

# Protecting Iraq's civilians

The Iraqi people are already in a highly vulnerable situation. With Iraq's basic infrastructures eroded by decades of war, national mismanagement and twelve years of sanctions, another war in Iraq will have devastating humanitarian consequences for the civilian population. For that reason, Oxfam remains convinced that military action is unjustifiable. **One vital way to protect Iraq's vulnerable civilians is to avert a war.**

However, if a war goes ahead, it must be conducted in accordance with International Humanitarian Law. This imposes an unavoidable responsibility on warring parties to take all necessary precautions to avoid loss of civilian life by refraining from indiscriminate attacks; preserving the infrastructure upon which the civilian population depends and allowing free passage of humanitarian relief. *All* parties to the conflict are responsible for respecting International Humanitarian Law. It is the responsibility of the whole international community to ensure that they do.

## Executive Summary

The Iraqi people are in the midst of a humanitarian disaster. Failing water and sanitation systems have spread disease; more than one in ten children die before the age of five. Iraq's economic collapse has left more than fifty per cent of its people dependent upon food rations for survival. In addition, Iraq's impoverished people are preparing themselves for a possible war. Having imposed indefinite and comprehensive sanctions on Iraq in response to its government's failure to comply with successive UN resolutions, the international community already shares responsibility for the vulnerability of the Iraqi people. If war goes ahead, the vulnerability of the Iraqi people, and the responsibility of the international community to protect them, will be greatly increased.

One vital way to protect Iraq's vulnerable civilians is to avert a war. However, if war goes ahead, to protect Iraq's civilians from the conflict it must be conducted in accordance with International Humanitarian Law. *All* parties to the conflict are responsible for respecting International Humanitarian Law. First and foremost, this imposes an unavoidable responsibility to take all necessary precautions to avoid loss of civilian life. Such protection encompasses key implications for how war is fought:

- Indiscriminate attacks - those that do not distinguish between combatants and non-combatants - are prohibited. Chemical, biological, radiological and nuclear weapons, but also cluster bombs and landmines can by their very nature only be indiscriminate.
- Military attacks must not have a disproportionate effect on civilians. With a high risk of civilians being trapped inside potential conflict areas, such as major cities, those responsible for the use of weapons must take into account any potential impact on civilians that is disproportionate to the direct military advantage of such weapons use.
- Likewise, the targeting of water, electrical, or transport infrastructure upon which the Iraqi people depend for their survival will almost certainly have a disproportionate and highly damaging effect on civilians.
- All parties to the conflict must allow free passage of impartial humanitarian assistance. Assistance must be prompt and sufficient in order to preserve life.

Grave breaches of these laws are war crimes. If political leaders, military commanders, and soldiers engaged in military operations in Iraq intentionally breach the laws of war, the independent prosecutor of the International Criminal Court may be urged to investigate and prosecute those responsible.

(References to the relevant sections of International Humanitarian Law are given in the endnotes.)

# **The vulnerability of the Iraqi people – the need for international protection**

## **Deficient water and sanitation systems**

Before 1991, Iraq had a modern water and sanitation network, which depended on electricity to purify and pump water. But much of Iraq's generating capacity was destroyed in the 1991 Gulf War. Coalition forces deliberately targeted the country's electricity stations. This shut down the capital's water treatment plants and led to a public health crisis caused by raw sewage dumped in the Tigris River.<sup>1</sup> Water treatment plants in Basra were also attacked.<sup>2</sup>

Due to the strict controls on what can be imported into Iraq, sanctions have greatly obstructed the rehabilitation of Iraq's water networks and electricity systems. Consequently, water delivered to Iraqi households is not safe for consumption. Only half of sewage treatment facilities are operational.<sup>3</sup> 500,000 tons of sewage is pumped daily into freshwater bodies.<sup>4</sup> Unsafe water lies at the root of child mortality in Iraq – more than 100 of every 1,000 children die before they reach the age of five.<sup>5</sup> Seventy per cent of these children die because of diarrhoea caused by unsafe water, or from acute respiratory infection, sometimes aggravated by unsafe water.<sup>6</sup>

A recent visit to Iraq by aid experts, including an Oxfam specialist, confirmed that the water and sanitation system is at risk of further collapse.<sup>7</sup> If electricity stations are put out of action in new attacks, water treatment plants will shut down and diarrhoeal diseases and respiratory infections will increase sharply, leading directly to an increase in civilian suffering and death.

