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ON REFUGEES AND EXILES

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GUIDELINES ON THE TREATMENT OF IRAQI ASYLUM SEEKERS AND REFUGEES IN EUROPE

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Introduction & Key Recommendations

1. The European Council on Refugees and Exiles (ECRE) is a network of 80 organisations in 30 European countries. This paper is in response to the treatment of Iraqi asylum seekers and refugees in Europe.¹ Many Iraqis in Europe face being returned to Iraq on the grounds that they would be safe in specific areas, despite widespread recognition of the unsafe conditions across the whole of Iraq. In addition, some European states are denying or withdrawing Iraqis' refugee status or other forms of international protection.
2. This paper concerns the voluntary return of Iraqis who have refugee or subsidiary forms of protection² 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 are engaged in an appeal process. It also looks at the mandatory and forced return of Iraqis whose asylum applications have been rejected, and those whose protection status has ceased or been withdrawn.³

¹ This paper is an update of ECRE's 2004 *Guidelines for the treatment of Iraqi asylum seekers and refugees in Europe*, April 2004. It should be read in light of other ECRE positions, in particular ECRE's series of papers entitled 'The Way Forward: Europe's role in the global refugee protection system': *The Return of Asylum Seekers whose applications have been rejected in Europe* (2005), *Towards Fair and Efficient Asylum Systems in Europe* (2005), and *Guarding Refugee Protection Standards in Regions of Origin* (2005), and ECRE's *Position on Return* (2003), *on The Interpretation of Article 1 of the Refugee Convention* (2000), *on Complementary Protection* (2000), and *on Detention of Asylum Seekers* (1996).

² Subsidiary forms of protection here refers to the definition as covered in Article 15 of the EU Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification of third country nationals and stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, other forms of complementary protection granted to individuals whose return would be in breach of states obligations under international law, and wider forms of discretionary leave granted to individuals who cannot return because of their particular circumstances.

³ ECRE defines three different categories of return: voluntary, mandatory and forced, see ECRE's *Position on Return*, October 2003, paras. 7-10.

3. There is currently no effective infrastructure in place in Iraq to uphold the rule of law and protect human rights. 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. The United Nations High Commissioner for Refugees (UNHCR) has only a very limited international presence in Iraq at this time so there is little capacity to monitor what happens to returnees.⁴
4. According to UNHCR, the number of Iraqi refugees worldwide in 2004 was 311,800, not taking into account the approximately one million displaced Iraqis in the region neighbouring Iraq.⁵ Iraqis represented the sixth largest asylum seeking group in 2004 with 23,500 claims worldwide.⁶ The main countries of asylum for Iraqis remained the same in 2004 as in previous years, namely Iran, Germany, the Netherlands, Sweden and the United Kingdom.⁷
5. Throughout Europe the treatment of Iraqis seeking international protection continues to vary considerably. Some European countries have increased the protection afforded to Iraqi nationals, some have withdrawn protection from Iraqi refugees, whilst others are taking measures that might indicate a preparedness to return Iraqis to Iraq. In 2005 two European countries, Poland and the United Kingdom, forcibly returned Iraqi asylum seekers whose applications had been rejected to Iraq.
6. ECRE urges that European governments give Iraqi asylum seekers the opportunity to lodge an asylum application and that it be dealt with on an individual basis in accordance with international refugee and human rights law, and that all Iraqis, including those whose asylum applications have been rejected, be granted the socio-economic support necessary to live in dignity, as long as safe and sustainable return to Iraq is not possible.
7. ECRE does not dispute the fact that governments have the right to return asylum seekers whose applications have been correctly rejected following a proper, fair and substantive examination of their asylum applications and protection concerns.⁸ However, reports from the UN, international organisations and NGOs continue to emphasise that Iraq remains unsafe and that there is insecurity throughout, including northern Iraq, with many groups continuing to suffer persecution. ECRE believes that the current situation in Iraq is such that the mandatory or forced return of Iraqis is unacceptable, and recommends a continued ban on forced return to any part of the country, including the Kurdish Autonomous Region.
8. ECRE continues to be against the promotion of voluntary return as a durable solution since conditions of safety and dignity cannot be upheld. Therefore, voluntary return should only be facilitated for those who have indicated a strong desire to return, based on accurate and sufficient information available to them about conditions in their home areas.
9. ECRE continues to advocate for a ban on the transfer of Iraqis from Europe to other countries in the region, regardless of their prior stay or transit in these countries. A premature

⁴ See British Refugee Council Briefing, *Iraq- Return and section 4 support*, November 2005, p.3.

⁵ See UNHCR, *Global Appeal 2006*, November 2005, p.232.

⁶ See UNHCR, *2004 Global Refugee Trends*, June 2005, p.6.

⁷ See UNHCR, *Refugees by numbers 2004*, September 2004 and UNHCR, *Refugees by numbers 2005*, September 2005. See also UNHCR, *Country of Origin Information-Iraq*, October 2005, p.177.

⁸ See ECRE's Way Forward series of papers on *The Return of Asylum Seekers whose applications have been rejected in Europe* (2005), *Towards Fair and Efficient Asylum Systems in Europe* (2005).

influx to such countries could further destabilise the region and inflame underlying tensions, and could lead to returnees fleeing again.

I. THE SITUATION IN IRAQ⁹

10. Since the fall of the former regime, Iraqis have been plagued by the proliferation of armed militias, and criminal and terrorist organisations acting with impunity, constituting major challenges to law and order and a threat to the security of the civilian population.¹⁰ The range of such criminal activities includes armed robberies, kidnappings for ransom, harassment, the killing of persons involved in the political process or reconstruction activities, sabotage attacks against civilian infrastructure such as electricity or oil pipelines and full-scale attacks involving bombs and/or other explosives. Attacks have become increasingly random and deadly, and any Iraqi can be the target of attack by insurgents at any time and any place.¹¹ *Many Iraqis continue to flee, especially to neighbouring Syria to escape lawlessness, harassment, and persecution.*¹² Data released by the Iraqi government show that nearly 6,000 Iraqi civilians, police and troops were killed in violence in 2005, while one independent source estimates that at least 28,501 civilians have been killed since the start of the US-led military action in Iraq in March 2003.¹³
11. The unstable security situation has become manifestly worse over the past two years, especially since May 2005, leading to:¹⁴
 - High civilian death tolls
 - Displacement of the civilian population
 - Urgent humanitarian needs for water, food, and shelter¹⁵
 - Low public confidence in government officials

⁹ For more information on the material safety in Iraq, please see UNHCR, *Country of Origin Information-Iraq*, October 2005, p.91-113.

¹⁰ See UNAMI, *Human Rights Report 1 September-31 October 2005*, November 2005, para.3; and ICG, *In their own words: Reading the Iraqi insurgency*, Middle East Report No 50, 15 February 2006. A survey of armed groups operating in Iraq can also be found at <http://www.rferl.org/specials/IraqCrisis/specials-armedgroups.asp> and UNHCR, *Country of Origin Information-Iraq*, October 2005, p.59-73.

¹¹ The UK Foreign and Commonwealth Office, *Travel Advice: Iraq*, 24 February 2006, although aimed at British nationals, states that i) terrorists and insurgents are targeting Iraqi interests and the security threat is directed against both military and civilian targets, ii) travel by road is dangerous and there have been random and premeditated attacks against civilians and military convoys killing numerous foreign and Iraqi nationals. See also the US Department of State, *Iraq*, 29 December 2005.

¹² See Refugees International, *Iraqi refugees in Syria: Silent exodus leaves 500,000 in need of protection and aid*, 15 November 2005.

¹³ See UNAMI, *Human Rights Report 1 September-31 October 2005*, November 2005, para.2; RadioFreeEurope and Radio Liberty, *Pentagon: 26,000 Iraqi casualties in insurgency*, 30 October 2005 and *Iraq puts domestic toll at 6,000*, 3 January 2006. Michael Ton, *Sollen irakische Exilanten Deutschland jetzt verlassen?*, September 2005, p.4, <http://www.proasyl.de/texte/mappe/2005/104/19.pdf>; and Iraq Body Count at <http://www.iraqbodycount.org/>, which maintains a public database of media-reported civilian deaths in Iraq that have resulted since the 2003 military action. The count includes civilian deaths caused by coalition military action and by military or paramilitary responses to the coalition presence (e.g. insurgent and terrorist attacks). These statistics have also been confirmed by the US Pentagon.

