

# LALIVE

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His Excellency  
Mr António Guterres  
United Nations High Commissioner for Refugees  
Case postale 2500  
CH-1211 Genève Dépôt 2

Geneva, 1 March 2007

Re: People's Mojahedin Organisation of Iran ("PMOI") in Iraq

Dear Mr Guterres,

I have the honour of acting as Counsel for the the People's Mojahedin Organisation of Iran ("PMOI") and its members residing in Iraq. I hold powers of attorney for most members of the PMOI resident in Ashraf<sup>1</sup>. Both the individual members resident in Ashraf and the PMOI make election of domicile at my office.

Immediate action of the UNHCR is requested for the protection of PMOI members at Camp Ashraf.

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<sup>1</sup> For reasons of confidentiality on the names of the members of the PMOI in Ashraf and for reasons of convenience, and due to the very large number of PMOI's members, a copy of the POAs' cannot be provided as enclosures of the present letter. However, the undersigned guarantees the reality of these POAs' signed by most, if not all members of the PMOI in Ashraf. It has to be emphasised that the undersigned was present at Ashraf when the POAs' were signed by the members of the PMOI.

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**1. Background: The PMOI is a political organisation opposed to the current fundamentalist regime in Iran.**

Since its inception in 1965, the PMOI has been actively promoting the democratisation of Iran and the end of its successive oppressive political regimes. The Court of First Instance of the European Community noted on 12 December 2006, that the PMOI “*was founded in 1965 and set itself the objective of replacing the regime of the Shah of Iran, then the mullahs’ regime, by a democracy. In 1981 it took part in the foundation of the National Council of Resistance of Iran (NCRI), a body defining itself as the ‘Parliament in exile of the Iranian resistance’*”(enclosure 1).

Consistent with its policies, the PMOI remained neutral throughout “Operation Iraqi Freedom” in 2003. This is demonstrated in a letter written by Mr Mohammad Mohaddessin, chair of the Foreign Affairs Committee of the National Council of Resistance of Iran (NCRI), to the United States Secretary of State Colin Powell (enclosure 2). The PMOI also remained neutral during Operation Desert Storm in 1991.

Contrary to allegations of the Iranian regime, the PMOI remained independent and refrained from interfering in Iraq's internal affairs. NCRI President, Mr Massoud Rajavi, reaffirmed this policy in a message on 11 February 2003, published in “The House Magazine” (a publication of the British Parliament) dated 31 March 2003 (enclosure 3).

Repeated persecution of the PMOI since 1980 forced both peaceful and military actions against the Mullah regime throughout the 1980s and 1990s. The PMOI has recently published the names and particulars of over 20,000 of its members and supporters executed or killed by the Iranian regime including children, the elderly and those executed due to links with the PMOI (enclosure 4). One must bear in mind that this publication aroused reprisal killings (enclosures 5 and 6).

Human rights organisations such as Amnesty International have identified affiliates of the PMOI currently imprisoned and facing possible execution. In addition, the organisation has information regarding dozens more of its supporters facing imminent execution. The Iranian regime has further acknowledged the incarceration of individuals for the provision of information to the PMOI.

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Thousands of PMOI members have been interviewed by the UNHCR in countries neighbouring Iran, including Turkey and Pakistan and, despite awareness of armed resistance by the PMOI, the UNHCR historically granted the status of political refugees.

## 2. The PMOI's current state

The PMOI has conducted no military activities since June 2001, as confirmed in the witness statement of the PMOI's Secretary General, Ms. Sedigheh Hosseini, submitted to the Proscribed Organization's Appeals Commission earlier this year: *"In its extraordinary session in June 2001 held in Ashraf City, Iraq, the PMOI's Leadership Council decided to end the organisation's military operations inside Iran and put that decision into effect in July 2001, nationwide. All PMOI members inside Iran immediately abided by that decision, except a handful of them who were informed of this decision sometime later due to communication and security precautions and difficulties... Once the US-led Coalition Forces agreed to protect the PMOI in Iraq, the organisation voluntarily handed over all its weaponry. I was a member of the delegation that negotiated with the US side. The statements by the Coalition and CENTCOM, which the Commission has, make it clear that the disarming was voluntary."*

On 12 December 2006, the European Community Court of First Instance acknowledged *"according to the applicant... this organisation [the PMOI] and all its members have expressly renounced violence and all military activity since June 2001..."* (enclosure 1).

