

December 2005

Iraq – return and section 4 support

1. Background

This briefing has been produced following a number of developments on several asylum policy issues relating to Iraq. It is a brief overview of the current position as regards that country and it must be stressed that the situation remains fluid in all respects. Further briefings will be produced as issues develop and arrangements become clearer.

2. Asylum applications from Iraqis¹

2.1. In 2004, there were **1695** principal applications for asylum from Iraqis, a 58% decrease from the previous year.

2.2. There were **4815** initial decisions made on applications:

- **10** recognised as a refugee and granted asylum
- **none** granted humanitarian protection
- **185** granted discretionary leave
- **4615** refused asylum

2.3. There were **6645** appeals determined:

- **275** allowed
- **6210** dismissed
- **160** withdrawn

Latest developments

2.4. In the third quarter of 2005 there were **285** principal applications for asylum from Iraqis, a 34% decrease from the previous quarter.

2.5. There were **480** initial decisions made on applications:

- **"one or two"** recognised as a refugee and granted asylum²
- **none** granted humanitarian protection
- **35** granted discretionary leave
- **445** refused asylum

2.6. There were **555** appeals determined:

- **30** allowed
- **510** dismissed
- **15** withdrawn

¹ From Home Office, *Asylum Statistics: 3rd Quarter 2005*.

<http://www.homeoffice.gov.uk/rds/pdfs05/asylumq305.pdf> Subject to revision. Note that figures may not add up due to rounding.

² Ibid.. The figure is listed as "*", which the Home Office advises is equivalent to "1 or 2".

2.7. The United Nations High Commissioner for Refugees (UNHCR) has recently published eligibility guidelines for Iraqi asylum seekers and detailed country of origin information for Iraq. The *Guidelines* contain guidance for States on how to determine the protection needs of Iraqi asylum seekers. In general, they note:

“Despite the fall of the former regime, widespread civil strife and persecution related to the grounds listed in the 1951 *Convention relating to the Status of Refugees* (‘1951 Convention’) nevertheless continues in today’s Iraq.”³

2.8. The agency’s *Country of Origin Information Iraq* seeks to provide a comprehensive assessment of current conditions in Iraq and how they impact upon the physical, material and legal safety of its citizens. The document also places current events in their historical context. The Executive Summary notes:

“The general human rights situation is no longer marked by the repressive system used by the former regime to suppress large parts of the society, and many legal and practical restrictions on human rights have been lifted. Nevertheless, the current violent climate in many parts of the country, the increasing sectarian tensions as well as the dire state of the country’s basic services severely limit the enjoyment of human rights in today’s Iraq. All parties to the conflict have been accused of violating basic standards of international humanitarian law, including the killing of civilians. In the name of security, people are arbitrarily arrested and detained, tortured and tried without due process of law. Deliberate attacks by insurgent groups have caused high numbers of civilian casualties. Targeted assassinations of politicians, civil society actors, academics and journalists infringe on people’s rights to be part of an evolving process of rebuilding their country. The situation of women, which had already deteriorated after the 1991 Gulf War and the sanction regime, has further worsened due to insecurity and high criminality, insufficient protection provided by the Iraqi authorities, the poor state of the country’s infrastructure as well as the general population’s embracing of stricter Islamic values, often enforced by militias, families or clans.”⁴

2.9. The UN Assistance Mission for Iraq (UNAMI), in its latest *Human Rights Report*, concludes that much of Iraq continues to experience “a general breakdown of law and order, characterized by violence across the country.”⁵ The Report goes on to elaborate the challenges to the protection of human rights in Iraq:

- Hundreds of civilians killed and wounded as a result of terrorist attacks, targeted assassinations and extrajudicial execution-style killings
- Massive security operations by the Iraqi police and Special Forces continuing to disregard instructions announced in August 2005 by the Minister of Interior, which were designed to safeguard individual guarantees during searches and detaining operations
- Repeated bombing campaigns by armed groups against civilians and Mosques, increasing fears that community relations are descending into a pattern of fear, animosity and revenge

³ United Nations High Commissioner for Refugees, *Guidelines Relating to the Eligibility of Iraqi Asylum-Seekers*, Geneva, October 2005, p.1. <http://www.unhcr.ch>

⁴ United Nations High Commissioner for Refugees, *Country of Origin Information Iraq*, Geneva, October 2005, p.2. <http://www.unhcr.ch>

⁵ UN Assistance Mission for Iraq (UNAMI), *Human Rights Report*, 1 September – 31 October 2005, p.1. <http://www.uniraq.org/documents/HR%20Report.Oct.Eng%20final.doc>

- Ongoing military operations, especially in western and northern parts of the country, continuing to generate displacement and hardship for thousands of families and to have a devastating effect on the civilian population
- The proliferation of armed militias, criminal and terrorist organizations acting with impunity, including participation in kidnappings, extra-judicial executions and carrying out illegal policing and sectarian attacks
- Sectarian violence, which increasingly seems aimed at disrupting the traditionally peaceful coexistence of communities
- Ongoing military and security operations by MNF-I [Multi-National Force – Iraq] and Iraqi forces, including the resort to aerial bombardment
- The impediment of the delivery of humanitarian assistance to areas and individuals affected by security operations
- Searches and arrests carried out by police and Special Forces that allegedly were in breach of the law
- The large number of detainees currently held in the country⁶

3. Voluntary return to Iraq

3.1. Due to the ongoing security situation, UNHCR has until recently not promoted voluntary return to Iraq. The agency has a very limited international presence in Iraq at this time so there is little monitoring capacity available.

