



## UNHCR RETURN ADVISORY AND POSITION ON INTERNATIONAL PROTECTION NEEDS OF IRAQIS OUTSIDE IRAQ\*

### A. Update on the Situation<sup>1</sup>

1. Since the last UNHCR return advisory in September 2005<sup>2</sup>, there has been a deterioration in the security situation in Iraq. Extreme violence in Central Iraq<sup>3</sup> and significant instability in the South mark today's overall security situation in the country. Sectarian tensions between Iraq's Sunni and Shi'a communities as well as among the Shi'ites have sharply increased after the bombing of the holy Shi'ite shrine in Samarra on 22 February 2006. This incident led to targeted killings of thousands of Iraqis from both communities as well as other groups on the basis of their religious identity resulting in massive displacement of populations.
2. Ethnic tensions have also been on the rise in traditionally mixed areas such as Kirkuk, Mosul and Diyala. Violence is expected to further increase in view of the popular referenda to determine the status of disputed areas scheduled for 2007. In parallel, civilians as well as individuals of certain profiles are being targeted by terrorist groups and militias on a daily basis through intimidation and acts of terror aimed at uprooting and expelling individuals from their areas of residence on ethnic, religious, political or mere criminal grounds (this includes intellectuals, wealthy people, women and girls and minority groups). Furthermore, hostilities between the Multinational Forces (MNF) / Iraqi Security Forces (ISF) on the one hand and the armed insurgency on the other, continue unabated and are causing further population displacements.<sup>4</sup>
3. Overall, the situation could be characterised as one of generalised violence and one in which massive targeted violations of human rights are prevalent. Hundreds of thousands of Iraqis have been displaced within Iraq, to neighbouring countries and,

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\* Corrigendum: This is a revised version of the document, with a modified paragraph 5(vi). No other changes have been made to the document.

<sup>1</sup> Within the context of the present Position, the term "Iraqi" refers to both Iraqi nationals as well as former habitual residents of Iraq, in particular Palestinian refugees who have increasingly fled Iraq since 2003.

<sup>2</sup> Given the fact that Iraq has, again, become a major refugee-producing country and prospects for return in safety and dignity are very limited, UNHCR issues this advisory with a major focus on international protection needs of persons from Iraq. This position replaces the last return advisory of September 2005.

<sup>3</sup> 'Central Iraq' includes also the Governorates of Mosul, Kirkuk and Diyala, including those areas that are under the control of the Kurdistan Regional Government as stipulated in Article 53(A) of the Transitional 'Administrative Law, which continues to be valid under the Permanent Constitution. See Article 143 of the unofficial English translation by the United Nations Assistance Mission for Iraq, available at [https://www.usip.org/ruleoflaw/projects/unami\\_iraq\\_constitution.pdf](https://www.usip.org/ruleoflaw/projects/unami_iraq_constitution.pdf).

<sup>4</sup> For an overview of the various groups at risk, please see: *UNHCR Guidelines Relating to the Eligibility of Iraqi Asylum-Seekers*, October 2005, available at <http://www.unhcr.org/cgi-bin/texis/vtx/rsd/rsddocview.pdf?tbl=RSDLEGAL&id=4354e3594>

displacements further afield, including to Europe, are also on the increase again.<sup>5</sup> The ability of the Iraqi Government to protect the population is significantly undermined by the weakness of its nascent security structures, political divisions and the high level and intensity of ongoing sectarian violence, crime and insurgency, which occur on a daily basis with large numbers of civilian casualties.<sup>6</sup> In addition, Ministry of Interior have been repeatedly accused of employing militia members who commit gross human rights violations against those suspected of belonging to the insurgency. There is also occasional factional fighting between various militia groups.

4. Despite positive developments on the political front, such as the approval of a Permanent Constitution in October 2005, the holding of Council of Representatives' elections in December 2005, the formation of a national unity government in May 2006 and the ongoing build-up of the ISF, the Iraqi authorities are not yet able to provide residents with basic protection from generalized violence and massive targeted violations of human rights. Major political issues remain unresolved including the issue of federalism, distribution of oil and de-Ba'athification, which serves to undermine the Government's declared goal of national reconciliation and inclusiveness. 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 unrest.

