

**UNHCR' s comments on the Memorandum of Understanding
between the Government of the Kingdom of Denmark
and the Government of the Republic of Iraq**

General comments

UNHCR's understanding is that the MoU regulates the voluntary return of Iraqis from Denmark (including permanent residence permit holders, asylum-seekers and rejected asylum-seekers) as well as the compulsory returns of Iraqis with no protection or compelling humanitarian needs who, as determined by the Danish authorities, fall within the category of those refusing to avail themselves of the option of voluntary return.

The stated objective of the MoU is to "lay the basis for a closely coordinated, phased and humane process of assisted returns of Iraqis in Denmark which respects the primacy of voluntary return and which takes account of the conditions in Iraq and of the importance of safe, dignified and sustainable return."¹

With regard to returns to the Central and Southern Governorates UNHCR notes that displacement in Iraq is massive, and hundreds of thousands of refugees remain in need of sustainable solutions. Voluntary repatriation remains the durable solution for, and sought by the largest number of Iraqi refugees, most of whom are estimated to live in the region. As the security situation improves in Iraq, expectations – and pressure – are growing that Iraqis will return to their homes in growing numbers. Its realization is, however, complex and challenging and should be evaluated against the current security situation and living conditions in the country. The slow progress with voluntary repatriation, despite some premature and politicized steps to encourage returns, reflects the fact that basic requirements for return, that is, physical, material and legal safety with full restoration of effective national protection as the end product, are not yet in place. The Iraqi Government is working to encourage returns through monetary grants, rental subsidies and restitution of property for the displaced, saying that security has improved. In 2008, more than 200,000 Iraqis returned home. However, the vast majority of these returnees are IDPs and not refugees returning from abroad.

UNHCR's Executive Committee, of which Denmark is an important and active member, has stipulated in its Conclusion No.40 of October 1985 that return should take place "*preferably to places of [former] residence of the refugee in his country of origin*", rather than to a place of internal displacement. In UNHCR's experience, return to areas other than the refugee's place of origin or previous residence may impact adversely on the protection situation of the returnees themselves, that of others in the place of return and more generally on the processes of stabilization, reintegration and reconciliation. From UNHCR's perspective, return to other areas than the place of origin or previous residence should only be countenanced if relocation is based on a free and informed choice, is not the result of obstacles to return in the area of origin, proves viable and does not infringe the rights of others, including property rights.

Despite positive developments on the security and political front since mid 2007, the Iraqi authorities are not yet able to provide residents with basic protection from generalized violence and violations of human rights. As outlined in UNHCR's *Eligibility Guidelines for Assessing the International Protection Needs of Iraqi Asylum-Seekers*

¹ Paragraph 1 (Objectives) of the MoU.

(April 2009), security improvements remain fragile, while major unresolved political issues hold potential for renewed violence. In addition, the country suffers from high unemployment and chronic fuel, electricity and water shortages, combined with serious shortcomings in health and educational services, creating the potential for major social hardship and unsustainable reintegration. In light of this background, UNHCR recommends the following with regard to return to Central and Southern Governorates:

- i. Unless volunteering for return, no Iraqi from the **five Central Governorates** and those belonging to the **specific groups which have been identified to be at risk from the Southern Governorates and Al-Anbar**, should be forcibly returned to Iraq until such time as there is substantial improvement in the security and human rights situation in the country.
- ii. When considering return of persons originating from the Southern Governorates or Al-Anbar Governorate not found to be in need of international protection, UNHCR recommends that caution needs to be exercised with regard to the evolving security situation in given areas. In addition, the following considerations should be taken into account:
 - Return to the place of origin to the individuals' community and family would provide the individual with a reasonable opportunity for durable re-integration in Iraq. No one should be returned to a situation of internal displacement;
 - Availability of services and/or community and family support network for particularly vulnerable cases such as, for example, single female heads of households without support, the chronically ill, persons with disabilities, the elderly, unaccompanied minors and victims of severe past persecution; and
 - The destabilizing effect which would result from potentially large numbers of individuals returning in light of the fragile situation in those Governorates, and the lack of sufficient absorption capacity (in particular shortage of housing) in the area.

UNHCR, in particular, advises against returns of persons to areas from where they do not originate. In addition, it should be stressed that a person's ethnic or religious background should not result in forcible returns to majority-areas in case the person does not originate from there.

With regard to returns to Northern Iraq, the situation in the three Northern Governorates of Dahuk, Erbil and Sulaymaniyah has been described in UNHCR's Eligibility Guidelines as relatively stable, but tenuous and unpredictable for a number of political and security reasons. Furthermore, it is outlined that serious human rights violations continue to occur in the Kurdistan Region, with specific groups being targeted. In light of this background, UNHCR recommends to consider the following when considering the return of Iraqis from the three Northern Governorates found not to be in need of international protection:

- The destabilizing effect which would result from large numbers of individuals returning in light of the fragile situation in the three Northern

Governorates, and the lack of sufficient absorption capacity (in particular shortage of housing) in the area. Assistance packages for the returnees and receiving communities could contribute to alleviating the burden;

- Return to the place of origin to the individuals' community and family would provide the individual with a reasonable opportunity for durable re-integration in Iraq. No one should be returned to a situation of internal displacement; and
- Returns should be conducted in a phased and orderly manner, and they should be closely coordinated with the KRG authorities in order to ensure lawful entry and take into account the limited absorption capacities in the three Northern Governorates.