3.2. UNHCR issued its new advisory note on Iraqi returns on 27 September. It notes that

- the security situation in Iraq generally deteriorated between January and August this year;
- the Iraqi authorities are not yet able to provide residents with even a minimum of protection;
- the Iraqi authorities are unable to guarantee access to those basic services needed for a secure and stable life;
- UNHCR is seriously concerned that some States are considering withdrawal of protection to asylum seekers from Iraq;
- UNHCR is seriously concerned where States have extremely low levels of recognition of Iraqis either as Convention refugees or in need of complementary protection.

It advises that

- internal flight or relocation within Iraq is usually neither safe nor practical. No area in Iraq can be considered safe, particularly for people who do not originate from any relocation area;
- States should grant temporary protection to asylum seekers from Southern and Central Iraq when they have not recognised them as refugees;
- States should postpone the introduction of measures to induce or promote voluntary returns to people originating from Southern or Central Iraq;
- States should not forcibly return people to Southern or Central Iraq.

On the Northern Governorates (Sulaymaniyah, Arbil and Dahuk), UNHCR concludes that

- security concerns persist in the area and the economy is still fragile but
 - a level of political stability has been achieved;

⁶ Ibid., pp.2-3.

- promotion of voluntary return to the area is feasible for those who have such family and community links as to ensure their access to protection, housing and other basic services;
- those who do not originate from the Northern Governorates would most likely be denied entry by the KRG [Kurdistan Regional Government];
- States need to be sensitive to the repeated concerns of the Iraqi Government and KRG about destabilisation caused by large numbers of forced removals;
- States are encouraged to provide assistance packages to returnees and receiving communities;
- those to be removed need a reasonable period of time to access assistance and for counselling on options prior to removal.⁷

3.3. UNHCR's *Country of Origin* report notes that refugees and asylum seekers returning to this environment face particular difficulties:

"The return and reintegration of Iraqis from abroad is severely hampered by a number of factors, including the destruction of villages and livelihoods, the loss of nationality and documentation, contamination of return areas by mines and unexploded ordnance (UXO) as well as property disputes. The capacity of the Iraqi authorities to provide protection to its people, to devise and implement durable solutions for displaced populations and to address obstacles to return and reintegration has not yet sufficiently developed."⁸

The agency also notes that its returnee monitoring process had confirmed that many returnees end up internally displaced within Iraq, and face severe problems reintegrating into Iraqi society.⁹

3.4. Some Iraqis may wish to return for a number of pressing reasons, and on our advice the Home Office has been in regular consultation with Iraqi community leaders in the UK. A senior civil servant from the Home Office now meets with Iraqi refugee community organisations every six months.

3.5. For those people who do want to go back, voluntary return is facilitated by the International Organization for Migration (IOM) under its Voluntary Assisted Return and Reintegration Programme (VARRP).¹⁰ Voluntary returns recommenced in May 2004 and have continued on a regular basis since that date.

3.6. Returnees will receive cash grants of £500 (equivalent in dollars) and are eligible for up to £500 worth of reintegration assistance (not in cash). Previously, reintegration assistance was not available, so the Home Office had been making an emergency payment of £500 per person up to £1500 per family through IOM. IOM has stated that reintegration assistance is now available for Iraqis wishing to apply for it¹¹. Returnees will need to contact the local NGO in Arbil¹² that IOM has contracted to provide this support. At the airport, all returnees

⁷ United Nations High Commissioner for Refugees, *Return Advisory Regarding Iraqi Asylum Seekers and Refugees*, Geneva, September 2005, passim. <http://www.unhcr.ch>

⁸ United Nations High Commissioner for Refugees, *Country of Origin Information Iraq*, p.3.

⁹ *Ibid.*, p.29.

¹⁰ For further information on VARRP, see IOM London's website at <http://www.iomlondon.org/varrp.php> Organisations offering independent advice and counselling for a person considering voluntary return are listed in Appendix C of this briefing.

¹¹ Source: IOM, London, September 2005.

¹² We understand that this applies to those who travel to Baghdad as well as those flying to Arbil.

will be given a letter with the address/contact of the partner in Arbil.¹³ Due to the situation in Iraq, IOM encourages those returnees who require reintegration assistance to provide as much detail as possible on their requirements so that reintegration activities can be identified prior to departure. Activities will centre around a) vocational training, b) purchase of equipment to start a business and c) schooling. There is no specific date for phasing out the emergency payments but the Home Office has indicated payments are to be phased out as reintegration assistance develops.

3.7. IOM requires all returnees to sign a waiver that reads: "I acknowledge that IOM has no responsibility for me or my dependants once I return to Iraqi territory and I hereby release IOM from any liability in this respect". This applies on all the routes that IOM offer.

3.8. The majority of returns had been by scheduled air services to Amman, Jordan, with returnees escorted to the Iraq border and assisted with onward travel overland via Iraqi Highway 10 to Baghdad. Some points to note about the overland route:

- Highway 10 is the main road running from the Jordanian border, through the western desert of Iraq, and passing the towns of Ramadi and Fallujah (see map below). The Highway is a notoriously dangerous road, with threats coming from various actors (see 5.1 below for more information on internal travel within Iraq).
- Return can take several weeks to arrange – this is primarily due to visa clearance requirements by the Jordanian interior ministry. The border has also been closed on a number of occasions, either due to escalations in conflict (as happened in April 2004) or specific events such as the elections in 2005 and key religious festivals.

3.9. On 27th June 2005, IOM facilitated the return of three Iraqi returnees from the UK on a scheduled Iraqi Airways flight from Amman to Arbil (in the region administered by the KRG) via Baghdad:

- For those continuing to Arbil, the journey involves a change of plane at Baghdad, but the returnees did not have to leave the airport (it should be noted that the Baghdad Airport Road is generally considered to be one of the most dangerous in the world)¹⁴
- Iraqi Airways operates this flight on Tuesday, Thursday and Saturday, and IOM plan to use it more frequently
- Returnees require a second Iraqi ID (for example, National ID Card or National Driving Licence) to fly with Iraqi Airways, but many UK-based Iraqis may not have this documentation.