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<sup>5</sup> The Government of Iraq, UNHCR and its partners estimate there are now more than 1.6 million people displaced within Iraq itself, including more than 480,000 newly displaced who have fled their homes in 2006, mainly since the bombings in Samara in February. It is further estimated that up to 1.6 million Iraqis are outside their country, most of them in Jordan (500-700,000 persons) and Syria (more than 500,000 persons with an additional reported 2,000 crossing from Iraq every day). Many more have sought refuge in Turkey, Lebanon, Egypt, the Gulf States and in Europe. Of some 40 nationalities seeking asylum in European countries in the first half of 2006, Iraqis ranked first with more than 8,100 applications. Statistics received from 36 industrialised countries for the first six months of 2006 showed a 50 percent increase in Iraqi asylum claims over the same period a year ago. See UNHCR, *Press Briefing, Iraq displacement*, 13 October 2006, available at <http://www.unhcr.org/cgi-bin/texis/vtx/iraq?page=news&id=452f69d74>.

<sup>6</sup> According to UNAMI/HRO the number of civilians killed violently in Iraq was an unprecedented 7,054 in September and October 2006. For July and August 2006, UNAMI had reported 6,599 and for the months of May and June 2006, 5,818 killed civilians. See UNAMI/HRO, *Human Rights Report*, 1 September – 30 October 2006, available at <http://www.uniraq.org/documents/HR%20Report%20Sep%20Oct%202006%20EN.pdf>;

See also:

- UNAMI/HRO, *Human Rights Report*, 1 July – 31 August 2006, available at <http://www.uniraq.org/documents/HR%20Report%20July%20August%202006%20EN.pdf>.
- Iraq Body Count, a respected website run by academics and peace activists and based on reports from at least two public media sources, estimates that between 44,736 and 49,692 civilians have been killed since the beginning of the conflict (by 26 October 2006). See Iraq Body Count, *The Iraq Body Count Database*, available at <http://www.iraqbodycount.net/database/>.
- A US research team, led by Gilbert Burnham of Johns Hopkins Bloomberg School of Public Health, estimates that 655,000 Iraqis, or around one in 40 of the Iraqi population, have died as a result of the 2003 invasion of their country. See The Lancet, Gilbert Burnham, Riyadh Lafta, Shannon Doocy, Les Roberts, *Mortality after the 2003 invasion of Iraq: a cross-sectional cluster sample survey*, 11 October 2006, available at <http://www.thelancet.com>.

## **B. Assessing International Protection Needs of Iraqis from Southern and Central Iraq**

5. In light of the above background, UNHCR recommends the following:

- (i) Iraqi asylum-seekers from Southern and Central Iraq should be favourably considered as refugees under the 1951 Convention relating to the Status of Refugees, given the high prevalence of serious human rights violations related to the grounds in the 1951 Convention. Where appropriate, the applicability of the exclusion criteria in the 1951 Convention should be considered.

Asylum claims should not be rejected merely on the basis of an internal flight alternative.<sup>7</sup> Whether the individual is a refugee under the 1951 Convention or flees generalised violence, there is no internal flight alternative within the Southern or Central regions, given the reach of both state and non-state agents of persecution, the lack of national protection and grave insecurity and human rights violations prevailing in those parts. An individual, who relocates to an area from where she/he does not originate, would likely face serious ongoing difficulties given the lack of protection provided by local authorities, communities or tribes, ethno-religious hostilities and the lack of access to basic services.

Furthermore, it would not be reasonable to expect an Iraqi from the Southern or Central regions to relocate to the three Northern Governorates of Sulaymaniyah, Erbil and Dohuk. Apart from the requirement to have a sponsor in order to be admitted and/or to legally reside in the Region of Kurdistan, individuals from the Southern or Central part of Iraq face serious obstacles in obtaining physical protection and in gaining access to accommodation, employment and other services. Internal relocation for individuals from Southern or Central Iraq is therefore not likely to address threats of persecution or security risks, nor would it permit a relatively normal life without undue hardship.