¹⁴ See UNHCR, *Guidelines Relating to the Eligibility of Iraqi Asylum Seekers*, October 2005, p.2 & 3 and Human Rights Watch (HRW), *World Report 2006: Iraq*, 18 January 2006.

¹⁵ See UNHCR, *Country of Origin Information-Iraq*, October 2005.

- High rates of criminality
- The lack of a properly functioning judicial system
- A weak local security system
- Kidnappings of civilian Iraqis¹⁶
- Widespread corruption.

Many people cannot enjoy their socio-economic rights, due to slow reconstruction and a lack of or instable supplies of proper health, education, water, electricity and other facilities, as well as significant housing shortages and high unemployment.¹⁷

12. Hopes for a stabilisation of the security situation in Iraq after the transfer of power in June 2004 to the Iraqi people have not yet materialised. The September 2005 report of the Secretary General to the United Nations on the UN's activities in Iraq noted that the security situation in Iraq remains "*a matter of serious concern*". Attacks by "*hostile elements*" are said to have reached their highest levels since the January 2005 elections. Furthermore, the "*sophistication, scale and lethality*" of the attacks has also increased significantly.¹⁸ The NGO International Crisis Group warned in October 2005 that Iraq is sliding towards "*de facto partition and full-scale civil war*".¹⁹
13. UNHCR has stated that due to the current volatile security situation in Iraq as well as the inability of the Iraqi authorities to provide adequate protection to Iraq's population, it is highly unlikely that asylum seekers who fear persecution in central and southern Iraq will be able to find a place in this region where they would be safe from persecution.²⁰

Northern Iraq

14. Although it may seem that the situation in northern Iraq is more stable, reports by the UN, UNHCR, NGOs and experts have indicated that the situation is unpredictable and therefore remains insecure. Reports of explosions, armed insurgent attacks as well as suicide bombing

¹⁶ See AI, *Iraq-In cold blood: Abuses by armed group*, 25 July 2005, p.6 and UN Assistance Mission for Iraq (UNAMI), *Human Rights Report 1 November-31 December 2005*, 18 January 2006, p.2

¹⁷ See UNHCR, *Guidelines Relating to the Eligibility of Iraqi Asylum Seekers*, October 2005, p.2 & 3 and HRW, *World Report 2006: Iraq*, 18 January 2006. For information on the situation for children, see IRIN, *Iraq: Children's mental health affected by insecurity, say specialists*, 7 February 2006.

¹⁸ See United Nations (UN), *Report of the Secretary General pursuant to paragraph 30 of resolution 1546 (2004) (update on United Nations activities in Iraq; summary of key developments)*, 7 September 2005, para.58 &59.

¹⁹ See International Crisis Group (ICG), *Crisiswatch*, 1 October 2005, No.26, p.11. This view is reinforced in their latest report published in February 2006, which stated that the bomb attack on a sacred Shiite (Shi'as) shrine in Samarra on 22 February 2006 and subsequent reprisals against Sunni mosques and killings of Sunni Arabs is "*only the latest and bloodiest indication that Iraq is teetering on the threshold of wholesale disaster*", ICG, *The next Iraqi war? Sectarianism and civil conflict*, Middle East Report No52, 27 February 2006.

²⁰ See UNHCR, *Guidelines Relating to the Eligibility of Iraqi Asylum-Seekers*, October 2005, p.49 and Schweizerische Flüchtlingshilfe (SFH), *Irak-Update*, 15 June 2005, p.4.

attempts, (attempted) murders and indiscriminate bombings continue to emerge.²¹ There is also considerable fear that the conflict in the other parts of the country, in particular in the Governorates of Kirkuk and Mosul, could spill over to the three Northern Governorates of Dohuk, Erbil and Sulaymaniyah.²²

15. During the elections in December 2005, party officials from the Kurdistan Alliance described those who did not plan to vote for the Kurdistan Alliance List as “traitors” and “non-patriots”. In the weeks leading up to the elections, Islamic Union offices in the northern city of Dohuk were burned and looted, while members of the Islamic Union were killed and others were injured.²³ Moreover, Kurdish ambitions to expand the Kurdish area of control, in particular in the Governorates of At Ta’imim (principal city: Kirkuk) and Ninawa (principal city: Mosul), have met resistance from Sunni Arabs, Turkmen and the Turkish authorities. The reported presence of some 5,000 Kurdistan Workers’ Party (PKK) fighters in northern Iraq, which causes tensions between the Kurdish authorities and the Turkish government, risks further inflaming the already volatile security situation in northern Iraq.²⁴

Agents of persecution in Iraq

17. There are growing indications that state persecution is taking place in Iraq, in particular by some police commandos and the Iraqi Security Forces (ISF) working under the authority of the Ministry of Interior, who have been accused of deliberately targeting Sunnis considered to be supporting the insurgency.²⁵ The human rights violations include arbitrary arrests and detention, unlawful killings as well as torture and ill-treatment, without almost anyone having been held accountable so far.²⁶
18. Acts of persecution are also committed by a number of non-state actors, including Islamic extremists, private militias, loyalists of the former regime, persons fighting against the presence of foreign troops in the country or family/tribe members in the case of honour killings or tribal feuds.²⁷ The risk of being subjected to persecution by any of these groups has become more pervasive, affecting all groups in society, and the number of such groups has become more varied since the fall of the previous regime.

²¹ See UNHCR, *Country of Origin Information-Iraq*, October 2005, p.17; HRW, *UK: Forced Return of Asylum-Seekers to Iraq*, 19 August 2005; AI, *Forcible return to Iraq would be unlawful*, 26 August 2005; SFH, *Irak-Update*, 15 June 2005, p.3 & 4. The September 2005 report of the Secretary General to the United Nations highlights the fact that no community, Kurd, Shi’a or Sunni, is immune from violence in northern Iraq, UN, *Report of the Secretary General pursuant to paragraph 30 of resolution 1546 (2004) (update on United Nations activities in Iraq; summary of key developments)*, 7 September 2005, para.58.

²² UNHCR, *Guidelines Relating to the Eligibility of Iraqi Asylum Seekers*, October 2005, p.49; and UNHCR, *Country of Origin Information-Iraq*, October 2005, p.75.

²³ See BBC News, *Tarnished democracy in Kurdistan*, 13 December 2005 and UNAMI, *Human Rights Report 1 November-31 December 2005*, 18 January 2006, para.6.

²⁴ See UNHCR, *Country of Origin Information-Iraq*, October 2005, p.76.

²⁵ See UNHCR, *Guidelines Relating to the Eligibility of Iraqi Asylum-Seekers*, October 2005, p.8; UNAMI, *Human Rights Report 1 November-31 December 2005*, 18 January 2006, para.7; and HRW, *World Report 2006: Iraq*, 18 January 2006.

²⁶ See UNHCR, *Country of Origin Information-Iraq*, October 2005, p.46-49 and BBC News, *Iraq ‘death squad caught in act’*, 16 February 2006. Similar allegations have emerged about the Iraqi National Intelligence Service. See UNHCR, *ibid*, p.57; UNHCR, *Aktualisierte UNHCR-Stellungnahme zur medizinischen Versorgungslage in Irak*, October 2005, p.1 (original in German); HRW, *The New Iraq? Torture and ill-treatment of detainees in Iraqi custody*, p.26; and ICG, *Crisiswatch*, Dec. 2005, No.28.

²⁷ See UNHCR, *Guidelines Relating to the Eligibility of Iraqi Asylum Seekers*, October 2005, p.55.

19. In addition, private security contractors, who supplement the military forces and provide functions such as protecting government officials and diplomats, guarding oil pipelines and reconstruction projects, training the Iraqi Security Forces, and working on consultancy and technical support, have little or no legal accountability, making them especially feared by the Iraqi population. These private security contractors were allegedly involved in the Abu Ghraib prison abuses, where they were conducting interrogations on prisoners.²⁸

Particular groups at risk

20. Religious and ethnic minorities are persecuted but this is not necessarily directly linked to individuals' own religious beliefs or practice. More often, there are strong perceptions vis-à-vis members of these groups, e.g. that they all support the US-led Coalition Forces or act in disrespect of Islamic values, which put individuals at risk of persecution irrespective of their actual belief or behaviour.²⁹ Many victims are most certainly targeted because of the ethnic/social/religious/political group they belong to. This is the case across the whole of Iraq.

