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UNHCR Regional Representation for Western Europe
Mr. W. van Hövell
Rue van Eyckstraat 11b
B - 1050 Brussels -
Belgium

Date 10 June 2010
Concerning Iraq

Dear Mr. van Hövell,

On 29 April 2010 you sent me a letter in which you referred to the general security situation in Iraq and expressed your concern about the compulsory return of a group of 35 foreign nationals to Iraq on 30 March 2010. In this letter, you asked me to (temporarily) suspend compulsory returns of Iraqi asylum seekers who have exhausted all legal remedies, or to limit such compulsory returns to people with a criminal record. I am writing to you to explain why your request cannot be complied with, based on a clarification of the Dutch asylum policy on Iraq.

As you will know, the Dutch asylum policy is legally anchored in the Aliens Act 2000. This national legislation is not an isolated Act. In the Aliens Act the emphasis is on complying with the principles laid down in the treaties ratified by the Netherlands, such as the Convention Relating to the Status of Refugees, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the Anti-Torture Treaty. The return policy is an integral part of the asylum and migration policy. After all, a prudent asylum and migration policy can only succeed if people who are not admitted actually return. In addition, without an effective return policy, public support for the reception and admission of refugees will crumble.

The UNHCR report you refer to concerning the situation in Iraq, dated April 2009, and the official reports by the Dutch Minister of Foreign Affairs show that the violence and human rights situation in (parts of) Iraq has been alarming for many years. At the same time, these reports also show that the improvements in the security situation, when compared to the situation in 2006 and 2007, are continuing.

The situation in Iraq described in the reports was the reason for me to make a subtle distinction as regards the individualisation requirement when assessing the applications for asylum by a number of vulnerable minority groups. This means that Iraqi Christians, Mandaean, Yazidis, Palestinians, Jews, Shabak and Kaka'i, can make a plausible case for an impending violation of Article 3 ECHR by putting forward only limited personal facts and circumstances in combination with the fact that he belongs to this group. As regards the judgement that a foreign national,

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Our reference

5653156/10

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with in themselves limited indications, has made a plausible case that a violation of Article 3 of the ECHR is imminent, it is not necessary for the person involved to have personally experienced such treatment. When the human rights of individuals in the direct vicinity of the foreign national who also belong to the same vulnerable minority group have been violated, this may be sufficient ground to assume this impending violation.

However, the nature and intensity of the violence in Iraq are, in my opinion, not as such that involuntary returns to this country will inevitably result in a violation of Article 3 of the ECHR, or one of the other treaties referred to. This explanation is shared by the European Court of Human Rights in his judgement of 20 January 2009 in case no. 32621/06, F.H. versus Sweden.

It can be deduced from the above that people for whom protection has been deemed to be unnecessary must return to their country of origin. The foreign national is primarily responsible for his return. Many Iraqis have already returned to Iraq voluntarily, inter alia with assistance from the International Organisation for Migration. The Dutch government supports people who want to return, inter alia through return and reintegration projects. Voluntary return continues to be the most desirable option, although involuntary return continues to be a necessary additional measure.

Lastly you refer in your letter to the situation of Iraqi refugees in the region around Iraq. The Netherlands are concerned about this group as well. The Netherlands for example participate actively in resettling Iraqis from the region, inter alia as part of a European project to resettle 10,000 displaced Iraqis and (thereby) reducing the pressure on neighbouring countries

Kind regards,



E.M.H. Hirsch Ballin
Minister of Justice

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