After "Operation Iraqi Freedom", members of the PMOI agreed to relocate to a single location (namely Ashraf City). On 15 April 2003, the PMOI and Coalition forces signed an agreement of *"mutual understanding and cooperation"*. This agreement was initially announced by Brig. Gen. Vincent Brooks, spokesman for the US Central Command, and was later confirmed by U.S. officials, including General Richard Myers, Chairman of the Joint Chiefs of Staff of the US Armed Forces during a press briefing on 2 May 2003. The agreement preamble provides: *"NLA / PMOI stated that they had not fired even a single bullet against US/Coalition forces in this war (...)"*.

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On 10 May 2003, the PMOI and Coalition Commanders signed a further agreement, whereby the PMOI would “*disarm and consolidate*”. The same day, Agence France Presse quoted Maj.-Gen. Raymond Odierno, then-commander of the 4<sup>th</sup> Infantry Division and now Lt.-Gen., Commanding General of MNF-I Corps, as saying, “*it is not a surrender. It is an agreement to disarm and consolidate*”. Speaking at a Mujahedeen base near the Iranian border, the General said the PMOI appeared to be committed to democracy in Iran and their cooperation with the United States should prompt a review of 'terrorist' status. “*I would say that any organisation that has given up their equipment to the coalition clearly is cooperating with us, and I believe that should lead to a review of whether they are still a terrorist organisation or not*” ([enclosure 7](#)).

The Los Angeles Times summed up the procedure quoting U.S. Army Spokesman, Captain Josh Felker stating the procedure “*(was) not a surrender (but) a disarmament process*” ([enclosure 8](#)). The voluntary nature of the PMOI’s disarmament was confirmed by a United States Central Command press release issued on 17 May 2003, by which: “*the voluntary, peaceful resolution of this process by the MEK and the Coalition significantly contributes to the Coalition’s mission to establish a safe and secure environment for the people of Iraq*” ([enclosure 9](#)).

In a videoconference from Baghdad on 18 June 2003, Maj.-Gen. Odierno confirmed that the PMOI did not possess weapons of any kind. He stated “*They have been completely disarmed. We have taken all small arms and all heavy equipment. They had about 10,000 small arms, and they had about 2,200 pieces of equipment, to include about 300 tanks, about 250 armored personnel carriers and about 250 artillery pieces. And we disarmed all of that equipment from them about 30 days ago*” ([enclosure 10](#)).

During the first half of 2004, all PMOI members in Ashraf City signed a statement denouncing terrorism and rejecting violence. In the statement, each member formally rejected “*participation in, or support for terrorism*”, stating “*I reject violence and I will not unlawfully take up arms or engage in any hostile act. It will obey the laws of Iraq and relevant United Nations mandates while residing in this country*” ([enclosure 11](#)).

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The PMOI therefore abandoned military activity six years ago, disarmed four years ago and renounced violence three years ago. No instance of violation evidences committal of the PMOI to its policy of passive resistance.

A few days before the transfer of sovereignty which took place at the end of June 2004, Prime Minister Allawi of the Interim Iraqi Government (IIG) assured Ambassador Bremer, of the Coalition Provisional Authority, *“that the provision of essential services to the individuals living at Camp Ashraf will continue after sovereignty is transferred on 30 June 2004. These services will be commensurate with the level of services at the quantities and prices as those received by Iraqi citizens living in Diyala’ Province and will remain in effect until final disposition of the individuals living at Camp Ashraf is determined. Prime Minister Allawi said that the IIG would agree to allow the MeK to purchase commodities and services (...) thus enabling them to remain self-sustained at Camp Ashraf”* (enclosure 12).

The United States recognised PMOI personnel in Ashraf City as protected persons under the Fourth Geneva Convention. By Proclamation of 2 July 2004, Gen. Miller, on behalf of the Multi-National Force-Iraq, stated that the United States had confirmed protected person status for the individuals at Camp Ashraf under the Fourth Geneva Convention (enclosure 13).

