



LAWYERS COMMITTEE  
FOR HUMAN RIGHTS

333 Seventh Avenue, 13<sup>th</sup> Floor  
New York, New York 10001-5004  
USA

Telephone (212) 845 5200  
Facsimile (212) 845 5299  
E-mail: [nyc@lchr.org](mailto:nyc@lchr.org)  
Website: [www.lchr.org](http://www.lchr.org)

Washington, D.C. Office:  
100 Maryland Avenue, N.E.  
Suite 500  
Washington D.C. 20002-5625

Telephone (202) 547 5692  
Facsimile (202) 543 5999  
E-mail: [wdc@lchr.org](mailto:wdc@lchr.org)

April 17, 2003

Mr. Ruud Lubbers,  
UN High Commissioner for Refugees,  
94, rue de montbrillant,  
1202 Geneva,  
Switzerland

Dear High Commissioner:

We are writing to express our concern about the guidelines issued recently by UNHCR relating to the situation of Iraqi asylum seekers. We are concerned that these guidelines may reduce the protection available to Iraqi asylum seekers worldwide and will undermine refugee protection more broadly.

We understand that UNHCR has written to governments around the world recommending that individual asylum processing procedures for Iraqi nationals, both those newly arriving as well as pending cases, be suspended. Your office further advised governments that they would be justified in granting temporary forms of protection, rather than refugee status, to Iraqi asylum seekers for an initial period of three months.

While the intent of these guidelines seems to be to ensure that Iraqi refugees, particularly those who find themselves in States unwilling to grant them refugee status, are not sent back to persecution in Iraq, we believe there is a danger that the guidelines will be interpreted by some states as giving a green light to reduce protections for Iraqi refugees. In particular, we are concerned that the guidelines will result in greater uncertainty for this vulnerable group and will lead to prolonged detention. For example, should the United States decide to suspend processing Iraqi asylum claims, Iraqi asylum seekers -- already subject to mandatory detention upon arrival -- would be detained in jails and detention facilities for many more months. In other states where suspension of processing is not accompanied by grant of an alternative status, similar deterioration of protection may result.

In addition to the impact these guidelines may have on the quality and availability of protection for Iraqi refugees, we are concerned that the guidelines may also erode protection for refugees in future crises. We are troubled by the implication of this policy advisory for the integrity of the international refugee protection system as a whole, particularly as the 1951 U.N. Refugee Convention is coming under increasing threat.

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The Lawyers Committee urges UNHCR to consider offering additional guidance to States to ensure that the implementation of the guidelines takes into account local conditions and does not undermine core principles of international policy law. In particular, we ask that UNHCR emphasize the following international refugee protection obligations and policies:

- The right not to be refouled and the suspension of processing: The Lawyers Committee fully endorses UNHCR's call on March 11 that Iraqis should not be forcibly returned to the region at the current time. It is extremely difficult, in the midst of conflict in Iraq, to assess the future safety of the country, let alone the likelihood of what may happen to particular Iraqi asylum seekers if returned home. But the necessity to halt involuntary returns to Iraq does not justify the automatic suspension of examinations of all asylum claims.
- Temporary protection may only be appropriately triggered in situations of mass influx: Temporary protection in the international context is a device employed to offer immediate protection to refugees when countries face a sudden mass influx of people and where regular asylum processing systems are overwhelmed. Although there were warnings that Iraq's neighbors might be called upon to shelter Iraqis on an emergency basis, most countries outside the immediate region are unlikely to receive asylum seekers from Iraq at a rate which overwhelms their asylum processing systems. In France, for example, only 23 Iraqis made applications for asylum as the threat of war loomed in February 2003. Where countries are signatories to the 1951 U.N. Refugee Convention, and where a mass influx is not underway, there is no legal justification for a refusal to consider whether or not Iraqi asylum seekers qualify for refugee status.
- Uncertain refuge: The kind of protection offered under a temporary protection regime differs from country to country. But a grant of temporary protection generally provides lesser safeguards and a narrower range of rights than that of refugee status. UNHCR has stated that temporary protection "*only complements, and does not substitute for the wider protection measures, including refugee asylum, offered by the Convention.*" We agree.
- Grant of temporary protection should not prevent recognition of refugee status: Although a caution was included in the guidelines that the recommendations should not be interpreted to preclude the recognition of refugee status either on an individual or on a group basis, we believe it is important that UNHCR to clarify this point. Iraqi asylum seekers who are offered the benefit of temporary protection should not be denied the opportunity to claim, or to continue to claim, refugee status. This may occur at the point when an offer of temporary protection is extended, or after the expiration of temporary protection.
- Considerations of fairness: Some Iraqi asylum seekers have been living in limbo in countries of potential asylum and awaiting the outcome of their applications for many years. Suspending consideration of their cases now, at a time when their country of origin is in turmoil, would create unnecessarily hardship.

- The dangers of suspending processing: Where suspension of a claim for asylum is not accompanied by the grant of alternative protection, asylum seekers will suffer particular hardship. This will particularly be the case, for example, in countries where detention of asylum seekers may be prolonged as a result.
- Flight from war does not imply disqualification for refugee status: Some countries, particularly in Western Europe, argue that civilians fleeing generalized war or who fear persecution by non-governmental groups such as militias and rebels, should not be given formal refugee status. It should be clarified that the suggestion that temporary protection be granted to Iraqi asylum seekers should in no way be interpreted as an endorsement by UNHCR of this position, which is contrary to the requirements of the 1951 U.N. Refugee Convention and the customary international law norm of non-refoulement. Requests for recognition of refugee status must not be rejected before there is an individual examination of whether a person deserves international protection.

We appreciate your consideration of this matter and look forward to hearing from you. We would welcome the opportunity to meet with you or your representatives to discuss this matter further.

Sincerely,

*Mike Posner*

Michael Posner  
Executive Director