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ON REFUGEES AND EXILES

CONSEIL EUROPEEN
SUR LES REFUGIES
ET LES EXILES

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GUIDELINES FOR THE TREATMENT OF IRAQI ASYLUM SEEKERS & REFUGEES IN EUROPE - April 2004

Introduction

1. The European Council on Refugees and Exiles (ECRE) is a network of 76 organisations in 30 European countries. These Guidelines are in response to the treatment of Iraqi asylum seekers and refugees in Europe, many of whom face being returned to Iraq despite widespread recognition of the unsafe conditions there. They take into account the latest developments in the country, the work of the Iraqi Governing Council (IGC) and the Coalition Provisional Authority (CPA), and the changes to the overall situation in the country in the twelve months since the U.S. declared the end of major combat operations in Iraq.
2. This paper concerns the voluntary repatriation of Iraqis who have refugee or complementary protection status, those with temporary protection status and those who are in the process of applying for protection, including those who have received a negative first decision and have appealed. It also concerns the forced return of Iraqis whose asylum applications have been rejected, and those whose protection status has ceased or ended after they have had effective access to the asylum system.
3. Throughout Europe the treatment of Iraqis seeking international protection continues to vary considerably. In many European countries the processing of asylum applications has recommenced after a period of suspension. In February 2004, the United Kingdom announced it would become the first European country to begin enforced returns of failed Iraqi asylum seekers, with the aim of 30 Iraqis per month being sent back from this spring. A number of other European states are reviewing the status of Iraqi asylum seekers and considering returning them to Iraq, including The Netherlands, Sweden, and Germany¹.

¹ See "Asylum Numbers Down, New Drive on Removals – Home Secretary", UK Home Office Press Releases, 24 February 2004. In February, the Dutch Parliament approved a bill to forcibly expel 26,000 asylum seekers over the next 3 years, applicable to those who arrived after 1 April 2001 – Iraqis being one of the largest groups to arrive after this date. The German government is also considering forcible returns to Iraq, and the Swedish Migration Board stated in February that "the general situation in Iraq cannot be regarded as such that there is need for protection in accordance with the current Aliens' Act." Further information is available from ECRE's *Questionnaire on the Treatment of Iraqi Refugees and Asylum Seekers in Europe* (April 2004). The Questionnaire contains specific information from eighteen countries relating to the treatment of Iraqi asylum

4. Reports from NGOs and international organisations continue to emphasise that the country remains unsafe and that there is insecurity throughout, including northern Iraq, with numerous groups continuing to suffer persecution. ECRE urges that Iraqi refugees be provided with protection in compliance with international human rights and refugee law principles. Host governments should also provide Iraqi refugees with accurate information about conditions in their home areas.
5. All Iraqi asylum claimants must be given the opportunity to lodge an asylum application and have it processed with minimum delay. These applications should be dealt with on an individual basis, in order to identify and recognise their status as early as possible. This should include either refugee status in accordance with the 1951 Convention Relating to the Status of Refugees or a complementary form of protection for those who fear persecution but fall outside a full and inclusive interpretation of the terms of the 1951 Convention. States must consider persecution emanating from non-State agents active in Iraq and the relevance of horrific forms of past persecution as compelling reasons for non-return, as well as current country of origin information. Iraqis who despite all of these factors fail to be granted refugee or a form of complementary status cannot be returned and should be granted a legal status which affords them their human rights and a dignified standard of living in the host country. We would recommend against a presumption that applications are deemed to be manifestly unfounded on the basis of the establishment of the Iraqi Governing Council (IGC), the Coalition Provisional Authority (CPA), the signing of an Interim Constitution, or the formation of internal human rights bodies². The rule of law and the protection of basic human rights are not in place in Iraq.
6. We are against the promotion of voluntary repatriation as a durable solution at the present time as the conditions of “safety and dignity” cannot be upheld. Therefore voluntary repatriation should only be facilitated at present for those who have indicated a strong desire to return in spite of current conditions.
7. The current situation in Iraq is such that the mandatory return of Iraqis is unthinkable, and we would recommend a continued ban on forced return to any part of the country³. There is no effective infrastructure in place to uphold the rule of law and protect human rights. Furthermore, UNHCR has stressed that due to an absence of international staff in Iraq, they are unable to monitor returnees or provide them with assistance once they enter the country⁴. In addition, instability due to increased violence, lack of basic services, housing shortages and high unemployment severely hinders the country’s ability to absorb those who return. We would also recommend a ban on the return of Iraqi asylum seekers to countries in the region, regardless of their prior stay or transit in these countries, until these infrastructure requirements are met. This will require continued support from European governments through funding of the reconstruction process in Iraq.