It is noted that the current doctrinal interpretation of the United States would prevent such a determination if the members of the PMOI had been qualified as “terrorists” (see DÖRMANN (K), *The Legal Situation Of Unlawful/Unprivileged Combatants, International Review of the Red Cross*, 2003, volume 85, No 849, p. 66ss.; MOFIDI (M) and ECKERT (A.E), “Unlawful Combatants” Or “Prisoners Of War”: The Law And Politics Of Labels, *Cornell International Law Journal*, 2003, vol. 36, p. 59ss.; ALDRICH (G), *The Taliban, Al Qaeda, and The Determination Of Illegal Combatants*”, *American Journal of International Law*, 2002, vol. 96, p. 893ss.; SASSOLI (M), *La “Guerre Contre Le Terrorisme”*, *Le Droit International Humanitaire Et Le Statut De Prisonnier De Guerre, Canadian Yearbook of International Law*, vol. 39, 2001, p. 211ss.).

In a letter addressed to “the people of Ashraf” dated 21 July 2004, Maj. Gen. Geoffrey Miller, MNF-Iraq Deputy Commanding General, congratulated them concluding *“this sends a strong signal and is a powerful first step on the road to your final individual disposition”* (enclosure 14).

On 7 October 2005, Maj.-Gen. W. Brandenburg, MNF-Iraq Deputy Commander General, reviewed the rights enjoyed by the members of the PMOI in Iraq, and stated in particular that

“(…)

- v) *they have the right to freedom of thought, religion, expression, intra-community association, and political opinion; they also have the right to freedom from prosecution and forced unpaid labor;*
- vi) *they have the right to food, health care, and a quality of living which meets the standards of local residents of the territory in which they are protected;*
- vii) *they have the right to fair treatment under the law, in accordance with Iraqi domestic law and international standards;*
- viii) *they have the right to pursue employment opportunities and profit-making activities which are consistent with local laws and can be taken without compromising their overriding right to personal safety;*
- ix) *they have the right to refuse to return to their country of nationality, regardless of their legal status in the country in which they are protected;*
- x) *they have the right to depart the territory of conflict at any time for their country of nationality or for any other country for which they possess valid travel documentation.”*

Maj.-Gen. Brandenburg also clearly affirmed that :

*“All residents of Camp Ashraf who do not wish to return to their country of nationality and instead wish to seek an individual or family refugee status determination, and individual or family claims for resettlement in third country, can request that their case be referred to the United Nations High Commissioner for Refugees (UNHCR)”.*

(enclosure 15).

All these changes reflect the cessation of PMOI military operations in June 2001, two years before the invasion of Iraq. Recognising this policy, on 17 October 2003, the Iranian Resistance’s President-elect Maryam Rajavi, called for a United Nations supervised referendum to change Iran’s

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ruling religious dictatorship as a last resort for peaceful change of the Mullahs' regime. (enclosure 16).

On 15 December 2004, Mrs Maryam Rajavi addressed the European Parliament, saying that, "*appeasement is not the way to contain or change the regime. Nor is it the path to avoid another war (...). The answer to fundamentalism is democracy (...). The equation of either a military invasion or appeasement is an exercise of political deception. A third option is within reach. The Iranian people and their organised resistance have the capacity and ability to bring about changes.*" Rajavi added: "*We have repeatedly called for free elections under the United Nations auspices. The mullahs, however, would never accept that. For us, democracy is not merely a political programme, but an ideal for which 120,000 members of the resistance, including 6 members of my family, have sacrificed their lives. The NCRI has committed itself to organize free elections for a constituent assembly within six months of regime change and handover the affairs to the people's elected representatives (...)*" (enclosure 17).

The NCRI and the PMOI have subsequently confirmed the approach of the resistance movement *vis-à-vis* the Iranian regime. Recently, Mrs Rajavi also addressed the Council of Europe (10-12 April 2006), the Belgian Senate (24 October 2006), the Norwegian Parliament (7-8 November 2006) and the European Parliament (12 December 2006).

### **3. The threat of "refoulement" or displacement: A humanitarian situation**

Constant threat of "*refoulement*" to Iran places the lives of PMOI in danger and demands attention.