21. According to numerous UNHCR, NGO and news reports, the following groups listed below are likely to have ongoing protection needs:

- *Women.*³⁰ For example, women who have transgressed perceived social mores or strict Islamic traditions, single women or female heads of households. Due to the increasing influence of strong conservative, religious groups, the situation for women has worsened. There is evidence of physical force (murder, rape, kidnappings, domestic violence, 'honour killings'³¹) and increasing pressure due to stricter dress and behaviour rules, as well as numerous cases of forced marriage and systematic discrimination.
- *Men who have transgressed perceived social mores or strict Islamic traditions, and homosexuals.*³² Similarly to women, due to the increasing influence of strong conservative, religious groups, men are being subjected to attacks and killings by Islamic groups or militias for their alleged non-Islamic behaviour (e.g. mingling with women in public, selling music or videos, or having 'Western' haircuts).
- *Members and associates of the Ba'ath Party and former regime.*³³

²⁸ See UNHCR, *Country of Origin Information-Iraq*, October 2005, p.45-46.

²⁹ See UNHCR, *Background Information on the Situation of Non-Muslim Religious Minorities in Iraq*, October 2005, p.2, (unofficial translation from German).

³⁰ See UNHCR, *Guidelines Relating to the Eligibility of Iraqi Asylum Seekers*, October 2005, p.20-21; SFH, *Irak-Update*, 15 June 2005, p.8; and Michael Ton, *Sollen irakische Exilanten Deutschland jetzt verlassen?*, 11 September 2005. For a detailed account of the current situation faced by women see UNHCR, *Aktualisierte Anmerkungen von UNHCR zur gegenwärtigen Situation von Frauen im Irak*, November 2005 and UNHCR, *Country of Origin Information-Iraq*, October 2005, p.34-40.

³¹ In the case of northern Iraq it has also been reported that cases of honour killings and other criminal offences against women are on the increase and not investigated by the Kurdish authorities. See UNHCR, *Aktualisierte Anmerkungen von UNHCR zur gegenwärtigen Situation von Frauen im Irak*, November 2005, p.3 and UNHCR, *Country of Origin Information-Iraq*, October 2005, p.34-40.

³² See UNHCR, *Guidelines Relating to the Eligibility of Iraqi Asylum Seekers*, October 2005, p.21 and IRIN, *Male homosexuality still a taboo*, 5 February 2006.

³³ See UNHCR, *ibid.*, p.14-17; SFH, *Irak-Update*, 15 June 2005, p.11; and SFH, *Irak: Gefährdung von ehemaligen Mitgliedern der Baath-Partei*, 27 January 2006.

- *Sympathisers or affiliates (perceived or real), or employees of the former Coalition Provisional Authorities, of US-led Coalition Forces, of the current government and administration, as well as members of political parties.*³⁴
- *Iraqis employed by foreign contractors, the UN or other international organisations (including NGOs).*³⁵
- *Professionals.* For example academics,³⁶ teachers, journalists, artists, doctors and medical personnel³⁷ due to suspected co-operation with or perceived support of the US-led Coalition Forces, suspected association with the former regime, as well as for the wealth they are perceived to have.
- *Members of religious minorities.*³⁸ For example Kurdish Yazidis,³⁹ Mandaean,⁴⁰ Jews,⁴¹ and Christians (including members of the Assyrian, Chaldean, Armenian and Catholic religious branch). Iraqi Christians increasingly experience discrimination with regard to access to the labour market or basic social services and many are afraid of persecution by insurgent groups as well as Islamic militias, which have gained *de facto* control over entire neighbourhoods in various cities and villages in Iraq. Additionally, there are reports from almost all parts of the country of assaults and attacks against Christian individuals and facilities (e.g. churches, community centres). Some are politically motivated and committed by members or supporters of the Kurdistan Democratic Party and the Patriotic Union of Kurdistan in northern Iraq.⁴² As part of increasing tensions between Sunnis and Shiite, individuals may also be targeted on the basis of their membership of either of these two groups.⁴³
- *Members of ethnic minorities.*⁴⁴ There are continuous reports that long term residents of Arab origin in the Governorates of Kirkuk and Mosul are victims of stigmatisation, harassment and arbitrary detention because of their perceived association with 'foreign fighters'. Arabs in the region administered by the Kurdish Regional Government are especially viewed as possible agents of Iraqi insurgency groups or as former Ba'athists. The Kurdish Regional

³⁴ See UNAMI, *Human Rights Report 1 September-31 October 2005*, November 2005, para.1; UNHCR, *ibid*, p.13-14; AI, *Iraq-In cold blood: Abuses by armed groups*, 25 July 2005; SFH, *Irak-Update*, 15 June 2005, p.9.

³⁵ See UNHCR, *ibid*, p.13 and SFH, *ibid*, p.9.

³⁶ There have been claims that University professors are facing persecution for being perceived as opposed to the US-led Coalition Forces operating in Iraq. According to the Minister of Education, during 2005, 296 members of education staff were killed and 133 wounded. See The Guardian, *Death of a professor*, 28 February 2006.

³⁷ See UNHCR, *Guidelines Relating to the Eligibility of Iraqi Asylum Seekers*, October 2005, p.18 and SFH, *Irak-Update*, 15 June 2005, p.9-10.

³⁸ See for general information UNHCR, *ibid*, p.9-13; SFH, *ibid*; and Michael Ton, *Sollen irakische Exilanten Deutschland jetzt verlassen?*, 11 September 2005.

³⁹ See UNHCR, *Background Information on the Situation of Non-Muslim Religious Minorities in Iraq*, October 2005, p.7/8 (original in German).

⁴⁰ See UNHCR, *ibid*, p5-6.

⁴¹ See UNHCR, *ibid*, p.6-7.

⁴² See UNHCR, *ibid*, p.3-4 and Amnesty International Germany, *Verwaltungsstreitsache einer irakischen Staatsangehörigen christlicher Religionszugehörigkeit*, 29 June 2005 (original in German).

⁴³ See UNHCR, *Guidelines Relating to the Eligibility of Iraqi Asylum Seekers*, October 2005, p.13 and UNHCR, *Country of Origin Information-Iraq*, October 2005, p.15; BBC News, *Iraqi blast damages Shia shrine*, 22 February 2006.

⁴⁴ See UNHCR, *ibid*, p.9-13 and SFH, *Irak-Update*, 15 June 2005, p.11.

Administration's vision for a "Kurdistan for Kurds" does not include the Arabs.⁴⁵ Similarly, many Turkmen complain about being subjected to investigation and/or arrest by the Kurdish authorities in the three northern Governorates, while Kurds who do not support the current Kurdish Regional Government face continuous harassment and discrimination.⁴⁶ Additionally, Human Rights Watch (HRW) reports that Kurds have been targeted due to their assumed support for the foreign invasion and presence in Iraq.⁴⁷

IDPs and refugees in Iraq⁴⁸

24. Estimates suggest there may be as many as 800,000 internally displaced persons (IDPs) throughout northern Iraq⁴⁹ and 100,000-300,000 in central and southern Iraq. It has been further estimated that within Iraq itself there were more than 400,000 IDP returnees, some 250,000 returnees from abroad, and the number of stateless persons is thought to be between half a million and two million.⁵⁰
25. Significant numbers of Iraqis from within the country have returned to their places of origin or former habitual residence or settled in other areas of their choice. However, the ongoing insecurity, including continued armed conflict and increasing ethnic and religious tensions, new patterns of persecution as well as the acute lack of services and infrastructure have led to new displacement of Iraqis both inside and outside Iraq.⁵¹
26. Ongoing military operations, especially in western and northern parts of the country, continue to generate displacement and hardship for thousands of families. Between May and October 2005 several thousand Iraqis all over Iraq were displaced from their homes following a series of offensives by the US-led coalition forces against insurgents.⁵² Reports by the UN Country Team (UNCT) of the United Nations Assistance Mission for Iraq (UNAMI) state that access

⁴⁵ See UNHCR, *ibid*, p.17-18; SFH, *ibid*, p. 11; US Committee on Refugees and Immigrants (USCRI), *World Refugee Survey 2005 Country Report: Iraq*, June 2005, p.8; and Internal Displacement Monitoring Centre (IDMC) at [http://www.internal-displacement.org/idmc/website/countries.nsf/\(httpEnvelopes\)/C08221F98BFF8D01802570B8005A74A6?OpenDocument](http://www.internal-displacement.org/idmc/website/countries.nsf/(httpEnvelopes)/C08221F98BFF8D01802570B8005A74A6?OpenDocument)

⁴⁶ See UNHCR, *ibid*, p.12, 14 & 17.

