

Opinion by Prof. Eric David, Faculty of Law, Free University of Brussels,
on the statement issued by Iraq's National Security Advisor

December 27, 2008

In a press release issued on 21 December 2008, Iraq's National Security Advisor, Dr. Mouwaffaq al-Rubaie, noted the Iraqi government's plan to close Camp Ashraf, which is home to 3,500 members of the main Iranian opposition movement, the People's Mojahedin Organisation of Iran (PMOI), and return its inhabitants to their country of origin or to third countries. He added, however, that this will not be an expulsion by force. The text of the press release in part states:

"The residents of the camp were informed that the Iraqi government is responsible for the security of the camp and they were instructed that the government has plans to close down the camp and non-forcibly move its inhabitants to their country or to a third country and that staying in Iraq was not an option for them."

It is worth reminding that an overwhelming number of residents of Camp Ashraf are of Iranian origin with dual citizenship.

First status: The first status of refugees belongs to the residents, who came to Iraq after fleeing the Iranian regime which has killed tens of thousands of people on the basis of their political beliefs and opinions. They were granted political asylum in Iraq in 1986 in accordance with Iraqi law. So these are political refugees under the Geneva Convention of 28 July 1951, as amended by the Protocol of 31 January 1967. While these instruments are not formally binding on Iraq which has never ratified them, they are binding on Iraq as an expression of customary international law as expressed by the Universal Declaration of Human Rights of 1948 (art . 14, § 1) and the UNGA Declaration of 1967 on Territorial Asylum (Article 1, Section 2). This political refugee status granted by Saddam Hussein's regime was confirmed by the current regime in 2006. Whether they emanate from the current or previous regime, these commitments are binding on Iraq as far as the rest of the international community is concerned, and they confirm the refugee status of Camp Ashraf residents.

Second status: Since 2003, a second status has overlaid the first status. This is a status of "civilian protected persons" under the Fourth Geneva Convention of 1949 on the Protection of Civilian Persons in Time of War. Since the current situation of the residents of Camp Ashraf is a direct consequence of the armed conflict of 2003 between the U.S. and Iraq, the Fourth Geneva Convention still applies to these residents.

These instruments also bear obligations for parties taking responsibility to protect the residents, including the obligation to protect the residents' right not to be expelled from the territory in which they currently reside.

As refugees, they benefit from the prohibition on refoulement to the territory which they have fled (i.e. Iran) (1951 Geneva Convention, Art. 33), and also the prohibition

on expulsion to any other state save on grounds of national security or public order in Iraq (Art. 32).

As protected persons, they cannot be transferred to a country where they would be at risk of being persecuted due to their political opinions (the Fourth Geneva Convention of 1949, art. 45, 4th al.). It is true that this prohibition refers only to the occupying power - the United States - but insofar as the occupying power has entrusted the fate of these persons to Iraq, it remains responsible for ensuring Iraq's compliance with this requirement.

More generally, Ashraf refugees can be equated to Iraqi residents when they were welcomed as asylum seekers. Their deportation would lead to a form of arbitrary exile and violates Art. 9 of the Universal Declaration of Human Rights.

In the case of deportation to Iran this act would not only violate the above rules, but would also amount to violating the prohibition on expelling a person to a territory where they would face the risk of being subjected to torture (UN Convention of 1984 against Torture, art. 4; The Convention does not bind Iraq, but the rule may be considered customary international law). Moreover, since Iran systematically violates the laws of humane treatment, the right to a fair trial and the right to life, the return of refugees from Camp Ashraf to that country would violate several fundamental rights as stipulated by the International Covenant on Civil and Political Rights (ICCPR, Articles 6, 7, 14) which has been binding on Iraq since 25 January 1971.

In conclusion, Iraq cannot expel refugees from Camp Ashraf located on its territory without also committing gross violations of international law.