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IRAQI REFUGEES IN NEIGHBORING COUNTRIES: A NEW FORCED PROTRACTED DISPLACEMENT IN THE REGION

Mohamed Y. Olwan

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**Cooperation project on the social integration
of immigrants, migration, and the movement
of persons**

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EUROPEAN UNIVERSITY INSTITUTE, FLORENCE
ROBERT SCHUMAN CENTRE FOR ADVANCED STUDIES

**Iraqi Refugees in Neighboring Countries:
A New Forced Protracted Displacement in the Region**

MOHAMED Y. OLWAN
Jordan University, Faculty of Law, Amman, Jordan

CARIM
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European University Institute
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For more information:

Euro-Mediterranean Consortium for Applied Research on International Migration
Robert Schuman Centre for Advanced Studies (EUI)

Convento

Via delle Fontanelle 19

50014 S. Domenico di Fiesole

Italy

Tel: +39 055 46 85 878

Fax: + 39 055 46 85 762

Email: carim@eui.eu

Robert Schuman Centre for Advanced Studies

<http://www.eui.eu/RSCAS/>

Abstract

The Iraqi refugees as other Iraqis are victims of the abuses of human rights inside their country, and they are also victims of foreign invasion and occupation. This study examines the different legal regimes that have been used by five asylum countries in dealing with the protection and assistance needs of hundreds of thousands of these refugees. While acknowledging the role played by these host countries and in particular Syria and Jordan, in alleviating the suffering of Iraqi refugees the study points that the legal status of these refugees is still ambiguous. The study considers if they are more considered as foreigners or refugee's, at least de facto refugee's.

It highlights also that the domestic law in these countries is not always in compliance with international law. The role played by the UNHCR is also envisaged. Finally, this study discusses the uncertain future of the refugees whether they decide to stay at the asylum countries, to return home, or to be resettled in third countries.

Résumé

Les réfugiés irakiens comme les autres irakiens sont victimes de violation des droits humains dans leur pays d'origine et sont victimes de l'invasion et de l'occupation étrangère. Cette étude rend compte des divers régimes légaux en vigueur dans cinq pays hôtes de réfugiés irakiens pour la protection et l'assistance de centaine de milliers d'entre eux. Tout en soulignant le rôle majeur joué par ces pays, en particulier la Jordanie et la Syrie, dans la prise en charge des difficultés des réfugiés irakiens, ce papier met en exergue les ambiguïtés juridiques relatives à leurs statuts. Ils sont en fait bien plus traités comme des étrangers de droit commun que comme des réfugiés de droit, à moins que ce soit des réfugiés de fait. Les législations et pratiques locales ne sont pas toujours en cohérence avec les engagements internationaux pris par les pays d'accueil. Le rôle joué par le HCR dans cette crise est également envisagé.

Enfin, cette étude envisage l'avenir incertain des réfugiés selon qu'ils décident de rester dans leur pays d'accueil, de retourner au pays ou de s'établir dans un pays tiers.

Table of Contents

Introduction	1
1. Numbers of Iraqi refugees	1
1.1. Turkey	2
1.2. Egypt	3
1.3. Lebanon.....	3
1.4. Syria	3
1.5. Jordan	4
2. Iraqi receiving countries' legal framework pertaining to borders control.....	5
2.1. Egypt	5
2.2. Turkey	5
2.3. Lebanon.....	6
2.4. Syria	7
2.5. Jordan	8
3. The Legal Status of Iraqis in the receiving countries: Refugees or foreign Immigrants?	10
3.1. Turkey	12
3.1.1. Registration with the Turkish Police	12
3.1.2. Resettlement of Iraqi Refugees in Turkey.....	14
3.2. Egypt	14
3.2.1 Registration of Iraqi Refugees.....	14
3.2.2 Resettlement of Iraqi Refugees in Egypt.....	16
3.3. Lebanon.....	16
3.4. Syria	18
3.5. Jordan	19
3.5.1. The Memorandum of Understanding	19
3.5.2. The Temporary Protection Regime (TPR)	20
4. Detention and Refoulement.....	21
4.1. Lebanon.....	22
4.2. Egypt	24
4.3. Syria	24
4.4. Jordan	24
5. Human rights of Iraqi refugees in the host countries	25
5.1. Right to access to education	25
5.1.1. Turkey	25
5.1.2. Egypt	26
5.1.3. Lebanon.....	26
5.1.4. Syria	27
5.1.5. Jordan	27

5.2. Right to work.....	28
5.2.1. Turkey	28
5.2.2. Egypt	28
5.2.3. Lebanon	29
5.2.4. Syria	29
5.2.5. Jordan	30
5.3. Right to health care.....	31
5.3.1. Turkey	31
5.3.2. Egypt	31
5.3.3. Lebanon	31
5.3.4. Syria	32
5.3.5. Jordan	32
5.4. Housing	32
5.5. Freedom of Movement	33
5.6. Right to citizenship.....	33
5.7. Freedom of Religion.....	34
6. Non-Iraqi Refugees	34
6.1. Palestinian Refugees in Iraq	34
6.1.1. The situation of Palestinian refugees at the Jordanian– Iraqi borders	35
6.1.2. The situation of Palestinian refugees on the Syria-Iraq borders	35
6.2. Iranian Kurdish refugees on the Jordan-Iraq borders	36
Conclusion.....	36
Bibliography.....	38

Introduction

Since the American-led invasion of Iraq in 2003 about two million Iraqis have become displaced within their own country. In addition more than two million others have become refugees in the neighboring countries, mainly Syria and Jordan. Lebanon, Egypt, Turkey, Iran and Arab Gulf States have also hosted hundreds of thousands of Iraqi refugees. The main host countries are developing countries with weak infrastructure, strained economies and high unemployment rates. Moreover, Jordan, Syria, Lebanon and Egypt are long-term hosts to millions of Palestinian refugees, while, with the exception of Egypt no one has signed the 1951 Geneva Convention related to the refugee status and its definition.

The Iraqi exodus is the biggest movement of refugees in the Middle East since the Palestinian Nakba (Catastrophe) of 1948 when millions of Palestinians were forced off their homeland after the establishment of the state of Israel. The intense presence of Palestinians in Jordan, Syria and Lebanon make these countries fearful of Iraqi refugees settling permanently as Palestinian refugees done sixty years ago. This presence, certainly colors the reception of Iraqis into these countries. The focus of this study is the legal status of Iraqi refugees in Syria, Jordan, Lebanon, Egypt and Turkey, which is fundamental to any analysis of the humanitarian crisis. Most of these countries included treat Iraqis as non-refugee foreigners, and in most of these countries there is neither national legislation specific for refugees nor a central government body which deals comprehensively with refugee issues. Of the five countries only Turkey and Egypt are parties to the 1951 Refugee Convention.

Non-Iraqi refugees inside Iraq remain forgotten and their situation should be dealt with. Thousands of Palestinian refugees inside Iraq sought refuge in Jordan and Syria but after the refusal of the two countries of their entry into their territory they were trapped at the Syrian and Jordanian borders with Iraq.

Due to the scarcity of doctrinal legal writing on the subject, this study is largely based on the domestic laws and regulations applicable to Iraqi refugees in the countries included in the study, International law and the NGO reports and studies on the matter. It further relies on the five reports on Iraqi refugees prepared by the national legal correspondents of CARIM in the countries included in this study.¹

This study explores a range of legal aspects gathered in six sections which are as follows: Numbers of Iraqi refugees in the countries included in the study; Iraqi receiving countries' legal framework pertaining to border control; the legal status of Iraqis in the host countries; the degree of compliance with the principle of non-refoulement towards Iraqi refugees; Human rights of Iraqi refugees in the host countries with a special attention to the situation of Iraqi refugees who fled Iraq following the American invasion; the situation of non Iraqi refugees inside Iraq who fled Iraq following the American invasion. Finally the conclusion explores some measures to be taken at national and international level in view of improving the situation of Iraqi refugees.

1. Numbers of Iraqi refugees

The exact number of Iraqi refugees who fled their country and live in the neighboring countries is unknown, but it is believed that there are well over four million displaced Iraqis around the world and within Iraq. Half of these displaced Iraqis sought refuge in neighboring countries in particular Syria, Jordan, Lebanon, Egypt, Iran, Turkey and some Arab Gulf States.

¹These reports are available on the CARIM website, www.carim.org, the authors being Fawaz SALEH (Syria), Tareq BADAWY (Egypt), Hasan JOUNI (Lebanon) Ibrahim KAYA (Turkey) and Mohamed OLWAN (Jordan).

Of these Iraqi hundreds of thousands left their homes a long time prior to the American military invasion of Iraq and the fall of the regime in 2003; but the scale of displacement which followed the invasion was unprecedented.²

The current Iraqi exodus is the largest displacement in the Middle East since 1948, when the creation of the state of Israel caused hundreds of thousands of Palestinians to take flight or be driven out. The Iraqi refugees host countries are aware that the Iraqis may remain outside their country for a long time as the Palestinians have.

Syria and Jordan are hosting the bigger number of Iraqi refugees; Lebanon, Egypt and Turkey have allowed limited number of Iraqis to enter. The number of Iraqi refugees can fluctuate in either direction depending on the situation prevailing in Iraq and in each country included in the study it is as follows.

1.1. Turkey

Turkey has been a major country of asylum for Iraqis since the early 1985. Two Gulf wars, political turmoil and the US invasion have contributed to the asylum flow of Iraqis to Turkey. Besides the mass influx of Iraqis in the late 1980s and early 1990s, there have been ongoing flows of individuals who sought refuge in Turkey.³

Turkey witnessed a mass influx of Iraqis in 1988 with the arrival of about 51,542 people, but the country experienced the biggest mass influx in 1991 when almost 460,000 of Iraqis fled to Turkey.⁴

On the verge of the 2003 Iraq invasion, Turkey started preparations for the arrival of another mass influx of refugees from Iraq in the event of war. Reportedly, refugee camps are planned near Turkey's border with Iraq, showing the government's readiness to setting up camps within northern Iraq itself and trying to limit the number coming into south east Turkey this time.⁵ Among the two million Iraqi fled out of the country, only 10,000 displaced Iraqis live in Turkey. Though it has received comparably quite low number of Iraqis, Turkey is not an exception and may be faced with an increasing number of refugees if things deteriorate especially in the northern parts of Iraq where the inhabitants, not only Iraqis of Turkish origin, but also Kurds and Arabs of the region have historical as well as cultural ties with Turkey, previously fled to Turkey.

The sharp decline in the number of Iraqis arriving in Turkey just in the aftermath of the 2003 invasion, compared to the period before the war, was attributed to the closure of the borders between Iraq and Turkey. Since then, there has been a serious increase in both the number of applicants for asylum, and those apprehended by the police.

According to Turkish Human Movements Bureau, 123,508 Iraqis have been apprehended by the Turkish authorities between 1995–2007. The peak year was 2002 reaching 20,926. The number dropped suddenly to 3757 in 2003. The following three years witnessed a consistent average of 6500 annually. In 2007 the apprehended Iraqis number jumped to 9384, increasing nearly 50%⁶. It should be noted that these numbers of "illegal immigrants" include illegal entry and exits as well as simple visa breaches and overstays.

² In early 2003, UNHCR estimated a total of more than 30,000 Iraqis in Syria, while more than 250,000 were estimated to be in Jordan. Jordan was the only country that accepted Iraqis during the 1991 Gulf war. Since that time it is believed that the population of Iraqis in Jordan has never gone below 130,000. See A. HARPER, "Iraqis refugees: ignored and unwanted", *International Review of the Red Cross*, Volume 90, Number 869, March 2008, p. 170.

³ A. ICDUYGU, "Transit Migration in Turkey: Trends, Patterns and Issues", *CARIM RR 2005/04*, Robert Shuman Center for Advanced Studies, European University Institute, Florence, 2005, p. 8

⁴ These are official figures by Turkish authorities. Asylum and Migration Legislation. p. 48.

⁵ "Turkey prepares for Iraq Refugees", *BBC News*, 15 January 2003.

⁶ As of the end of 2007.

1.2. Egypt

There is no official number of Iraqis in Egypt, because there is no census data to distinguish between refugees and other foreigners. According to unofficial estimates, it is reported that the numbers of Iraqis in Egypt range from 100,000 to 180,000 persons. But, according to the Ministry of foreign Affairs, there are 100,000 Iraqis living in Egypt⁷. Iraqis are the newer refugees to arrive in Egypt; they began coming in comparatively large number from 2005.

There are several reasons why Iraqis choose to reside in Egypt. It is reported that, due to the overwhelmingly large numbers of Iraqi refugees in Syria and Jordan, Iraqis are no longer welcome in these two neighboring countries. Furthermore living costs in Egypt are reportedly lower than Jordan and Syria, and given Egypt's encouragement of foreign investment, it is relatively easy for Iraqis to obtain residence permits provided they invest in the country⁸. In addition Iraqis think of Egypt as an attractive destination given its relative political stability and distance from Iraq. Being in Syria puts them within the reach of Iraqi militias and security Agents, hence living in Egypt appears relatively safer.

1.3. Lebanon

The Danish Refugee Council estimated that there are 50,000 Iraqi residing in Lebanon in 2007.⁹ UNHCR also estimates that Lebanon hosts about 50,000 Iraqi asylum seekers, 10,000 of whom arrived before the American led invasion in 2003. This is a small population compared to the estimated 2.2 million Iraqis across the region, mostly in Syria and Jordan. But it is an enormous figure for a country of about six million. Lebanon hosts also somewhere between 350,000 and 400,000 Palestinians.

As with other Arab countries, there are close tribal and religious ties between Iraq and Lebanon. Almost all Iraqi religions and sects can find co-religionists in Lebanon. In addition Iraqi Shi'as find themselves at home in Lebanon because of the large presence of the Shi'a community among the Lebanese population. There are also some political parties common to Lebanon and Iraq (Aldawa party, Alba'ath party etc.).

1.4. Syria

Syria has received the largest number of Iraqi refugees fleeing their country. Since the 1970s and 1980s Iraqi opponents of the regime regularly have found refuge in Syria. The Syria–Iraq border remained closed after the second Gulf war and throughout the 1990s. The second wave of Iraqi displacement began in 2003 as a result of the American invasion in March 2003. The bombing of the Shi'a Al-Askari Mosque in Samarra in February 2006 increased the sectarian violence in Iraq and led to a further surge in the number of Iraqis fleeing their country.

It is estimated that there are one million to one and a half million Iraqis in Syria which represents 10 percent of Syria's approximately 18 million population. Syria has received since 2003, according to UNHCR 1.4 million Iraqis, of whom 80 percent are currently living in Damascus.¹⁰

According to a recent report from the UNHCR on the numbers of Iraqi emigration into Syria, an average of 1200 Iraqis per day enter Syria, compared to about 700 who return. If this is confirmed it means that Iraqis continue to flee toward Syria, and the number of those who cross the border is much greater than

⁷ See *World Refugee Survey*, Egypt, section 1, P.o., 2008.

⁸ This is no longer the case as the government stopped issuing all sorts of visa to Iraqis. It is reported that the government suspects that Iraqis use investment visas to enter Egypt then apply for asylum.