## **A fragile ration system**

In 1996, the Iraqi government and the UN agreed on a humanitarian programme which allowed Iraq to barter limited quantities of its oil in return for humanitarian supplies - the Oil-For-Food Programme. This programme averted nutritional collapse by providing a food ration of wheat, rice, tea, oil, sugar, dried milk and (usually inadequate) protein-rich pulses for every

Iraqi. In 1999, the UN allowed Iraq to export unlimited quantities of oil, which has led to a slight improvement in economic conditions and food security. In 2002, Iraqis saw the first substantial decline in child malnutrition.<sup>8</sup> However, close to one million children under the age of five have continued to suffer from chronic malnutrition.<sup>9</sup>

The Oil-For-Food Programme is a short-term measure which has created a soup-kitchen economy. Iraq gets no legal financial income from its oil sales. Consequently, markets are severely disrupted, and employers have little money to pay people. Low wages and high unemployment mean that people cannot earn enough to feed themselves, and farmers cannot find buyers for their produce. More than fifty per cent of Iraqis are now almost totally dependent on the distribution of food rations for their survival.<sup>10</sup> In the event of war, this system of support could be critically jeopardised.

## **Delivery of humanitarian relief**

Any attacks that target the roads, bridges, ports and railways of Iraq would severely affect the ration distribution system. Iraq's 43,000 food agents – responsible for food distribution - need a functioning port, road transport network and warehousing system to do their job. There is no alternative system, because farmers cannot grow enough to feed Iraq's people.

Currently the UN plays little role in the distribution of rations in government-controlled Iraq, although it is responsible for providing rations in the semi-autonomous north. In January 2003, an internal UN document released by the press revealed that the UN has the capacity to feed only a few thousand people, while in the event of war in Iraq more than 11 million people could be in immediate need of humanitarian assistance.<sup>11</sup> Such levels of humanitarian need would far outweigh the capacity of the humanitarian organisations currently working in Iraq to respond. In Afghanistan, at the peak of the bombing by coalition forces, the international humanitarian system was struggling to meet the needs of 900,000 Afghans. According to an article in the British daily newspaper, *The Guardian*, evidence from Afghanistan indicates that as many as 20,000 Afghans may have lost their lives as an

indirect consequence of US action there during 2001. Most of the deaths were hunger-related.<sup>12</sup>

Other considerations also need to be taken into account. Lack of security and fear of lawlessness during warfare can make it extremely difficult to deliver food assistance. As Oxfam's Country Director, John Fairhurst, said of Afghanistan in November 2001: 'There is still a lot of fighting, food truckers are fearful about driving into unknown situations and aid routes have been turned upside down.' In certain parts of the country, increasing insecurity and fear of lawlessness made it very difficult to deliver food to people.<sup>13</sup>

If prompt humanitarian relief cannot be delivered to the Iraqi people – whether for economic, infrastructural, or security reasons - the situation could become life-threatening and lead to widespread civilian suffering and starvation. Internally displaced persons (IDPs) may be particularly vulnerable. There are currently between 700,000 and one million IDPs in Iraq, the majority of whom are women and children.<sup>14</sup> During any conflict, and in the immediate phase following it, an even greater part of the population may be displaced. In the event of war in Iraq, there could be upwards of two million IDPs, in urgent need of shelter, food, and access to health care facilities.<sup>15</sup>

## **Provisions for refugees**

Some scenarios of war in Iraq suggest that large numbers of displaced people may seek refuge beyond Iraq's borders – up to 1.5 million.<sup>16</sup> Not only do relief workers need to be able to reach those in need inside Iraq, but Iraq's neighbours also need to keep their borders open to refugees fleeing any conflict<sup>17</sup> – with the swift, adequate assistance of international donors needed to take a fair share of this burden.

However, the prospects for this do not look good. Syria and Iran have agreed to allow refugees to cross their borders at specified points, for which some preparation is being made.<sup>18</sup> Turkey is making provision for refugees, but primarily inside Iraq. Jordan is in the midst of making preparations for camps on the Iraqi side of the Jordanian border, but the border itself will be closed to all except those in transit or requiring medical assistance.<sup>19</sup> Saudi Arabia and Kuwait have said that they will

not play a role in handling refugees.<sup>20</sup> Governments appear to be well aware of the potential humanitarian predicament that displaced people would face, but are more concerned about the risk of instability within their own countries, and the cost of providing for refugees.<sup>21</sup>

## **Civilians trapped in conflict**

Apart from the risk to Iraqis if neighbouring states close their borders, past evidence from both Kosovo and Iraq illustrates that the potential for civilians to become trapped in areas of conflict on a large scale inside Iraq is great. Where people are trapped intentionally, this is known as the use of 'human shields'.