Since the occupation of Iraq, the Iranian regime has made every effort to secure the extradition of the PMOI to Iran or its expulsion / *refoulement* from Iraq. Extensive lobbying by the Iranian regime in Iraq required the Administrator of the Coalition Provisional Authority, Ambassador L. Paul Bremer, to conclude that the "*refoulement*" of the members of the PMOI to Iran was impossible, and asylum was needed.

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The Iranian regime has increased its efforts dramatically. Under pressure from the Iranian regime, Iraqi officials have on numerous occasions pointed to their decision to expel the PMOI from Iraq.

On 19 July 2006, the Agence France Presse quoted the Iraqi Prime Minister Nouri Al-Maliki as saying *"he was looking for ways to end the presence in Iraq of the Iranian opposition group, the People's Mojahedin of Iran (PMOI)."* ([enclosure 18](#)).

On 28 July 2006, Abdul Aziz Al-Hakim, the head of the Supreme Council for Islamic Revolution in Iraq, said in a speech aired by Al-Araqiya television station that *"terrorist organizations in Iraq, including the terrorist Mojahedin-e Khalq, must be expelled from Iraq."*

On 3 August 2006, Iraq's National Security Advisor, Mowafaq Al-Rubaiee, was quoted in the Iranian State-run daily Jomhuri-Islami as saying, *"the organization's [PMOI] criminal members must be prosecuted in Iraq and other members of this grouplet who have not committed a crime must be either extradited to Iran or be expelled from Iraq."*

On 29 August 2006, the Iranian regime's ambassador to Iraq, Hassan Kazemi Qomi stated in a press conference in Baghdad, *"Tehran supports the return of PMOI members to Iran after they have repented and expressed remorse and abandon the terrorist Mojahedin organisation"* ([enclosure 19](#)).

On 20 September 2006, the Iranian-affiliated Iraqi weekly Nabz As-Shabab, openly called for *"the execution of all members of this organisation [the PMOI] and the expulsion of the Organisation from Iraq."* ([enclosure 20](#)).

On 15 January 2007, the Iranian regime's Minister of Intelligence and Security, Gholam Hossein Mohseni Ejei, met his Iraqi counterpart, Shirwan al-Waili, and discussed among other things, *"activities of the terrorist Mojahedin Khalq Organization (MKO/PMOI) based in Iraq"* as reported by the State-run news agency, Mehr.

On 1 February 2007, Agence France Presse quoted Iraqi government spokesman, Ali Dabbagh, as saying in a press conference in Baghdad, *"this organization [People's Mojahedin Organization of Iran (PMOI)] in Iraq is an illegitimate and illegal organization. On July 19, 2006, the cabinet*

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*ordered that the issue of ending the presence of this organization in a specified period of time be pursued by a ministerial cabinet, headed by the Minister of the Interior... They were given the opportunity to find residence in another country other than Iraq. They have been given the freedom of choice to return to their own country or to any country that would accept them... [PMOI] and its members violate Iraqi laws by contacting Iraqi officials. This is not allowed." (enclosure 21).*

PMOI members face arbitrary imprisonment, torture, persecution and execution if returned to Iran. Article 186 of the Iranian regime's "Islamic Punishment Act" sentences all members and affiliates of the PMOI to death (enclosure 22). The Iranian government has executed tens of thousands of PMOI political supporters since 1981 (enclosure 4). The displacement or expulsion of PMOI members within Iraq for more than 20 years renders PMOI vulnerable to grave risk.

According to authorized sources, the Iranian Supreme Leader, Ali Khamenei, recently ordered Abdul-Aziz Al-Hakim, head of the Supreme Council for Islamic Revolution in Iraq (SCIRI) to mobilize a majority of the members of Shiite coalition affiliated with the Iranian regime in the Iraqi Parliament to introduce a bill with the view of ordering the expulsion of the members of the PMOI to Iran. This initiative is pending.

International law extends protection to refugees and it is the responsibility of the UNHCR to ensure the PMOI are protected.

#### **4. Members of the PMOI qualify as refugees under both international and Iraqi laws**

Recognition of the PMOI members residing in Ashraf City as 'civilians' under the Fourth Geneva Convention does not prejudice attribution of 'refugee' status under international refugee law.