Additionally, since 2005, there are increasing signs of public impatience with the administration and its ability to deliver improvements to public service provision, particularly as regards water, fuel and electricity. This has led to a number of protests throughout the Kurdistan Region. Additional pressure is placed on basic services by the large numbers of IDPs in the three Northern Governorates and absorption capacities are therefore severely limited.<sup>8</sup> Furthermore, support by both the local communities as well as the local authorities, may be dwindling in light of the increase of IDPs to the Region.

- (ii) Where an Iraqi from Southern or Central Iraq is not recognized as a refugee under the 1951 Convention criteria, a complementary form of protection

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<sup>7</sup> See, UNHCR, *Guidelines on International Protection: 'Internal Flight or Relocation Alternative' within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, HCR/GIP/03/04, 23 July 2003, particularly para. 7 and para.30. See also, *UNHCR Guidelines Relating to the Eligibility of Iraqi Asylum-Seekers*, Annex VII, October 2005, available at <http://www.unhcr.org/cgi-bin/texis/vtx/rsd/rsddocview.pdf?tbl=RSDLEGAL&id=4354e3594>

<sup>8</sup> According to UNOPS and the KRG, there are 117,036 IDP families (over nearly 700,000 persons) present in the three Northern Governorates, including 11,232 families (some 70,000 persons) displaced in 2006 only.

should be granted, unless the individual comes within the exclusion criteria in the 1951 Convention.

- (iii) No Iraqi from Southern or Central Iraq should be forcibly returned to Iraq until such time as there is substantial improvement in the security and human rights situation in the country. UNHCR, in particular, advises against returns to the three Northern Governorates of persons not originating from there.
- (iv) Asylum seekers from Southern or Central Iraq who seek asylum beyond the neighbouring countries should not be returned to countries in the region, regardless of their prior stay in or transit through these countries. While these countries have to date been generous in their hosting of a large number of asylum-seekers from Iraq on their territories, the socio-political consequences of a large Iraqi presence are beginning to take their toll on the ability and willingness of the authorities to continue extending protection to Iraqis.<sup>9</sup>
- (v) In relation to countries in the region hosting Iraqis and which do not have national asylum systems, Iraqis from Southern and Central Iraq should be permitted to enter and remain, even if on a temporary basis, based on national legislative provisions which would enable lawful stay or residence. Their fundamental human rights should be recognised and protected during this period. They should also be granted access to basic services such as health and education, and be permitted self-reliance opportunities and to obtain their own accommodation. Due attention should be given to the situation of vulnerable individuals, including single female heads of households without support, the chronically ill, the elderly, and victims of severe past persecution. It is recommended that these countries collaborate with UNHCR to facilitate the protection of vulnerable groups.
- (vi) Significant political changes have occurred in Iraq. Saddam Hussein's regime has been removed, elections were organised and a new Government has been formed. A new Constitution has also been adopted. In UNHCR's view, however, these developments have not led to a situation where the cessation clauses of Articles 1C(5) or (6) of the 1951 Convention could be invoked. This is the case given that the political changes had not given rise to stability and effective governance. Rather, there is today a situation of generalised violence in the Southern and Central parts of Iraq, and an overall prevalence of serious human rights violations. It, therefore, cannot be said that national protection is available. In conclusion, in relation to Iraqis who were granted refugee status on the basis of a well-founded fear of persecution during the previous regime or who are already benefiting from a complementary form of protection, the "ceased circumstances" cessation clauses under Article 1C(5) or (6) of the 1951 Convention should not be applied. Guidance on assessing the change of circumstances may be drawn from UNHCR's *Guidelines on International Protection: Cessation of*

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<sup>9</sup> UNHCR estimates that there are up to 5-700,000 Iraqis in Jordan; at least 600,000 in Syria; at least 100,000 in Egypt; 20-40,000 in Lebanon; and 54,000 in Iran.