⁹ Human Rights Watch, "Rot here or die there", November 2007/ Volume 19, n°. 8 (E), p. 2; Danish Refugee Council, *Iraqi Population Survey in Lebanon*, November 2007, p. 10.

¹⁰ [http:// www. asianews](http://www.asianews).

that of those returning home. It means also that the number of Iraqis entering Syria following the imposition of visa regulations in October 2007 did not witness a sharp decline as it was expected.¹¹

1.5. Jordan

Jordan has been exposed to consistent migratory waves of Palestinian refugee since the creation of the state of Israel in 1948. The country has traditionally been one of the regions most welcoming countries toward Iraqis. Jordan received several flows of Iraqis during the last four decades, but most Iraqis residing in Jordan fled the precarious situation prevailing in Iraq following the American invasion of Iraq in March 2003.

A Few thousand Iraqis came to Jordan after the first Gulf war between Iraq and Iran in the end of the year 1979; but the overwhelming majority of Iraqis currently living in Jordan and elsewhere fled their country after the 1991 second gulf war and afterward the U.S. invasion in 2004.

Following the second Gulf war and as a consequence of the 13 years of United Nations imposed disastrous sanctions against Iraq, Jordan has received the first mass influx of Iraqis. The number of Iraqis estimated at the start of the American occupation of Iraq in March 2003 amounts to 250,000 – 300,000 people. No large refugee flows occurred during the fighting of 2003, but the occupation has resulted in a humanitarian catastrophe and with the escalated sectarian violence in Iraq growing worse, Iraqis began fleeing Iraq in mass. This trend of mass influx escalated even more after the bombing of the Mosque at Sammarra in February 2006.

Many estimates of the number of Iraqis residing in Jordan have been put forward and numbers as high as one million or about 18 percent of the total population or 750.000 i.e., 16 percent of the population have been accepted at a certain moment.¹²

In May 2007 Jordan commissioned a survey to determine the exact number of Iraqis in its territory. In its report the Norway-based Institute for Applied International Studies (FAFO) found, despite the above mentioned estimates, that there were approximately 450,000 – 500,000 Iraqis residents in Jordan as of May 2007. The report also found that about 23 percent of the Iraqis who were residing during May 2007 in Jordan were in the country before 2003; the remaining 77 percent came during the years from 2003 until May 2007, and the largest number of Iraqis entered Jordan in 2005. The number is based on consideration of the immigration statistics, the number of phone subscribers as well as on a household survey of Iraqis carried out in May by the FAFO in cooperation with the Department of Statistics.¹³

The number of Iraqis in Jordan can fluctuate in either direction because of the large number of Iraqis who move in and out of Jordan. Nevertheless, the number found by FAFO is an enormous figure for a country of less than six million people, and if we add to this number the Palestinian refugees registered or not with the United Nations Relief and Work Agency for Palestinian Refugees in the Near East (UNRWA), Jordan is the country with the world's highest refugee to total population ratio.¹⁴

The security situation prevailing in Iraq since many years and particularly since the invasion in March 2003 in addition to the desire of a search for better life and better economic situation are the main reasons for leaving Iraq to Jordan.

¹¹ January 2008.

¹² <http://www.Souria.com> 8.9.2007, *The Jordan Times daily Newspaper*, 7,8 and 14 August 2007; FAFO, "Iraqis in Jordan 2007, Their Number and Characteristics", p.37; N. HUDSON, *Refugees in Jordan: Cause for concern in a pivotal State*, The Washington Institute. Org.

¹³ FAFO, *Ibid*, p.7.

¹⁴ Human Rights Watch, "The Silent Treatment, Fleeing Iraq, Surviving in Jordan", Number 2006, Volum 18, n° 10 (E), p. 19.

2. Iraqi receiving countries' legal framework pertaining to borders control

The right of the state to regulate, admit or deny the entry and stay of aliens in its territory is an attribute of the sovereignty of the state, but like other rights it is limited by International law. Refugees are foreigners but they are entitled to the protection provided by several United Nations legal instruments and particularly the 1951 UN Refugee Convention and its 1967 Protocol.

Syria, Jordan and Lebanon are not parties to this Convention and Iraqis are treated by them as foreigners and not as refugees for whom the state takes responsibility. They are permitted entry and stay on the basis of national laws and regulations in relation to foreigners generally. While Egypt and Turkey are parties to the UN Refugee Convention the policy of the two countries towards refugees is also formulated in their domestic laws pertaining to foreigners. These laws stipulate the conditions under which a refugee enters, resides in, and departs from Egypt.

Rules pertaining to entry and stay in the countries included in the study are continually subject to changing requirements. But generally speaking they all apply informal and even formal restrictive policies on Iraqis seeking to enter their territories or to stay there in. Iraqis are generally issued a tourist visa and only short periods of legal stay. The degree of this restrictive policy varies, nevertheless, from a country to another.

2.1. Egypt

The possibility of obtaining a one-month renewable tourist visa at the airport upon arrival has made entry to Egypt relatively easy for many asylum seekers. Moreover Iraqis were able to obtain residence permits under the ambit of the laws on investment or apply for residence permits derived from a family member's student visa.

All these options are now severally hampered by the Egyptian government which, as of the 2006, rarely issues or renews visas for Iraqis¹⁵. The Egyptian authorities stamp residence permit with a notice instructing Iraqis to leave the country within seven days.¹⁶ But Iraqis refugees are still granted six months renewable legal residence permit on the basis of registration with the UNHCR.

Preventing potential refugees from entering the country through a general ban on visas raises questions related to the conflict between state sovereignty, as represented by a state's right to deny entry to non-nationals, and the principle of non-refoulement. Analyzing this question is beyond the scope of this study. However, it is believed that there might be some indication that the Egyptian government may be acting against the spirit of the Refugee Convention.

2.2. Turkey

The legal regulation concerning entry into and exit from Turkey fall within the Turkish passport law number 5672 which stipulates that all travelers require valid passports or travel documents whenever they leave or enter the country.¹⁷ Foreigners, as well as Turkish nationals, may only enter and exit Turkey through places determined by the council of Ministers upon a proposal of the Ministry of Interior.¹⁸ With some exception, a visa is needed to enter Turkey,¹⁹ and for certain countries nationals, it is possible to obtain visas (sticker visas) at border gates.

¹⁵ The ability to obtain residence permit is also contingent upon the applicants, type of passport. As of February 2008, due to security reasons, the Egyptian Government only recognizes Iraqi passports whose number start with letter other than "S". All "S passport" holders are therefore required to approach the Iraqi embassy, which will issue them passports whose numbers start with the letter G. after a security clearance is granted.

¹⁶ Interview with a UNHCR – Cairo office on 3 June 2008 .

¹⁷ *Official Gazette*, 24.07.1950 no.7564, Passport law, Article 2.

¹⁸ Passport Law, Article 1.

Residence permits are regulated by the law on Residence and Travel of foreigners in Turkey.²⁰ Article 3(1) of the law states that aliens have to apply to local police authorities within one month upon their arrival, and in any case before taking up employment. Under this law the Council of Ministers is allowed to make amendments to time limits. In 2004 "one month" clause was amended to "ninety days".²¹

The duration of residence permits are a maximum of five years²². For persons with residence permits who left Turkey and want to enter again within the period their permits are valid no visa is needed.²³ Persons who apply for asylum are required to live in cities authorized by the Ministry of Interior²⁴.

Iraqis are required to have visas to enter Turkey. Turkey has an embassy in Baghdad and a consulate general in Mosul. Ordinary passport holder Iraqis traveling to Turkey with the flights from Baghdad, Erbil, Suleymania or Amman Airport to Istanbul Ataturk Airport or Antalya Airport, are able to acquire visas at the Turkish border gates upon their arrival. With regard to mass influx, the 1994 regulation states that "it is essential that population movements be stopped at the border, and that asylum seekers be prevented from crossing over into Turkey²⁵, provided that Turkey's obligations under international law are maintained"²⁶. In the first instance, refugees and asylum seekers shall be disarmed by military authorities.²⁷ Front-line assembly areas to shelter asylum seekers and refugees as close as possible to the border will be designated by the Ministry of Interior in conjunction with the Turkish General Staff and will be established by the Governorates.²⁸ Those who seek asylum in Turkey and take refuge in Turkey are under the protection and supervision of the government authority whilst they remain in Turkey.²⁹ Aliens who are to be sent to in-land assembly areas will be interviewed and their statements taken either in their own language or in a language that they can understand.³⁰ Camps established in the front-line assembly areas and in-land assembly areas will be administered by the Governorate of the province where they are located.³¹ However, the asylum procedure of Iraqis after the 2003 Iraq war is not considered as a mass influx as opposed to the 1991 case.

2.3. Lebanon

The Lebanese 1962 Law regulating the entry and stay of foreigners in Lebanon and their exit from the country stipulates the conditions under which a foreign national may enter the country. Thus an Iraqi national cannot be granted entry without a valid passport and an entry or tourist visa. This visa is issued by the Lebanese embassy in his country of residence, or at the international airport upon arrival. The visa is granted for 15 days if the Iraqi proves that he has US \$ 2,000 in cash, a credit card or

(Contd.) _____

¹⁹ Passport Law, Article 5.

²⁰ Law no. 5683, *Official Gazette*, 24.07.1950 no. 7564 .

²¹ *Official Gazette*, 08.1.2004 no. 25340 .

²² Article 9(1).

²³ Article 13.

²⁴ Article 17.

²⁵ Turkish Ministry of foreign Affairs [www. Mfa. Gov. tr](http://www.Mfa.Gov.tr), last visited 15.5.2008

²⁶ Article 8 .

²⁷ Article 9.

²⁸ Article 11.

²⁹ Article 10 .

³⁰ Article 12.

³¹ Article 14.

legalized check of the same value, two ways non-refundable ticket and a hotel reservation.³² Only some Iraqis are authorized to apply for a tourist visa through the crossing points with Syria: Traders, doctors and engineers, those who have Lebanese roots, and tourist delegations.

It is therefore very difficult for an Iraqi national to obtain an entry visa and to enter Lebanon legally and because Lebanon's borders are nearly closed, most of Iraqi asylum-seekers in Lebanon entered the country illegally through Syria. It is almost impossible to obtain a residence permit in the country. For those who entered legally and wish to stay in the country they must renew their tourist visa, which can be done only once, and for a period not exceeding three months. Illegal entry and stay is, therefore, the only way for Iraqis to enter Lebanon or to stay there. Palestinians coming from Iraq to Lebanon have also arrived illegally and their status remained illegal.³³

These restrictions have led to the arrest and detention of hundreds of Iraqi and this is despite the intervention of the UNHCR which was successful in releasing and/or suspending the deportation of some persons of concern.

In several times, during the last years including the year 2008 the General security gave Iraqis who have entered the country illegally or overstayed their visas three months to regulating their status. The UNHCR has praised the Lebanese government for this decision which was believed will benefit thousands of refugees and will result in the release of hundreds from detention³⁴. But it is unfortunate that only a small fraction of irregular Iraqis manage to regularize their status and this is due to exorbitant conditions and fees required for rectification. The fact is that among countries in the region, Lebanon has the highest number of detained refugees and asylum seekers. The reason behind this is that Iraqis refugees are treated as foreigners without being entitled to any special status or protection³⁵.

2.4. Syria

Syrian policy towards movement of foreigners across its border is formulated in the law no. 29 of 15.1.1970 on the entry, stay and departure from Syria³⁶. A foreign national can only be granted entry if he is in possession of a valid passport and entry visa and he is liable to a fine and to the expulsion if he enters the country illegally. In case he refuses to leave the country, he may be fined and imprisoned for three months to two years.

The residence permits is of three kinds: Particular, normal and provisional ones. Sanctions applicable to foreigners entering the country unlawfully, but who fails to obtain a residence permit, include fines, imprisonment and deportation³⁷.

According to Article 25 of the law no. 29 of the year 1970, the Minister of Interior may expel a foreigner for security and public order reasons. The Minister may also order a temporary detention for the expelled foreigner and he may order him to stay in a determined place pending deportation. A foreigner who is expelled is authorized to return to the Syrian territory only by a permission of the

³² General Security.gov.Lb. accessed on 28.9.2008; HRW, "Rot here or Die there", *op.cit*, p.20 ; Danish Refugee Council , *op.cit*, p.24,25.

³³ Danish Refugee Council , *op.cit*, p. 75.

³⁴ UNHCR welcomes Lebanon's recognition of Iraqi refugees, 20 Feb. 2008 <http://www.unhcr.org/news/news/46bc55842.html>.accessed on 27.08.2008.

³⁵ HRW, "Rot here or die there", *op.cit*, p.21/22.

³⁶ *Official Journal of the Syrian Republic*, 1970, p.254. see also the law number 24 of 313.12.,1975 on the passport and the law no 276 of 24.11.1969.

³⁷ See for more details F. SALEH, " Syrie-la dimension juridique des migrations, Migration méditerranéennes », *CARIM, Rapport 2005*, <http://www.carim.org>

Minister.³⁸ Foreigners who try to leave the country illegally are subject to the same sanctions applicable to the illegal entry.

According to Article 1 of the Syrian law on nationality no 276 of 24.11.1969, a foreigner is every person who does not possess the Syrian nationality, but the law distinguishes between foreigners, citizens of Arab states and Syrian-Arab citizens.

Iraqis are treated as citizens of other Arab states in matters of entry, sojourn and departure from the Syrian territory; this treatment is governed by the Decision of the Minister of Interior no 30 of 2 2007³⁹, which entitles Iraqis to enter Syria without being holders of an entry visa. They only need to be registered in the register of arrivals and departures and have their passports or travel document stamped upon arrival and departure.

Iraqis who want to stay in Syria for a period exceeding three months starting the date of entry are required to obtain residence permits.⁴⁰ Those who live in Syria without residence permits are illegal, but the Ministerial decision is without any provision penalizing the overstayers.

As other Arab citizens Iraqi citizens were not in need of an entry visa into Syria. Until the end of the year 2006 they were granted three months visa renewable for a new period of three months upon their arrival to the cross borders. But at the beginning of 2007 the duration of the visa became only one month renewable for another two months. The holder of this visa must leave the country before the expiration of the renewed visa and he cannot go back to Syria without a new entry visa.⁴¹

On September 10, 2007, Syria decided to impose a new strict visa regulation, limiting entry to the holders of a visa which is only granted to those traveling for commercial, educational and transport purposes. These visa restrictions came into force in October 12, 2007 and since then the visa is only for a single entry; it is valid for three months maximum, and granted by the Syria Embassy in Baghdad and not upon arrival at the cross borders.⁴² The Syrian authorities issue, also, a one week transit visa for Iraqis flying into Syria airport in order to return to Iraq. This was the first time that Syria had imposed any visa restrictions on Arab citizens.

2.5. Jordan

The law of Residence and Foreigners' Affairs (law no.24 of 1973) required that those entering the country as political asylum seekers must present themselves to a police station within 48 hours of arrival. There were no further provisions on who was eligible for asylum or how they could go about obtaining it.⁴³ The law stipulates the conditions under which a foreigner national may enter the kingdom.

