is difficult to obtain substantial general background information on a specific situation in the country of origin.

In 2000 1,490 Iraqis were granted *de facto* refugee status, 54 were granted Convention status and less than 50 were rejected.

General background information

The above decision of the Danish asylum authorities to grant *de facto*-refugee status to Iraqis from government controlled areas on a *prima facie* basis rests on the following information:

Foreign Ministry Note of 2 September 1994

This note states, *inter alia*, that

"According to sources in Amman, Iraqis who have been abroad for a longer period of time, i.e. more than one month, will normally be arrested [on return] with the intention of establishing the background for the stay abroad. As a starting point they will be suspected of espionage. This is particularly so if the person in question has a military or technical knowledge. Other sources could not corroborate this information.

A source in UNHCR has stated that Iraqis who have left the country illegally will be interrogated on return regardless of the length of the stay abroad. According to this source persons with a particular military or technical knowledge, with contact to the industries or academics will be under particular suspicion. This group will also not be allowed to leave the country.

A source in UNHCR is of the opinion that the decree [No. 840 of 14 November 1986] is being applied. A source in UNHCR pointed to the fact that even though the Decree No. 840 do not specifically mention returned asylum seekers, they may very well be included by the decree if they have a political profile.

Sources in Amman were of the opinion that the penalties for "republikflucht", including an attempt to obtain asylum abroad, are long prison sentences. If it is people who have particular military or technical knowledge, the death penalty will be applied. ... "

Foreign Ministry Note of 1 May 1995

This note states, *inter alia*, that

" According to the UNHCR's office in Amman, Iraqi citizens will – if they do not have any unsettled problems with the Iraqi authorities - normally not be met with retaliatory measures on return due to their stay abroad. It was moreover the impression of UNHCR that the Iraqi authorities would normally only discover that an Iraqi asylum seeker had applied for asylum abroad if the asylum country has indicated this in their travel documents. The above concerns only Iraqi citizens who left the country legally.

With regard to Iraqis who left illegally it must be expected that they will be arrested, interrogated and punished quite severely (prison sentence, confiscation of property) on return. Similarly it must be expected that Iraqi citizens who did leave legally, but stayed for an "unforeseen and surprisingly" long period of time abroad, for example more than around one month, will be interrogated about the reasons for the stay abroad and about how this stay was financed. "

UNHCR letter of 15 August 1996 to the Permanent Mission of Denmark

In this note UNHCR states, *inter alia*:

"UNHCR has no knowledge of any West European country presently returning rejected Iraqi asylum seekers against their will to their country of origin. The information that is available to our Office on the situation in Iraq makes any such forcible returns highly inadvisable.

Due to the situation prevailing in Government controlled areas of Iraq, UNHCR is concerned of about the safety of rejected Iraqi asylum seeker when forcibly returned to those areas. Iraqi asylum seekers who left Iraq illegally may be subjected to

Iraqis in possession of a genuine and valid Iraqi passport and exit visa may upon return to Government controlled areas be at risk if they asked for asylum abroad and that fact came to the knowledge of the Iraqi authorities. We would conclude that, under the prevailing circumstances, it is most likely that Iraqi asylum seekers, whether they left their country of origin legally or illegally, upon their return to Iraq, will face severe punishment."

Foreign Ministry Note of 28 January 1997

With regard to the question of reprisals/reactions against returning Iraqis who left legally, but applied for asylum abroad, the note refers to UNHCR's letter of 15 August 1996 (referred to above). The note further states that:

"... UNHCR has confirmed that Iraqi citizens equipped with genuine passports and exit visa could return to Iraq without problems. It was

also told that the UNHCR offices as a general rule rejected to grant refugee status to Iraqis who had left Iraq legally...

....

Finally it should be noted that Iraqi citizens risk persecution on return if the Iraqi authorities should get knowledge of the person concerned having applied for asylum, cf. UNHCR's Note of 15 August 1996 and the Foreign Ministry Note of 2 September 1994."

Foreign Ministry Note of 13 August 1999

This note concerns a UNHCR briefing on 13 August 1999 concerning the Iraqi Decree No 110 of 28 June 1999 on an amnesty to returning Iraqi refugees. The note, inter alia, states that:

"UNHCR wished to underline two things. Firstly, it is a very unclear Decree which on several issues is open for interpretation. Secondly, at present there is not entered an agreement between Iraq and UNHCR on the conditions for returnees.