**C. Specific Considerations for the Three Northern Governorates (Sulaymaniyah, Erbil and Dohuk)**

6. Based on in-depth assessments over the last three years made by UNHCR, other UN agencies and humanitarian organizations, UNHCR continues to take a differentiated approach with regard to the international protection needs of persons originating from the three Northern Governorates
7. The present security situation in the three Northern Governorates is relatively calm and, arguably, one of the most stable in Iraq. Since the end of the PUK-KDP fighting in 1997, the security situation has stabilized and local authorities have committed themselves to increasing security against external and internal threats. However, for a number of mainly political factors, the security situation, even if calm, remains tense and unpredictable for the following reasons:
  - (i) There is anticipation that the conflict prevailing in the other parts of the country, in particular in the Governorates of At Tamim (capital city: Kirkuk) and Ninawa (capital city: Mosul), might spill over;
  - (ii) Despite the recent unification of the two KRG administrations, the exercise of joint control still needs to be demonstrated on the crucial portfolios of Justice, Peshmerga Affairs, Interior and Finance. In addition, clarification is still needed regarding which Ministry is responsible for displacement issues;
  - (iii) Apparent Kurdish ambitions to expand their areas of control, in particular in the Governorates of At Tamim and Ninawa, are being met with concern from Arab and Turkmen communities as well as Turkey and Iran;
  - (iv) Tensions are expected to rise in view of a popular referendum on the status of Kirkuk and other disputed areas slated for 2007;<sup>11</sup>
  - (v) The reported presence of some 5,000 PKK and 1,000 PJAK fighters in Northern Iraq is a cause for concern. A number of attacks inside Turkey allegedly perpetrated by PKK fighters operating from Northern Iraq, prompted Turkey to threaten Iraq with military retaliation. Both Turkey and Iran have reportedly massed troops on the border and carried out operations against Kurdish fighters along the Iraqi border in recent months.<sup>12</sup> The Iraqi

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<sup>10</sup> UNHCR, *Guidelines on International Protection: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees (the “Ceased Circumstances” Clauses)*, HCR/GIP/03/03, 10 February 2003, available at <http://www.unhcr.org/publ/PUBL/3e637a202.pdf>.

<sup>11</sup> Iraq’s Permanent Constitution stipulates in Article 140 that there be ‘normalisation, a census and a referendum in Kirkuk and other disputed territories to determine the will of their citizens before 31 December 2007’.

<sup>12</sup> The Christian Science Monitor, *Turkey sharpens response to upsurge in Kurd violence*, 29 August 2006, available at <http://www.csmonitor.com/2006/0829/p10s01-woeu.html>

See also:

- The Guardian, *Kurds flee homes as Iran shells Iraq's northern frontier*, 18 August 2006, available at <http://www.guardian.co.uk/Iraq/Story/0,,1852843,00.html>;
- Oxford Analytica, *Tensions mount at Iraq-Turkey border*, 25 July 2006, available at [http://www.hillnews.com/thehill/export/TheHill/Comment/OpEd/072506\\_oxford.html](http://www.hillnews.com/thehill/export/TheHill/Comment/OpEd/072506_oxford.html);

Government's repeated promise to close down all PKK offices in the country has yet to fully materialize ;<sup>13</sup>

- (vi) Radical Islamic elements, offshoots from *Ansar Al-Islam*, a home-grown indigenous Kurdish Islamist Movement, which during the 2003 US-led invasion was attacked by Coalition and Kurdish forces for reportedly providing a safe haven to major terrorist groups have regrouped, mainly near the Iraqi-Iranian border. They are held responsible for (suicide) attacks in the Kurdistan Region, mainly directed against senior PUK/KDP political and military officials;
- (vii) Growing dissatisfaction over alleged corruption, restrictions on freedom of press and lack of public services generate regular demonstrations and public unrest across the KRG-administered area;<sup>14</sup>
- (viii) Despite the KRG authorities' commitment to respect human rights in their areas, serious violations of human rights continue to take place with specific groups being targeted. Journalists and media organizations have repeatedly claimed that press freedom is restricted and criticism of the ruling parties can lead to physical harassment, arrest and imprisonment on fabricated charges. In 2005 and 2006, street protests due to lack of public services were at times violently suppressed, with large numbers killed, wounded or arrested.<sup>15</sup>