⁴⁷ See HRW, *A Face and a Name: Civilian victims of insurgent groups in Iraq*, 3 October 2005.

⁴⁸ For more information on the absence/problems of infrastructure (e.g. water and sanitation facilities, shelter/housing, electricity, fuel) and problems accessing basic services (e.g. food, health services, education, employment) for these groups, please see UNHCR, *Country of Origin Information-Iraq*, October 2005. For further details on internal displacement in Iraq see Internal Displacement Monitoring Centre (IDMC) at [http://www.internal-displacement.org/8025708F004CE90B/\(httpCountries\)/718916EEB6743EEF802570A7004CB9B9?OpenDocument](http://www.internal-displacement.org/8025708F004CE90B/(httpCountries)/718916EEB6743EEF802570A7004CB9B9?OpenDocument)

⁴⁹ UNHCR speaks of at least 580,000 IDPs in the three northern Governorates, see UNHCR, *Guidelines Relating to the Eligibility of Iraqi Asylum Seekers*, October 2005, p.56-57.

⁵⁰ See UNHCR, *Global Appeal 2006*, November 2005, p.232 and UNHCR, *Country of Origin Information-Iraq*, October 2005, p.24 & 27; Mesopotamian Advisory Team (MAT), *Fact-Finding Mission in Iraq Concerning the Repatriation of Iraqi Refugees and the Establishment of Facilities for Voluntary Returnees in Iraq*, July 2004, p.9; and SFH, *Irak-Update*, 15 June 2005, p.1, 11 & 12.

⁵¹ UNHCR states that shelter is one of the most pressing concerns for IDPs who are returning to their place of origin, only to find themselves in search of a new region to move to in search of protection again. See UNHCR, *Country of Origin Information-Iraq*, October 2005, p.97.

⁵² See IRIN, *Iraq: Year in Brief 2005-Chronology of humanitarian events*, 9 January 2006; UNAMI, *UN-Iraq Humanitarian Update*, September 2005, p.2; UNAMI, *UN-Iraq Humanitarian Update*, October 2005, p.1-3; and UNAMI, *Human Rights Report 1 November-31 December 2005*, 18 January 2006.

to residents and to IDPs in these locations is difficult and sporadic due to security constraints. General access to water, health care, sewage, schools, fuel supplies and electricity often remain disrupted for residents.⁵³

27. It has been estimated that within Iraq itself there are some 46,000 refugees from Palestine, Turkey, Iran and Syria⁵⁴, and their protection problems are mounting with increasing reports from UNHCR of harassment, arrest and detention. Palestinian and Syrian refugees are facing increasing protection problems in the Baghdad area.⁵⁵ Continued fighting and localised ethnic and religious tensions are resulting in their further displacement.⁵⁶

The duty of protection

28. UNHCR and UNAMI have stated that no state protection is available for persons fearing persecution in the areas under the administration of the central government. The Iraqi authorities are not yet able to provide residents with even a minimum of protection from violent attacks, including bombings specifically targeting civilians, nor guarantee them access to the basic services needed for a secure and stable life.⁵⁷ In fact the Iraqi authorities, in particular members of the police and security forces, are amongst the targets of violent attacks. The ISF are currently not able to effectively maintain law and order. In addition, the lack of a functioning judiciary often leaves victims of assault, maltreatment, expropriation and other attacks without legal protection and redress. Increasingly, Iraqis are resorting to extra-judicial conflict resolution and relying on protection mechanisms provided by family, tribe, community and neighbours.⁵⁸
29. In November 2005, the former Iraqi interim Prime Minister, Iyad Allawi, called for immediate action against human rights abuses that were “*as bad today as they were under Saddam Hussein*”.⁵⁹ The European Council of the EU also expressed its concern in December 2005 about human rights violations in Iraq, and urged the Iraqi authorities to address these urgently and transparently.⁶⁰
30. Similarly, in the northern part of Iraq, neither the Kurdistan Democratic Party nor the Patriotic Union of Kurdistan can provide adequate protection to all segments of society, since they do not allow political dissent in their respective areas of control, which could in cases

⁵³ UNAMI, *UN-Iraq Humanitarian Update*, September 2005, p.2 and UNAMI, *UN-Iraq Humanitarian Update*, October 2005, p.2 & 3.

⁵⁴ See UNHCR, *Global Appeal 2006*, November 2005, p.232 and UNHCR, *Country of Origin Information-Iraq*, October 2005, p.24-26.

⁵⁵ UNHCR Bureau for CASWANAME, *Regional Strategic Presentation Summary to 35th Standing Committee meeting*, 7-9 March 2006, p.2.

⁵⁶ UNHCR, *Global Appeal 2006*, November 2005 and UNHCR, *Country of Origin Information-Iraq*, October 2005.

⁵⁷ See UNHCR, *Guidelines Relating to the Eligibility of Iraqi Asylum Seekers*, October 2005, p.24 & 48 and UNAMI, *Human Rights Report 1 November-31 December 2005*, 18 January 2006, para.1.

⁵⁸ UN, *Report of the Secretary General pursuant to paragraph 30 of resolution 1546 (2004) (update on United Nations activities in Iraq; summary of key developments)*, 7 September 2005, para.72; UNHCR, *Background Information on the Situation of Non-Muslim Religious Minorities in Iraq*, October 2005, p.2, [original in German]; and UNHCR, *Guidelines Relating to the Eligibility of Iraqi Asylum-Seekers*, October 2005, p.48,-49, 55 & 58.

⁵⁹ BBC, *Iraq abuse ‘as bad as Saddam era’*, 27 November 2005.

⁶⁰ European Council of the EU’s *Presidency Conclusions*, 15/16 December 2005, p.19 (15914/05 Annex III).

amount to persecution. Moreover, the judicial system has neither reached basic standards regarding independence from political influence nor is it capable of providing sufficient protection from persecution by non-state actors.⁶¹ Attacks against police stations and recruits also take place.⁶²

II. IRAQI ASYLUM SEEKERS AND REFUGEES IN EUROPE⁶³

31. European countries host sizeable numbers of Iraqi refugees and indeed they continue to receive applications from Iraqis seeking asylum in Europe. In 2004, 9,458 asylum applications were submitted by Iraqi nationals in Europe. The European countries receiving the highest number of asylum applications from Iraqis were the *United Kingdom* (1,878), *Sweden* (1,456), *Germany* (1,293) and the *Netherlands* (1,043).⁶⁴ In 2005 the number of Iraqis seeking asylum in *Germany* rose by 53.4% compared to 2004. Half of the applicants in 2005 were Kurds.⁶⁵ Moreover, *Ireland* has decided to use the whole of its newly increased annual resettlement quota to resettle 200 Iraqi Kurdish refugees to Ireland in 2005.

Iraqi asylum seekers

32. The following countries from which ECRE received information are currently processing claims from Iraqi asylum seekers: *Australia, Austria, Belgium, Cyprus,*⁶⁶ *Denmark, Finland, France, Greece,*⁶⁷ *Hungary, Lithuania, Malta,*⁶⁸ *Norway, Spain,*⁶⁹ *Sweden, Switzerland,* and the *United Kingdom*.

33. The *Norwegian* authorities consider persons originating from central Iraq and especially the Sunni-triangle to be in general need of protection. Similarly, the *Swedish* authorities normally grant protection in the form of a permanent residence permit to Iraqis originating from central

⁶¹ See UNHCR, *Guidelines Relating to the Eligibility of Iraqi Asylum-Seekers*, October 2005, p. 48, 50, 51 & 55; the Swiss 'Bundesamt für Migration' (BFM), *Kreisschreiben zur weiteren Vorgehensweise bei Asylgesuchen von Irakischem Staatsangehörigen*, 10 October 2005; and SFH, *Gefährdung von ehemaligen Mitgliedern der Baath-Partei*, 27 January 2006, p.8.

⁶² See Agence France-Press (AFP), *Twenty-five killed in series of attacks in Baghdad*, 5 May 2005.