3.10. IOM's first charter flight to Arbil left on 16 August 2005. Returnees were met at Arbil airport by IOM's NGO partner, and taken to their office where road travel to their final destination was arranged. A second flight left on 13 September. Iraqis using this route do not require secondary ID.

3.11. The Home Office is considering the introduction of an Explore and Prepare scheme at some point. This scheme would allow eligible Iraqis to visit Iraq, assess the conditions there

¹³ Details of the NGO in Arbil are not available prior to departure due to security concerns.

¹⁴ Foreign & Commonwealth Office, Travel Advice for Iraq, updated 16 December 2005, still current at 19 December 2005, www.fco.gov.uk/travel/iraq The advice notes that "[t]he road between Baghdad and Baghdad International Airport and the Abu Ghraib-Ramadi corridor are considered to be particularly dangerous". For more information on internal travel see section 5.1. below.

and return to the UK, without it affecting their permission to stay in the UK (a similar scheme is currently in operation for Afghans¹⁵).

Latest developments

3.12. A seventh IOM charter flight to Arbil left on 29 November, and more are planned for the coming months, although the logistics of the exercise mean that IOM is not able to give precise details about dates.

3.13. The present routes available to IOM are

- the overland route from Amman to Baghdad;
- scheduled flights from Jordan to Arbil, via Baghdad. This route is limited to those who have a second Iraqi ID available (ID card, birth certificate or driving licence. Licences may be obtainable through a family member in Iraq). An EU travel document is also required;
- the IOM charter flight to Arbil (we understand that the KRG will not at present allow individuals to return using this route unless they are originally from one of the three northern governorates – Dahuk, Arbil or Sulaymaniyah). Returnees travelling via this route do not require Iraqi ID and can fly on an EU travel document only;
- and from Monday 28 November a Royal Jordanian Airlines service from Amman to Arbil. Previously, Kurds from Mosul and Kirkuk had to fly to Amman and take the overland route through Iraq, due to the attitude of the KRG towards returnees who originated from outside Dahuk, Arbil or Sulaymaniyah. Using this route, they can now fly to Jordan, remain airside in Amman airport without requiring a Jordanian transit visa, and can fly with Royal Jordanian to Arbil. They will also be able to travel on an EU letter without secondary identification. This is a new route. Previously, the flight from Amman was an Iraqi Airlines service that stopped at Baghdad and returnees using this route required secondary Iraqi ID.

IOM continues to look at developing new routes and options. Independent advice and counselling on voluntary return to Iraq is available from IOM's implementing partners listed in Appendix C below.

4. Removals

4.1. The Home Office announced on 24th February 2004 that the UK was to be the first country to begin enforced returns of unsuccessful Iraqi asylum seekers to Iraq. Under an agreement concluded with the Coalition Provisional Authority (CPA), which had been administering Iraq since May 2003, the UK would operate a pilot scheme to remove 30 Iraqis per month between April and June of 2004. In the event, no removals to Iraq took place.

4.2. On 28th June 2004, sovereignty was handed over to the Iraqi Interim Government, and the Coalition Provisional Authority (CPA) was dissolved. The newly-appointed Iraqi Minister for Displacement and Migration, Pascal Esho Warda, made a number of public remarks urging Iraqi refugees abroad not to return and asking countries hosting them not to send them home.¹⁶

¹⁵ Details of the Explore and Prepare and other voluntary return schemes to Afghanistan can be obtained from the Refugee Council's Voluntary Return Project on 020 7346 1176.

¹⁶ 'Minister urges refugees not to return', *Iraq Press*, 10 June 2004.

4.3. The Home Office has continued to explore the possibility of removals. On 14th July this year, Immigration Minister Tony McNulty MP restated the Government's position to the House of Commons:

"The Government announced their intention in February 2004 to commence enforced returns to Iraq, but this has yet to start. The overriding reason has been the need to co-ordinate our operational logistics and preparations with the changes in the administrations in Iraq since this announcement was made. The enforced return of any individual to Iraq will be directed to areas assessed as sufficiently stable and where the Home Office is satisfied that the individual concerned will not be at risk. Great care will be taken with all travel arrangements."¹⁷

4.4. Removals would normally require some form of agreement between the UK and the Iraqi Transitional Government, possibly taking the form of a Memorandum of Understanding (MoU) or bilateral agreement. In an April 2005 debate on Justice and Foreign Affairs in the Dutch Second Chamber of Parliament, the Minister for Alien Affairs claimed that "since January 2005 the UK has had an MoU with Iraq."¹⁸ Similarly, the new Dutch Country Report on Iraq mentions a UK MoU with Iraq, stating:

"In January 2005 the UK and the Iraqi Interim Minister for IDP's and Migration Isho signed a Memorandum of Understanding about return, including forced return, despite her objections against forced return."¹⁹

It was subsequently confirmed that the UK had signed an MoU with the Iraqi Interim Government at the end of January 2005, just before the elections in Iraq. As an agreement between two states, it remains confidential.²⁰

4.5. At the beginning of August, the Immigration Service started to detain a group of unsuccessful Iraqi asylum applicants with a view to removing them to Iraq at the end of that month. On 26 August 2005, Mr Justice Collins heard an application for interim 'class' relief made by Mr Amin (CO/6595/2005). Mr Amin was applying to the court for:

1. an interim order staying the removal to Iraq of those asylum seekers who have not issued judicial review claims; alternatively:
2. an interim order requiring the Secretary of State to notify those Iraqi failed asylum seekers of their right to claim judicial review and that the Refugee Legal Centre may assist them to bring such claims.

At the hearing, Treasury Counsel representing the Home Secretary informed the court that although 28 August 2005 was one of several dates canvassed for enforced removals, no removal directions had been set for that date, and none were scheduled over the Bank Holiday weekend.