Jordan Treats Iraqis as foreigners and as such they could be denied entry and could be subjected to sanctions.

Jordan used to have a very open immigration policy towards Iraqis, who were permitted to enter the country without anything more than their valid passports and without first having to obtain a visa. They were given normally one-month visas at the border and they were able to register as visitors for a

³⁸ Article 26.

³⁹ *Official Journal*, 2007, p.880 .

⁴⁰ This period is extended to six months for the lebaneses, and it is only (15) days for foreigners non Arabs.

⁴¹ Report of Amnesty International on the situation of Iraqi refugees in Syria, Public Document, index AL: MDE 14/036/2007, EFAI, 29.7.2007.

⁴² However, it seems that it is still possible for Iraqis, in some cases, to obtain a visa at the border. See Danish Refugee Council study, *op.cit.*, p.13. see also UNHCR, Syria Update, May 2008 .

⁴³ http://www.refugees.org/country_report.asp?id=2150 accessed on 25.08.2008.

period of three to six months, without work authorization and the resident permits they received were subject to renewal⁴⁴.

Jordan became restrictive about entry and stay after the terrorist bombing of three luxury hotels in Amman by Iraqi nationals on November 9, 2005 which killed sixty people. Since then, Jordanian authorities began turning away more Iraqis at the border and issuing visas at the border that are only valid for two to three days. Renewal of Iraqi residency permits became far more difficult. These new measures increased the number of Iraqis who reside illegally in Jordan. Nevertheless the Jordanian authorities afford one-year renewable residence permits to Iraqi students, employees and investors.

Jordan introduced a visa requirement for Iraqis in mid February 2008. Iraqis willing to enter the Kingdom as of May 1st 2008 will need a visa issued in advance. Due to the absence of an active Jordanian embassy in Iraq because of the instability in the region, they have to apply at the international courier TNT offices in Iraq or through the Jordanian diplomatic missions abroad. Under an agreement between the Jordanian government and the company, TNT will receive visa applications from Iraqis through its 13 offices in Iraq, process them and forward them to the Ministry of Interior. Applicants will be informed of the governments' response in 10-14 working days. In return for its services, the company will charge each applicant 15,000 Iraqi dinars (\$12.5).⁴⁵ It is reported, few days following the new visa system, that most of the visa applications by Iraqis were approved by the Jordanian authorities.⁴⁶

It is also worth mentioning that at the beginning of 2008, Jordan denied Iraqis holding "S" series passports entry into the Kingdom and this is due to the number of forgeries. Iraqis with G-series passports were permitted to apply for a visa to cross the Kingdom. These "G" series passports can only be obtained in Baghdad. Jordan also required from Iraqis entering Jordan to present the so-called "nationality certificate document" along with their passport. This document proves that the holder is an Iraqi national and it was issued to Iraqis before the 2003 U.S. invasion of Iraq. But later on Jordan decided not to apply these requirements, and consequently, Iraqis entering Jordan no longer need to present the nationality certificate or to hold "G" series passports.⁴⁷

As in all states, a foreign national can only be granted entry if he is in possession of a valid passport or travel document and an entry visa duly endorsed on his passport by a Jordanian diplomatic or consular representative. However, the Minister of Interior may exempt any foreigner from the requirement that he should bear a passport or obtain a visa on entering the kingdom (Article 4). Entry to the country should be via Jordanian borders and crossing points but may occur elsewhere due to force majeure (Article 5 and 6 of the law).

The visas by-law no3 of 1997 specifies the types of visas, their duration, conditions and procedures for granting them, exemptions from visa requirements and visas fees and exemption from such fees. Conditions for admission for temporary purposes are more lenient than those required for permanent residence. Residence may be refused on the grounds of the criminal record of an alien, his lack of adequate economic means, infectious illness, or his potential risk to public order and security.

The provisions of the law on Residence and foreigners are not applied to different categories of persons included "persons exempted by the Minister of Interior on account of special considerations connected with international or humanitarian courtesy or of the right to political asylum or yet in application of principle of reciprocity" (Article 29). Other categories of foreign nationals are exempted from the payment of residence permit fees (Article 30).

⁴⁴ P. WEIS FAGEN, *Iraqi Refugees: Seeking Stability in Syria and Jordan*, 2007, p.8.

⁴⁵ *Jordan Times* 15. 04. 2006 .

⁴⁶ *Jordan Times*, 13. 05. 2008, 18. 0.5. 2008.

⁴⁷ *Jordan Times*, 15. 06. 2008 .

According to the Jordanian Law foreign nationals may be expelled if they enter the country illegally or if they are convicted of a serious crime while in the country. The decision of the Minister of Interior to expel can also be taken if this measure will preserve the security of the state and it does not need to specify the reasons behind the expulsion. A foreigner entering the country lawfully, but who fails to obtain a temporary residence permit, is liable to a fine, but exemptions are possible.

In practice, Jordan accords the right to enter the territory freely to the national of states with historical or traditional links with Jordan such as Syria, Iraq, and Egypt⁴⁸.

According to the law no. 24 of 1973 on Residence and Foreigners' Affairs, any visitor who overstays his permitted period of residence is liable to a fine of JD 1.5 (about U.S \$2) per day. Iraqi families willing to go home will, therefore, find it difficult to do so because of the financial burdens imposed on them. However, the government usually gives Iraqi illegal residents a grace period to enable them to rectify their status and to become legal residents in accordance with the law. These periods of status rectification are usually renewed, and those who legalize their situations are exempted from the accumulated fines⁴⁹. But the vast majority of Iraqis living in the Kingdom do not rectify their status because they do not wish to present themselves to the Jordanian authorities and because of the financial constraints they will face if they want to legalize their status. Therefore, the stay of most Iraqis in the country remains illegal.⁵⁰ Nevertheless, Jordan is not used to launching inspection campaigns to insure illegal Iraqis are abiding by residency and labor laws as it used to do towards illegal foreign workers⁵¹. Jordan is not enforcing immigration laws against Iraqis who are overstaying in Jordan in a consistent manner and generally speaking we can say that until now it follows a policy of considerable tolerance and leniency in enforcing immigration and work laws towards Iraqis residing in the country.

3. The Legal Status of Iraqis in the receiving countries: Refugees or foreign Immigrants?

Of the five countries included in the study, Egypt and Turkey have signed the 1951 UN Refugee Convention relating to the status of refugees and the 1967 Protocol but with heavy restrictions and limited effective protection.

Syria, Jordan and Lebanon, the three major Iraqi refugees host countries, are not signatories to the UN convention.

In all these countries UNHCR undertakes individual Refugee Status Determination (RSD) and helps the resettlement of Iraqi refugees in third countries. Syria, Jordan, Lebanon and Egypt are not resettlement countries for Iraqi refugees. All these countries do not have national refugee laws nor a functioning national mechanism to deal with the registration and status determination of asylum seekers.

Since January 2007, UNHCR granted refugee status on a *prima facie* basis to all Iraqi nationals from central and southern Iraq. The granting of the *prima facie* status is based on the fact that individuals from the two parts of Iraq are persons of concern to UNHCR because they are facing

⁴⁸ M. Y. OLWAN, "Jordan: the legal dimension of international migration", *ASN*, 2006/01, Florence, European University Institute, RSCAS, www.carim.org.

⁴⁹ *Jordan Times* 17.1.2008 ; 13.2.2008 .

⁵⁰ *Jordan Times*, April 17th 2008.

⁵¹ M. Y. OLWAN, "Circular and Permanent Migration, A Jordanian Perspective", *CARIM ASN* 2008/34, available on www.carim.org/circularmigration.

generalized violence and persecution within the meaning of the 1951 Convention and its 1967 Protocol and within the extended definition of other international instruments.⁵²

The offices of the UNHCR throughout the region hold registration interviews with Iraqis in order to identify those in need of protection, offer them assistance, and facilitate their referral for resettlement in third countries.

Iraqis no longer need to go through individualized RSD interviews and the UNHCR deems them to be *prima facie* refugees. In fact the size of the outflow as a whole makes individual RSDs clearly unrealistic.

On the other hand the resettlement countries show genuine intentions to increase the resettlement opportunities of Iraqis in their territory.

By February 2008 UNHCR has registered about 250,000 or some 10 percent of the estimated population of Iraqis in the hosting countries of the region.⁵³

It is worth noting that Iraqis who still have the means to support themselves hesitate to register, while those who are in need to assistance and those who see little prospect of returning to Iraq register with the UNHCR. Few Iraqis register in the hope of being resettled in third countries.

Many Iraqis do not want to be identified by the authorities or by the UNHCR for fear of persecution and deportation. Finally, registering with UNHCR and requesting assistance are seen by many Iraqis, if not all, as dishonorable and demeaning experiences.

The registration form provides basic information and once it has been checked and received by the UNHCR staff, the registered person is issued with an asylum seeker certificate or refugee certificate. These certificates or cards provided by the UNHCR do not have the same status of the residence permits granted by the refugee host countries.

The issuance of the residence permits remains solely within the competence of local authorities and the said certificates do not exempt their holders from arrest, detention and even deportation in case of illegal entry or illegal stay in the host country. They do not, furthermore, entitle them to resettlement because the resettlement decision is depending on the receiving countries decision and because it is only an option for the most vulnerable cases with assistance and protection needs.

By the end of 2007 UNHCR referred more than 21,500 Iraqis for resettlement⁵⁴. Referrals were made to sixteen resettlement countries including the United States, Sweden, UK, New Zealand, Ireland, Netherlands, Brazil and Denmark.

This number considered for resettlement constitutes a small portion of the total Iraqi refugees but it is a considerable achievement, given that fewer than 1,000 Iraqis were referred for resettlement in 2006 and only 672 in 2005. The number of Iraqi refugees admitted to Europe and North America remains very small. Just over 3,100 Iraqi refugees were resettled to industrialized countries from 2003-2006, and by the end of 2007, only 4,575 Iraqi refugees had left their countries of first asylum for resettlement in third countries.⁵⁵

⁵² See A. HARPER, *op.cit.*, p. 121, and for details see H.R.W., "Rot here or Die there", *op.cit.*, p. 34 ; P. WEISS FAGEN, *op.cit.*, p. 9.

⁵³ A. HARPER, *op.cit.*, p. 170.

⁵⁴ Some Iraqis were referred by UNHCR'S office in Amman, 7.702 by UNHCR Damascus, 3.280 by UNHCR Ankara, 1.464 from Beirut 319 from Cairo and 500 by other offices, including those in the United Arab Emirates. See A. HARPER, *op.cit.*, p. 18 , 184.

⁵⁵ K. O'DONELL and K. NEWLAND, *op.cit.*, p. 17.

Only around 1,000 Iraqi refugees were accepted for resettlement in Europe in 2007, the vast majority going to Sweden⁵⁶, but the EU is actually considering the appeals from the UN to take up 10,000 more Iraqis refugees for resettlement during the coming years.

Fewer than 600 Iraqi refugees were admitted to the US between 2003 and 2005, and only 202 were admitted in 2006. The US promised to take 12,000 Iraqi refugees, but last year only took in 2600.

The number of Iraqis admitted or promised to be admitted in Europe and North America is quite low in comparison with about two million Iraqis displaced around the world and particularly in the immediate vicinity of their own country. These countries and in particular the US should resettle more Iraqi refugees and more Palestinian refugees who fled Iraq after the American invasion. After all, the destabilization of Iraq is a result of the invasion and occupation of Iraq and the US bears the greatest responsibility for the tragedy of the four million Iraqis who have been ravaged by the atrocities of the war and forced to flee their country.

The legal status of Iraqis in every single country included in this study is as follows:

3.1. Turkey

Refugees need to be registered with Turkish police and then they have to register with the UNHCR.

3.1.1. Registration with the Turkish Police

Turkey is a party to the UN Refugee Convention and to 1967 Protocol. Yet Turkey maintains the original refugee definition, limited to Europeans. Upon ratification of the Convention, Turkey introduced a geographical limitation. Iraqis like other non-Europeans are not granted refugee status legally in Turkey. Turkey's convention obligations are only towards persons uprooted by events in Europe. This considerably limits Turkey's obligations to International refugee law. It is expressed that geographical limitation was introduced by Turkey due to challenging experiences in the region which clearly includes a mass refugee influx coming from its eastern and southeastern neighbors like the Iraqi cases in 1988 and 1991.⁵⁷

Turkey recognized the right to asylum as envisaged by Article 14 of the Universal Declaration of Human Rights and the country is the only neighboring country of Iraq which conducts accession negotiations to the European Union. Turkey is obliged to undertake the accomplishment of the EU in the field. To this end the General Security prepared a national action plan for Asylum and Immigration which was endorsed by the Prime Minister in 2003.⁵⁸ The action plan set forth how Turkish national legislation should be made compatible with that of the EU and a time frame is also set. The EU asks for the lifting of the geographical limitation by Turkey which is not ready to do it except, eventually in case of effective adhesion.

Yet, the Turkish parliament has not enacted a law comprehensively regulating asylum and related issues which have been dealt with by a number of legislations such as passports law, law on Residence and Travel of Foreigners in Turkey. In 1994 the Council of Ministers issued an asylum Regulation which

⁵⁶ See A. HARPER, *op.cit.*, p. 183; <http://www.europeanvoice.com> accessed on 25.09.2008; K. LIBAL and S. HARDING, "The forgotten Crisis: Iraqi Refugees as collateral Damage", <http://www.pilog.net/index/php/site/article/821> accessed on 10.09.2008.

⁵⁷ Action plan, Para. 4.13

⁵⁸ 17. 1. 2005, this Action plan came following UN official calls on Turkey to enact a law on asylum. See *Todays Zaman* / <http://www.todayszaman.com/tz-web/detavlar.do?Load=detav.&link=149777>. accessed on 27.8.2008

was amended in 1999 and 2006.⁵⁹ In 2006 the General Directorate of Security at the Ministry of Interior issued a Circular on asylum procedures, rights and obligations of refugees and asylum seekers.⁶⁰

Turkey does not accept *de jure* refugees from non-European countries. However, these refugees were given *de facto* status of asylum seekers and provided with international protection. Many non-European asylum seekers, including people coming from Iraq, enter Turkey en route to the west. Only some consider Turkey as their final destination in their journey to freedom, security and prosperity. Others keep their hope for returning back when "things are settled down".

Under current legislation non-Europeans, such as Iraqis, are not recognized as "refugees",⁶¹ but as asylum seekers.⁶² The only difference between a "refugee" and an "asylum seeker" is whether the events caused to flee occurred in Europe. The rights arising from the Geneva Convention such as international protection as well as other types of protection and the customary law principle of non-refoulement principle are granted by Turkey to asylum-seekers.⁶³

Turkey adopted a way of dealing with individual asylum claims and the system seems to be one which satisfies international legal standards. However, the system is not designed to answer collective asylum claims and may collapse in the event of a mass influx which is a possibility for the future. The UNHCR decides the cases of persons who applied for refugee status in Turkey and helps the resettlement of Iraqis in third countries.