seekers from 2001 to 2003. See also “RFE/RL Iraq Report”, Vol. 7, No. 7, 27 February 2004 and “Iraq: Forcible Return of Refugees and Asylum-Seekers is Contrary to International Law”, Amnesty International Press Release, 27 November 2003

² Such as the IGC’s Ministry of Human Rights.

³ For a definition of mandatory and forced return, see ECRE’s *Position on Return* (2003)

⁴ See *Latest Guidance on Iraqi Asylum Seekers*, UNHCR, 16 March 2004

8. This paper should be read in conjunction with ECRE's Positions on Return, on the Interpretation of Article 1 of the Refugee Convention, and on Complementary Protection, and in light of other ECRE policy statements⁵.

I – THE DUTY OF PROTECTION FROM PERSECUTION

Lack of physical security

9. Despite the establishment of the Iraqi Governing Council (IGC) and the Coalition Provisional Authority (CPA), the signing of an Interim Constitution and the beginning of reconstruction efforts by the international community, the security situation in Iraq remains highly unsafe. This is confirmed by media reports⁶, reports from the UN⁷, NGOs⁸ and information provided by governments⁹. As a recent Amnesty International press release states, "Security remains of high concern with the breakdown of law and order and the threat of persecution. Many Iraqi civilians have been killed by armed groups, Coalition forces, foreign fighters and insurgents in different parts of the country, including the north. The departure of international staff from the vast majority of non-governmental organizations and from international agencies, and closure of a large number of projects that provided Iraqis with regular assistance and aid has only heightened the problem"¹⁰. Deficiencies in physical security are compounded by inadequate material security, with severe shortages in basic services and housing persisting, aggravated by high rates of unemployment.
10. In Baghdad, the security and human rights situation remains precarious despite the work of the Coalition and police forces and the heavy international presence in the capital. The CPA and IGC continue to lack effective control over Baghdad and there have been reports of the complete inability of the authorities to guarantee the protection of human rights there. As one report states, "Regular car bombings, mortar attacks and small arms incidents in the centre of Baghdad have created an ongoing atmosphere of fear and instability.... US armoured patrols are not only ineffective, but have also become targets for Ba'athist and foreign insurgents, with civilian bystanders often becoming victims of the attacks"¹¹. There are also reports that Coalition forces and the police themselves are involved in human rights violations but because of the absence of accountability structures they cannot be held to account for their actions.

⁵ In particular, *Position on Refugee Children* (1996) and *Position on Asylum Seeking and Refugee Women* (1997)

⁶ As of February this year, Reuters reported that some 300 police officers had lost their lives as the result of the insurgency in Iraq since the fall of the regime, and AP reported that at least 261 Iraqi civilians had been killed in major suicide attacks or car bombings since 1 January, "RFE/RL Iraq Report", Vol. 7, No. 5, 12 February 2004

⁷ See *Update on the International Protection Response to Asylum-Seekers from Iraq*, UNHCR, 4 March 2004

⁸ See for example the Human Rights Watch report *Sidelined: Human Rights in Postwar Iraq*, January 2004

⁹ See for example the United Kingdom's Foreign and Commonwealth Office website, which states, "The security situation in Iraq remains dangerous", 3 March 2004