Pre-eminent refugee scholars, Professor Guy S. Goodwin-Gill and Professor Vera Gowland-Debbas on 20 November 2006, and, Professor Eric David in November 2006, (enclosures 23 and 24) have provided opinions on the applicable international, international refugee, humanitarian and human rights laws.

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These reports confirm that the PMOI members qualify as refugees under both international law and Iraqi legislation. In particular *“given the circumstances of their flight from Iran and the absence of any meaningful change of circumstances in the meantime, there can be little doubt members of the PMOI, as a group, fall within the category of refugees, whether considered from the perspective of customary international law or that of the UNHCR Statute”* (enclosure 23, p. 11).

Note was made of the possession of members of the PMOI enjoying refugee status in Iraq for the past twenty years by virtue of a special verbal agreement with the previous government of Iraq and confirmed by the conduct of the previous Iraqi government (enclosure 23, p. 9; enclosure 25). The current refugee framework should be dictated by Article 21(2) of the new Iraqi Constitution of September 2005, which states that *“a law shall regulate the right of political asylum to Iraq. No political refugee shall be surrendered to a foreign entity or returned forcibly to the country from which he fled”* (enclosure 23, p. 8).

Article 34 of Iraq's interim constitution in 1970<sup>2</sup> and the law on the residency of foreign nationals adopted in 1978, and modified in 2002, affirms the political refugee rights of the PMOI members and their legal residence in Iraq.<sup>3</sup>

#### **5. Iraqi officials affirm PMOI political refugee status**

Iraqi officials have affirmed the political refugee status of PMOI members in Iraq.

In a press conference, Dr. Ibrahim Jafari, former Iraqi Prime Minister, told Al-Iraqiya television on 21 July 2005, *“we were asked about the political movement opposing the Islamic Republic of Iran which exists now, we mentioned a general principle that we understand that we are bound by the policy of good neighborly relations and that we are not prepared for any group to attempt*

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<sup>2</sup> Article 34 of the Interim Constitution of 16 July 1970: 1. The Republic of Iraq grants the right to political asylum to all militants who are bring oppressed in their own country due to their defense of freedom-seeking and humanitarian principles, to which the people of Iraq are also committed in this constitution. 2. Handing over political refugees is prohibited (Translated from the original Arabic text).

<sup>3</sup> Law on residence of foreigners: This was adopted in 1978 and after being modified in 2000 and 2002, was published in the Iraqi government's official journal, number 3864, dated 2 February 2002. The law stipulated that non-Iraqis would not

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*interfering and bothering our neighbor... However, in Iraq, we do have the capacity to accept the existing political pluralism provided that their presence here is not intended to bother neighboring countries."*

In a letter on 6 September 2006 to Maj. Gen. John Gardner, Deputy Commanding General of the MNF-I, Deputy Prime Minister Dr. Salam Zekam Ali al-Zobeii wrote, *"I respect all international conventions and covenants and the principals of human rights and the right to political asylum which international laws and organizations guarantee. I should as well respect the government that I serve and am part of and I respect her political program since I am a part of it. I have clearly stated that while there are international conventions and covenants that come to serve the PMOI, we as the government in Iraq are bound by them."* (enclosure 26)

On 18 July 2005, the Arab-language daily As-Sharq Al-Awsat, wrote the following on comments by the Iraqi Foreign Minister Hoshiyar Zebari: *"Referring to the presence of thousands of members of the Iranian opposition Mujahedin-e Khalq organization on Iraqi soil under the protection of US Troops, Zibary emphasized that Iraq cannot hand the Mujahedin-e Khalq over to Iran 'because they have an international status with the Red Cross. They have laid down their arms and they are only a few thousand."* (enclosure 27)

On 9 August 2006, former Iraqi Deputy Prime Minister for security and services affairs, Dr. Salam Zubai, strongly and officially denied in a press statement comments attributed to him by a local daily on the expulsion of the PMOI from Iraq, describing it as "void of any truth". The Iraqi Deputy Prime Minister reaffirmed the People's Mojahedin's legal right to stay in Iraq as political refugees and said: *"In addition, the Mojahedin enjoy a legal status as protected persons under the Fourth Geneva Convention and are protected by U.S. forces."* In the summer of 2006, many of the most important Iraqi political leaders and personalities and some parliamentary groups condemned the Mullahs regime's conspiracies against the presence of PMOI members in Iraq and reaffirmed their legal rights as political refugees in statements and many interviews in the media (enclosure 28).