⁶³ The information in this section is based on a short survey undertaken in January 2006 by ECRE, which provides specific information on return policies of Iraqis from 14 EU Member States (Austria, Belgium, Cyprus, Denmark, Finland, France, Greece, Hungary, Lithuania, Luxembourg, Malta, Poland, Spain, and the United Kingdom), two non-EU Member States (Norway and Switzerland) and one non-EU country (Australia). See Annex I for a list of organisations that provided us with the information.

⁶⁴ See UNHCR, *Country of Origin Information-Iraq*, October 2005, p.179, Table 2.

⁶⁵ See press statement by the German Ministry of Interior ('Bundesministerium des Innern'), 8 January 2006,

http://www.bmi.bund.de/cln_028/nn_662928/Internet/Content/Nachrichten/Pressemitteilungen/2006/01/Asylzahlen2005.html.

⁶⁶ In Cyprus the current policy is to grant subsidiary protection if Iraqi asylum seekers are found credible with regards to their nationality. If they can then prove individual persecution they are granted refugee status.

⁶⁷ The Greek Refugee Council has noted, however, that the Greek authorities have "frozen" the examination at second instance (following appeal) of asylum applications submitted by Iraqis in 2005.

⁶⁸ During 2004 and 2005 the Office of the Refugee Commissioner recommended humanitarian protection (special leave to remain) for Iraqi asylum seekers.

⁶⁹ Iraqis in Spain are considered a group of particular concern and they are granted subsidiary protection if their nationality is proven and refugee status if they qualify under the 1951 Refugee Convention.

Iraq, while asylum seekers from northern Iraq are given temporary protection and those whose applications have been rejected are not forcibly returned.⁷⁰

34. Since September 2005, *Switzerland* has been granting all Iraqi asylum seekers a subsidiary form of protection, due to the unsafe and unstable situation in Iraq. Subsidiary protection for Iraqis whose application had already been rejected is only granted upon request. So far 1,680 out of 1,871 Iraqis who did not originally receive refugee status were granted a subsidiary form of protection.⁷¹
35. In *Belgium*, most Iraqis in 2004 and 2005 who received an expulsion order after a final negative decision on their asylum application had their deportation deadline extended indefinitely and were thus entitled to material reception conditions (but not the right to work). That policy is now under review.
36. In the *Netherlands*, the Minister for Foreigners Affairs and Integration (Minister voor Vreemdelingenzaken en Integratie) decided in January 2006 to end the blanket protection policy for asylum seekers from central and southern Iraq.⁷² All Iraqi asylum requests are now being rejected unless there are individual grounds for protection. In addition, asylum permits that were based on this blanket protection are being withdrawn if the asylum request was submitted after January 2003, unless the person is considered to be in continued need of protection on individual grounds. As a result many Iraqis from the centre and south of Iraq will face the threat of return. Even if expulsion is impossible, Iraqis will be excluded from state accommodation provisions.
37. From the limited statistical information received it emerges that the recognition rate varies from one EU Member State to another for Iraqi nationals. High recognition rates are evident in *Austria*, where it was 72 % in 2005 and 62% in 2004, and in *Hungary*, where it was 41.7% in 2005 and 24% in 2004. In addition, the subsidiary protection rate for Iraqis in *Hungary* was 58.3% in 2005 and 61.1% in 2004.
38. However, the percentage of Iraqis granted asylum in *Denmark, Finland, France, Greece, Poland*, and the *United Kingdom* is much lower. In *Denmark*, since January 2004 the Immigration Services and the Appeals Board have restarted processing cases of Iraqi asylum seekers, after a period of suspension, but the vast majority of cases have been rejected.⁷³ In *Finland* in 2005, no refugee status was granted, 4 Iraqis received subsidiary protection, and 73 Iraqis were granted a temporary residence permit. During 2004 in *France*, only 15.3% of Iraqis were given refugee status, while the number of Iraqis that were granted subsidiary protection is reported to be very low. In *Greece* in 2004 the recognition rate (refugee status

⁷⁰ Additional information received from Caritas Sweden.

⁷¹ See the Swiss 'Bundesamt für Migration' (BFM), 5 January 2006, <http://www.bfm.admin.ch/index.php?id=294>; Basler Zeitung, 1 November 2005, <http://www.baz.ch/humanrights/index.cfm?startpage=1&ObjectID=4B8CAA06-60CF-2062-F49829AD86C7697B> and the Tagesanzeiger Online, 1 November 2005, <http://www.tagesanzeiger.ch/dyn/news/schweiz/556714.html>.

⁷² See press statement, 20 January 2006, http://www.justitie.nl/english/press/press_releases/archive%5Carchive_2006/60124Country-based_asylum_policy_on_Iraq.asp. For a critical analysis see press statement of the Dutch Council for Refugees, 20 January 2006, http://www.vluchtelingenwerk.nl/898-VluchtelingenWerk_Nederland_Opheffen_categoriaal_beschermingsbeleid_Centraal_Irak_onverantwoord.html

⁷³ In 2004, the Iraqi recognition rate of the Danish Immigration Service (only first instance cases) was 1%.

and subsidiary forms of protection) was zero. In 2005 the authorities in *Norway* rejected 63% of Iraqi asylum claims and only granted humanitarian status to 11.1% and protection status to 22.1% Iraqi applicants, while only granting refugee status to 3.8%. Similarly, in *Poland* the statistics show that the refugee recognition rate for Iraqi asylum seekers is very low. In the *United Kingdom*, statistics show that the refugee recognition rate of Iraqi asylum seekers was extremely low in the last quarter of 2005 and throughout 2004, and no Iraqi was granted humanitarian protection.⁷⁴

Recommendations:

39. All Iraqi asylum claimants in Europe must be given the opportunity to lodge an asylum application and have it processed with minimum delay, respecting procedural safeguards.⁷⁵ These applications should be dealt with on an individual basis, in order to identify and recognise their status. This should include either refugee status in accordance with the 1951 Refugee Convention⁷⁶ or a subsidiary form of protection for those who fear persecution but fall outside a full and inclusive interpretation of the terms of the 1951 Refugee Convention.⁷⁷ European countries should take due account of all persecution including that stemming from non-state actors when assessing Iraqi asylum claims.⁷⁸
40. ECRE would reject the presumption that applications are deemed to be manifestly unfounded on the basis of the establishment of an Iraqi government, an Iraqi constitution, as well as a Kurdish Autonomous Region, as the rule of law and protection of human rights are not in place in any part of Iraq.
41. In relation to assessing the possibility of applying the internal protection alternative (IPA) alternative within Iraq, UNHCR has stated it is necessary to assess the individual case based on two main sets of analyses, namely whether internal relocation is relevant and reasonable. For example, individuals, whether of Kurdish origin or not, may not be able to access areas in the northern Governorates safely and legally and, even if they can, they may face undue hardship, as conditions for economic survival may not be met.⁷⁹ Given the evident insecurity

⁷⁴ Humanitarian protection is the UK's subsidiary form of protection.

⁷⁵ See ECRE's *Guidelines on Fair and Efficient Procedures for Determining Refugee Status*, September 1999 and UNHCR's 1979 *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees*, HCR/IP/4/Eng/Rev.1, Reedited January 1992.

⁷⁶ See 1951 Convention relating to the Status of Refugees.

⁷⁷ ECRE believes that complementary protection should include, amongst others, persons who have fled their country, and/or who are unable or unwilling to return there, because their lives, safety or freedom are threatened by generalised violence, internal conflict, massive violation of human rights or other circumstances which have seriously disturbed public order. See ECRE's *Position on Complementary Protection*, September 2000, para.14.

⁷⁸ This is required by the EU *Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification of third country nationals and stateless persons as refugees or a person who otherwise need international protection and the content of the protection granted*, Art. 6 (c). See also ECRE's *Position on Complementary Protection*, September 2000, para.21.