¹⁰ See "Iraq: Forcible Return of Refugees and Asylum-Seekers is Contrary to International Law", 27 November 2003. The situation has become so dire that Iraqi Interior Minister Nuri Badran said on 23 March 2004 the Interior Ministry will not be ready to manage internal security when the U.S.-led coalition transfers power to an Iraqi administration at the end of June, "RFE/RL Iraq Report", Vol. 7, No. 11, 26 March 2004

¹¹ See "Iraqi Crisis Report No. 36", Institute for War and Peace Reporting (IWPR), 21 November 2003

11. Beyond Baghdad, poor security, generalised criminality, and disregard for basic human rights are also endemic. Each of these factors has in turn negatively affected reconstruction efforts and the delivery of humanitarian assistance. Travel on many roads remains unsafe with ongoing attacks by insurgents and criminals. The greatest resistance comes from within the so-called Sunni Triangle, the area to the west of Baghdad, around the town of Fallujah. However, security is poor throughout the country and no region can be considered 'safe', including northern Iraq. As UNHCR states, there is "on-going sectarian tension in this region concerning the extent of political autonomy as well as land ownership, the latter a consequence of forced displacement by the former regime's 'Arabization' campaign"¹². Throughout Iraq, the high security risks have led to a reduced UN and NGO presence, meaning these organisations have little ability to assist persons at risk of human rights abuses.

12. A number of events in recent months are indications of the unstable security situation. On 19 August 2003, the UN suffered the worst attack in its history when its headquarters in Baghdad were bombed, wounding over 150 people and killing 22 staff and visitors, including the UN Secretary-General's Special Representative for Iraq, Sergio Vieira de Mello. The UN withdrew its foreign staff from Iraq following the attack, functioning only at reduced levels using local staff¹³, and a large number of relief and reconstruction operations by other international organisations and NGOs were disrupted or dramatically scaled back¹⁴. Further recent attacks have resulted in a number of deaths, including at least 12 people in a suicide car bomb attack on the headquarters of the International Committee of the Red Cross in Baghdad, and at least 65 people killed (and over 260 wounded) in 9 explosions in Karbala and 3 outside a mosque in Baghdad on 2 March 2004, the Shi'ite holy day when millions of Muslims gather to commemorate Ashura¹⁵. It is important to note that attacks have become increasingly random and deadly, and innocent civilians remain at risk throughout the country, as well as returning Iraqis. Recently, there has been an upsurge in violence that has led to approximately 880 deaths of Iraqis, including civilians, and 87 deaths of U.S. forces since 1 April¹⁶.

13. Coalition forces are stretched beyond their capacity to try and restore order, and are generally hampered by their inability to impose their authority, especially outside of Baghdad¹⁷. Increasingly, insurgents are targeting those working for or suspected of being associated with Coalition forces¹⁸. As a recent Human Rights Watch report states, "the escalating use of force reveals how the occupying powers have been unable to secure law

¹² See *Update on the International Protection Response to Asylum-Seekers from Iraq*, UNHCR, 4 March 2004

¹³ See "Dark Day for UN: Baghdad Attack Kills 22", UN News Centre

¹⁴ Both the World Bank and the International Monetary Fund (IMF) pulled their staff out of Iraq the following day, while the European Union (EU) also scaled back its presence in Baghdad. In November, the International Committee of the Red Cross (IRC) announced it would shut its Baghdad and Basra offices amid security concerns, "Iraq Crisis Reports", UN Integrated Regional Information Network (IRIN), 21 August 2003, and "Iraqi Crisis Report No. 35", Institute for War and Peace Reporting (IWPR), 14 November 2003

¹⁵ See "RFE/RL Iraq Report", Vol. 7, No. 8, 5 March 2004

¹⁶ The number of Iraqi deaths given is an estimate reported by the Associated Press and compiled from statements from US military officials and Iraqi police and hospitals, "Iraq Death Toll Reaches New High", BBC News, 14 April 2004

¹⁷ See "Iraq" (Country Profile), Danish Red Cross, January 2004, www.flygtning.dk/asyl/profiler/irak/irak.pdf