¹⁷ Hansard, Written Answers of 14th July 2005, Volume No.436, Part No.34, Column 1213 W.

<http://www.publications.parliament.uk/pa/cm/cmhansrd.htm>

¹⁸ Tweede Kamer, vergaderjaar 2004–2005, 19 637, nr. 943, p.13, <http://parlando.sdu.nl/>

¹⁹ Ministerie van Buitenlandse Zaken, *Algemeen Ambtsbericht Irak*, 4 July 2005, p.63. The Country Report on Iraq is produced by the Dutch Ministry of Foreign Affairs. The report has now been published on the website of the Ministry of Foreign Affairs: www.minbuza.nl

²⁰ Section Two of the Annex to the Law for the Administration of Iraq in the Transitional Period states that the powers of the Iraqi Interim Government to conclude international agreements "will not extend beyond Iraq's diplomatic relations, international loans and assistance, and Iraq's sovereign debt." See http://cpa-iraq.org/government/TAL_Annex.html for further details.

Although the judge made no order regarding the general relief sought on behalf of all Iraqi nationals liable to removal, he made it clear that he had not heard full argument on the issue of whether the court had jurisdiction to make such an order. The judge also expressed concern at the Secretary of State's approach to cases involving Iraqi nationals and gave a clear indication to the following effect:

1. The Secretary of State should be carrying out an exercise to identify which cases may fall within the scope of the judgement of the Court of Appeal in the case of *Rashid* [2005] EWCA Civ 744;²¹
2. No Iraqi national should be removed pending such a review;
3. No Iraqi national whose case is potentially within the policy clarified in the case of *Rashid* should be removed pending clarification by the courts of the scope of the judgement of the Court of Appeal in *Rashid*; and
4. Once the review is complete, all those Iraqi nationals who remain liable to removal should be informed of their right to lodge a claim for judicial review and given details of how they may access legal advice and representation in order to do so.

The judge stated that if the Secretary of State did "...anything which contravenes the desires that I have expressed, [he] may find [himself] brought straight back to court and a dim view taken with consequences as a result." He also expressed dismay at the Immigration Service policy of detaining a 'pool' of Iraqis in the knowledge that a considerable proportion of them would seek judicial review.²²

4.6. Concern over the UK's policy was also voiced by the main Kurdish political parties and in early September, the Kurdistan Regional Government High Representative Bayan Sami Abdul Rahman met the Immigration Minister to "seek a rethink by the British government of its decision to forcibly return failed asylum seekers to Kurdistan." She was accompanied by Shanaz Rashid, UK representative of the Patriotic Union of Kurdistan (PUK). While Ms Rahman said she understood that the UK had a policy of returning unsuccessful asylum seekers,

"Iraq was a special case since it had yet to recover from the war and, even in Kurdistan, where there is relative stability, resources are stretched and those returned by force would be vulnerable."

She also stated that the KRG "strongly opposed" the detention and forcible removal of asylum seekers.²³

²¹ Between 1 October 2000 and 21 March 2003, the Home Office had a policy of not arguing that Iraqis from areas controlled by Saddam could relocate to the Kurdish controlled region to seek protection (also known as the Kurdish Autonomous Zone [KAZ]). There were no exceptions to this policy. The Court of Appeal, in *Bakhtear Rashid –v- Secretary of State for the Home Department*, upheld the judgement that the Home Office had been in breach of this policy and had therefore abused its power in denying indefinite leave to remain (ILR) to asylum applicants falling within its scope. Iraqis from areas controlled by Saddam who before 21 March 2003 had been refused asylum on the basis that they could relocate to the KAZ could now apply for ILR. See *Rashid, R (on the application of) v Secretary of State for the Home Department [2005] EWCA Civ 744 (16 June 2005)*, www.bailii.org

²² Transcript, *Abbas R (on the application of) –v- Secretary of State for the Home Department*, Friday, 26th August 2005, CO/6595/05

²³ Kurdistan Regional Government, 8 September 2005, <http://www.krg.org/>. Accessed 1 November 2005.

4.7. The Home Office has reaffirmed its policy to do so in the wake of Justice Collins' remarks.

4.8. In a letter to Lord Avebury dated 18 October 2005, the Immigration Minister confirmed that as of 14 October, twenty-one Iraqi nationals remained in detention pending removal from the UK. However, the Minister went on to note that "operational issues have developed which will prevent their removal within a reasonable timeframe" and concluded that those who posed no threat of absconding would be released on bail.²⁴

4.9. On 18 October, Wilkie J granted permission for Judicial Review in the Amin case, which would be used to determine the scope of the *Rashid* judgement.

Latest developments

4.10. In the early hours of Sunday 20 November 15 Iraqis were forcibly returned to northern Iraq via Cyprus amid threats of legal action and pleas from refugee agencies to reconsider the planned returns.²⁵ All 15 returnees are reported to have been left in Arbil with reintegration assistance of \$100 (£58) each to help them re-establish themselves in their home country. It has also been reported that the returnees were handcuffed and forced to wear military 'protective clothing' for the second part of the journey from Cyprus. There have been reports that more Iraqi Kurds have been detained with a view to effecting their removal from the UK, but this remains unconfirmed at the time of writing.

4.11. The Amin case mentioned above has not yet been heard.

4.12. In a statement issued on 14 December, the KRG's Nordic Representation reiterated its opposition to forced returns of Iraqi Kurds to the region under its control. Echoing the remarks made by other Kurdish political representatives, KRG Nordic declared:

"The Kurdistan Regional Government (KRG) Nordic Representation reiterates its previous policy with regards to forcible expulsions of refugees from Iraqi Kurdistan. The KRG Nordic is strongly opposed to forcible expulsion of refugees from Iraqi Kurdistan from the Nordic countries, and remains firm on this stance.