Asylum procedures begin with registering with the police. A non-European asylum seeker must register with the police, whether or not he entered Turkey legally. Only after registration the police will evaluate whether to grant "asylum seeker status" to stay legally in Turkey.⁶⁴ There are currently a total number of 16,972 Iraqi asylum seeker applications of which 4707 pending (not decided yet), 3672 rejected, 986 closed, and 5849 asylum seeker status granted.⁶⁵

Between 1995-2007, 19,672 Iraqi applications have been made for asylum in Turkey, of which 4666 are registered after 2003 when the war broke out. Although in the eight years before 2003 the annual average was almost 1500, 2003 witnessed a dramatic decrease. Only 181 applied for asylum. Since 2003, 1041 (2004), 764 (2005), 555 (2006) and finally 2306 (2007) applications have been made.⁶⁶ The UN estimates that 10,000 displaced Iraqis live in Turkey⁶⁷.

⁵⁹ Regulations No 6169, *Official Gazette*, 30. 11. 1994 .

⁶⁰ Circular No. 57, 22. 6. 2006.

⁶¹ "Refugee" is defined by Turkish law as "*an alien who as a result of events occurring in Europe and owing to well-founded fear of being persecuted for reason of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it*". The 1994 Regulation.

⁶² "Asylum seeker" is defined as "*an alien who owing to well-founded fear of being persecuted for reason of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it*". The 1994 Regulation.

⁶³ But it is reported that the Turkish authorities forcibly returned during July 2007, 135 Iraqis to their home and there is some reportedly having claimed asylum in Turkey. If this is confirmed, the deportation would constitute a "clear violation" of 1951 UN Refugee Convention which prohibits the refoulement of refugees or asylum – seekers to the country where their personal safety is at risk. <http://www.iraqudates.com/p-articlesphp/article/1995>.

⁶⁴ 2006 Circular. For further details related to the procedure see Y. KAYA, "Reform in Turkish Asylum Law: Adopting the EU Acquis?", *CARIM RR/2009*, à paraître prochainement sur www.carim.org.

⁶⁵ As of 10.01. 2008. statistics and Data Recording Bureau of the Directorate of Security. Remaining numbers are escapers, legal leavers to third countries etc.

⁶⁶ *Ibid.*

⁶⁷ UNHCR.

3.1.2. Resettlement of Iraqi Refugees in Turkey

Apart from registration with Turkish police, another registration with the UNHCR in Ankara must be completed. "Application Form" for RSD is filled by the applicant. The form contains information on the identity, education, work, travel story to Turkey and obviously the reasons for leaving the home country and grounds why the applicant cannot go back. The UNHCR provides an interpreter when needed, as Turkish police do. An Asylum Seeker Certificate is issued by the UNHCR possibly on the registration day, depending on the workload. Pictures are also taken during registration. Those applicants who have not been yet registered with the police are advised by the UNHCR to register as soon as possible.

An appointment slip with date for interview to determine whether the applicant qualifies to be a refugee according to the UN guidelines is also given. No interview by UNCHR is carried out without registration with police. A legal representative can be present in the interview. The case is determined on the basis of information provided in the interview. If the refugee status is granted, a UNHCR Refugee Certificate will be issued and the case will be referred to the "Durable Solutions" department. Those who pass the UNHCR test wait in Turkey for eventual resettlement to a third country since, due to geographical limitation we mentioned. Those who are granted refugee status by the UNHCR go through an application process with the embassy of the resettlement country in accordance with the criteria set forth by the resettlement country. Final resettlement could take several months and even years in some cases. In fact recognition of refugee status by the UNHCR does not guarantee final resettlement in a third country and Turkey. If refugee status is granted, the person may apply to the UNHCR for financial aid. There are 5827 Iraqis who were granted refugee status and resettled in third countries. Main resettlement countries are the US (1552), Australia (1060), Canada (900), Sweden (563), Norway (481), Germany (421), Finland (413), Denmark (146), the Netherlands (103), and the United Kingdom (47).⁶⁸

3.2. Egypt

Egypt cooperates with the UNHCR in the registration of Iraqi refugees and in the resettlement of refugees.

3.2.1 Registration of Iraqi Refugees

Article 53 of the Egyptian Constitution provides that "the right to political asylum shall be granted by the state for every foreigner persecuted for defending peoples interest, human rights, peace and justice. The extradition of political refugees is forbidden". There is also the presidential Decree no. 188 for 1984 which called for the creation of a permanent committee in the Ministry of Foreign Affairs to review asylum applications and grant refugee status, but in fact the determination of refugee status in Egypt is undertaken by the UNHCR which has been unsuccessfully trying to hand over this responsibility to the Egyptian Government for the past few years.

In 1954, the government of Egypt signed a Memorandum of Understanding (MOU) with the Cairo office of UNHCR. According to the MOU it was agreed that UNHCR would conduct RSD functions on behalf of the Egyptian Government. The Egyptian Government on the other hand, accepted the responsibility of granting residence permits to those given refugee status by UNHCR. Moreover, the Egyptian Government entrusted UNHCR to coordinate with third states in order to facilitate the resettlement of recognized refugees to their countries.

It is worth noting that Egypt was one of the drafting members of the 1951 Convention, and acceded to the Refugee Convention and to the 1967 Protocol on 22 May 1981. But upon ratification Egypt

⁶⁸ As of 10.10. 2008. Statistics and Data Recording Bureau of the Directorate of security. There are other countries receiving small numbers of Iraqi refugees such as Israel (22), Syria (3), Indonesia (2).

made five reservations to articles relating to the personal status (Article 12); rationing (Article 20), access to primary education (Article 22), Public relief and assistance (Article 23) and labor legislation and social security (Article 24). It is believed that the status of these reservations in domestic law is questionable because they are not specifically reproduced in the official Gazette, a publication which marks the official recognition of treaty in domestic Law.⁶⁹

It should be noted also that in 1980 Egypt ratified the Organization of African Unity (now the African Union) Refugee Convention Governing the Specific Aspects of Refugee Problems in Africa which adds Article 2 to the definition of who is a refugee: “*every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality*”.

Iraqis are currently given *prima facie* recognition by UNHCR on the basis of their nationality and provided a “yellow card” as identification, but only the minority has registered for this status. One cannot help but notice the low number of Iraqi applicants for refugee status in relation to the total number of Iraqis living in Egypt.⁷⁰

Until May 2008, only 10,988 Iraqis applied for refugee status at UNHCR despite the fact that all Iraqis would enjoy refugee status on a *prima facie* basis.⁷¹ Most Iraqi residents of Egypt prefer to adopt a route other than the one offered by UNHCR, and until recently, they were able to obtain residence permits without the need to approach the UNHCR.

Against this background, it is worth mentioning that 2006 witnessed an increase in UNHCR registration of refugees from Iraq. The reason was attributed to the new restrictions on residence permits. Fearing eminent deportation, many Iraqis sought UNHCR protection. Preliminary research demonstrated that Iraqis resort to UNHCR as a final solution to their problem. Iraqis do not really see themselves as typical refugees. They can have access to their embassy and are in regular contact with their families in their home country. Some even visit Iraq occasionally. Many have or used to have money and want(ed) to move around with it. Obtaining a residence permit on their UNHCR refugee card would prevent them from leaving Egypt without UNHCR's approval, which can pose serious constraints on their international mobility.⁷² However, one of the apparent benefits that Iraqis can receive from going through the UNHCR route is the opportunity to be considered for UNHCR resettlement. This privilege does not extend to those who only have investment and student visas. However, they can apply for resettlement through IOM's Direct Access Program if they meet the program's requirements.

⁶⁹ For example, in the area of the right to education, see Article 28(1) (a) and 22 of CRC, Article 10 and 13 of ICESCR and Article 17 of the African Charter.

⁷⁰ Ranging from 10% to 18% depending on the estimates.

⁷¹ UNHCR Statistics, May 2008.

⁷² Once a person receive a residence permit as an asylum-seeker or refugee in Egypt, the authorities cancel the applicant's entry visa. As a result, the applicant cannot leave the country unless he renounces his status as an asylum-seeker or refugee. In exceptional circumstances, and subject to UNHCR's intervention and approval, a refugee or asylum-seeker may be given a convention travel document (CTD). Few refugees have benefitted from this right (Art. 28 of the Refugee Convention). Refugees are also allowed to leave the country without renouncing their status if they had been recognized for resettlement. Their travel arrangements are made by UNHCR, the International Committee of the Red Cross (ICRC), the State of resettlement, and the Egyptian government.

3.2.2 Resettlement of Iraqi Refugees in Egypt

UNHCR-Cairo is planning to refer approximately 750-800 refugees for resettlement in 2008.⁷³ This number is significantly lower than the 4,000 refugees that used to be resettled out of Egypt during the first half of the decade.⁷⁴

There are currently three resettlement schemes:

- a. The UNHCR referral system,
- b. The humanitarian programs sponsored by certain States, and
- c. IOM's Direct Access Resettlement Program for Iraqi Refugees.

The UNHCR resettlement program is governed by the organization's guidelines and the conditions stipulated by each resettlement country.⁷⁵ These conditions can vary from one year to another subject to the availability of funding, the situation in the host State, and politics in the resettlement country. Until the end of May 2008, it is estimated that 301 Iraqis were referred for resettlement for Australia, Canada, and the United States of America⁷⁶. Following referral, refugees must go through an RSD assessment at the embassy of the State of resettlement, in addition to having to undergo a medical test and security screening. Once approved, refugees are resettled with the help of the embassy of the State of resettlement, UNHCR, and the International Committee of the Red Cross (ICRC). According to UNHCR Cairo, only the most vulnerable refugees are referred for resettlement and no Iraqi refugee selected by UNHCR was turned-down by the embassy of a resettlement State.

The humanitarian program in Cairo is sponsored by the Australian and Canadian embassies. Occasionally, some Scandinavian countries accept vulnerable people of concern under their humanitarian programs. The program is open to asylum-seekers (and refugees) irrespective of their legal status in the host State. It is mainly based on the applicant's claim, vulnerability, and ties to the resettlement country. Accordingly, an applicant with relatives or sponsors in the resettlement country would have higher chances of being approved than someone without any ties there.

IOM's Direct Access Resettlement Program to the United States is designed for the Iraqis who provided assistance to Multinational Forces. Although, in theory, the program primarily aims at rewarding and protecting those who worked with the United States troops in Iraq, in practice, several legal and administrative obstacles make the program's success doubtful, and many applications are significantly delayed or excluded due to the United States' interpretation of the exclusion clause and the government's introduction of the material support doctrine.

3.3. Lebanon

The Lebanese constitution prohibits the resettlement of Palestinians in Lebanon's and the country is not prepared, nor willing, for political, economic, confessional and security considerations to admit the local integration of other refugees in its territory. The local integration of Iraqis in Lebanon could create a precedent and it could weaken the Lebanese firm position on the right of the Palestinians to return to Palestine.

These considerations explain the non-adherence of Lebanon to the 1951 UN Refugee Convention and to the 1967 Protocol relating to the status of refugees. They also explain the partial non-

⁷³ Resettlement target for the end of 2008.

⁷⁴ The reduction in the numbers of resettled refugees is due to several factors including lack of money, lack of political will on the part of resettlement States, and UNHCR's attempt to encourage the Egyptian government to integrate refugees.

⁷⁵ There are currently 15 States that offered to host categories of resettled refugees. However, only Australia, Canada, and the United States take refugees from Egypt on a yearly basis.

⁷⁶ More than 90% resettled refugees until May 2008. UNHCR Statistics. May 2008.

application of the provisions of the 1962 Lebanese law regulating the entry and stay of foreigners in Lebanon and their exit from the country, which provides that foreigners "whose life or freedom is in danger for political reasons may request political asylum in Lebanon" ⁷⁷. The law further provides that those who have been granted asylum cannot be expelled to the territory of a state where their lives or freedom would be threatened (Article 31). These provisions have been implemented only once since its issuance in 1962⁷⁸.

According to the same law the Lebanese authorities consider the foreigners who enter Lebanon illegally or who enter legally but then overstay their visa, as illegal immigrants, and this is regardless of their intent to seek asylum or not. They are, therefore, subject to arrest and detention, payment of a fine, imprisonment and deportation (Articles 32-36).

As it did in Jordan and Syria, UNHCR granted in April 2003 a temporary Protection Regime (TPR) to all Iraqi nationals in Lebanon which allow them, in the eyes of the UN Refugee Agency, to stay legally in the country without being forced to go back to Iraq.

Under this regime the UNHCR gave most of the registered Iraqis an asylum seeker certificates and in a very exceptional cases of vulnerability they were interviewed by the UN refugee Agency for Refugee Status Determination (RSD).

The Lebanese authorities, like the Jordanian authorities, has refused to recognize the TPR and continued to treat Iraqis who are in violation of the Lebanese regulation on foreigners as illegal immigrants and not as refugees recognized by the UNHCR as such.

A theoretical improvement was achieved in September 2003 with the signing of a Memorandum of Understanding (MOU) between UNHCR and the director general of the General Security. The MOU is based on the assumption that Lebanon is not a country of permanent refuge and that UNHCR must find the Iraqis a resettlement place elsewhere. It specifies explicitly that "*Lebanon does not consider itself as an asylum country*" and that "*the only viable durable solution for refugees recognized under the mandate of UNHCR is resettlement in a third country*". But the Memorandum acknowledged for the first time that the asylum seekers could temporarily stay in Lebanon. It provides for a "temporary humanitarian solutions for the problems of people entering clandestinely, residing unlawfully in Lebanon and submitting asylum applications at UNHCR" (The preamble of the MOU).

The "circulation permits" granted under the MOU to asylum seekers and refugees are only valid for a maximum period of one year. This one-year limit on circulation permits means that if the UNHCR cannot resettle the refugees to a third country within this period, which is almost always the case, their presence in the country becomes illegal and they are subject to arrest, detention, and even deportation. On the other hand, under the MOU the circulation permits cannot be issued to asylum seekers who enter Lebanon illegally and who apply to UNHCR for refugee status after two months of their arrival in the country. They are also not issued to persons who entered the country before September 2003 and they are only granted in exceptional cases to asylum seekers who entered the country legally and then overstayed their visa.

The TPR which proved to be ineffective in protecting Iraqi refugees in the region was replaced in January 2007 by a new regime. Instead of the asylum seeker certificate it had issued since April 2003, the UNHCR issued since then a "refugee certificate" to all Iraqi nationals from central and southern Iraq (Iraqis coming from Northern Iraq are excepted) who approach the office.

⁷⁷ *Official Journal*, n°. 28- 1962 .

⁷⁸ The first and the last refugee card has been granted to the Japanese Okomoto, a member of the Japanese Red Army.

It is unfortunate that these new documents, as the previous ones, are not recognized by the Lebanese authorities and they do not, consequently, exempt their holders from penalties for their illegal status in the country.⁷⁹

So far, UNHCR in Lebanon has registered about 10 thousand Iraqis, 6198 of whom were registered in 2007. In the same year, some 1,500 Iraqi refugees in Lebanon were referred for resettlement in third countries, but it is not clear how many of these referrals have been accepted by these countries⁸⁰.