¹⁸ Recent attacks include the 10 February 2004 bombing of a police station in Al-Iskandariyah, killing at least 55 people and wounding 150; the assassination that same day of four police officers in two separate incidents; and the 18 February 2004 detonation of two truck bombs outside a military camp in Al-Hillah, killing at least 13 people and wounding more than 60, "RFE/RL Iraq Report", Vol. 7, No.s 5 and 6, 12 and 20 February 2004

and order. From the beginning of the occupation, U.S. troops have failed to communicate effectively with the local population on security issues, and to deploy sufficient numbers of international police or constabulary (*gendarme*) forces, and have relied on combat troops for policing duties without appropriate training¹⁹. The Coalition-trained Iraqi police and Civil Defense Corps (ICDC), which will replace Coalition forces after a U.S. withdrawal, do not have the capacity required to adequately patrol the country and act as a deterrent to renewed fighting and human rights abuses, and are themselves the target of attacks.

Recommendations

14. All Iraqi asylum claimants must be given the opportunity to lodge an asylum application and have it processed with minimum delay. These applications should be dealt with on an individual basis, in order to identify and recognise their status as early as possible. This should include either refugee status in accordance with the 1951 Convention Relating to the Status of Refugees or a complementary form of protection for those who fear persecution but fall outside a full and inclusive interpretation of the terms of the 1951 Convention. States must consider persecution emanating from non-State agents active in Iraq and the relevance of horrific forms of past persecution as compelling reasons for non-return, as well as current country of origin information. Iraqis who despite all of these factors fail to be granted refugee or a form of complementary status cannot be returned and should be granted a legal status which affords them their human rights and a dignified standard of living in the host country. We would recommend against a presumption that applications are deemed to be manifestly unfounded on the basis of the establishment of the Iraqi Governing Council (IGC), the Coalition Provisional Authority (CPA), or the signing of an Interim Constitution for Iraq.
15. In particular, the groups listed below may have ongoing protection needs that would make their forced return to Iraq a breach of international law and intolerable:
 - Iraqis perceived to be supporting or collaborating with the CPA and IGC, who are increasingly targeted in attacks. These include religious and community leaders (intellectuals, doctors, lawyers, judges); NGO, UN and CPA staff; and members of Iraqi political parties, especially the Kurdistan Democratic Party (KDP) and the Patriotic Union of Kurdistan (PUK)²⁰. Several hundreds of people in these categories have already been murdered, and many more face harassment, murder threats and attacks²¹.
 - Persons in opposition to Saddam Hussein, who are still in great danger due to the return of former regime members to Iraq²².

¹⁹ See *Sidelined: Human Rights in Postwar Iraq*, Human Rights Watch report, January 2004

²⁰ On 1 February, suicide bombers struck the PUK and KDP offices in Irbil in separate but almost simultaneous attacks, as both hosted receptions for the Muslim holiday Eid Al-Adha. Over 130 people were wounded and at least 101 people killed, including a number of senior Kurdish leaders, "RFE/RL Iraq Report", Vol. 7, No. 5, 12 February 2004

²¹ See *Update on the International Protection Response to Asylum-Seekers from Iraq*, UNHCR, 4 March 2004

²² As evidenced by the number of local Iraqi judges working on Saddam-era cases who have been the target of attacks, *Sidelined: Human Rights in Postwar Iraq*, Human Rights Watch report, January 2004. See also "Iraq" (Country Profile), Danish Red Cross, January 2004