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- Radio Free Europe/Radio Liberty, Iraq: Turkey Threatens Military Incursion, 21 July 2006, available at <http://www.rferl.org/featuresarticle/2006/07/04C77744-2F65-4989-B6DE-D00564FD5DB8.html>;
  - IRIN, IRAQ: Officials warn of displacement following attacks, 28 May 2006, available at [http://www.irinnews.org/report.asp?ReportID=53571&SelectRegion=Middle\\_East&SelectCountry=IR\\_AQ](http://www.irinnews.org/report.asp?ReportID=53571&SelectRegion=Middle_East&SelectCountry=IR_AQ);
  - Ibid., IRAQ: Kurdish families flee as Iran shells rebel positions, 2 May 2006, available at [http://www.irinnews.org/report.asp?ReportID=53094&SelectRegion=Middle\\_East&SelectCountry=IR\\_AQ](http://www.irinnews.org/report.asp?ReportID=53094&SelectRegion=Middle_East&SelectCountry=IR_AQ).

<sup>13</sup> United Press International, Iraq Promises Crackdown On PKK, 18 November 2006, <http://www.washingtontimes.com/upi/20061118-014937-3262r.htm>; CNN, Iraq to close offices of Kurdish separatist group, 19 September 2006, available at <http://www.cnn.com/2006/WORLD/meast/09/19/iraq.main/index.html>.

<sup>14</sup> Radio Free Europe/Radio Liberty, Iraq: Kurds Call For More Government Accountability, 9 August 2006, available at <http://www.rferl.org/featuresarticle/2006/08/b502064d-63c7-484b-adcf-91b92c3d0d07.html>.

See also:

- Institute for War and Peace Reporting, Kurds Protest Energy Shortages, Iraq Crisis Report No. 184, 7 July 2006, available at [http://www.iwpr.net/?p=icr&s=f&o=322133&apc\\_state=henh](http://www.iwpr.net/?p=icr&s=f&o=322133&apc_state=henh);
- IRIN, IRAQ: Kurdish authorities vow to upgrade services after protests, 19 March 2006, available at [http://www.irinnews.org/report.asp?ReportID=52303&SelectRegion=Middle\\_East&SelectCountry=IR\\_AQ](http://www.irinnews.org/report.asp?ReportID=52303&SelectRegion=Middle_East&SelectCountry=IR_AQ)

<sup>15</sup> Institute for War and Peace Reporting, Kurdish Press Freedom Abuses, Iraqi Crisis Report No. 192, 1 September 2006, [http://iwpr.net/?p=icr&s=f&o=323571&apc\\_state=heniicr2006](http://iwpr.net/?p=icr&s=f&o=323571&apc_state=heniicr2006)

See also:

- UNAMI Human Rights Office, Human Rights Report 1 July – 31 August 2006, pp. 19-20, available at <http://www.uniraq.org/documents/HR%20Report%20July%20August%202006%20EN.pdf>;
- Coalition to Stop Deportations to Iraq, Kurdistan unsafe but Home Office still intent on sending people back there, 25 August 2006, available at <http://www.wadinet.de/news/iraq/newsarticle.php?id=2453>;
- Reporters Without Borders, Two journalists go on trial while wave of arrests continues in north, 17 August 2006, available at [http://www.rsf.org/article.php3?id\\_article=18582](http://www.rsf.org/article.php3?id_article=18582);
- Reuters Alertnet, Scores detained during protests in Iraq's Kurdistan, 14 August 2006;
- Radio Free Europe/Radio Liberty, Iraq: New Kurdish Administration Comes Under Scrutiny, 12 May 2006, available at <http://www.rferl.org/featuresarticle/2006/5/4B58E7A7-5456-4D67-A1F1-B5DF2E2AD5B4.html>;

Furthermore, those perceived as sympathizers of Islamist groups may be at risk of being arbitrarily arrested and detained.<sup>16</sup> In unofficial detention centres run by the political parties' security and intelligence apparatus, detainees are held incommunicado and without judicial review of their detention for prolonged periods of time; the use of torture and other forms of ill-treatment have also been reported.<sup>17</sup>

#### **D. Assessing International Protection Needs of Iraqis from the Three Northern Governorates (Sulaymaniyah, Erbil and Dohuk)**

8. In assessing the international protection needs of Iraqis from the Northern Governorates, UNHCR recommends as follows:

- (i) Asylum claims of Iraqis originating from the three Northern Governorates should be assessed in fair and efficient asylum procedures based on the refugee criteria of the 1951 Convention taking into account the individual merits of the claim.