During the 1999 air strikes on Kosovo, civilians were used as human shields by Serb forces - more than 80 documented cases exist. Such a strategy was blamed for NATO's bombing of civilians in the village of Korisa in May 1999. Serb forces are alleged to have concentrated a large group of ethnic Albanians near a command post in the village, preventing them from returning to their dwellings. Unaware of the large concentration of civilians in the area, NATO forces identified part of the village as a legitimate military target. Ten bombs were dropped, and more than 80 civilians killed.<sup>22</sup>

The risk that civilians will be trapped inside strategic locations in Iraq is just as great, if not greater. In 1997, under the threat of allied air strikes on Iraq, government palaces and other strategic installations were fortified with human shields. Iraqis flocked – the Iraqi government claims voluntarily - to government buildings and factories, in the hope that their presence would deter air strikes.<sup>23</sup> The pattern was repeated again in 1998, when Washington and London launched an extensive air and missile bombing campaign in return for Iraq's alleged failure to co-operate with UN arms experts. Hundreds of Iraqi "volunteers" were used as human shields in presidential palaces scattered in Baghdad and other Iraqi cities. Iraq is already preparing to receive its first Arab and Western visitors to act as human shields in case a military attack is launched.

It is the responsibility of the Iraqi government to ensure that human shields are not used. International Humanitarian Law

obliges all parties to a conflict to take all precautions to protect civilians under their control against the dangers resulting from military operations. Such measures include the removal of civilians from the vicinity of military objectives and avoiding locating military objectives within or near densely populated areas.

However, the vital point for any forces attacking Iraq is that even where human shields are used, International Humanitarian Law obliges them to distinguish civilians from combatants and to avoid any disproportionate civilian casualties. The high potential for civilians to be trapped in cities throughout Iraq – whether involuntarily or voluntarily - means that *all* opposing forces have a heavy responsibility to weigh the potential risk to civilians in any military attack.

## **The risk of ‘collateral damage’**

If a war goes ahead, the risk of ‘collateral damage’ is high. Military and civilians are often bunched together, and distinguishing one from the other can be difficult. However, this in no way exempts all forces from their obligation to weigh carefully the direct military advantage of any attack against the potential harm to civilians.

The nature of military terms of engagement themselves can lead to unintentional civilian suffering and death. For example, in Iraq during the 1991 Gulf War, due to the tactics of aerial bombardment, on some occasions weapons installations were mis-targeted and civilian shelters were hit. NATO pilots faced a parallel problem in the air campaign against Yugoslavia during the Kosovo conflict. By putting themselves out of the range of Serb anti-aircraft fire when they flew at altitudes of fifteen thousand feet, the accuracy of NATO’s pilots’ targeting was diminished, increasing the chances of civilian casualties. According to Human Rights Watch, about 500 civilians were killed by NATO’s air campaign against Yugoslavia during the Kosovo conflict.<sup>24</sup> Civilian deaths were reported in some 90 separate incidents. These included the bombing of a passenger train and civilian bus in Serbia, and the deaths of 64 refugees when an F-16 pilot mistook a convoy of tractors for military vehicles. In numerous cases, the targeting of power stations, radio stations, telephone and press offices, trucks and buses -

deemed as legitimate military targets – has resulted in missiles and bombs being dropped upon or near heavily populated areas.

The risk to civilians comes not only from the difficulty of distinguishing between military and civilian targets, but also from the use of indiscriminate weapons and their aftermath. For example, the areas along Iraq's borders with neighbouring countries, and some areas around the dividing line with the three northern governorates currently under the control of Kurdish local authorities, are 'secured' by a barrier of minefields which will present a considerable danger to refugees and IDPs. Additionally, conflict may result in unexploded ordnance (UXO) becoming commonplace, particularly in the towns and cities, with the potential to cause civilian casualties.<sup>25</sup>

## **Upholding International Humanitarian Law**

### **A shared responsibility**

Every Iraqi has a right to life and a right to an adequate standard of living, including adequate water and food.<sup>26</sup> The Iraqi government is responsible for creating the conditions in which every Iraqi can realise these basic rights. However, the responsibility for the plight of Iraq's population is shared. Not only have the people of Iraq continued to suffer at the hands of their government, they have also borne the brunt of the UN sanctions regime since 1991.<sup>27</sup> For more than twelve years, sanctions have contributed to the undermining of Iraqi people's rights and their ability to survive.<sup>28</sup> The international community therefore already shares responsibility for the existing vulnerability of the Iraqi people: their dependence on rations, their exhausted water, sanitation, and electricity systems. This responsibility will increase, should members of the international community decide to go to war with Iraq.