The KRG will under no circumstances receive refugees who have been expelled against their will. The KRG is strongly opposed to any such hasty decisions taken during a time when Iraqi Kurdistan is in need of support for strengthening its democratic developments."²⁶

4.13. It has since transpired that one of the Iraqis removed on 20 November was done so unlawfully. 'Mr. A' had not been given removal directions in time to consult legal representatives because he was considered to be at risk of self-harm. At a hearing before the High Court on 19 December the Home Office admitted that this was a breach of its own policy. Counsel for the Home Office stated:

²⁴ Tony McNulty MP, letter to Lord Avebury, 18 October 2005.

²⁵ The Refugee Council's responses to this development can be found at http://www.refugeecouncil.org.uk/news/2005/Nov05/relea1105_2.htm

²⁶ KRG Nordic Statement regarding forcible deportations of Iraqi Kurds to Kurdistan: Press Release, 14 December 2005. http://www.krg.org/articles/article_detail.asp?langnr=12&rubricnr=95&articlenr=8149&lnnr=28&rnrnr=70& Accessed 19 December 2005.

"The Secretary of State has decided that, since we did not follow the policy set out - albeit for the best of motives - we shall use our best endeavours to find him."

It is reported that Mr. A has gone into hiding in Iraq, and is unaware of efforts to track him down.²⁷

5. Travel in Iraq

5.1. The situation in Iraq remains unstable, and there are still concerns about safety from many different quarters. The International Crisis Group (ICG) has warned that Iraq is sliding towards "de facto partition and full-scale civil war"²⁸ while US military commanders have repeatedly predicted an increase in insurgent activity in the run-up to the elections scheduled for mid-December, a pattern which is expected to continue after election day. This assessment has been echoed by the Foreign & Commonwealth Office (FCO) in its latest travel advice.²⁹ On 24 October, suicide bombers targeted the Palestine and Sheraton Hotels in Baghdad, killing at least 17 people³⁰, while on the following day a series of car bombs in the relatively stable Kurdish city of Sulaymaniyah killed nine people.³¹ Attacks on Coalition and Iraqi forces have also increased. The ICG's latest worldwide bulletin assesses the Iraqi situation as "unchanged" but noted several incidents that give rise for concern:

"Iraq Insurgency intensified as approach of 15 December parliamentary elections prompted fears of major escalation. Wave of suicide bombings included twin blasts at Shiite mosques in Khanaqin, near Iranian border, killing 80 and car bomb outside hospital south of Baghdad killing 30. Gunmen dressed in Iraqi army uniforms shot dead prominent Sunni Arab tribal chief and 4 family members 23 November. Escalation of violence coincided with opening of preparatory Iraqi reconciliation meeting run by Arab League in Cairo. Detainee abuse scandal emerged 13 November after U.S. troops found 173 prisoners, mostly Sunni Arabs and some reportedly tortured, in bunker in interior ministry building. U.S. military forces completed 17-day counter-insurgency operation in western province of Anbar near Syrian border, which left 139 insurgents and 10 marines dead."³²

Kidnapping of foreign nationals has also escalated in recent weeks, with four members of Christian Peacemaker Teams, a French engineer, a German archaeologist and six Iranian pilgrims the latest to be abducted.³³ On 28 November 2005, a car containing British nationals returning to the airport after a pilgrimage came under fire near Baghdad. Three British nationals were killed and two were seriously injured.

²⁷ Nigel Morris, 'Search for Kurdish refugee deported to Iraq by mistake' *The Independent*, 20 December 2005; <http://news.independent.co.uk/uk/legal/article334148.ece>.

²⁸ International Crisis Group, *Crisiswatch*, 1 October 2005, No.26, p.11.
http://www.crisisgroup.org/library/documents/crisiswatch/cw_2005/cw26.pdf

²⁹ See the Summary to Foreign & Commonwealth Office, Travel Advice for Iraq.

³⁰ BBC News Online, 'Deadly blasts rock Baghdad hotels', 24 October 2005.
http://news.bbc.co.uk/1/hi/world/middle_east/4370922.stm

³¹ BBC News Online, 'Bomb blasts hit Iraqi Kurdistan', 25 October 2005.
http://news.bbc.co.uk/1/hi/world/middle_east/4374468.stm

³² International Crisis Group, *Crisiswatch*, 1 December 2005, No.28, p.11.

³³ Kathleen Ridolfo, 'Iraq: New Surge Of Kidnappings Target Westerners', 30 November 2005; 'Frenchman Kidnapped In Iraq', 5 December 2005; Radio Free Europe, <http://www.rferl.org/featuresarchive/country/iraq.html> The German has since been released.

5.2. Travel to and within Iraq presents particular difficulties. The US State Department's advice on internal travel dated 28th June 2005 states:

"All vehicular travel in Iraq is extremely dangerous. There have been numerous attacks on civilian vehicles, as well as military convoys. Attacks occur throughout the day, but travel at night is exceptionally dangerous. Travel in or through Ramadi and Fallujah, travel between al-Hillah and Baghdad, and travel between the International Zone and Baghdad International Airport is particularly dangerous. Occasionally, US Government personnel are prohibited from traveling to select areas depending on prevailing security conditions. There continues to be heavy use of Improvised Explosive Devices (IEDs) and/or mines on roads, particularly in plastic bags, soda cans, and dead animals. Grenades and explosives have been thrown into vehicles from overpasses, particularly in crowded areas. Overland travel should be undertaken only when absolutely necessary and with the appropriate security."³⁴

UNHCR's *Country of Origin* information concurs with this view, emphasising that "no major route into Iraq is to be considered safe", and identifies the risks involved:

- Ongoing armed conflict between MNF/ISF [Multi-national Force/Iraqi Security Force] and insurgents, mainly near Fallujah and Ramadi (highway to Jordan/Syria) and near the Syrian border, but also on the roads to Samarra, Tikrit and Mosul, as well as on the roads leading South
- Ambushes/hostage taking by insurgents/criminals, mainly on the road from Baghdad to Fallujah as well as South of Baghdad ('Triangle of death'). The kidnappers often demand money but have also carried out kidnappings for political/religious reasons
- Highway robbery/car-jacking by armed thieves are very common, even during daylight hours, and particularly on the highways from Baghdad to Jordan and Kuwait
- Roadside bombs, in particular near Baghdad, mainly targeting MNF/ISF, but often causing civilian deaths
- Mines/UXO, in particular near Iraqi-Iranian border and along the former 'green line'
- 'Friendly fire': there have been a number of incidents in which civilians were killed at MNF/ISF checkpoints or when getting close to a military convoy³⁵

For those considering flying to Iraq, the FCO website advises that

"[t]here have been several missile attacks on military and civilian aircraft throughout Iraq. Baghdad International Airport has been repeatedly targeted by rocket and mortar attacks. The British Embassy does not permit its staff to travel by commercial airlines in Iraq."³⁶

The US State Department provides further information about the threat to air travel:

"There is credible information that terrorists are targeting civil aviation. Civilian and military aircraft arriving in and departing from Baghdad International Airport have been subjected to small arms and missiles. Civilian aircraft do not generally possess systems, such as those found on military aircraft, capable of defeating man-portable, surface-to-air missiles (MANPADS). Anyone choosing to utilize civilian aircraft to enter or depart Iraq should be aware of this potential threat, as well as the extremely high

³⁴ Travel Warning – Iraq, United States Department of State, Bureau of Consular Affairs, 28 June 2005, still current at 19 December 2005, http://travel.state.gov/travel/cis_pa_tw/tw/tw_921.html.

³⁵ UNHCR, *Country of Origin Information Iraq*, p.90.

³⁶ Foreign & Commonwealth Office, Travel Advice for Iraq.

risk to road transportation described below. Official U.S. Government (USG) personnel are strongly encouraged to use U.S. military or other USG aircraft when entering and departing Iraq due to concerns about security of civilian aircraft servicing Iraq. Due to safety and security concerns, U.S. government personnel are not authorized to travel commercially on Iraqi Airways. Currently, U.S. government personnel are only authorized to travel commercially on Royal Jordanian Airlines".³⁷

The Regional Air Movement Control Center, the military body that currently co-ordinates civilian flights into, out of, or within Iraq, also advises:

"All operators are warned that there are ongoing military operations in Iraq and non-military flight operations could be at significant risk. There are continuing reports of indiscriminate missile and small arms attacks on aircraft operating in Iraq. Operators undertake flights within the BAGHDAD FIR [Flight Information Region] at their own risk."³⁸

5.3. With regard to conditions in Arbil (Erbil) and the area administered by the KRG, the FCO notes that:

"There have been fewer attacks in the urban areas of the Kurdish Regional Government administered areas in northern Iraq than across the rest of the country but there is still a threat of attack. The city of Dohuk [Dahuk] has had fewer security incidents and heavy security is in place. In 2005, there have been 2 suicide bomb attacks in Erbil resulting in severe casualties. In October 2005, there were two explosions in the city of Sulymaniyah [Sulaymaniyah]. The areas administered by the Kurdish Regional Government do not include Mosul and Kirkuk. There has been a significant increase in the number of attacks in Kirkuk and Mosul."³⁹

UNHCR's *Country of Origin* information assesses the security situation in the KRG administered governorates as relatively stable, but identifies several factors contributing to a climate of tension and unpredictability:

- fear that the conflict in Kirkuk and Mosul will spill over into the region
- assassinations and assassination attempts against high-profile targets such as politicians
- suicide attacks by groups such as Ansar Al-Sunna
- continued tensions between the main Kurdish political groups and uncertainty about the degree of unity between them
- unresolved issues such as the division of power and oil revenues between Central Government and the KRG, as well as the future political status and geographical boundaries of the region
- the reported presence of 5000 PKK fighters in the region, which is a source of tension with the Turkish Government⁴⁰

The report concludes:

"Accordingly, the situation in the three Northern Governorates remains tense and a large number of security measures have been introduced. Permanent check points

³⁷ Travel Warning – Iraq, US Dept. of State.

³⁸ Regional Air Movement Control Center, <http://ramcc.dtic.mil/iraq.htm>. Accessed 20 December 2005.

³⁹ Foreign & Commonwealth Office, Travel Advice for Iraq.

⁴⁰ The PKK - Partiya Karkerên Kurdistan or 'Kurdish Workers Party' - mainly operates in Turkey. The PKK has been defined as a terrorist organisation by the European Union and the United States.

exist between the Centre of Iraq and the three Northern Governorates, as well as on the main entry/exit points linking Erbil, Dohuk and Sulaymaniyah. These checkpoints limit freedom of movement to and within the Northern region."⁴¹

6. Section 4 ('hard case') support

6.1. 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 (generally known as 'section 4' or 'hard case' support), providing they satisfy one or more conditions set out in NASS Policy Bulletin 71.

6.2. Section 3.1 of NASS Policy Bulletin 71 states that section 4 support may be provided to a destitute person who is taking all reasonable steps to leave the UK, possibly including "complying with an attempt to obtain a travel document to facilitate return".⁴² This is generally interpreted as making an application to the Immigration Service for a travel document, or to IOM for assisted voluntary return, which means signing a voluntary return declaration. Support can be denied if applicants are deemed not to have complied in this manner.

6.3. The very high percentage of negative asylum decisions has given rise to a large pool of Iraqis who have no permission to remain in the UK and no means of support.