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be given residence in Iraq more than five years, with the following five exceptions: Diplomatic and consular staff, international organizations in Iraq, foreign students, political refugees and members of militant organizations.

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This was also endorsed by 12,000 Iraqi lawyers and jurists in January 2006, as well as signed by 5.2 million in Iraq people in June 2006 (enclosures 29 and 30).

Adnan Assadi, Iraq's Deputy Interior Minister, told Al-Jazeera television on 22 July 2005, "*Iranians informed us of the need to put an end to this group. The fact of the matter is that this group has been disarmed and (its individuals) are presently living as refugees. They were asked to pledge that they will not resort to any terrorist action against Iran from our borders*".

#### **6. The PMOI's status remains valid**

As it was said, members of the PMOI have enjoyed *de facto* refugee status in Iraq since arrival in 1986. They met the definitional elements of "refugee" under the former Political Refugee Act of 1971 and benefited from the oral agreement and equating treatment as refugees by the previous government of Iraq. This status remains valid.

The UNHCR, whilst fully aware of the PMOI's military activities, granted political refugee status to its members, fulfilling both the criterion set out in Article 1 of the 1951 Refugee Convention, and its mandate under Article 6 of the UNHCR Statute.

The applicable legal regime for refugees in Iraq was redefined by the Constitution of 15 October 2005. Article 21(2) proclaims that a right to asylum in Iraq must be specifically regulated by Parliament. The Iraqi Parliament has yet to enact such regulations. Accordingly, Iraq does not offer any refugee status determination procedure for individuals located within its territory. The legal residence and 20-year refugee status of the PMOI in Iraq - to which the current government is committed - is thus in conformity with the principle of continuity.

Given the composition of the Iraqi government and the influence of the Iranian regime in undermining recognition of the PMOI, it is incumbent on the UNHCR to address the deficit in determination of PMOI refugee status. Such determination would reflect past UNHCR practice where a country's political circumstances otherwise prohibited determination. Positive action by the UNHCR reminds Iraq of its international obligations in this regard.

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It is fundamental that, as refugees, PMOI members enjoy rights not to be “*refoulés*” to their country of citizenship (*i.e.* Iran) or forcibly displaced within Iraq, respectively under Articles 33 and 26 of the above-mentioned Convention of 28 July 1951 [and reflective of current customary international law]. Security and stability in Ashraf City depends on the UNHCR facilitating commitment by the Iraqi government to respect these rights of the PMOI.

### **7. The PMOI does not qualify as a “terrorist” organisation**

Speculation that the PMOI might not qualify for protection as “terrorists” is erroneous given first, that the misleading inclusion of the PMOI in US and EU terrorist lists is unrelated to ‘terrorism’ under the 1951 Refugee Convention, and second, given the true political designation of the PMOI.

First, neither the US nor the EU terrorist lists are binding on the UNHCR. In particular, it is worthwhile noting that the United Nations Security Council has not included the PMOI on its list of terrorist organisations.

Second, on inclusion of the PMOI on terrorist lists “*one senior Clinton administration official said inclusion of the People’s Mojaheddeen was intended as a goodwill gesture to Tehran and its newly elected moderate President, Mohammad Khatami*” ([enclosure 31](#)). Later, Martin Indyk, the U.S. Assistant Secretary of State for Near Eastern Affairs, confirmed in Newsweek that: “...[there] was White House interest in opening up a dialogue with the Iranian government. At the time, President Khatami had recently been elected and was seen as a moderate. Top administration officials saw cracking down on the [PMOI], which the Iranians had made clear they saw as menace, as one way to do so” ([enclosure 32](#)).