Against this Background UNHCR recommended that the various countries, including Denmark do not initiate policy changes on basis of the mentioned decree. ..."

Foreign Ministry Note of 20 June 2000

The note is a reply to a request for information from the Immigration Service regarding the conditions for entry and exit of government-controlled areas of Iraq in light of Decree No. 110 of 28 June 1999. Concerning the situation in general the note makes reference to the above-mentioned Foreign Ministry Note of 28 January 1997. With regard to Decree No. 110, the Note of 20 June 2000, inter alia, states:

"... UNHCR is still of the opinion that Decree No. 110 of 28 June 1999 from the Iraqi Revolutionary Council is unclear and open to various interpretations. UNHCR recommends that Denmark consider the Decree as conclusive and does not change its present policy on basis of the Decree.

UNHCR still recommends that Denmark treats the Decree with cautiousness and does not change its present [asylum] policy on basis of the Decree. UNHCR further points to the fact that previous amnesties from the Revolutionary Council have not been respected by the Iraqi authorities....

UNHCR has not yet concluded negotiations with Iraq about an agreement concerning monitoring of the situation for returning Iraqi refugees and does therefore not see itself fit to speak about the situation of the 2,725 Iraqis who according to the information received by UNHCR have returned voluntarily from Iran to government controlled area of Iraq. UNHCR has however received unconfirmed information that the Iraqi authorities as a part of ordinary procedures interrogate returnees on entry into Iraq....

.... UNHCR moreover informed that Iraqis who left Iraq legally, as a rule can return without risk of persecution. An exception

will as mentioned earlier however be the situations where the Iraqi authorities get to know about the person concerned having applied for asylum ..."

Danish Immigration Service fact-finding mission report of June 2001

The Immigration Service refers in the report to information gathered from a number of anonymous sources, which were interviewed during the mission.

With regard to Iraqi citizens who left Iraq *legally*, a source which in the fact-finding mission report is identified as "a UN organisation in Amman working with refugees", has, according to the report (p. 17f), provided the delegation with the following information:

"This organisation informed the delegation that it on a weekly basis received about 60 asylum applications from Iraqi citizens. On a yearly basis between 12 % and 15 % of these were granted status while the rest were rejected. The Iraqis whose asylum applications were rejected risked being forcibly returned to Iraq by the Jordanian authorities. This implies that the organisation at the time when the examination of the asylum application took place knew that Iraqis who had applied for asylum and subsequently had the application rejected would be at risk of being returned to Iraq if they did not return voluntarily. The organisation had not information to the end (indicating) that the Iraqis who had applied for asylum and subsequently been forcibly returned from Jordan were persecuted on return. Often asylum applications were received from "old friends", i.e. persons who had already applied for asylum at a previous occasion and been forcibly returned from Jordan in the meantime. The organisation had no knowledge to the effect that the Iraqi authorities would look or behave differently towards Iraqis who had applied for asylum in Europe and on rejection returned to Iraq. The most common reason for applying for asylum was related to the difficult humanitarian situation in Iraq, including the lack of future prospects, lack of medical expertise and medication in the case of serious illness, etc. Lately there had been examples of Iraqis who had had their applications for asylum rejected had tried to create (sur place) grounds for a new asylum application by carrying out activities for opposition groups ... The organisation would nevertheless reject the asylum applications of the concerned persons if it was evident that the activities had been carried out in order to obtain asylum."

Whereas a few of the sources express a little more cautiousness, most of the other interviewed persons/organisations (identified as international humanitarian organisations and Western diplomatic representations in Iraq) by and large seem to be of the opinion that if only the person concerned has left Iraq legally and do not otherwise have outstanding problems with the Iraqi government, there is no risk persecution on return to Iraq.

Questions needing clarification

The Danish Refugee Council will of course welcome any improvement in the situation in Iraq, which could reduce the need of international protection for Iraqi asylum seekers and cause a change in current asylum policy. It is however very important for us to make sure that the basis on which these decisions are taken fully and accurately reflect the risk, which rejected Iraqi asylum seekers, might be in if they are returned to Iraq.