⁷⁹ See UNHCR, *Guidelines Relating to the Eligibility of Iraqi Asylum-Seekers*, October 2005, p.22-24 & p.53-59 and Annex VII, para.1, where UNHCR notes that with regards to an IPA, the "inability of the current authorities to provide national protection as well as the uncertain future of the *de jure* control exercised by the authorities of the Kurdistan Regional Government within the Governorates of Dohuk, Arbil, Sulaymaniyah, parts of Kirkuk, Diyala and Mosul and other areas in northern and central Iraq should be taken into account".

throughout Iraq and the inability of the Iraqi government and the Kurdish Regional Government to provide adequate and sustainable protection, ECRE opposes the use of the IPA notion in the consideration of claims from Iraqi asylum seekers.⁸⁰

42. ECRE is concerned at the large variances between European countries in the recognition rates of Iraqis and especially alarmed by the low recognition rate of Iraqis in some European countries. Iraqis who, despite all the security concerns, are not granted refugee status or a form of subsidiary protection should not be returned. They should be granted a legal status (temporary or permanent, depending on their circumstances), which affords them their human rights and a dignified standard of living in the host country.⁸¹

Iraqi refugees

43. Changing policies of European governments are having a considerable impact on Iraqis, in terms of their legal protection and their socio-economic rights.
44. In *Malta*, the level of protection given to Iraqis was 'downgraded' from 1951 Refugee Convention status to humanitarian protection, in view of the changed conditions in Iraq during 2004 and 2005.
45. In 2004, out of 73,489 Iraqi refugees living in *Germany*, 7,114 had their status withdrawn on the assumption that most Iraqis fear for their life and their health because of the general insecurity in Iraq and not because of an individual fear of persecution.⁸² This is likely to include refugees who have been in Germany a long time. This policy runs counter to recommendations made by a number of bodies, both governmental and non-governmental⁸³, including the Parliamentary Assembly of the Council of Europe⁸⁴ and the Executive Committee of UNHCR⁸⁵, requesting that appropriate arrangements be considered for those persons who cannot be expected to leave the country of asylum, due to a long stay in that country resulting in strong family, social and economic links there.

⁸⁰ See ECRE, *Comments from the European Council on Refugees and Exiles on the Amended proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status, as agreed by the Council on 19 November 2004*, March 2005, p.9; *Information Note on the Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification of third country nationals and stateless persons as refugees or a person who otherwise need international protection and the content of the protection granted*, October 2004, p.7-8 and *Position on the Interpretation of Article 1 of the Refugee Convention*, September 2000, para. 34-38.

⁸¹ ECRE, *The Way Forward. Europe's role in the global refugee protection system, The Return of Asylum Seekers whose applications have been rejected in Europe*, June 2005, Recommendations 15-17.

⁸² See UNHCR Report, *2004 Global Refugee Trends*, June 2005, p.28; UNHCR, *Revocation procedures alarm Iraqi refugees in Germany*, 4 May 2005; Amnesty International Deutschland, *Die Menschenrechtssituation in den Herkunftsländern: Ablehnungen und Widerrufe sind nicht gerechtfertigt*, 27 September 2005; and Michael Ton, *Sollen irakische Exilanten Deutschland jetzt verlassen?*, 11 September 2005.

⁸³ ECRE, *'Safe Third Countries' - Myths and Realities*, February 1995, p.1 and *The Way Forward. Europe's role in the global refugee protection system, The Return of Asylum Seekers whose applications have been rejected in Europe*, June 2005, p.22-23.

⁸⁴ Parliamentary Assembly of the Council of Europe (PACE), Report Doc. 10741, *Policy of return for failed asylum seekers in the Netherlands*, 15 November 2005, 15.2.

⁸⁵ UNHCR, Executive Committee Conclusions, *Cessation of Status*, No. 69 (XLIII), 1992, (e).

46. In a recent judgment, an administrative court (Verwaltungsgericht Sigmaringen) in *Germany* reversed a decision made by the Federal Office for the Recognition of Foreign Asylum Seekers (Bundesamt für die Anerkennung ausländischer Flüchtlinge), which had previously revoked the refugee status of an Iraqi national. The court ruled that conditions in the country of origin have to be in place to definitely exclude any persecution and to be reasonable enough to expect a refugee to avail him/herself voluntarily of the protection of that country as defined by the 1951 Refugee Convention, and the court stated that this was clearly not the case in Iraq.⁸⁶

Recommendations:

47. ECRE believes that before taking such a serious step as withdrawing refugee status European countries should ascertain that the refugee can effectively, genuinely and voluntarily re-avail him/herself of the protection of the country of origin as prescribed in international refugee and human rights law.

48. ECRE believes that where the cessation clauses are applied because of a change of circumstances in the country of origin, the asylum state must ensure that the changes are effective, fundamental and durable before proceeding to withdraw recognition of refugee status. Refugee status should be maintained unless someone falls clearly within one of the cessation clauses and should not be subject to constant review.⁸⁷ Moreover, ECRE recommends that states include the ‘compelling reasons’ exception to cessation set out in Articles 1 C (5) and (6) of the 1951 Refugee Convention.⁸⁸ ECRE agrees with UNHCR that this ‘humanitarian principle’ should prevent cessation being applied to refugees who are able to invoke compelling reasons arising out of previous persecution for refusing to avail themselves of the protection of the country of nationality.⁸⁹

49. ECRE urges European countries not to prematurely ‘downgrade’ or withdraw protection from Iraqi refugees. A settled status is an important factor in ensuring successful integration into the asylum country and eventual re-integration into the home country.⁹⁰ However, the current situation in Iraq makes it very difficult to envisage a return that would be safe, dignified and sustainable in the near future.

50. Even if the withdrawal of refugee status is permissible, European countries should ensure that no Iraqi with long-standing and strong ties to the host society is deprived of a legal status that permits him/her to remain in Europe.⁹¹

⁸⁶ See Pro Asyl’s *Newsletter Nr 107*, December 2005 for more information and for the judgment (case: A 3 K 11212/04) in German:

http://www.proasyl.de/fileadmin/proasyl/fm_redakteure/Newsletter_Anhaenge/107/siegmaringen.pdf

⁸⁷ ECRE *Position on the Interpretation of Article 1 of the Refugee Convention*, September 2000, pars.70, 72 & 73.

⁸⁸ ECRE *Information Note on the Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification of third country nationals and stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted*, October 2004, p.10.

⁸⁹ UNHCR’s *Handbook on Procedures and Criteria for Determining Refugee Status*, para. 136.

⁹⁰ ECRE *Position on Complementary Protection*, September 2000, para.26 and also Parliamentary Assembly of the Council of Europe (PACE), Report Doc. 10741, *Policy of return for failed asylum seekers in the Netherlands*, 15 November 2005, para.15.13

⁹¹ ECRE *The Way Forward. Europe’s role in the global refugee protection system, The Return of Asylum Seekers whose applications have been rejected in Europe*, June 2005, p.22-23.

III. RETURN

Voluntary return of Iraqis

51. Significant numbers of Iraqis from abroad have returned voluntarily to their place of origin or former habitual residence or settled in other areas of their choice. However, many end up internally displaced, largely because of the lack of absorption capacities, ongoing conflicts and property disputes.⁹² Returnees are particularly affected by the difficult economic and humanitarian conditions. The specific problems are, *inter alia*, a lack of employment possibilities, difficulties obtaining documentation and accessing education due to the non-recognition of educational qualifications and certificates earned abroad, a lack of adequate language skills in Arabic or Kurdish, inadequate health care facilities and the high cost of essential medicines.⁹³
52. The following countries from which ECRE received information are providing assistance to those who want to return voluntarily:⁹⁴ **Australia, Austria, Belgium, Denmark, Germany, Switzerland**, and the **United Kingdom**.⁹⁵ Although **Spain** also has a voluntary return programme, it is not available to Iraqi nationals because the situation in Iraq is considered to be too unstable.
53. During 2004, 141 Iraqis with permission to remain in **Denmark** returned voluntarily to their country.⁹⁷
54. The **United Kingdom** is considering the introduction of an 'explore and prepare' scheme specifically for Iraqis. This scheme would allow eligible Iraqis to visit Iraq, assess the conditions there and return to the UK, without it affecting their permission to stay in the UK.⁹⁸

⁹² UNHCR, *Country of Origin Information-Iraq*, October 2005, p.27 & 29.

⁹³ UNHCR, *Global Appeal 2006*, November 2005, p.232 and UNHCR, *Country of Origin Information-Iraq*, p.29.

⁹⁴ It is recalled that ECRE defines voluntary return as applying only to those with a legal basis to remain in their host country.