The surge in the number of Iraqis approaching UNHCR is due to the fact that registering with the UN Refugee Agency is regarded by the Iraqis as an action of preference, in order to have access to resettlement options to the settlement countries. It also provides medical, educational, and social and material assistance to the most vulnerable of them.⁸¹

3.4. Syria

The Syrian authorities accept the UNHCR designation of *prima facie* refugees for the Iraqis. But this does not mean in any way that Syria is willing to afford local integration to them. At best, this is no more than a Syrian readiness to accept a temporary haven pending return.⁸²

UNHCR issues a refugee card to Iraqis upon registration. This card is valid for renewable six months duration, and it entitles its bearers access to the UNHCR and its partners distribute food and non food items, primary health care, education needs, and the financial assistance system of the UNHCR⁸³. Most of these assistance programs are implemented by UNHCR itself and /or by the Syrian Red Crescent society, and the UN World Program (W.F.P)⁸⁴. In addition, during the registration, the most vulnerable of the refugees are identified for resettlement.

The list of the persons chosen for resettlement is sent to the centre of resettlement in the UNHCR office in Beirut, which in its side communicates it to the host country.

The number of the applicants is growing gradually. To date, UNHCR has registered over 194, 273 Iraqi refugees including those who are sick people, and women at risk.⁸⁵ The process of registration still covers only a tiny fraction of the total Iraqi population living in Syria, and the UNHCR started in October 2007 a mobile registration exercise in an effort to register Iraqi refugees in the country's North East region.⁸⁶

In 2007, UNHCR Syria submitted 7, 852 Iraqi refugees for resettlement to all countries. That same year, only 833 Iraqi refugees actually departed for resettlement countries.⁸⁷

⁷⁹ For more details see HRW, "Rot here or die there ", *op.cit*, pp. 2, 19, 20 .

⁸⁰ UNHCR Global Report 2007, p.314; http://www.unhcr.org/news/NEWS/46_11.html. Accessed on 27.8. 2008; http://www.unhcr.org/news/NEWS/47b_c55824.html. a cassed on 27.8.2008 .

⁸¹ Danish Refugee council, *op.cit*, p.57 .

⁸² P. WEISS FAGEN, *op.cit*, p. 6.

⁸³ [www.refugeesinternational.org / content/ article/ detail/10507](http://www.refugeesinternational.org/content/article/detail/10507) accessed on 25 August 2008; <http://www.unhcr.org/cgi-bin/texis/vtx/iraq/page=news&id=46373&adf4> accessed on 25 August 2008.

⁸⁴ <http://www.worldpress.org/mideast/3043/cfm> accessed on 25. 8.2008.

⁸⁵ UNHCR, "Syria Update", May 2008, p.2.

⁸⁶ <http://www.org/apps/News/Story.asp?NewID:24232&Cr.PalestineCr1>=accessed on 25.08.2008.

⁸⁷ UNHCR, "Syria Update", May 2008.

3.5. Jordan

Jordan denies that Iraqis residents in the country are refugees because the country is not a party to the 1951 Refugee Convention. Instead, Jordan describes these Iraqis as "Guests" or temporary residents or even "illegal aliens". The Jordanian point of view is shared by most of the Iraqis residing in Jordan who had not approached the UNHCR and had not requested refugee status nor registered with the UNHCR. Iraqi official expressed their satisfaction that Jordan does not consider Iraqis in the Kingdom as refugees. They are of the opinion that the Jordanian position prevents other countries from attracting qualified, skilled and educated Iraqis who are needed to build their country!⁸⁸

Iraqi refugees in Jordan benefit from a Memorandum of Understanding with the UNHCR, which offered them a Temporary Protection Regime.

3.5.1. The Memorandum of Understanding

The 1952 Jordanian constitution stipulates that political refugees shall not be extradited on account of their "political belief, or for their defense of liberty" (Article 21). But Jordanian municipal law is deficient as far as asylum is concerned. The country has provided no legal definition of refugees and has not established clear domestic policies for the determination of refugee status⁸⁹.

Jordan has not adhered to the 1951 Convention on the Status of Refugees or the 1967 Protocol which extends the provisions of the Convention but Jordan cooperates with UNHCR since 1991, when the UN Refugee Agency opened its Amman office, largely to provide international aid and protection for Iraqi asylum seekers. Moreover, Jordan cooperates with the UNHCR in the implementation of the Memorandum of Understanding signed between the two parties on 5 April 1998⁹⁰.

The Memorandum institutionalized procedures already in place regarding asylum seekers and refugees in Jordan and upholds the principles promulgated in the 1951 Convention and the 1967 Protocol which Jordan has never endorsed. It reproduces the definition of refugee adopted by the 1951 Convention and the 1967 Protocol, both of which relate to the status of refugees, but without the geographic and time limitations (Article 1 of the MOU).

The same has occurred with the principle of non-refoulement, according to which no state shall refuse to admit temporarily any person claiming to be a refugee. According to the Memorandum, Jordan cannot ask a refugee seeking asylum in Jordan to return to a country where his life or freedom could be threatened on the basis of his race, religion, nationality, membership of a particular social group or political opinion (Art.2).

It was agreed to allow UNHCR to interview asylum seekers who entered Jordan clandestinely and are being held by competent authorities. UNHCR would make its determination within seven days except in exceptional cases requiring other procedures and the period should not exceed a month (Article 3). Although Jordan is required to consider the establishment of a national mechanism for status determination (Article 14), this mechanism has not been established yet.

The two parties have agreed that asylum seekers and refugees should receive a treatment as per the international accepted standards. A refugee should receive legal status and UNHCR would endeavor to find recognized refugees a durable solution be it voluntary repatriation to the country of origin or

⁸⁸ *Jordan Times Newspaper*, 12.12.2007.

⁸⁹ See for more details on the right of asylum in Jordan M. OLWAN, "The institution of asylum in Jordan", in A. ALZAGAL (ed.), *The evolution of asylum and displacement: legislation, protection, and practice*, Center of refugees and Displaced and Forced Displacement, July 2003, p. 91; A. HALSA, "The legal status of refugees non Palestinian in Jordan", *Muat'a Journal for studies and Researches*, vol.21, n°.3, 2006, p.231. Both articles are in Arabic.

⁹⁰ *Jordanian Official Gazette*, n° 4277, p. 1463. See also the cooperation agreement between the two parties signed on 30 July 1997 in the *Jordanian Official Gazette*, n°. 4228 on 16.09.1997.

resettlement in a third country. The sojourn of recognized refugees should not exceed six months (Article 5).

This means that Jordan rejects the principle of local integration and this is in fact what all Iraqis, Palestinians who fled Iraq want. However, in practice the Jordanian Government has shown great flexibility in applying Article 5 of the MOU because recognized refugees remain sometimes in the country a long time without being resettled. Only a small fraction of the most vulnerable Iraqis can realistically expect to be considered for resettlement to third countries.

Although the rights guaranteed to Iraqis under the MOU are fewer and narrower than those under the 1951 convention, the MOU resembles in many respects the 1951 Convention which has received world-wide acceptance. The Jordanian authorities defend the non-adherence of Jordan to the Convention on the grounds of a possible expansion of the UNHCR mandate to Palestinians if the United Nations Relief and Work Agency for Palestinian Refugees in the Near East (UNRWA) - created in virtue of a UN General Assembly resolution on 8 December 1949- is dissolved. While the Jordanian government's position is understandable, it remains unjustifiable in the eyes of many. Indeed, the 1951 Convention Relating to the status of Refugees excluded Palestinian refugees from its scope (Article 1).

The position of the Jordanian National Centre for Human Rights regarding the ratification of the Convention, which has been stated in many of its annual reports, proves also that there are no substantive legal obstacles preventing Jordan from adhering to the 1951 Convention.

3.5.2. *The Temporary Protection Regime (TPR)*

Following the invasion and in response to anticipated exodus from Iraq, the UNHCR decided to offer Iraqis in Jordan, Syria and Lebanon a Temporary Protection Regime (TPR) including the possibility to register with the UN refugee Agency.⁹¹

The legal basis for the T.P.R. is the Letter of Understanding which UNHCR concluded with the Jordanian government on 15 April 2003. In this letter the two parties agreed to provide safe facilities for the temporary protection of "beneficiaries", who are "*persons in urgent need of humanitarian assistance caused by possible hostilities*", and for this purpose they decided to establish a center in the border area. The centre shall provide accommodation to Iraqis and other nationals in need of temporary protection pending longer-term and durable solutions, in particular the safe return to their country of origin or habitual residence or resettlement in third countries (Article 2). The Letter adds that "*the provision of temporary protection, pending a longer-term solution, does not include the possibility of local integration, assimilation or permanent residency in the territory of the Hashemite Kingdom of Jordan.*" The UNHCR insists that the TPR applies to all Iraqis; Jordan, however, only recognizes the TPR as applying to Al- Ruwaished Camp and it has never agreed to the temporary protection regime initiated by the UNHCR.⁹²

UNHCR, nevertheless, continues to issue the asylum-seeker cards and renew them every six months. The Jordanian authorities give no importance to these documents for residency purposes but it has to notify the United Nations Refugees Agency in case of arrest or deportation of an asylum seeker cardholder, and to provide the Agency access to conduct a refugee status determination (RSD) i.e. to examine his refugee claim.⁹³

⁹¹ Human Right Watch, "The silent Treatment", *op. cit.*, p.43 .

⁹² *Ibid.*

⁹³ Human Rights Watch, "The Silent Treatment", *op. cit.*, p.43.

Protection services provided to persons registered with UNHCR include legal counseling, intervention in case of detained individuals and the submission of the most vulnerable cases for resettlement.⁹⁴

So far, the vast majority of Iraqis have neither registered as asylum seekers nor been recognized as refugees by the UN Refugee Agency. Most Iraqis residing in Jordan have not approached the UNHCR and have not requested refugee status nor registered with the UNHCR.

In 2003 UNHCR initiated the TPR and in practice it suspended the RSD. As of 17 April 2008, UNHCR has registered 52, 997 Iraqis in its files. This number means that the UNHCR has registered only a small fraction (about 10%) of the total number of the estimated Iraqi population in Jordan. In addition, only a total of 10,177 individuals were referred for resettlement⁹⁵ and have been submitted to thirteen countries of which twelve are European and North American countries.

Brazil is the only country outside the two continents to host refugees (107 persons). Those who left their host countries like Jordan and Syria, among others, for resettlement countries were only 4,577 (i.e. a mere 22 per cent of the total referred cases.). The number of departures from Jordan as of the end of November 2007 was 1,534 refugees⁹⁶. The other individuals referred for resettlement are still awaiting a third country to host them.

In fact, the option of resettlement is not always a practical one because the number of refugees seeking resettlement would far outstrip the available places offered by the countries willing to host Iraqis.

4. Detention and Refoulement

The concept of "refugee" is closely linked to the application of the principle of non-refoulement under which no state shall refuse to admit temporarily any person claiming to be a refugee.⁹⁷

Article 32 (1) of the 1951 Convention Relating to the Status of Refugees stipulates that " the contracting states shall not expel a refugee lawfully in their territory save on the grounds of national security or public order". In general, state practice indicates that Article 32 does not apply to refugees who are in a state unlawfully, that is without authorization to enter or to stay in the country. The protection of Article 32 (1) is not restricted to the person formally recognized as a refugee and as in the case of non-refoulement the prohibition of expulsion does not presupposes the formal recognition of a refugee status. The decision to expel a refugee, the same as any alien, shall only be reached in accordance with due process of law. This principle is contained in Article 32 (2) of the 1951 Convention Relating to the Status of Refugees and in several international human rights law instruments. Furthermore, states should permit refugees facing expulsion a reasonable period within which they can seek admission into another country (Article 32 (3) of the 1951 convention).

Article 33 (1) of the 1951 refugee Convention provides: "No contracting state shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territory where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion". The general opinion is that the principle of non-refoulement applies not only to a person who has already been recognized as a refugee, but also to any person applying for refugee status pending the determination of the status. The principle should be observed "both at the border and within the territory of the state with respect to persons who may be subjected to persecution if returned to their country of origin irrespective of whether or not they have been formally

⁹⁴ UNHCR, Branch Office Amman, 2007, p.1.

⁹⁵ UNHCR, "Jordan 2007 year", in *Review, Achievements and development, UNHCR fact sheet*, April 2008.

⁹⁶ *Ibid.*

⁹⁷ See for more details L. B. SOHN and T. BUERGENTHAL (ed), *The Movement of Persons Across Borders*, The American Society of International Law, Washington, 1992, p. 89.

recognized as refugees". The practical effect of the benefit of non-refoulement is that states give limited but critical protection to refugees in the form of some sort of temporary refuge.

Iraq is still facing deplorable living conditions and a highly dangerous security situation and to force Iraqis to return to their country while in these conditions could amount to a serious violation of international human rights law in general and the principle of non-refoulement in particular.⁹⁸ Iraqi refugees receiving countries are also required according to the Convention against Torture and other Cruel, Inhumane and Degrading Treatment or Punishment (1984) to which they are parties, which urges states not to "expel, return ("refouler") or extradite" Iraqis, in case there "are substantial grounds for believing that they shall be in danger of being subjected to torture. For the purpose of determining whether there are such grounds, local competent authorities should take into account all relevant considerations including, where applicable, the existence in the states concerned, of a consistent pattern of gross, flagrant or mass violations of human rights (Article 4 of the Convention). Deportation of Iraqis to Iraq could endanger the life or liberty of the deportees. Such action would not be different from sending a person on a boat to a shark-infested area and pushing him or her into the sea. Either action would clearly violate international standards of human rights. The question of deportation of Iraqis in each of the countries included in the study can be described as follows.

4.1. Lebanon

According to Article 23 of the Lebanese law of Entry, Stay and Exit of 1961 as amended by the law no 89 of 1991 and the law no 172 of 2002, foreigners entering Lebanon illegally are liable to a financial fine, imprisonment for one month to three years and deportation.

A foreigner who is arrested and submitted to the General Security for the crime of entering illegally is deported and a proclamation of entrance banning for a period of five years is issued against him for the first time and ten years for the second time.

A foreigner who violates the residence's term and a deportation decision is issued against him is also deported and a proclamation of entrance banning for a period of three years is issued against him for the first time and ten years for the second time.⁹⁹

Article 18 of the previous law provides that anyone who is subject to a deportation order may be kept in detention under the authority of General Security until the deportation procedures are completed.

The Lebanese authorities detain Iraqis who are found irregular and they place them in jail initially for one to three-months sentence but then indefinitely or until they "volunteer" for expatriation.¹⁰⁰

Once Iraqis have served their original prison sentence for being in the country illegally they are kept arbitrarily in indefinite detention by the General Security, and the only alternative they have to secure their release from prison is to agree to return to Iraq. In fact such an option between indefinite imprisonment and forced return is not a genuine one because most Iraqis have no intention to go back to Iraq in the present situation of the country. This kind of return cannot be considered a voluntarily repatriation and it is merely a refoulement or forcible return which violates Lebanon's obligations under International law.