- Many former members of the ruling Ba'ath regime, including the earlier secret services, the earlier government and administration as well as other national services, who still face violence, harassment and discrimination for their roles in Saddam Hussein's government, despite the co-operation of many with the new administration²³.
 - Religious, ethnic and national groups at risk of persecution including Shiites, Sunnis, Kurds, Jews, Christians, Chaldo-Assyrians, and Palestinians²⁴.
 - Victims of cruel punishment at the hands of religious courts that practise Islamic shari'a law, including those who have already received such punishment and those who are threatened with this punishment if they return to Iraq.
 - Victims of torture and persecution and witnesses of severe human right crimes committed by the Ba'ath-regime.
 - Vulnerable populations including the elderly, handicapped, sick, children, single women, women who are the head of household or who have been expelled from their families, and individuals with no feasible social network in Iraq and therefore a severely reduced possibility to access forms of subsistence.
16. It should particularly be noted that the position of women remains precarious due to the failure of Iraqi and Coalition forces to provide public security, and despite the lifting of Islamic shari'a law from the civil courts and the provisions of the new Interim Constitution²⁵. 'Honour killings' continue throughout the country, and particularly in the north. The fear of public harassment, rape, and abduction keeps women and girls at home, drastically affecting access to education, health facilities, jobs, and leisure. Allegations of sexual violence and abduction are considered a low priority by Iraqi law enforcement personnel and Coalition forces, and victims often face indifference and sexism when reporting abuses against them²⁶. Many Iraqi men were killed by the former regime and during the U.S.-led invasion, and returning female head of households or single females without family to return to will have no means of supporting themselves in Iraq²⁷. ECRE strongly recommends that female asylum seekers are not forcibly returned to Iraq, and urges governments to consider a grant of protection on Refugee Convention or human rights grounds, or to grant some form of complementary protection for humanitarian reasons to those who do not qualify for protection on either of these grounds.
17. The lack of corroboratory evidence due to the uncertain situation in Iraq should not represent sufficient ground for rejecting or granting a lesser protection status to claimants who are able to demonstrate that their fear of persecution is a reasonable one.

²³ Alignment with the Ba'ath Party did not necessarily mean one was pro-Saddam, as party membership was a requirement to obtain a government job. Yet 'revenge killings' of former government and Ba'ath Party officials reportedly numbered several hundred in early November 2003, *Sidelined: Human Rights in Postwar Iraq*, Human Rights Watch report, January 2004

²⁴ Sunnis have been driven out of villages in the north, due to a phenomenon of "reverse-Arabization" in which Kurds are returning to reclaim homes taken from them under the Ba'ath regime. Kurds and Shi'a Muslims are purportedly two of the four groups listed as terrorist targets in Iraq in a letter drafted by alleged Al-Qaeda terrorist Abu Mus'ab al-Zarqawi.

²⁵ See "Iraq: Interim Constitution Shortchanges Women", Human Rights Watch Press Release, 5 March 2004

²⁶ See *Climate of Fear: Sexual Violence and abduction of women and girls in Baghdad*, Human Rights Watch report, July 2003

²⁷ According to the CPA, the former regime killed so many men in south-central Iraq that women now comprise 60 percent of the population, "RFE/RL Iraq Report", Vol. 7, No. 6, 20 February 2004

18. For people facing persecution an internal protection option is not a viable alternative to granting asylum. Considering the unsafe situation throughout the country and general lawlessness and total lack of respect for human rights, in our view the internal protection option would not provide effective protection.

II –RECOGNISING THE DANGERS OF RETURN

The situation on the ground

19. The collapse of the former regime caused an initial power vacuum that resulted in the collapse of many public services, and one year later the problem persists. Iraqis are confronted with the absence of law and order and basic physical infrastructure (such as roads, schools, health clinics, and a severe lack of housing and employment opportunities)²⁸, the irregular provision of basic services (including water availability and food supply), the absence of an effective judicial system or financial institutions, a high dependency on international food aid, and the presence of millions of mines from decades of conflict, compounded by the problems faced by voluntary agencies due to security concerns in providing basic social services and assistance. UNHCR and the CPA's Ministry of Displacement and Migration warn that any large-scale return programme would only further destabilise Iraq²⁹.
20. Furthermore, foreign refugees who once found sanctuary within Iraq now find themselves evicted from their homes, with several thousand Palestinian and Iranian refugees leaving since early April 2003. Unregulated flows of refugees are already threatening the impoverished communities to which they return, chiefly in the nine southern governates where more than 122,000 refugees have returned since last year³⁰. Internal displacement is pervasive, particularly due to Kurds reclaiming property given to Arabs under Saddam's 'Arabization' plan. The governate of Diyala, northeast of Baghdad, is home to more than 50,000 internally displaced people, the most of any Iraqi province³¹.
21. The situation on the ground is dire, in political and security terms. Security is one of the biggest concerns for returning refugees,³² and European States must fully take into account the instability in the country and the fact that the safety of returnees can in no way be guaranteed. Due to an absence of international staff in Iraq, UNHCR has stressed that little support exists for those who do return, as the organisation is unable to monitor returnees or provide them with assistance once they enter the country³³.