Based on the above, in relation to Iraqis from the three Northern Governorates who are found not to have international protection needs, host States may consider allowing stay on a humanitarian basis.

Specific comments

In light of the foregoing, UNHCR considers a number of provisions of the MoU to be of concern, namely Paragraph 2 (III), Paragraph 2 (IV), Paragraph 4, Paragraph 5 and Paragraph 8.

- **Paragraph 2 (III)** refers to voluntary return of Iraqis who are found not to have protection needs or humanitarian reasons in accordance with the regulations in the Danish Aliens Act. The paragraph reads:

Paragraph 2 (III) "Iraqis, who are found not to have protection needs or humanitarian reasons in accordance with the regulations in the Danish Aliens Act, could opt for voluntary return after a final negative decision on their asylum claim".

UNHCR reiterates that the application of the Danish Aliens Act should not result in protection gaps but rather, should enable all those in need of international protection to find and enjoy it. According to the above-mentioned Eligibility Guidelines, Iraqi asylum-seekers from Central Iraq continue to be in need of international protection. The Guidelines indicate that the level of human rights violations and violence remains high in the five Central Governorates of Baghdad, Diyala, Kirkuk, Ninewa and Salah Al-Din, hence the position remains that Iraqis from these five Central Governorates should be considered as refugees within the definition of the 1951 Convention. The above-mentioned paragraph of the MoU should be confined to Iraqis from the Northern and Southern Governorates, and Al-Anbar Governorate. Even in these cases, there is a need for special attention to categories of individuals who may not be able to find protection upon return as highlighted in the above-mentioned Eligibility Guidelines.

- **Paragraph 2 (IV)** is of particular concern as it refers to the compulsory return of Iraqis deemed not to have protection or compelling humanitarian needs without making a clear distinction between the compulsory return of Iraqis originating from the five Central Governorates and those from Northern and Southern Iraq and Al-Anbar Governorate. The paragraph reads:

Paragraph 2 (IV) "Iraqis who have no protection or compelling humanitarian needs justifying prolongation of their stay in Denmark, but who nevertheless continue to refuse to avail themselves of the option of voluntary return may be ordered to leave Denmark as an option of last resort".

Without making such a distinction, compulsory return could thus be extended to Iraqis from Central Iraq. In light of UNHCR's position as regards the international protection needs of Iraqis from Central Iraq, the Organisation is concerned that any compulsory return of Iraqis from Central Iraq may lead to *refoulement* of refugees.

- **Paragraph 4 and paragraph 8** refer to the responsibility of the Iraqi Government respectively for the safety of individual returnees and for measures to be taken to ensure that vulnerable groups receive adequate protection and assistance. The paragraphs state:

Paragraph 4 "The Government of the Republic of Iraq will, together with other relevant bodies, carry out the necessary measures to ensure that Iraqis abroad can return without any fear of harassment, intimidation, persecution, discrimination, prosecution or any punitive measures whatsoever".

Paragraph 8 "The Parties will take special measures to ensure that vulnerable groups receive adequate protection, assistance and care throughout the return and reintegration process. In particular, measures will be taken to ensure that unaccompanied minors are not returned prior to successful tracing of family members or without specific and adequate reception and care-taking arrangements having been put in place in Iraq".

UNHCR's assessment indicates that the Government of Iraq continues to lack capacity to ensure that the security needs of Iraqis are met and also to ensure that the basic health care and other essential services are adequately provided. Hence, the above mentioned provision raises serious questions as to the ability of the Government of Iraq to meet its commitments under these two paragraphs.

Furthermore, UNHCR notes that Paragraph 4 of the MOU foresees the participation of "other relevant bodies" to ensure the protection of returnees. The reference to "other relevant bodies" is unclear as the current wording may, as in previous tripartite agreements to which UNHCR is a party, also refer to the role of UNHCR.

- **Paragraph 5** refers to freedom of choice of destination. The paragraph states:

Paragraph 5 "The Republic of Iraq accepts that Iraqis returning from abroad will be free to settle in their former place of residence or any other place of their choice in Iraq".

The reference to Iraqi returnees being "free" to choose to return to their former place of residence is not reflective of realities of the situation. It may also not present an accurate picture to potential voluntary returnees in making their decision whether to return or not.

Any compulsory return may result in forced internal displacement, exacerbating the situation inside Iraq.

Conclusion

In light of the current situation in Iraq with regard to conditions required for any eventual return of uprooted people, it would be more appropriate to confine the MoU to Iraqis from the Northern, Southern and Al-Anbar Governorates only, in line with the Eligibility Guidelines and the considerations regarding return outlined above. With regard to provisions of the MoU related to voluntary repatriation, UNHCR notes that Iraq has currently little or no capacity to absorb large scale returns. Prior to engaging in large scale voluntary returns, conditions should be in place for the successful and sustainable voluntary return of Iraqis in safety and dignity.

UNHCR
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