6.4. The Refugee Legal Centre applied for and was granted permission to claim judicial review of a refusal of section 4 support to an Iraqi client on the grounds that: (a) the Home Office had failed properly to consider the safety of the route to Iraq and (b) the Home Office were not entitled to consider that VARRP is open to a claimant who is not a true volunteer. The decision was made at a contested oral hearing before the High Court on 17th September 2004. NASS undertook to accommodate the client until the full hearing of the claim.

6.5 In January 2005, the Home Office agreed to concede on the issue of safety of route. It accepted that it was arguable that there were risks in making the journey to Iraq via Highway 10, and that in the circumstances it might not be reasonable to demand that an applicant sign up to return via this route as a precondition for receiving section 4 support. The judicial review application was withdrawn and since then Iraqis were able to apply for section 4 support without signing the voluntary return declaration. There are currently over five thousand Iraqis supported under section 4.

6.6. The opening up of air routes into Iraq has had implications for Iraqis supported under the section 4 concession of January 2005. NASS makes no distinction in its treatment for

⁴¹ UNHCR, *Country of Origin Information Iraq*, pp.75-6.

⁴² NASS Policy Bulletin 71 Version 2.0, Section 4 of the Immigration and Asylum Act 1999, p.2. Issued 31 March 2005. See

http://www.ind.homeoffice.gov.uk/ind/en/home/applying/national_asylum_support/stakeholders/policy_bulletin.html for NASS Policy Bulletins.

The regulation also provides for section 4 support to be provided when: the person is unable to leave the UK by reason of a physical impediment to travel or for some other medical reason; or the person is unable to leave the UK because in the opinion of the Secretary of State there is currently no viable route of return available; or the person has made an application in Scotland for judicial review of a decision in relation to his asylum claim, or, in England, Wales or Northern Ireland, has applied for such a judicial review and been granted permission to proceed; or the provision of accommodation is necessary for the purpose of avoiding a breach of a person's Convention rights, within the meaning of the Human Rights Act 1998.

applications for section 4 support with regard to the area of Iraq the asylum seeker originates from.⁴³

6.7 New applications for section 4 support:

The Home Office announced that from **Monday 1st August** a safe route of return was considered to exist for Iraqi asylum seekers whose asylum applications have been rejected. Therefore, from 1st August NASS requires Iraqi asylum seekers who make a new application for section 4 support to demonstrate that they satisfy one of the criteria for support⁴⁴. In most cases this means demonstrating they are taking all reasonable steps to leave the UK or are placing themselves in a position in which they will be able to leave the UK.

6.8 Those in receipt of section 4 support:

From **Thursday 1st September** Iraqi asylum seekers already in receipt of section 4 support are expected to show they are taking steps to leave the UK, or satisfy one of the other grounds for section 4 support, in order to continue to be eligible for that support⁴⁵. Between September and December NASS is writing to all Iraqi nationals who are in receipt of section 4 support to explain the situation. NASS intends to review cases closely to ensure that section 4 support is only continued for those who comply with voluntary return or who meet the one of the other conditions for support. Recipients of the letter have 14 days plus a few days grace period to respond. In most cases, it is clear that the choice they have to make is either to agree to leave voluntarily or to lose section 4 support.

6.9. The Refugee Legal Centre made an application to claim Judicial Review of a refusal to provide support under section 4 (and the Asylum Support Adjudicator's subsequent dismissal of an appeal) for an Iraqi – Mr. Rasul - from Kirkuk, which is not in the KRG. His asylum claim and appeal were dismissed and from February 2003 he was accommodated under section 4. In October 2005, section 4 support was withdrawn because he had not applied for voluntary return. The asylum support adjudicator (ASA) decided that the NASS opinion that there is a viable route of return was conclusive. NASS maintained its refusal on the ground that Mr. Rasul can make a voluntary departure by direct flight to Arbil, and then travel by taxi to Kirkuk.

Latest developments

6.10. As of 24 November 2005, NASS has sent 4,884 initial letters to Iraqi nationals in receipt of section 4 support informing them they must either register for the VARRP or demonstrate they meet another of the section 4 criteria for support to continue. NASS has sent 2,012 discontinuation letters, which has generated 296 appeals, and so far 309 Iraqis have registered for the VARRP.

6.11. On 18 November, the Director of NASS attended a meeting with Leeds City Council and agreed to immediately suspend all evictions of Iraqis supported under section 4 in the city. Apparently, this was due to concerns expressed by Leeds City Council and some of the local

⁴³See

http://www.ind.homeoffice.gov.uk/ind/en/home/applying/national_asylum_support/nass_news/latest_news.Maincontent.0016.file.tmp/Section_4_NASF_290705.pdf

⁴⁴ Ibid.

⁴⁵ Ibid.

MPs about the high concentration of Iraqis receiving section 4 support in the city and the effects of the NASS project on homelessness in the city.⁴⁶

We understand that NASS plan to make a concerted effort, probably over a six week period, to persuade all Iraqis receiving section 4 support in Leeds to sign up for VARRP. During this time Iraqis in receipt of section 4 support will not be evicted and will continue to receive support if they are in the accommodation. Furthermore, NASS will continue to provide section 4 support beyond the proposed six-week period if the stipulated criteria on return are met. Those who have already received discontinuation letters but have not yet been evicted will continue to receive support rather than be evicted. Those who have been evicted will remain so and will have to reapply and fully satisfy the criteria if they wish to receive section 4 support again. After the six-week period, the eviction process will be restarted for those who have not signed up for VARRP.

6.12. NASS also put a temporary halt on the despatch of all discontinuation of section 4 support letters to Iraqi nationals. This temporary halt was in operation between 5 - 19 December. As the discontinuation letters allow a 14-day grace period before eviction from accommodation this was to ensure that support would not be terminated over the Christmas/New Year period. However, NASS will recommence the despatch discontinuation letters after this period, which may mean that Iraqis face eviction from section 4 accommodation from 3 January onwards.