Besides this implicit kind of deportation, 300 detained Iraqis in Roumieh prison were expelled on 16 December 2003 to Iraq and this is following an accord between the General Security and Iraqi Government.¹⁰¹ Another 300 persons detained in the same prison were expelled on 22 April 2004.¹⁰²

⁹⁸ Human Rights Watch, "The Silent Treatment", *op. cit.*, pp. 24, 33.

⁹⁹ <http://www.general-security.gov.lb/English/News/exp-ref/>.

¹⁰⁰ K. O'DONELL, Migration Policy Institute (MPI), *The Iraqi Refugees Crisis, The Need for Action*, 2008, p. 16.

¹⁰¹ *L'Orient - le Jour*, 16 december 2003.

UNHCR intervenes on behalf of Iraqis in detention whether in Lebanon or elsewhere in the Iraqis host countries, and in February 2008 an agreement was reached with Lebanon to release up to 600 detained Iraqis and to regularize their status.¹⁰³

Although Lebanon is not party to the 1951 Refugee Convention or its Protocol, she is, nevertheless, as other Iraqi host countries, still bound by customary international law, to observe the principle of non-refoulement. This principle prevents a country from returning a refugee to a place where his or her life or freedom would be threatened.

On the other hand, Lebanon is party to the Convention against Torture and Cruel, Inhumane or Degrading Treatment since 5 October 2000 and is bound to Article 3 of that convention not to return or expel any person to states where he would be in danger of being tortured.

Finally, subjecting Iraqi refugees to detention beyond the duration of their original sentence for entering the country illegally amounts to an arbitrary detention and hence violates Lebanon's international obligations. Article 9(1) of the International Covenant on Civil and Political Rights (ICCPR), to which Lebanon is a party provides: "no one shall be subjected to arbitrary arrest or detention". Therefore, Lebanon is under an international obligation not to subject any one under its jurisdiction to arbitrary detention. To this it should be added that conditions of detention are bad, detainees are mixed with common criminals, and they are placed in overcrowded prisons.¹⁰⁴

Moreover, there is seemingly no provision for judicial review of administrative detention, which had the effect of leaving detainees without legal remedy.¹⁰⁵

Lebanon considers Iraqi nationals who enter illegally or overstay their visas illegal immigrants and not asylum seekers or refugees. They are therefore exposed to arrest, detention and even deportation. The detention of Iraqis on the basis of their illegal entry or stay violates international refugee law according to which the receiving countries cannot penalize refugees for their illegal entry or stay.¹⁰⁶ Iraqi Nationals who enter Lebanon or stay there illegally for the purposes of seeking asylum should not be, therefore, prosecuted under the 1962 Law of Entry, Stay, and Exit nor deported against their will.¹⁰⁷

It is worth mentioning, in this regard, that in 2001, the Beirut Court of appeals overturned a deportation order issued against an Iraqi refugee for illegal entry into the country. The decision of the Court is based on Article 3 of the convention against Torture.¹⁰⁸ But the Court upheld the sentence of imprisonment for legal entry. The court authorized M. Illias to stay in Lebanon until such time as he could be resettled to a third country with the assistance of UNHCR.¹⁰⁹

It should be also mentioned that the Lebanon Ministry of Justice issued on 19 June 2006 an advisory to all judges and prosecutors in Lebanon inviting them to systematically suspend the deportation of persons of concern to UNHCR on the basis of Article 3 of the Convention against Torture (CAT), to which Lebanon is party.¹¹⁰

(Contd.) _____

¹⁰² O. CLOCHARD et M. K DORA, *Aux frontières de l'asile: les réfugiés non Palestiniens au Liban*, A contrario, Numéro spécial. Frontières au Moyen Orient, vol.3, n°2 (2003) sous la direction de R. BOCCO et D. MEIRS, p. 47.

¹⁰³ A. HARPER, "Iraq's refugees: ignored and unwanted", *International Review of the Red Cross*, Volume 90, Number 869, March 2008, p. 181.

¹⁰⁴ MPI, *op.cit.*, p. 16.

¹⁰⁵ A. HARPER, *op. cit.*, p. 182.

¹⁰⁶ Article 31 of the UN Refugee Convention.

¹⁰⁷ HRW, "Rot here or die there", *op.cit.*, p. 26.

¹⁰⁸ The case n°. 2001 / 580, June 20, 201; "Rot here or Die there", *op. cit.*, p. 43.

¹⁰⁹ *Ibid.*

¹¹⁰ UNHCR, Beirut office, Lebanon, "Country Operation plan", 2008. p. 3.

4.2. Egypt

Egyptian law allows the Minister of Interior to issue deportation orders against those who constitute a danger to Egyptian society, and such decision is arguably of a sovereign nature¹¹¹ and cannot be appealed in court. Exceptions are made to special residence permit holders and to those who are at risk of torture,¹¹² in addition to UNHCR registered refugees and asylum-seekers.

Iraqis can, therefore, be deported if do not belong to any of the three categories. Hence UNHCR registration can offer protection from deportation, and according to a UNHCR official, none of the Iraqis of concern was deported to his country of origin. The official added that the deportation procedures of an Iraqi wanted by Interpol were discontinued following UNHCR's intervention because the UN Refugee Agency believed that the accusations against the applicant did not warrant his exclusion and hence, his refugee status prevailed.¹¹³ The few detention cases in Egypt involve asylum seekers from Iraq arriving or attempting to depart without valid documentation (including visas).¹¹⁴

4.3. Syria

Syria is not party to the Geneva Convention (1951) but it considers itself bound by the principle of non-refoulement. Syria has reassured the UNHCR that no Iraqis living in Syria will be forced to return to Iraq against his will and this is despite the new rules aimed at stemming the flow of Iraqis into the country. In practice, there are rarely sanctions for those who overstay and fail to renew their tourist visas.¹¹⁵ The simple overstay in Syria does not automatically lead to the deportation. Iraqis facing a greater risk of deportation are those who:

- Have been arrested or detained.
- Have destroyed their documents.
- Have entered Syria illegally.
- Have committed any type of criminal acts such as forging.
- Involved in prostitution, petty crimes.¹¹⁶

4.4. Jordan

Jordan is not a party to the 1951 Refugee Convention or its 1967 Protocol, but is, nevertheless, bound by customary international law not to return refugee and asylum seekers to a place where their lives or liberty would be threatened.

Jordan has always pledged to uphold the basic principle of non-refoulement which it is committed to, not only according to customary international law but also in accordance to the MOU with the UNHCR. Therefore Iraqis whose residence permit or visa has expired and who are considered to be at risk of serious human rights violations in Iraq should not be forcibly returned from Jordan. In fact, the vast majority of Iraqis were admitted into the territory, granted at least temporary asylum, and protected from refoulement. It seems also that the departure from the principle is exceptional and not repeated.¹¹⁷

¹¹¹ Referred in Arabic as "qarar siyadi".

¹¹² See Articles 26 and 29 of Law no. 89 of 1960 Regarding Entrance, Exit, and Residence of foreigners

¹¹³ See Article 3 CAT.

¹¹⁴ Those found to have met the exclusion requirements are not of concern to UNHCR. Their deportation is legal according to the Refugee Convention (Article 1 F of the Refugee Convention).

¹¹⁵ MPI, op.cit, p. 13; <http://www.iht.com/articles/an/2007/10/05/news/un-Gen-Un.Iraq-Refugees.hbn>. Accessed on 25. 08. 2008.

¹¹⁶ UNHCR, "Syria Update", May 2008.

¹¹⁷ <http://www.amnesty.org/ar/library/asset/MDE/14/021/207/en/dom-MDE/207e> accessed on 26. 4. 2008.

Nevertheless, Jordan occasionally deports Iraqis who have overstayed their visas whether they are registered with the UNHCR or not. It also rejects entry to increasing number of Iraqis at the border without giving them any opportunity to make refugee claims. Additionally, the UNHCR, in contradiction with the MOU, is not always notified by the Jordanian authorities in case of the detention of an individual who has been granted refugee status or has applied for asylum.¹¹⁸

It is worth mentioning also that Iraqi deportees choose Syria or Yemen in case they fear returning to their country. Furthermore, Jordan notifies UNHCR in case an asylum seeker cardholder is detained for residency violations and allows UNHCR staff to visit him in the detention center for the purpose of refugee status determination (RSD). Asylum seekers in detention are held in one detention center in order to accelerate the RSD process. Any recognized refugee is released, if he/she was detained due to his/her violation of the Residency and Foreign Affairs Law and any action taken against asylum seekers is postponed until his/her status is determined¹¹⁹.

The Jordanian authorities have tolerated the prolonged stay of Iraqis beyond the expiration of a maximum stay of six months given to those who are classified by the UNHCR as asylum seekers according to the MOU, and beyond the expiration of the visit permit.

As underlined above, Jordan denies that Iraqis residing in the country are refugees because they don't meet the criteria of refugees as stated in the 1951 Refugee Convention. Instead, Jordan describes these Iraqis as "guests" or "temporary residents" or even "illegal aliens". But Jordan is bound by the UNHCR's status determination process itself. If the UNHCR declares someone as a refugee, that person has to be recognized as such by the Jordanian authorities.

5. Human rights of Iraqi refugees in the host countries

Living conditions of Iraqi refugees in the receiving countries included in this study are governed by national laws, bilateral conventions with the UNHCR, international conventions of human rights to which these countries are parties, and by general international law.

The irregular status of most of Iraqis living in these countries make them vulnerable to exploitation and abuse. Their living conditions are deteriorating and they are more and more impoverished. Furthermore, the lack of media attention to the problems they are facing increases their isolation and causes them to live on the fringe of the host countries' societies.

The focus of the following pages is the human rights of Iraqi refugees in the receiving countries included in the study.

5.1. Right to access to education

Public schools in the host countries included in this study are overcrowded, and private schools are too expensive. Although the education opportunities provided to Iraqi refugees varies from one host country to another, the fact is that a large percentage of Iraqi children living in these countries are not attending schools and could go unschooled.

5.1.1. Turkey

The Turkish Constitution reserves political rights to citizens, but it extends social and economic rights to "anyone" notwithstanding whether the person is Turkish or an alien. State authorities, local governments and non-governmental organizations provide assistance for health care, work, education,

¹¹⁸ National Center for Human Rights (NCHR), *Fourth Annual Report*,(2007), Amman, Jordan. p. 39.

¹¹⁹ A. HALASA, "Refugee protection in Jordan", local focus, available on <http://www.rsdwatch.org> , accessed on 26. 4. 2008.

housing, food and legal aid but this assistance varies from city to city. Furthermore, under the Turkish Constitution elementary education is compulsory and free.¹²⁰ Children aged 6.14 are required to attend elementary school.

Article 27 of the 1994 Regulations provides that "within the general provisions, possibilities for education and work, are to be accorded to refugees and asylum seekers, and this is depending to their period of residence in the country".

In order to access health care, education, work financial and social assistance an Iraqi living in Turkey needs two documents: an asylum seeker ID card and a residence permit. The assigned city schools register asylum seekers' children. There are currently 101 Iraqi students attending schools in Turkey.¹²¹

5.1.2. Egypt

The Egyptian government upon ratification of the 1951 Refugee Convention reserved its right not to comply with article 22 on the right of refugee children to public education. The government's position with regards to the right of refugees to education is reflected in the Minister of Education's decree No. 24 of 1992. According to Article 5 of the Decree, non-Egyptians, including refugees, are only allowed to enroll in private schools. Exceptions can be made for the following categories:

- a. Sudanese, Libyan, Jordanian and some Palestinian citizens.
- b. Those registered on the UNHCR scholarship list.
- c. Children of refugees in accordance with article 53 of the constitution.¹²²
- d. Refugee children who reside in areas where no private schools exist.
- e. Children of Arab diplomats and attaches.

Iraqi refugees who do not fall in one or more of these categories can only enroll in private schools. The Ministry of foreign affairs reported that there are approximately 4,800 Iraqi children in Egyptian schools (most are attending private schools).¹²³

Although Iraqi refugees receive educational grants from the Catholic Relief Services, it is estimated that there are hundreds of Iraqi children that are not enrolled in any school, probably due to limited funds. In fact, the denial of the right of the Iraqi refugees access to public schools constitutes a violation of article (1), 28 (1) (a) and 22 (1) of the Convention on the Right of the Child to which Egypt is a party.¹²⁴

5.1.3. Lebanon

According to Article 3 of the Regulation n°. 820 of 1968 the enrollment of students in Lebanese schools is restricted to Lebanese citizens. Nevertheless, Article 102 of the Regulation states that foreign children can be enrolled as students in public schools if places are locally available. Few Iraqis

¹²⁰ Article 42

¹²¹ As of the end of 2007, the total number of asylum seekers' school age children is 1985 of whom only 386 attend classes. Statistics and Recording Bureau at the Directorate of Security.

¹²² See T. BADAWY, "Refugee Children in Egypt and the Right to Education Examining the Gap Between Theory and Practice", *MJHR*, (Forthcoming 2008).

¹²³ Information on file with the Egyptian Legal Correspondent of CARIM.

¹²⁴ The Convention is published in the *Official Gazette* on 14 February 1991. It is worth noticing that the Minister of Education issued in 2000 two decrees that allow refugees to enrol in Public schools. The decrees were not published in the *Official Gazette*. Hence, they are not binding on school administrations.

See *World Refugee Survey 2008*, Egypt section IV, A, p. 5.

have been able to do so and the vast majority of those who go to school in Lebanon are enrolled in private schools which are open to anyone who can afford tuition fees.

Although UNHCR and several NGOs contribute to the tuition fees, many Iraqi refugee families still cannot afford to send their children to school.¹²⁵

It is estimated that some 1,600 Iraqi children are enrolled in a formal education at the primary and secondary levels.

The acceptance of Iraqi students in the Lebanese public universities depends also on the availability of places. Fees of inscription in the Lebanese University which is a public university became exorbitant for foreigners according to the law no 392 of 2002. Cost is the main reason prohibiting Iraqis from enrolment in schools and universities in Lebanon,¹²⁶ but some Iraqis send their children out to work.

5.1.4. Syria

Syria offers free education to Arab children living in Syria, including Iraqi refugees. However, less than 25% Iraqi children believed to be in the country are enrolled in Syrian Schools (47, 456 out of an estimated 200.000 school-aged Iraqi children)¹²⁷. Although education is subsidized by the state, and despite the fact that UNHCR and UNICEF support the absorption of more Iraqi children in the already overcrowded Syrian schools, many Iraqi families cannot afford the additional expenses of education and are forced to send their children to work for very low wages.¹²⁸

Iraqi refugees may also enroll in Syrian Universities, subsidized by the government, free of charge.

5.1.5. Jordan

The 1952 Jordanian Constitution reserves the right to free and primary education in governmental schools (Article 20) to nationals, but this does not mean that foreign children are not allowed to attend schools in Jordan.

Jordan is a party to the Convention on the Rights of the Child (CRC) of 1989 which provides in its Article 28 the right of a child to education, including compulsory primary education available free to all. As a party to the Convention on the Elimination of all Forms of Racial Discrimination (CERD), Jordan must also “ensure that public education institutions are open to non-citizens and children of undocumented immigrants” in Jordan.¹²⁹ It is unfortunate that an amendment in the Jordan constitution in view of reflecting its international commitments is unlikely to occur in the near future.