²⁸ The unemployment rate runs as high as 60-70 percent.

²⁹ See paragraph 5 of the *Update to the International Protection Response to Asylum-Seekers from Iraq*, UNHCR, 1 March 2004. See also "UNHCR delays return convoy to Iraq amid insecurity", UNHCR News Stories, 6 April 2004.

³⁰ according to the Iraqi Ministry of Trade, "Impoverished southern Iraq wrestles with significant refugee returns", UNHCR, 17 March 2004

³¹ See "Aiding the internally displaced in Iraq", Danish Refugee Council, 7 January 2004

³² As UNHCR warns, "Even though they might not be a target of attacks, returning Iraqis tell us they fear being caught in the wrong place at the wrong time, while others mention the prevalence of land mines and unexploded ordnance", *Iraq: security an issue for returnees too*, UNHCR, 2 April 2004

³³ See *Latest Guidance on Iraqi Asylum Seekers*, UNHCR, 16 March 2004

Recommendations

22. ECRE calls for a ban on the forced return of Iraqis from Europe. No mandatory return to Iraq should take place until an effective and sustainable infrastructure is in place to uphold the rule of law and protect the human rights of Iraqis and until the country is in a stable enough position to absorb the number of people who have already returned. These conditions do not exist at present. We would also recommend a ban on the return of Iraqi asylum seekers to countries in the region, regardless of their prior stay or transit in these countries, as any return programme by European States risks triggering forced returns to Iraq from countries in the region or further destabilisation within Iraq.
23. For Iraqis who indicate a strong desire to return, return should be facilitated. Returnees should be given the necessary information to make an informed choice, which should include access to information from friends and relatives living in communities in Iraq whom returnees are most likely to trust. Information should cover whether or not guarantees for safe and sustainable return have been met and also the rights guaranteed there, as well as possibilities regarding the right to remain in the host country. Once security improves and the conditions highlighted above are met, returnees should also be entitled to undertake "look and see" visits to Iraq to assess whether it is realistic to return, while retaining their Convention or complementary protection status in the country of asylum. They should be given time to commit to the voluntary repatriation process and prepare to return.
24. Voluntary repatriation should only be "facilitated" and should not be "promoted"³⁴. Facilitating voluntary repatriation by the host states implies supporting and enabling individuals wishing to repatriate, but not promoting the repatriation of the particular nationality or ethnic group involved. Promotion of voluntary repatriation can only take place when an assessment of the situation in Iraq shows that the necessary conditions of return in safety and dignity including "physical, legal and material safety" exist³⁵.
25. It is imperative that international support for the reconstruction of Iraq should continue. The international community, and in particular the EU, must play a full and active role in the reconstruction of Iraq.

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³⁴ "Promotion" of repatriation is defined by UNHCR as "the practical measures which can be taken to help refugees return voluntarily once the conditions for this exist" and "actively undertaking broad and wide-ranging measures to advocate refugees' return". UNHCR defines "facilitation" as respecting the refugee's right to return to their country at any time, when they have indicated a "strong desire to return voluntarily and/or have begun to do so on their own initiative".

³⁵ As stated in the Global Consultations on International Protection, fourth meeting, 25 April 2002, EC/GC/02/5, paragraph 15. These concepts are also defined in *UNHCR Handbook on voluntary repatriation* (1996), supra 10, paragraph 2.4.

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