⁹⁵ The German authorities together with the International Organisation for Migration (IOM) are giving 500 Euros per adult and 250 Euros per child under 12 in cash (but not more than 1500 Euros per family) in assistance to encourage the return of Iraqis, amongst others. See Bundesamt für Migration und Flüchtlinge, http://www.bamf.de/clin_042/nn_565448/DE/Migration/Rueckkehrfoerderung/Reag-GARP/foerderprogramme-reag-garpg-inhalt.html

⁹⁶ Since 1 January 2006 any asylum seeker who chooses to return voluntarily to his/her country of origin is eligible for support to the value of £3,000. Returnees were previously offered £1,000 in kind as re-integration assistance. Under the new six month pilot programme individuals who are eligible under the pilot scheme will receive £500 as a relocation grant and the remaining amount will be given in the context of individually-tailored and agreed reintegration plans. The programme is only for those who claimed asylum before the end of December 2005. See The Guardian, 13 January 2006, <http://www.guardian.co.uk/immigration/story/0,15729,1685423,00.html>; the British Refugee Council, 13 January 2006, http://www.refugeecouncil.org.uk/news/2006/jan06/curr0106_1.htm; and Times Online, 13 January 2006, <http://www.timesonline.co.uk/article/0,,2-1983132,00.html>.

⁹⁷ For more information on the Danish Voluntary Repatriation Programme please contact the Danish Refugee Council.

⁹⁸ See British Refugee Council Briefing, *Iraq- Return and section 4 support*, December 2005.

Recommendations:

55. ECRE strongly urges European states to postpone the introduction of measures that are intended to promote voluntary returns, which should only be ‘facilitated’.⁹⁹ Voluntary return should be facilitated for Iraqis who indicate a strong desire to return. Returnees should be given the necessary information to make an informed choice. Information should cover whether or not conditions for safe and sustainable return are in place in the country of origin, the right guaranteed there, as well as any options for exercising the right to remain in the host country.¹⁰⁰ Promotion of voluntary return should 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*” exist.¹⁰¹
56. European countries should also organise ‘explore and prepare’ visits to Iraq so that Iraqis can assess for themselves whether it is realistic to return, while retaining their status in the country of asylum. They should be given sufficient time to commit to and prepare for the repatriation process.¹⁰²
57. In order to prevent any burden on Iraq that would undoubtedly arise from any sudden mass influx of returnees, ECRE would urge that any voluntary returns to Iraq from Europe should be gradual and staggered. ECRE is very concerned that a premature influx of Iraqis from Europe might worsen the situation for IDPs and refugees in Iraq, and might also lead to the renewed displacement of returnees.
58. ECRE believes that international cooperation with countries of origin in a spirit of solidarity at all stages of the return process is a pre-requisite to achieving sustainable return.¹⁰³ Therefore, if the Iraqi government and the Kurdish Regional Government raise concerns about continued absorption capacity, these should be taken very seriously. The burden on Iraq should not be increased. It is very important to assess the absorption capacity of the country of origin in relation to levels of damage to infrastructure (e.g. roads, hospitals, schools, housing, sanitation, water sources), the extent of military and insurgent presence, the scale of internal displacement, the availability of arable land and housing.¹⁰⁴

⁹⁹ “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”. UNHCR, *Handbook Voluntary Repatriation: International Protection*, 1996, p.16-17

¹⁰⁰ ECRE *Position on Return*, October 2003, para.56.

¹⁰¹ 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, *ibid*, paragraph 2.4.

¹⁰² See ECRE’s *Position on Return*, October 2003, para.58, p.12.

¹⁰³ ECRE *Position on Return*, October 2003, para.41, and *The Way Forward. Europe’s role in the global refugee protection system, The Return of Asylum Seekers whose applications have been rejected in Europe*, June 2005, p.5.

¹⁰⁴ See UNHCR, *Handbook Voluntary Repatriation: International Protection*, 1996, p.22.

Mandatory and forced return of Iraqis¹⁰⁵

59. In December 2005, the Kurdistan Regional Government Nordic Representation made a statement warning that the Kurdish Regional Government would under no circumstances receive refugees who have been expelled against their will.¹⁰⁶
60. The means used to return Iraqis to Iraq can put them at risk and deny them a safe and dignified return. According to several sources,¹⁰⁷ attacks are occurring on the main supply routes into Iraq, particularly the Baghdad-Amman highway, as well as on military and civilian aircraft throughout Iraq and at Baghdad's International Airport.
61. In relation to northern Iraq, UNHCR warns that the three Northern Governorates of Dohuk, Erbil and Sulaymaniyah are not easily accessible. There are continuous reports of security incidents on the roads leading from major Iraqi cities to the north, including armed fighting, highway robbery and car-jacking, ambushes and hostage taking, landmines and unexploded ordnance (UXO), as well as having to pass through numerous checkpoints at the unofficial border between central and northern Iraq.¹⁰⁸
62. The authorities in *Denmark* are generally coercing asylum seekers whose applications have been rejected to return home by withdrawing cash support, moving them to one specific asylum centre and/or routinely asking them to report with the police. Special financial repatriation packages have been launched to act as incentives to Afghan and Iraqi asylum seekers whose applications have been rejected to return to their home country, which include offering around \$2000 and counselling.
63. Between July 2003 and September 2005, 250 Iraqis went back to Iraq 'on their own' according to information from the *Swiss* Federal Office for Migration. However, according to the Swiss Organisation for Refugees (Schweizerische Flüchtlingshilfe), many of these did not return 'voluntarily'. There was indirect pressure from the Swiss authorities, since the status of these Iraqis had been withdrawn. Between January and September 2005, 97 Iraqis returned in these conditions, while 15 chose to go to a third country.
64. In the *United Kingdom* unsuccessful asylum applicants are not entitled to the standard National Asylum Support Service (NASS) support. However, they can apply for support under Section 4 of the Immigration and Asylum Act 1999 providing they satisfy one or more conditions, primarily whether they are taking steps to leave the UK. In January 2005 the Home Office conceded that land routes into Iraq were unsafe and it was unreasonable to require Iraqis to sign up for voluntary return in order to qualify for support. Following the opening of air links, however, the Home Office announced on 1 August 2005 that it considered a safe return route to exist. NASS makes no distinction in its treatment with regards to the area where Iraqi asylum seekers originate from. In most cases the choice Iraqi asylum seekers have to make is either to agree to leave or to lose section 4 support.¹⁰⁹

¹⁰⁵ For a full definition see ECRE *Position on Return*, October 2003, para.9.

¹⁰⁶ See Kurdistan Regional Government, *KRG Nordic Statement regarding forcible deportations of Iraqi Kurds to Kurdistan*, 14 December 2005, <http://www.krg.org/>

¹⁰⁷ See UK Foreign and Commonwealth office, *Travel Advice: Iraq*, 24 February 2006, US Department of State, *Iraq*, 29 December 2005 and the Regional Air Movement Control Center, <http://ramcc.dtic.mil/iraq.htm>

¹⁰⁸ UNHCR, *Guidelines Relating to the Eligibility of Iraqi Asylum-Seekers*, October 2005, p.53.

¹⁰⁹ British Refugee Council Briefing, *Iraq- Return and section 4 support*, December 2005.

65. The following countries are not forcibly returning any Iraqi nationals to Iraq: **Australia, Austria,**¹¹⁰ **Belgium, Cyprus, Denmark, Finland, France, Greece, Hungary, Ireland, Lithuania, Luxembourg, Malta, Norway, Spain.**
66. In **Belgium** a non-return policy is currently in place for Iraqis from central and southern Iraq. In 2004 and 2005 no Iraqi national was forcibly returned to any part of Iraq by the **Danish** authorities, since the local authorities in Iraq refused to receive asylum seekers whose cases had been rejected, fearing that it would have a destabilising effect on the country.
67. In **Switzerland**, in 2004, one Iraqi was forcibly returned by the Swiss authorities and 59 Iraqis were transferred to a third country. In 2005, no Iraqi was forcibly returned to Iraq, but 18 Iraqis were transferred to a third country.
68. The governments in **Poland** and the **United Kingdom** have a different policy stance from the rest of Europe. In **Poland**, 10 Iraqis in 2005, and 6 Iraqis in 2004, received an expulsion decision.¹¹¹ At the same time ECRE has been informed that the Polish government has removed Iraqis in 2006. Four persons have been transferred to Yemen, on the basis that Iraqis have a right of legal stay in Yemen. The other person was returned to Iraq, after the Polish authorities did not manage to arrange for adequate treatment of the person's mental illness in Poland.
69. While plans by the **United Kingdom** government to remove 30 Iraqis a month from April 2004 were not acted upon,¹¹² the policy of removing Iraqi asylum seekers whose applications have been rejected was maintained.¹¹³ After a subsequent announcement by the government that it would return Iraqis by the end of August 2005 and an outcry by human rights and refugee organisations, the government deferred implementation.¹¹⁴ However, in mid-November 2005, 15 Iraqi asylum seekers from the northern Kurdish region whose applications had been unsuccessful were forcibly returned to Iraq. They were flown to Cyprus, where they were put into military fatigues, helmets and body armour, and transported by military plane to Erbil (Arbil).¹¹⁵ It then emerged that one of the returnees had been unlawfully deported and the Home Office was instructed to bring him back to the UK, which it did.¹¹⁶ It seems likely that the government is planning to return more Iraqis, since news has emerged that support was withdrawn in December 2005 from at least 1600 asylum seekers whose asylum applications had been rejected.¹¹⁷

¹¹⁰ However, one case was decided by the second instance in October 2005 stating that return to North Iraq was possible. For further information on this case please contact *Asylkoordination*.