6.13. On 7 December 2005, at a contested oral hearing, Mr. Justice Lloyd-Jones granted Mr. Rasul permission to claim judicial review of the ASA and NASS. Mr. Rasul is arguing that the ASA must decide for itself whether the proposed route is viable or, at least, whether NASS has made a full assessment as to the viability. In the alternative he argues that NASS made an unlawful decision that the route from Arbil to Kirkuk is safe, because it failed to make proper enquiries about the safety of the route for an Iraqi civilian. The judge ordered expedition of the hearing of the claim for judicial review, which is likely to be held in February 2006. Persons who originate from outside the KRG may therefore wish to argue to NASS that no decision to withdraw support should be made until judgment has been given in Rasul. Mr. Rasul is pressing NASS to adopt a policy to this effect, pending judgment in his case.⁴⁷

⁴⁶ Anne Alexander, 'Rethink halts eviction of failed asylum seekers', *Yorkshire Evening Post*, 1 December 2005; <http://www.leadstoday.net/ViewArticle2.aspx?SectionID=39&ArticleID=1272929> Accessed 19 December 2005.

⁴⁷ R (Rasul) v Asylum Support Adjudicator & Secretary of State for Home Department CO/8650/2005 – 7 December 2005

Appendix A - Map of Iraq



Appendix B – sources for further information on Iraq

Amnesty International	http://web.amnesty.org/library/eng-iraq/index
BBC News	http://news.bbc.co.uk/1/hi/in_depth/middle_east/2002/conflict_with_iraq/default.stm
Brookings Institution (Iraq Index)	http://www.brook.edu/dybdocroot/fp/saban/iraq/index.pdf
Central Intelligence Agency	http://www.cia.gov/cia/publications/factbook/geos/iz.html
Coalition Provisional Authority	http://cpa-iraq.org/ (no longer active - accessible until 30 June 2006 for historical purposes)
Department for International Development	http://www.dfid.gov.uk/countries/asia/iraq.asp
European Country of Origin Information Network	http://www.ecoi.net/documents.php?gp=1&iflang=en&country=IQ
Foreign & Commonwealth Office	www.fco.gov.uk/travel/iraq
Home Office Country Information	http://www.ind.homeoffice.gov.uk/ind/en/home/0/country_information.html
Human Rights Watch	http://www.hrw.org/doc?t=mideast&c=iraq
Institute for War & Peace Reporting	http://www.iwpr.net/iraq_index1.html
International Committee of the Red Cross	http://www.icrc.org/Web/eng/siteeng0.nsf/html/iraq
International Crisis Group	http://www.crisisgroup.org/home/index.cfm?id=2436&l=1
International Monetary Fund	http://www.imf.org/external/country/IRQ/index.htm
International Organization for Migration	http://www.iom-iraq.net
Iraqi Ministry of Displacement and Migration	http://www.iraqi-modm.org/ (English pages incomplete)
Iraqis Rebuilding Iraq	http://www.iraq-iri.org/
Kurdistan Regional Government	http://www.krg.org/
National Asylum Support Service	http://www.ind.homeoffice.gov.uk/ind/en/home/applying/national_asylum_support.html

NewsNow Iraq	http://www.newsnow.co.uk/newsfeed/?name=Iraq
Reliefweb	http://www.reliefweb.int/rw/dbc.nsf/doc104?OpenForm&rc=3&cc=irq
UN Assistance Mission for Iraq	http://www.uniraq.org/
UN Development Programme	http://www.iq.undp.org/
UN High Commissioner for Human Rights	http://iraq.ohchr.org/
UN High Commissioner for Refugees	http://www.unhcr.ch/cgi-bin/texis/vtx/iraq
UN Iraq News Centre	http://www.un.org/apps/news/infocusRel.asp?infocusID=50&Body=Iraq&Body1=inspect
US Agency for International Development	http://www.usaid.gov/iraq/
US Army Corps of Engineers	http://www.grd.usace.army.mil/index.html
US State Department	http://travel.state.gov/travel/cis_pa_tw/tw/tw_921.html
World Bank	www.worldbank.org/iq
World Health Organisation	http://www.who.int/countries/irq/en/

Appendix C – sources for further information on voluntary return to Iraq

For those Iraqis contemplating returning to Iraq, independent advice and counselling is available from IOM's implementing partners:

Choices	Refugee Action The Old Fire Station 3rd floor 150 Waterloo Road London SE1 8SB Tel: 020 7654 7700	Refugee Action Suite 7 Floor C Joseph's Well Hanover Walk Leeds LS3 1AB Tel: 0113 244 5345
	Refugee Action Chancery House 7 Millstone Lane Leicester LE1 5JN Tel: 0116 261 6200	Refugee Action 1 Tariff Street Manchester M1 2HF Tel: 0800 917 2719/0161 233 1200
Options	YMCA 33 Petershill Drive Glasgow G21 4QQ Tel: 0141 557 2355	
North of England Refugee Service (NERS)	19 The Bigg Market Newcastle NE1 1UN Tel: 0191 222 0406	27 Borough Road Middlesbrough TS1 4AD Tel: 01642 217 447
	Ground Floor Maritime Buildings St Thomas Street Sunderland Tyne & Wear SR1 1BL Tel: 0191 510 8685	3rd Floor Forum House The Forum Wallsend Tyne & Wear NE28 8LX Tel: 0191 200 1109
Safe Haven Yorkshire	6a Turners Business Park Richmond Park Road Sheffield S13 8HT Tel: 0114 256 1033	
Wolverhampton Asylum Seeker & Refugee Services Ltd. (WARS)	Federation House 20-21 Cleveland Street Wolverhampton WV1 3HT Tel: 01902 311554/424901	

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