In practice, prior to the 2006-2007 year school, foreign children, including Iraqis, were not allowed to attend public schools. Only those holding residence permits were allowed to enroll in private schools.¹³⁰

As a result only around 14,000 school-age Iraqi children were enrolled in Jordanian schools during the scholastic year 2005/2006 and between 18,000 to 19,000 students were enrolled in public and private schools in 2006/2007 scholastic year.

On the 7th of August, 2007, the Ministry of Education decided to allow school-age Iraqi children living in the Kingdom to enroll in both public and private schools regardless of their legal residency

¹²⁵ See Human Rights Watch, "Rot here or Die there", *op.cit.*, p. 55.

¹²⁶ Danish Refugee Council, *op.cit.*, p. 40.

¹²⁷ UNHCR, *Syria update*, May 2008.

¹²⁸ <http://www.worldpress.org/mideast/3034cfm>, accessed on 25. 08. 2008 .

¹²⁹ Human Rights Watch, "Silent Treatment", *op. cit.*, p. 62.

¹³⁰ *Jordan Times*, March 22, 2006.

status as of the beginning of the scholastic year 2007-2008. The Ministry predicted that public schools will accommodate around 50,000 new Iraqi students, but the number of Iraqi students enrolled was below expectation. In fact as of September 2007, 22,000 Iraqi children have been registered.¹³¹

But by the end of 2007 more than 25,000 Iraqi children in Jordan are attending schools. Of that figure 6,000 are in private schools.¹³² This means that a good percentage of Iraqi children that are of a school age and not all are now receiving education.¹³³

Different factors could slow down the enrollment process including the fact that Iraqi families who have overstayed their visas and live in fear that they will be caught and sent back to their country are reluctant to enroll their children into schools. The low turnout is also attributed to the fact that many Iraqi families have their children working in Jordan, and to the fact that many families could not afford tuition and they do not have the necessary funds to purchase school necessities.

It is also worth noticing that the Palestinian children who used to live at Ruwaished Camp did not receive adequate education. This is also the case of the Iranian Kurdish who lived and still lives in the border between Iraq and Jordan. Contrary to Iraqis who live in urban areas and especially in big cities, Palestinian refugees who fled Iraq and the Iranian Kurdish were not permitted to across the borders and they lived in camps in very desert-like areas.

5.2. Right to work

Labor laws in the host countries distinguish between nationals and foreigners with regard to the right to work. Iraqi refugees in the countries cannot earn their living and even if they work the wages they receive are less than the citizen workers wages and it is sometimes less than the minimum wage. In addition they are wrongly blamed in these countries of decreasing job opportunities for citizens. The situation in each country included in the study is as follows:

5.2.1. Turkey

Under Turkish law, anyone who holds residence permits for six months or more is allowed to apply for a work permit.¹³⁴ The 2006 Circular provides that asylum seekers be encouraged to get jobs. However, it must be noted that cities where they live do not have abundant job opportunities. Also, it is known that a significant percentage of employees work unregistered in Turkey.

5.2.2. Egypt

To have access to the formal employment market in Egypt, foreigners, including refugees, need to have work permits. The Labor Law n°. 12 of 2003 puts refugees on an equal footing with non-Egyptian residents of Egypt. The Ministry of Manpower and Emigration's Decree of 2003 capped the number of foreigners who could work in any establishment at 10% and a 2004 Decree exempted refugees (among other categories) from the non-competition with national requirements.¹³⁵

Several foreigners are given privileges related to employment and employment fee exemptions. Iraqis however, have no such privileges unless they invest substantial amounts in Egypt or join the Board of Directors of a company that operates in Egypt¹³⁶. They cannot work in the public sector

¹³¹ *Jordan Times* 26.8.2007; 14.9.2007, UNHCR, Jordan, 2007, *Year in Review*.

¹³² *Jordan Times* 4.2.2008.

¹³³ *Ibid*.

¹³⁴ See *World Refugee Survey 2008*, Egypt Section 17, p.5.

¹³⁵ Law n° 4817.

¹³⁶ Law n°. 56 of 1988 and Law n°. 8. of 1997.

without a permit. It is hence common for Iraqis to work in the private sector where wages are low, which is particularly frustrating to Iraqi refugees as most of those in Egypt are highly qualified professionals.

There is no doubt that the rules governing the employment of refugees in Egypt constitute a violation of Article 17 of the Refugee Convention.

5.2.3. Lebanon

The Lebanese Law ¹³⁷ requires that all foreigners, including refugees and asylum seekers, obtain a permit of work issued by the Ministry of Labour in order to work in Lebanon. Moreover, whoever possesses a work visa for a period not less than six months jointly with a work contract certified by the Notary public is granted a residence permit.

A permit is given for a specific job position, and it is abrogated whenever its holder changes employer. Its duration is one renewable year. The employer is penalized with a financial fine for recruiting a non-Lebanese without a prior work permit, and this is in accordance with Article 4 of the Law of Labour of 4 May 1968.

Free professions are only open to those who hold the Lebanese citizenship for no less than ten years, but it is possible for foreigners to practice these professions if their countries reciprocally allow Lebanese citizens to engage in such professions.

The fact is that most of the Iraqis in Lebanon are irregulars and as such they cannot or they don't want to show themselves to the Lebanese authorities. This results in their de facto deprivation of the right to work. The Memorandum of Understanding signed between UNHCR and the Lebanese General Security in September 2003 does not recognize the right to work for refugees, and it requires the UNHCR to provide them with economic and social assistance.

A small portion of Iraqis who regularize their status are employed in the formal sector, others cannot help but look for work in the black market sector. The available jobs in this market are usually in stores, free enterprise businesses, gas stations and the like. In these jobs Iraqis are exposed to harsh working conditions and are also vulnerable to abuse and exploitation by their employers.

5.2.4. Syria

According to Article 35 of the Syrian Labor Law n° 91 and its amendments a foreigner may not be employed unless he has a normal or particular permit of residency in Syria and a work permit issued by the Minister of Social Affairs and Labor. The worker who is in violation of the law is liable to both fine and imprisonment which can be extended to six months or only to one of these sanctions.

The work of foreigners in Syria is also governed by two ministerial Decisions issued by the Minister of Social Affairs and Labor in 2005. These two Decisions do not distinguish between foreign non-Arabs and citizens of Arab states. Both are in need of a work permit if they want to work in Syria, and they are considered irregular persons if they work without such a permit. Nevertheless, the Syrian law has no provisions dealing with the case of citizens of Arab states working in the country without a work permit.

Finally, according to the Minister of Interior Decision n° 30 of 2 March 2007 the residency permit does not entitle its holder to work in the country; a work permit issued by the Minister of social Affairs and Labor is needed.

¹³⁷ In particular, the legislative regulation no 17561 of 18 September 1964 concerning access of foreigners to work permit.

In practice, when Iraqis cross the borders, their passports are stamped banning them from working. Iraqis as other foreigners are not entitled to work in Syria without being legal residents in the country and procuring a valid work permit. Nevertheless, many end up working illegally in the country and the government does not forcefully enforce its own restrictions.¹³⁸

Work opportunities in Syria are scarce. With the exception of some highly skilled professionals and large investors, Iraqi refugees even when they can find a work are forced to accept comparatively lower wages.

5.2.5. Jordan

The Jordanian Constitution stipulates in Article 23 that work is the right of every Jordanian citizen and that the state provides opportunities for work to all citizens by directing and providing the national economy. Furthermore, Article 12 of the Jordanian labor law n° 8 of 1996 deals with the employment of non-Jordanian workers. It requires the approval of the Ministry of Labor (MOL) for any recruitment; approval that depends on the lack of relevant experience and ability among Jordanian workers.

According to the same provision, priority shall be given to Arab workers, but with no exceptions for refugees and asylum seekers.

Non-Jordanian workers must obtain one year renewable work permits given by the Ministry of Labor prior to his/her recruitment. The MOL charges the employer a fee for the issuance or the renewal of the permit.

Foreign workers who are in violation of the law are subject to cumulative fines and deportation outside the Kingdom at the expense of the employer; the deportees are not permitted to return until three years from the date of the deportation have passed¹³⁹.

Jordan applies stricter rules to the admission of foreign nationals for purposes of employment because of the socio-economic conditions prevailing in the country. The country reserves for its own local Labor force certain categories of employment, which involve the exercise of public functions and occupations connected with national security or defense.¹⁴⁰ The same is true for the "free professions", such as lawyers, doctors, dentists, engineers, etc.

Labor and social security laws apply to citizens and non citizens as well, but foreigners have no right to join unions.

Jordan is a party to the 1966 International Covenant on Civil and Political Rights which reserves political rights, including access to public service to citizens (Article 25). She is also a party to the International Covenant on Economic, Social and Cultural Rights (ICESR) of 1966 and to the Convention on Elimination of all forms of Racial Discrimination (CERD) of 1965. Both conventions prohibit discrimination against non-citizens in the field of work.

In regards to Iraqis, it is worth noting that the Memorandum of Understanding signed with the UNHCR on 15 April 1998 provided that a legal resident refugee could work "*for his own account whenever the laws and regulations permit*" (Article 8). The following Article adds that "*Refugees holding degrees recognized by the competent authorities could practice liberal professions if the laws and regulations permit*".

¹³⁸ K. O'CONNEL and K. NEWLAND, op.cit, p.13.

¹³⁹ See for more details: M. OLWAN , "Circular and Permanent migration: A Jordanian Perspective", *CARIM ASN,2008/34*, <http://www.carim.org/circularmigration>; see also from the same author; "Jordan: The legal dimension of International migration", *CARIM ASN 2006/1*, available at the same website.

¹⁴⁰ Article 43 of the By-Law on Civil Services no (3) of 2007.

In fact it is difficult for Iraqis with residence permits to work legally and virtually impossible for those without them. Nevertheless, a good number of professionals are issued work permits and allowed to work; Iraqi academics compete with their Jordanian colleagues and they are employed as professors at public and private universities alike.¹⁴¹

5.3. Right to health care

Iraqi refugees in the receiving countries do not have easy access to health care. Reasons behind this vary from one country to another.

5.3.1. Turkey

In Turkey cost of health care must be covered by the asylum seeker¹⁴². In case the person is financially unable to pay for health care or the UNHCR does not cover the cost, the police defer the asylum seekers to the social assistance solidarity foundations which are present in every city and run by the official authorities. These foundations provide a certificate which must be produced in hospitals. Costs are then covered by the foundations.

5.3.2. Egypt

To benefit from social security, non-Egyptians must be employed in Egypt for a period of ten years. Given Egypt's reservation to article 24 of the Refugee Convention refugees are excluded from the benefits of social Security. Primary and emergency health care is fully subsidized by UNHCR/CARITAS, yet secondary and tertiary health care is asserted on a case by case basis.¹⁴³ Furthermore, CARITAS covers up to 75% of the cost of medication. It is estimated that in 2007, 6,000 persons were provided with medical support and that more than 23,000 case were examined by medical practitioners.¹⁴⁴ However, due to the heavy demand on medical services, it is sometimes difficult to obtain assistance upon request and delays in the provision of services are common, which often leads refugees to make the necessary assignments for their own treatment in exchange for fees that exceed the amount of assistance that is usually provided by UNHCR/CARITAS. It is therefore not uncommon to hear that a refugee was not fully reimbursed for the costs he incurred for medical services.

5.3.3. Lebanon

Iraqi refugees in Lebanon are able to access health care, regardless of their status in the country. Most medical services in Lebanon are private, and refugees are treated in the private hospitals on the same basis as Lebanese citizens¹⁴⁵. Iraqis who could not afford private care sought health care, preferably, from small NGO supported programs. Furthermore, the Memorandum of Understandings signed between the Lebanese Government General Security Agency and the UNHCR requires the UNHCR to provide assistance to the refugees. Nevertheless, bureaucracy, the considerable number of Iraqi refugees, and the absence of procedures for medical emergency limit the efficiency of the humanitarian assistance and consequently the access of Iraqis to health services in Lebanon.¹⁴⁶

¹⁴¹ Human Rights Watch, "The silent treatment", *op.cit.*, p.57 .

¹⁴² 2006 Circular, paragraph 19.

¹⁴³ See, 1971 companies law as amended in 1988.

¹⁴⁴ *World Refugee Survey 2008- Egypt*, Section, V, A, p.6.

¹⁴⁵ Human Right Watch, "Rot here or Die there", *op.cit.*, p.57.

¹⁴⁶ Frontiers Association (Beirut), 2007, *Annual Report: refugee and Migrant protection in Lebanon in 2006*. [http://www.Frontiersassociation.org/pubs/frontiers % 20 2007 % 20% Annual. % 20 report. Pdf](http://www.Frontiersassociation.org/pubs/frontiers%202007%20Annual.%20report.Pdf).

5.3.4. Syria

Iraqis have the right to access health care facilities as Syrians, and this is regardless of their legal status in the country or registration with UNHCR. Nevertheless, few Iraqis thus far have availed themselves to the public hospitals which are overcrowded and not perfectly equipped whether in personnel or infrastructure. Private hospitals are expensive for most Iraqis, but on September 2002, UNHCR, WHO, UNICEF, UNFPA and WFP launched an appeal for \$84.8 million to help host countries- primarily Jordan and Syria - meet health and nutrition needs of Iraqi refugees¹⁴⁷. In addition in May 2007 the UNHCR and the Government of Syria signed an agreement (the fourth in the field of health care) to provide the Syrian ministry of health with aid to rehabilitate public hospitals, train medical staff, and furnish new medical equipment, including ambulances.¹⁴⁸ Under the agreement, Iraqi refugees who are unregistered with the UN Refugee Agency and are gravely ill can seek immediate assistance in the clinics of the Syrian Red Crescent. The UNHCR supports 80% of this health care costs while the patient is responsible for the remaining 20%.

5.3.5. Jordan

Iraqis have access to subsidized health care at public health institutions regardless of their residency status. However, if Iraqis want continued treatment they have to pay to access private hospitals. Iraqis often utilize the private sector health care system when they need medical care because they are apprehensive of approaching the public hospitals for fear of being identified as irregular and then arrested by the police. Most Iraqis cannot afford the expenses of medical care for hospitalization¹⁴⁹. Jordan is a party to the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966 and to the Convention on the Elimination of all forms of Racial Discrimination (CERD) of 1965, and to the Convention of the child (CRD) of 1989. All these Conventions guarantee the right of non-citizens to adequate standards of physical and mental health.

5.4. Housing

Iraqi refugees are concentrated largely in and around the capital and the region's largest cities of Jordan, Syria, Egypt and Lebanon. In all these countries Iraqis are wrongly blamed by the population for inflation including the rising prices of real-estate. In all these countries Iraqis are not living in camps, as Palestinian refugees, and Iranian Kurdish refugees have been, although they fled Iraq for the same reasons. It seems that creating refugee camps for Iraqis is considered undesirable in Jordan, Syria and Lebanon, because establishing them would be seen as an admission that the Iraqi presence, like the Palestinian one, is a long-term refugee problem.