In regard to the availability of an internal flight alternative in the Southern and Central regions, no such alternative is available for Iraqi asylum-seekers originating from the three Northern Governorates due to the widespread violence, insecurity and human rights violations in those areas. Whether an internal flight alternative is available within the Northern Governorates must be examined on a case by case basis, on the basis of UNHCR's Guidelines;<sup>18</sup>

As described above, although the situation is not characterised as one of generalised violence, it remains tenuous and unpredictable nonetheless, hence UNHCR continues to monitor it closely, in particular, with respect to developments which may impact the assessment of international protection

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- Committee to Protect Journalists, Iraq: Journalists from Kurdish weekly face arrest, trial, 2 May 2006, available at <http://www.cpj.org/news/2006/mideast/iraq02may06na.html>;
  - Radio Free Europe/Radio Liberty, Iraq: Kurdish Media Complain Of Harassment, 31 March 2006, available at <http://www.rferl.org/featuresarticle/2006/03/5dcece20-7c49-4f2e-a636-55a53c62e674.html>.

<sup>16</sup> Radio Free Europe/Radio Liberty, Iraq: Corruption Restricts Development In Iraqi Kurdistan, 29 April 2005, available at <http://www.rferl.org/featuresarticle/2005/4/DA9D366C-C2C2-486F-A4D7-2EEBC0BB507E.html>.

See also:

- Dr. Rebwar Fatah and Sheri Laizer, Fact Finding Mission to Iraqi Kurdistan, September – October 2004, 2004, pp. 10-13, 50;
- Inter Press Service, Liberated Kurds Find Little Freedom, 5 June 2004, available at <http://www.antiwar.com/glantz/?articleid=2747>;
- IRIN, IRAQ: Focus on libel laws in north, 3 March 2004, available at [http://www.irinnews.org/report.asp?ReportID=39801&SelectRegion=Iraq\\_Crisis&SelectCountry=IRAQ](http://www.irinnews.org/report.asp?ReportID=39801&SelectRegion=Iraq_Crisis&SelectCountry=IRAQ)

<sup>17</sup> See Amnesty International, Urgent Action, Iraq: Incommunicado detention/fear of torture, Rebwar Arif, 9 May 2005, available at <http://web.amnesty.org/library/Index/ENGMDE140102005?open&of=ENG-IRQ>.

See also Dr. Rebwar Fatah and Sheri Laizer, Fact Finding Mission to Iraqi Kurdistan, September – October 2004, 2004, pp. 32-36.

<sup>18</sup> UNHCR, *Guidelines on International Protection “Internal Flight or Relocation Alternative” within the Context of Article 1A(2) of the 1951 Convention and /or the 1967 Protocol relating to the Status of Refugees*, HCR/GIP/03/04, 23 July 2003, available at <http://www.unhcr.org/publ/PUBL/3f28d5cd4.pdf>.

needs. Assessing international protection needs should take into account a situation which may change suddenly and dramatically.

- (ii) In countries in the region without national asylum systems and hosting Iraqis, those originating from the three Northern Governorates should not be returned forcibly to Iraq, but their protection needs should be assessed in consultation with UNHCR to ensure that individuals with international protection needs are allowed to remain, and be permitted lawful stay or residency as well as access to education, healthcare, employment, and other basic rights. Due attention should be given to the situation of vulnerable individuals including single female heads of households without support, the chronically ill, the elderly, and victims of severe past persecution. Collaboration with UNHCR is highly recommended in order to address the specific needs of vulnerable individuals;
- (iii) When considering the return of Iraqis from the three Northern Governorates found not to be in need of international protection, the following considerations should be taken into account:
  - The destabilizing effect which would result from large numbers of individuals returning in light of the already fragile situation in the three Northern Governorates, as well as 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;
  - 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.
- (iv) Based on the above, in relation to Iraqis from the Northern Governorates who are found not to have international protection needs, host States may consider allowing stay on a humanitarian basis.

**UNHCR, Geneva**  
**18 December 2006 (Corr.)**