The examples given above clearly illustrate the direct relevance of the rules of International Humanitarian Law in protecting the Iraqi people during war. Forces must distinguish between military targets and civilians. Forces are obliged to take all precautions to ensure targets are military targets, and refrain from launching attacks that would have a disproportionate

effect on civilians. Indiscriminate attacks are prohibited; certain weapons, such as chemical, biological, nuclear and radiological weapons, but also cluster bombs and landmines, can by their very nature only be indiscriminate. The use of civilians to protect military objectives - human shields - is prohibited.<sup>29</sup> However, their use does not exempt all opposing forces from their obligation to weigh carefully the concrete and direct military advantage of any attack against the potential harm to civilians.<sup>30</sup>

Use of starvation as a weapon of warfare is also prohibited, as are attacks on “objects [targets] indispensable to the survival of the civilian population”.<sup>31</sup> International Humanitarian Law obliges all parties to the conflict to allow free passage of relief supplies.<sup>32</sup> Existing relief operations, and hence the Iraqi people, depend on the country’s transport infrastructure for survival. Assistance must be prompt and sufficient in order to preserve life. The targeting of water, electrical, or transport infrastructure on which the Iraqi people depend for their survival will almost certainly have a disproportionate effect on civilians.

## **Individuals can be held accountable for violations of International Humanitarian Law – the International Criminal Court**

What happens if these rules are broken? Grave breaches of International Humanitarian Law are war crimes. In some conflicts, national courts or special international tribunals have prosecuted soldiers, commanders and political leaders for war crimes. In 2002, however, the International Criminal Court (ICC) came into being. Its prosecutor may bring those responsible for these war crimes to justice, if they are nationals of states that have ratified the ICC Statute, or if they commit offences in the territory of a state that has ratified the Statute. If the United Nations Security Council refers a case to the ICC then *anyone* may be prosecuted.<sup>33</sup> Neither Iraq nor the USA has ratified the Statute, but most European countries, as well as Canada and Australia, have. If soldiers, their commanders or political leaders intentionally attack civilians or undermine their ability to survive, they may be held personally accountable.<sup>34</sup>

## Conclusion

The vulnerability of the Iraqi women, children and men will greatly increase in the event of war. If war cannot be averted, the responsibility to protect the rights of the Iraqi people rests not only with the Iraqi government, but also with any military forces attacking Iraq, and with the wider international community. The obligations to refrain from indiscriminate attacks, to ensure that any military attacks do not have a disproportionate effect upon civilians, whether through the direct use of weapons or as a consequence of the targeting of the infrastructure upon which the Iraqi people depend for their survival, and to allow free passage of impartial humanitarian assistance, are clearly set out under International Humanitarian Law. The international community's critical responsibility to uphold these obligations is made greater because it has imposed indefinite and comprehensive sanctions on Iraq.