The EU designation of the PMOI as a “terrorist organization” was also politically and commercially motivated. The IRNA (the Iranian Regime’s official news agency) said on November 16, 2002: “*analysts point out that this year the EU took several major steps to improve ties with Iran: it put the MKO group on its terrorist list, decided to begin talks on a cooperation and trade accord, decided not to table a resolution at the UN General Assembly this year criticizing the human rights situation in Iran, and began discussions to boost cooperation in the energy sector*”.

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A dispatch of the AP on 21 October 2004 confirmed, “*according to the preparatory text for European proposals on Iranian nuclear program, the EU said that if Iran complies [we would cooperate in the prevention and suppression of terrorist acts in accordance with respective legislation and regulations. We would continue regard the MEK (Iranian resistance group) as a terrorist organization]*”.

Interestingly, on 12 December 2006, the European Community Court of First Instance ordered the European Union to annul the terrorist designation of the PMOI. The Court confirmed that annulment provides that “the act is eliminated retroactively from the legal order and is deemed never to have existed.” Thus, as far as the Court is concerned the PMOI was never on the terrorist list. The PMOI is not included on the list of terrorist groups maintained by the governments of the Netherlands and Norway. These various determinations acknowledge the fundamental change in circumstances surrounding the PMOI, its members and their renunciation of all forms of violence.

Notably various United States agencies, including the Judge Advocate General’s Corp, the Department of State, the Federal Bureau of Investigation (FBI) and other US agencies screened all PMOI personnel for 16 months in order to discover whether they had committed any terrorist crimes, war crimes or crimes against humanity, concluding that there was no basis to charge any member of such crimes, as reported on 27 July 2004 by the New York Times (enclosure 33). The investigations were only carried out by US agencies to verify if members of the PMOI had committed crimes against US citizens or against US interests. Agencies had a legal duty under international customary law and under US laws to investigate if the persons fallen in their custody had committed crimes against peace, crimes against humanity or war crimes<sup>4</sup>.

Finally no Iraqi court charged members of the PMOI, or alleged that members of the PMOI in Iraq could have committed any crime in relation to Saddam Hussein’s regime.

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<sup>4</sup> As for U.S. laws, see U.S. FIELD MANUAL, THE LAW OF LAND WARFARE, FM 27-10, CHAPTER 8 “REMEDIES FOR VIOLATION OF INTERNATIONAL LAW; WAR CRIMES”, Section II. CRIMES UNDER INTERNATIONAL LAW, § 498: Crimes under International Law, as well as § 507: Universality of Jurisdiction.

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Last, in any case, even if the UNHCR had to consider that members of the PMOI did fall under art. 1F(b) of the 1951 Refugee Convention for its past military activities which is strongly contested the UNHCR would eventually have to consider to which extent the activities of the PMOI took “*part of a struggle over power in the State, (...) were politically motivated and directly linked to the political aim and if they (met) the requirement of proportionality between the political aim and the means used in that struggle*”. The UNHCR would also have to check if the purpose of the actions of the PMOI was to oppose an undemocratic and oppressive regime, and if these actions were “*directed against persons who (were) directly responsible for serious violations of human rights*”, as two apted authors, Prof. Water KÄLIN and Dr Jörg KÜNZLI have stated in an article published in the International Journal of Refugee Law in 2000<sup>5</sup>.

**8. Membership in PMOI is no reason to deny members refugee status**

On various occasions, UNHCR officials have suggested that UNHCR refugee status of Ashraf residents required abandonment of Ashraf for a "Temporary International Presence Facility (TIPF)"; an institution established by the US military for those who leave the ranks of the PMOI. Iranian state-controlled newspapers have quoted the UNHCR's legal adviser several times, as saying that Ashraf residents' refugee status would only be accepted if they abandoned the PMOI.

Such remarks exceed the UNHCR mandate and are disturbing. Unfortunately, the UNHCR fails to dissociate itself from the comments attributed to its legal advisor, despite repeated requests by officials of the National Council of Resistance of Iran. Membership of a political organization should not in any way impede the right of an individual to be recognized as a political refugee. Political refugee status is granted on membership or affiliation with a political organization and not vice versa.