We would therefore kindly request you to clarify UNHCR's position with regard to the following questions:

- *Is it the position of UNHCR that risk of persecution can be excluded if the person concerned left Iraq legally (and do not give other reasons for applying for asylum than republikflucht) and that this is so even in the cases where it has come to the attention of the Iraqi authorities that the returnee in question lodged an application for while asylum abroad?*
- *Or is a position of UNHCR that Iraqis who left Iraq legally (and do not give other reasons for applying for asylum than republikflucht) as a rule can return without being at risk of persecution (still) based on a presumption that the Iraqi authorities do not know - or suspect - that an application for asylum has been lodged?*
- *In the affirmative of the previous question, i.e. the lack of risk of persecution is based on a presumption that the Iraqi authorities are not aware that the returnee did applied for asylum abroad, what might, according to UNHCR, raise the suspicions of the Iraqi authorities and put the IC at risk? Would, for example, any of the below factors put the returnee at risk:*
 - *A "longer stay abroad". In the affirmative, what should according to the opinion of UNHCR be considered a "longer" stay abroad?*
(In the above quoted Foreign Ministry Note of 1 may 1995, it is stated that "it must be expected that Iraqi citizens who left legally , but stayed for an "unforeseen and surprisingly" long period of time abroad, for example more than around one month, will be interrogated about the reasons for the stay abroad and about the financing of the stay. – Your attention should also be drawn to the fact that it would normally take at least one year before an asylum application have been finally rejected under the normal two-instance asylum procedure in Denmark)
 - *Interrogation on return*
 - *Stay in the West (as opposed to a stay in a neighbouring country)*
 - *May the possible lack of (lesser) risk of persecution for returnees from Jordan (or other neighbouring countries?) be related to the fact that there is already a heavy traffic of Iraqis over the border from Iraq to Jordan and vise-versa – Iraqis who merely travels in order to do business, visit relatives, etc.? May this imply that it is easier for rejected asylum seekers to hide/mix with the*

ordinary lot of (illegal) migrants being returned from Jordan?

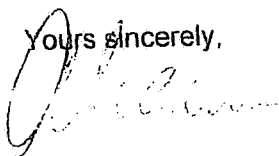
- *The arbitrary behaviour of the Iraqi authorities, which seems to be documented in all other areas*
- *Would other factors be relevant when assessing the risk of persecution?*
- *With regard to the interpretation and implementation of Decree No 110 of 28 June 1999, has the position of UNHCR changed since the position referred to in the Foreign Ministry Note of 20 June 2000?*
- *Does UNHCR find that there is now basis for Denmark to change its present asylum policy according to which Iraqis from government controlled areas are granted de facto-status and protected against forcible return to Iraq?*

The Danish Refugee Council is concerned that UNHCR while apparently endorsing the conclusions which the Danish Immigration Service drew on basis of the fact-finding mission to Iraq and Jordan has not been fully aware of the implications and complexity of these. At the same time it is very clear that an endorsement would seem to imply a major shift in UNHCR's policy regarding this caseload.

It should also be mentioned that the Danish Refugee Council has been in contact with Amnesty International's International Secretariat in London through our local Amnesty International office in Copenhagen. Amnesty International was very surprised and expressed doubt as to the fact that the findings of the fact-finding report of June 2001, should be an accurate reflection of UNHCR's position. According to Amnesty International, when their researchers have put to UNHCR's office in Jordan the issues of republikflucht and enforcement of the relevant decrees and amnesties in Iraq, they have got the very distinct impression that UNHCR's position remains the same as was expressed to the Danish Foreign Ministry in June 2000.

I very much appreciate how difficult it must be for you to prioritise this request. However, given that the Danish Refugee Appeals Board already will make decisions in the first test cases on next Friday 28 September, I would highly appreciate your urgent attention and reply as these decisions will set a precedent for the future Iraqi caseload.

Yours sincerely,



Andreas Kamm
Secretary General

c.c. Mr. Gary Troller, Representative, UNHCR-RONBC
Ms. Rosaline Okoro, Head of Desk, Regional Bureau for Europe, UNHCR HQ