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## Notes

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- <sup>1</sup> *Strategic Attack: Air Force Doctrine Document 2-1.2*, US Air Force, 20 May 1998, page 26.
- <sup>2</sup> "Fear At the End of the Basra Road," Ed Vulliamy, *The Guardian*, 18-19 May 1991.
- <sup>3</sup> *Alleviating Poverty in Iraq*, UNDP Iraq 2002.
- <sup>4</sup> The Situation of Children in Iraq: An Assessment Based on the United Nations Convention on the Rights of the Child, UNICEF Iraq, February 2002, page 7.
- <sup>5</sup> *The situation of children in Iraq*. United Nation's Children's Fund New York, UNICEF, 2002. See also UNICEF Humanitarian Action Iraq Donor Update, 14 January 2003.
- <sup>6</sup> The Situation of Children in Iraq: An Assessment Based on the United Nations Convention on the Rights of the Child, UNICEF Iraq, February 2002, page 20.
- <sup>7</sup> Visit by Oxfam engineer Paul Sherlock to Baghdad, 28 October 2002.
- <sup>8</sup> "Malnutrition down by half among Iraqi children", UNICEF press release, Baghdad, 21 November 2002.
- <sup>9</sup> *Ibid.*
- <sup>10</sup> See *Understanding Kurdish Livelihoods in Northern Iraq*, Save the Children UK, January 2002; and 'On the brink of war: a recipe for a humanitarian disaster', Caritas International, November 2002, page 4.
- <sup>11</sup> 'Likely Humanitarian Scenarios', UN Confidential Document, 10 December 2002, released to the Washington Post, 5 January 2003.
- <sup>12</sup> Guardian Unlimited, Special Report, War in Afghanistan, 'Forgotten victims,' Jonathan Steele, Monday May 20, 2002. The evidence behind the figure of 20,000 is based on reports and interviews collated by Guardian journalist Jonathan Steele covering an extensive period.
- <sup>13</sup> Afghanistan Crisis Press Release, 'Humanitarian Crisis Still Looms,' 15 November 2001.
- <sup>14</sup> Iraq Emergency Bulletin, Save the Children UK, 18 December 2002; 'Likely Humanitarian Scenarios', UN Confidential Document, 10 December 2002, released to the Washington Post, 5 January 2003.
- <sup>15</sup> *Ibid.*
- <sup>16</sup> International Council of Voluntary Agencies Note for the File, Meeting on Contingency Planning and Preparedness for Iraq, Versoix II, 12-13 January 2003.
- <sup>17</sup> Many international lawyers argue that border closures to prevent people fleeing conflict from leaving their country is a form of *refoulement*, and thus in violation of a key principle of customary international law.
- <sup>18</sup> Iraq Borders Assessment Visit, Adam Leach, Middle East Director, Oxfam and Paul Sherlock, Senior Humanitarian Representative, Oxfam, 11-17 December 2002.
- <sup>19</sup> 'Iraq's refugees seek shelter from the storm,' Amnesty International Australia, Newsletter, Volume 22 Number 1 February-March 2003.
- <sup>20</sup> Iraq Borders Assessment Visit, Adam Leach, Middle East Director, Oxfam and Paul Sherlock, Senior Humanitarian Representative, Oxfam, 11-17 December 2002.
- <sup>21</sup> *Ibid.*
- <sup>22</sup> 'Serbs blamed for NATO killings,' BBC News, Saturday, 15 May 1999.
- <sup>23</sup> 'Iraq fortifies with human shields, sandbags,' CNN, 15 November 1997.
- <sup>24</sup> *Civilian Deaths in the NATO Air Campaign*, Human Rights Watch, February 2000, Vol. 12, No. 1 (D).
- <sup>25</sup> 'Likely Humanitarian Scenarios', UN Confidential Document, 10 December 2002, released to the Washington Post, 5 January 2003.
- <sup>26</sup> International Convention on Civil and Political Rights, Article 6, International Convention on Economic and Social Rights, Article 12; as ratified by Iraq.
- <sup>27</sup> See 'Human rights in the balance,' by Irene Khan, Amnesty International Secretary General, 25 September 2002.
- <sup>28</sup> UN human rights bodies have argued in the past few years that sanctioning states share responsibility for the violation of the economic rights of populations in sanctioned states. General Comment No 8, *The relationship between economic sanctions and respect for economic, social and cultural rights*, United Nations

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Committee on Economic, Cultural and Social Rights, Geneva, E/C.12/1997/8, 12 December 1997, see also *The Human Rights Impact of Economic Sanctions on Iraq*, Office of the High Commissioner for Human Rights, Geneva, 5 September 2000. The UK government accepted in its 1999 review of sanctions that sanctions must be targeted at a regime and not its people; that sanctions should include humanitarian exceptions; have clear objectives and a clear exit strategy. The report is quoted in the House of Commons International Development Committee Report *The Future of Sanctions*, (London: The Stationary Office, 27 January 2000) page viii. But in the case of Iraq, the UK government believes that the exit from sanctions is a matter of negotiation, see UK Mission to the UN press release, *Iraq debate: Statement by Sir Jeremy Greenstock KCMG, 26 June 2001*.

<sup>29</sup> Additional Protocol 1, Geneva Conventions, Article 51.

<sup>30</sup> Additional Protocol 1, Geneva Conventions, Article 57.

<sup>31</sup> Additional Protocol I, Geneva Convention, Article 54.

<sup>32</sup> Additional Protocol 1, Geneva Conventions, Article 70.

<sup>33</sup> Rome Statute of the International Criminal Court, Part 1: Establishment of the Court, Article 13, Exercise of the jurisdiction, (b)

<sup>34</sup> Rome Statute of the International Criminal Court, Article 8.

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