¹¹¹ There is currently no information available on whether these decisions have been executed.

¹¹² The newly appointed Iraqi Minister of Displacement and Migration made a series of statements towards this policy in 2004, which made clear the Iraqi Interim Government's unwillingness to accept forcible returns, or large-scale voluntary returns, until Iraq's security environment had improved, and the country had the capacity to absorb them.

¹¹³ See ECRE *Country Report 2004 United Kingdom*, September 2005 and British Refugee Council's Briefing on *Iraq- Return and section 4 support*, November 2005, p.6.

¹¹⁴ See British Refugee Council, *Statement on the current situation facing Iraqi asylum seekers*, 12 August 2005; HRW, *U.K.: Forced return of Asylum-Seekers to Iraq*, 19 August 2005; and AI, *UK: Forcible return to Iraq would be unlawful*, 26 August 2005.

¹¹⁵ See The Guardian, *Iraqis forcibly removed on overnight flights*, 21 November 2005. For a critical response see British Refugee Council's *Response to the forced removal of 15 Iraqis*, 20 November 2005.

¹¹⁶ See BBC News, *Judge attacks deportation tactics*, 19 December 2005.

¹¹⁷ See Leeds Today, *250 Iraqis forced on to the streets*, 14 December 2005.

70. International and European law prohibits the return of anyone to a place where his or her life or freedom would be threatened or faces persecution.¹¹⁸ Given the precarious situation prevailing in Iraq, forced return of persons to that country risks violating fundamental rights, including the right to life and liberty, as well as the right to be free from torture and cruel, inhuman and degrading treatment.

Recommendations:

71. ECRE calls for a ban on the forced return of Iraqis from *all* European countries.¹¹⁹ Equally, no mandatory return to Iraq should take place (e.g. individuals who, although not having freely consented to leave, have been induced to do so by means of incentives or threats of sanctions) until there is an effective and sustainable infrastructure in Iraq 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 still do not exist at present.¹²⁰ Returns by European states also risk triggering forced returns to Iraq from countries in the region or further destabilisation within Iraq and the region.¹²¹
72. ECRE also strongly recommends not forcibly transferring Iraqi asylum seekers to third countries in the region in accordance with international solidarity and responsibility-sharing principles, regardless of their prior stay or transit in these countries.

Situation of Iraqis who cannot be returned

73. European governments are mostly unable to return persons due to the unsafe conditions in Iraq. Yet, some European countries do not grant any kind of protection status or other legal status to former asylum seekers awaiting return and they are then left in a legal 'limbo', in an irregular situation with few or no rights and without any possibility of receiving support or permission to work in order to survive.¹²² This is the case for a great number of Iraqis in Europe.

¹¹⁸ See 1951 Refugee Convention, Article 33; European Convention on Human Rights and Fundamental Freedoms (ECHR), Article 3; International Covenant on Civil and Political Rights (ICCPR), Article 7; Convention Against Torture (CAT), Article 3. See also Article 19 (2) of the Charter of Fundamental Rights of the European Union.

¹¹⁹ See the Committee of Ministers, *Twenty guidelines on forced return*, May 2005, Guideline 2 (CM (2005) 40); the Joint Statement by European Organisations, including ECRE, *Common principles on removal of irregular migrants and rejected asylum seekers*, August 2005, p.2; ECRE *Information Note on the Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification of third country nationals and stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted*, October 2004, p.8; and Amnesty International (AI), *Practices of Detention and Expulsion: Human Rights at Risk*, 16 June 2005.

¹²⁰ The Parliamentary Assembly of the Council of Europe (PACE) recently stated that Council of Europe member states should postpone the return of failed asylum seekers to countries or regions of conflict or where the humanitarian situation is volatile, pending improvement of the situation. See PACE, Report Doc. 10741, *Policy of return for failed asylum seekers in the Netherlands*, 15 November 2005, para.15.4.

¹²¹ For more information on this position see Recommendation 32 in ECRE, *The Way Forward. Europe's role in the global refugee protection system. The Return of Asylum Seekers whose applications have been rejected in Europe*, June 2005, p.43.

¹²² In the Netherlands, the Advisory Committee on Aliens Affairs (ACVZ) has recommended that there be a provision making it clear in what cases asylum seekers whose applications have failed may still be

74. In *Finland* many Iraqis do not get a protection status but instead are given temporary residence permits for one year because they cannot be returned for technical reasons. This permit does not give them the right to work or to education and can only be renewed after the first year. During the second year, however, the person can have access to the labour market. If this permit lasts for 2 years then the person is no longer subject to return by the authorities who have to give them a long-term residence permit. A similar situation exists in *Ireland* with Iraqi asylum seekers whose applications have been rejected, since they cannot be removed to Iraq but are not granted access to the labour market nor to the education system.
75. Since *Germany* is currently not forcibly returning Iraqis to Iraq but still making use of the cessation clause of the 1951 Refugee Convention, they are granting exceptional leave to remain for six months. Every six months the permit is reviewed and if considered necessary renewed.
76. In *Lithuania*, there is generally a high risk of detention for asylum seekers, whose applications have been rejected and who cannot be returned. One Iraqi national has been in detention since 21 July 2004.
77. The *United Kingdom's* Home Affairs Select Committee has recognised that applicants whose claims have been rejected and who cannot be returned through no fault of their own should be given a temporary status, which would allow them to work. At the moment, many are left destitute and, at best, eligible only for 'hard case' support.¹²³ This is more limited than basic asylum support for which the eligibility criteria are narrow.¹²⁴

Recommendation:

78. In order to address the unacceptable 'limbo' situations in which increasing numbers of Iraqis find themselves in Europe today, it is imperative that European countries maintain or grant legal statuses for all Iraqi nationals who face return up to the time of their departure from the host country. This status should include rights to housing, health, employment, and education.¹²⁵

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eligible for a residence permit because they cannot leave the Netherlands, *Advisory Report on Return*, ACVZ, 2 February 2005.

¹²³ See paragraph 64 of this paper.

¹²⁴ See House of Commons, Home Affairs Committee, *Asylum Applications, Second Report of Session 2003-04, Vol.I*, January 2004, para.205-207.

¹²⁵ See ECRE, *The Way Forward. Europe's role in the global refugee protection system. The Return of Asylum Seekers whose applications have been rejected in Europe*, June 2005 and PACE, *Policy of return for failed asylum seekers in the Netherlands*, 15 November 2005, Report Doc. 10741, para.15.14.

ANNEX: Contributing Organisations

ECRE MEMBER AGENCIES

Austria

Asylkoordination

Belgium

Vluchtelingenwerk Vlaanderen

Denmark

Danish Refugee Council

Finland

Finish Refugee Advice Centre

France

France Terre d'Asile

Germany

Arbeiterwohlfahrt Bundesverband e.V.

Greece

Greek Council for Refugees

Hungary

Hungarian Helsinki Committee

Ireland

Irish Refugee Council

Lithuania

Lithuanian Red Cross

Luxembourg

Caritas Luxembourg

The Netherlands

Dutch Council for Refugees

Norway

Norwegian Organisation for Asylum

Spain

Asociación Comisión Católica Espanola de Migración

Switzerland

Schweizerische Flüchtlingshilfe (SFH)/Organisation Suisse d'Aide aux Réfugiés (OSAR)

United Kingdom

British Refugee Council

OTHER AGENCIES

Australia

Australian Refugee Council

Cyprus

Symfiliosis

Malta

Jesuit Refugee Service Malta

Refugee Commissioner

Poland

Helsinki Foundation for Human Rights