Assertions that Ashraf constitutes a military camp are unsustainable. Countless Iraqis, European parliamentarians, political and human rights personalities and journalists frequent Ashraf. A delegation of the European Parliament described Ashraf as follows: “*Camp Ashraf or Ashraf City à*

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<sup>5</sup> W. Kälin, J. Künzli, Article 1F(b) : Freedom Fighters, Terrorists, and the Notion of Serious Non-Political Crimes, 12 Int’l J. Refugee L., 2000, 46-78, 77.

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*its residents know it, is situated north of the Iraqi town of Al-Khalis and approximately 60 miles from the Iraqi capital, Baghdad. It is made up of a complex of roads and buildings. It contains all sorts of educational, social and sports facilities. These include four Olympic size swimming pools, a shopping centre, a zoo, a park, a university, a full size football pitch, a 'museum of terrorism' containing details of attacks on the PMOI and its personnel by the Iranian regime, a 'museum of martyrs', a mosque and even a cemetery. Due to its size and in order to function effectively, Camp Ashraf also has services such as shops and bakeries, a petrol station and its own traffic police. Camp Ashraf even has its own Cola production factory, which produces thousands of bottles of 'Ashraf Cola' per day." (enclosure 34)*

In a report from Ashraf, the Knight Ridder news agency wrote on 18 March 2005 that *"Iraq has an oasis where fountains gurgle over pebbles and flowers blossom in lush gardens. The hospital is spotless and fully stocked, schools offer violin lessons and drivers obey traffic laws. The electricity is always on, and the water is always clean in this serene, self-sufficient compound." (enclosure 35).*

In a similar report the next day, the Los Angeles Times added that *"... MEK [PMOI] members have built a bustling, idyllic sprawl of self-contained mini-villages with barracks-style living quarters, dining halls, recreational facilities and carefully maintained gardens... They spend their days tending to their gardens, sprucing up their living quarters and listening to performances of John Lennon's 'Imagine.'" (enclosure 36).*

### **9. Appeal to the UNCHR**

*Refoulement* of the 3,500 residents of Ashraf to Iran would result in humanitarian crisis as most of them would face death and torture. Over the past few months, the situation has deteriorated as the Iranian regime is increasing pressure on the Iraqi government and Parliament to expel members of the PMOI to Iran. The UNHCR is obliged to prevent the policy of execution and torture which would be imposed on refouled PMOI members.

The PMOI members' refugee status falls within the ambit of the protective mission entrusted to the UNHCR by its Statute and further developed in its Procedural Standards for Refugee Status

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Determination under UNHCR's mandate. Refusal of recognition of this refugee status by the UNHCR would prove inconsistent with historical practice and be unjustifiable. The residents of Ashraf and their families are not herein requesting a new determination of political refugee status for the PMOI.

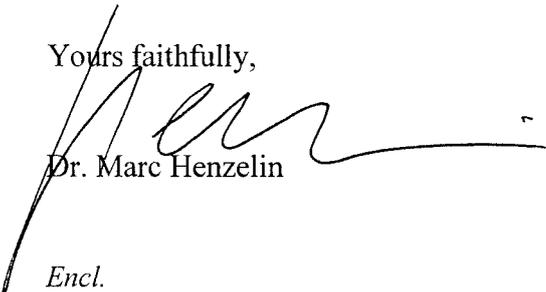
Humanitarian motivation has historically stimulated UNHCR intervention beyond its mandate. The UNHCR has a moral duty to act promptly to address the humanitarian issue of PMOI safety and security.

Therefore, official determination of the UNHCR is sought on the following issues:

1. Whether the members of the PMOI in Iraq have had refugee status or alternatively legal residence and *de facto* political refugee status in Iraq for 20 years, in accordance with the 1951 Refugee Convention;
2. Whether the right to *non-refoulement* for the members of the PMOI under Article 33 of the 1951 Refugee Convention, and pursuant to international customary law, will be upheld and;
3. Whether the right of PMOI members not to be forcibly displaced within Iraq or outside of Iraq under Article 26 1951 Refugee Convention, and pursuant to international customary law, will be upheld.

I remain at your disposal should you need additional information relating to the factual or legal situation of the PMOI in Iraq.

Yours faithfully,

  
Dr. Marc Henzelin

Encl.