Some wealthy Iraqis often buy apartments but most of them rent, which affects the demand and, consequently, increase the prices. In both cases their landlords take advantage of their irregular status.

It is worth mentioning, also, that Shi'a in the southern suburbs of Beirut host the highest concentration of Iraqis, since Iraqi Shi'a refugees find themselves more welcome and comfortable among their co-religionists than in other parts of Beirut or in the North of Lebanon.

Finally, the Lebanese Law n° 296 of 2001 amending the Law n°. 11,614 of 1969 prohibits foreigners from purchasing and owning real estate property, except after acquiring an authorization by the government upon a recommendation issued by the Minister of Finance.

¹⁴⁷ P. WEISS FARGEN, *op.cit.*, p.12 .

¹⁴⁸ <http://www.unhcr.org/cgi-bin/texis/vtx/iraq> Page= New & id – 46373 adf4 Accessed on 25. 08. 2008.

¹⁴⁹ Amnesty International, *Millions in flight: The Iraqi refugees crisis, September 24, 2007*; K. O'CONNEL, and K. NEWLAND, *op.cit.*, p. 16; Human Rights Watch, "The Silent Treatment", *op. cit.*, p. 67; Jordan Times 13. 2. 2008.

5.5. Freedom of Movement

Freedom of movement is guaranteed to all including foreigners residing in the receiving countries included in this study. But Iraqi refugees are treated as irregular migrants in these countries, and as such, they are constantly at risk of arrest. They, therefore, hesitate to leave their home or to identify themselves unless it is absolutely necessary. They also hesitate to approach UNHCR for registration, and the government authorities for assistance for fear of exposing themselves to arrest.

In **Lebanon**, due to security preoccupation, freedom is not fully guaranteed in the frontier zones in the south of Lebanon and in the Palestinian camps where prior authorization is required in order to visit these areas.

In **Turkey**, when the registration with the police is completed, the applicant for asylum is assigned to one of twenty six cities to live. Two of them are neighboring cities of Iraq: Hakkari and Sirnak. Khabur border gate is located in Sirnak. In the assigned city, the applicant is called to police centre sign-in regularly. Taking into account family ties and medical conditions of the applicant, the police can assign the applicant to live in another city upon request. It should be noted that the assignment cities list does not include big cities and metropolitans like Istanbul where applicants can find jobs. It is also possible to apply to the police for permission to leave the assigned city for a short period. If the application is successful, the police issue a temporary leave permit. The permission can be given for up to 15 days with the possibility of a further renewal of another 15 days by the police in the city where the applicant has gone. If the person travels out of the city without permission, he is regarded as an "escapee". Escape can result in prosecution (monetary fine and/ or imprisonment); only reasonable grounds that satisfy the police prevent prosecution.

In **Egypt**, many Iraqi refugees live in and around Cairo, with large concentration in the Sixth of October city.

5.6. Right to citizenship

Citizenship laws in Arab countries make it difficult for non-citizens to acquire citizenship, no matter how long they have lived in a given country. Children born of Iraqi parents continue to hold the citizenship of their parents and not their birthplace. A **Syrian, Lebanese, Jordanian or Egyptian woman** married to a no-citizen does not have the legal right to transmit her citizenship to her children. Iraqi husbands also, are not eligible to apply for the citizenship of their wives. The children and husbands are, however, entitled to residence permits.

In Turkey, birth in Turkish territory does not automatically confer citizenship either. However, if a child who was born in Turkey does not obtain a citizenship through his father or mother then he/she is Turkish citizen. A child at least one of whose parents is a Turkish citizen is deemed to be a Turkish citizen¹⁵⁰.

Persons with Turkish descent are given Turkish nationality upon only two years residence, instead of five. It is not always easy to prove "Turkish descent" which is in general, supposed to be supported by an official statement by a Turkish representative stationed in the country of origin. In the Iraqi case, documentation of Turkish descent is furnished by the Iraqi Turks' Association for Culture and Cooperation, an NGO established in 1959 in Istanbul. Overtime, many Iraqis have migrated to Turkey. Those who have Turkish descent, especially, have preferred to relocate to Turkey for historical and cultural reasons. They speak Turkish as their mother tongue, share the same faith and very similar cultural life. Their spouses and children are also entitled to Turkish citizenship on preferential terms.

¹⁵⁰ Ministry of Interior Circular no. 27525 of 22. 02, 1993.

5.7. Freedom of Religion

It is reported that the **Egyptian** government opposed a request by some Iraqis to build a Shiite mosque. Support for this decision can arguably be found on the basis of the Egyptians state's interest in public order and in international human rights law which allows restrictions on religious freedom in certain cases.¹⁵¹ Considering the predominantly Sunni character of the country, opening the door to public Shiite religious practices and possible activism might be thought to lead to various unwanted complications and conflicts between the Iraqi refugee communities and Egyptian society and State. The same reasoning is valid, in the case of **Jordan**, although Iraqi Shiites in this country perform the annual pilgrimage in the shrine of Jaafar Ben Abi Taleb in the southern town of Mazar.¹⁵²

The potential Shiite–Sunni divide may also be the reason behind the host countries position to ban the creation of Iraqi community–based organizations (CBOS). These countries have some concern that problems might arise if these organizations are established.

6. Non-Iraqi Refugees

Two main refugee groups in Iraq found themselves in a similar position of being both recognized refugees in Iraq and asylum seekers in Jordan and Syria are Palestinians and Iranian Kurdish.

6.1. Palestinian Refugees in Iraq

The presence of Palestinians in Iraq goes back to 1948 when thousands of Palestinians fled to this country from the violence accompanied the creation of the state of Israel and the expulsion of Palestinians from their homeland. Other smaller number of Palestinians arrived in Iraq following the Israeli Arab war of 1967 and the second gulf war in 1991. In total, around 34,000 Palestinian refugees used to live in Iraq before the United States–led invasion of Iraq in 2003 and the fall of the former regime. Most of these Palestinians were registered with UNHCR in Baghdad and held Iraqi travel documents.¹⁵³

Since the invasion, Palestinian refugees in Iraq have been subjected to gross human rights abuses and targeted by various military and armed groups. This situation has forced them to flee Iraq, seeking refuge in neighboring countries, and once again becoming refugees.

The UN Refugee Agency believes that the Palestinian refugees in Iraq may be decreased to 10,000–15,000 and estimates that around 3,000 Palestinians fled Iraq to the borders with Jordan and Syria of whom 776 need to be resettled.¹⁵⁴

Contrary to Iraqis to whom Syria and Jordan opened their doors at the beginning of the war, most Palestinians who fled to Iraq sought refuge at the neighboring countries borders of Syria and Jordan. This was the only alternative for these Palestinians after the refusal of their entry into their territory. In fact, except for the earliest arrivals in April 2003, they were unable to gain entrance to Jordan. Syria also took in 250 Palestinian refugees from Iraq, but since then closed its borders to them.

¹⁵¹ Article 18 (3) of ICCPR states, "Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety order, health, morals or the fundamental rights and freedom of others".

¹⁵² *Jordan Times*, 20. 1. 2008.

¹⁵³ <http://www.unhcr.org/cgi-bin/texis/vtx/news/onendoc.htm?thl=news&id=444e4ac24>. accessed on 25. 05. 2008 .

¹⁵⁴ <http://www.eurovoice.com>, accessed on 25.09.2008 .

6.1.1. *The situation of Palestinian refugees at the Jordanian– Iraqi borders*

To host refugees other than Iraqis, three camps were allocated, including two inside Jordanian territory at Al-Ruwaished and a third at Karama in the no-man zone between the Jordanian and Iraqi borders. Al-Ruwaished camp situated in a remote desert area in Jordan's far east, about 83 km from the Iraqi border, hosted more than 2000 people the first days of the war. The camp hosted the first Palestinians fleeing Iraq at the beginning of the war before Jordan decided to shut its borders completely to Palestinian asylum seekers for fear of attracting more refugees from the war-torn country. Over the past five years, most of the Sudanese, Somalis, Iranians, Kurdistan's Iraqis, and Palestinians have been resettled in third countries, including Scandinavian countries, Canada, New-Zealand, Australia, Ireland, and the United States. Others returned back to Iraq or to their countries of origin. Most Palestinians could not return to Iraq for fear of retaliation from Iraq armed groups and they could not return to their homeland from which they were forced to flee because Israel denies the right of Palestinian refugees to return to Palestine. Nevertheless hundreds of Palestinians married to Jordanian spouses have been allowed to settle in the kingdom. Finally, and after spending about five years languishing in the camp, the government of Brazil, in the framework of a deal between the Brazilian government and the UNHCR, generously accepted to resettle the 108 remaining Palestinians from Ruweished camp. The departure took place in three waves during September and October and the last remaining Palestinian left to Brazil though Amman airport on 5th of November 2007.

It is worth mentioning that the Palestinians were the first refugees from outside Latin America to benefit from the solidarity settlement program, adopted by 20 Latin America countries proposed as one of the durable solutions for refugees in 2004 Mexico plan of action.¹⁵⁵

6.1.2. *The situation of Palestinian refugees on the Syria-Iraq borders*

In addition to more than one million Iraqis who have sought refuge in Syria, around three thousands Palestinian refugees who lived in Iraq before the occupation have been stranded in three camps on or near the border between Syria and Iraq. Al-Tanf camp in the no-man's land between Iraq and Syria, Al Waleed camp just inside Iraq and El-Hol camp located in Hasekh Province in north eastern Syria. They were denied entry into Syria or temporally admitted into Syrian territory in the case of El Hol camp. This last camp hosted about two hundreds Palestinians fleeing Iraq and stranded near the Iraqi–Jordan borders that exceptionally allowed entry into Syria and transferred later on to El Hol camp.

On April and May 2008, Chile generously accepted to resettle some of the Palestinian refugees who sought refuge in Al Tanf camp in 2006, and this is in accordance of a resettlement plan sponsored by the Catholic Church and UN agency for refugees.¹⁵⁶

Finally a number of Palestinians who have been stuck on the Iraqi-Syria border for the late two years will be leaving in the coming weeks for Iceland and Sweden. Moreover, discussions are underway with the Sudanese government which offered on 30 August 2007 its readiness to host Palestinians fleeing Iraq and held up at the countries border with Syria and Jordan. It is worth noticing that the Sudanese offer comes from a country hosting the largest displacement population of the world.

Around two thousands Palestinian refugees are still living in the camp and in the other two camps along the Syria–Iraq border who cannot return to Iraq or enter neighboring countries¹⁵⁷. All three camps are entirely dependent on assistance from UNHCR and its partners mainly UNRWA, WFF, UNICEF, the Palestinian Red Crescent.¹⁵⁸

¹⁵⁵ UNHCR, Amman office, Jordan “Jordan 2007 year”, in *Review, achievements and developments*.

¹⁵⁶ *International Herald Tribune*, 5.4. 2008.

¹⁵⁷ <http://www.alarabiya.net/article/2008/08/or/5433.htm/>

¹⁵⁸ UNHCR, *Syria update*, May 2008.

6.2. Iranian Kurdish refugees on the Jordan-Iraq borders

A group of Iranian Kurdish refugees are still stuck in the Al Karama camp in the no-man's land between Iraq and Jordan, after being denied entry into Jordan. These refugees among others fled Iran to Iraq at the beginning of the Iran-Iraq war early 1980. They lived first in AL Tash refugee camp near Ramadi in western Iraq's Anbar province till 2005 when they decided to leave to the Jordanian border after being attacked by the insurgents. More than 650 Kurdish refugees were resettled abroad including in Northern Iraq but 190 of them remain in the camp. It is worth noticing that the UNHCR does not consider them refugees qualified for resettlement because it believes that they have an alternative durable solution in the Kurdish controlled parts of northern Iraq and do not need to resettle outside the region.¹⁵⁹

Conclusion

After five years of the US-led invasion of Iraq in 2003, nearly two million Iraqis remain in Syria, Jordan and other neighboring countries. Nearly an equal number of Iraqis are internally displaced and ten of thousands of Palestinian refugees are still trapped in Iraq and hundreds of them are still stranded at Syria and Jordan's borders with Iraq. The vast majority of these displaced had fled Iraq since the invasion.

The ultimate goal of refugee international law is to achieve one of the three durable solutions for refugees: voluntary repatriation, local integration, and third country resettlement. Resettlement opportunities are scarce because most of Iraqi refugees do not have any chance to be resettled to Europe and North America. Local integration opportunities are limited because host countries are not permanent refuge; they cannot afford a local integration for hundreds of thousands of Iraqi refugees and they are not inclined to offer them this possibility as a durable solution to their plight. Moreover, Iraqis cannot return home because the current security situation prevailing in Iraq makes return of Iraqis a risky endeavor.

Given the lack of safety and stability in Iraq, the UN Refugee Agency position is not to encourage Iraqis to return to their country. Living conditions in Iraq also make most Iraqis refugees choose to remain in the host countries. As the security situation remains volatile and unpredictable in Iraq, the prospect of large scale voluntary return of Iraqis to their country is not a possible or effective solution.

Assisted voluntary return may be a more effective way to promote return. But this solution requires in addition to the end of violence in Iraq, significant political progress there. Therefore, it will remain a long term objective.

Iraqis therefore, cannot return home or go elsewhere. This situation leaves them with the only option of remaining in the host countries. But these countries, fearful of a long-term nature of the Iraqi refugee crisis, are constraining the regular venues of movement of Iraqis. After a long policy of open borders, Iraqis willing to enter these countries and Iraqis residing already in them are more and more subject to closer scrutiny and to tightened visa regimes. Iraqis can become irregular migrants in the eyes of the local authorities and could be, therefore, subjected to different sanctions including the forced return to their country. Opportunities for Iraqis to enter these countries are decreasing and their right to seek asylum, therefore, is hindered.

There is no doubt that some progress has been made in areas of schooling and health care in the host countries, but Iraqis are still not allowed to work in these countries.

The countries included in the study played no direct role in creating the Iraqi refugee crisis and have no more responsibility than any other country. But a country like Jordan benefited from emigration in the past and is benefiting today from the inflows of refugees including the Iraqis.

¹⁵⁹ Human Rights watch, "The silent Treatment" p. 83; *International Herald Tribune*, 14.8. 2007; <http://english.peopledaily.com.cn/90001/62793.htm>. accessed on 28.8. 2008.

Moreover, tightening host country restrictions are associated in a country like Lebanon with high levels of irregular migration.

The attitudes of the host countries included in the study are not always in compliance with their international obligations vis-à-vis Iraqi refugees and with the protection needs and the special status they are entitled under international law or on behalf of international standards of fundamental rights protection. There is a need to adopt a different approach and to offer Iraqi asylum seekers and refugees the protection they are entitled to under international law. For this purpose, there is a need to amend the domestic laws and regulations on entry and stay of foreigners to exempt Iraqi asylum seekers and refugees from penalties for being in the country illegally. There is also a need to assist voluntary return of those willing to go back to their country and take more steps to integrate those who are not willing to do so. Since most Iraqis residing in the host countries choose not to return to Iraq at present, and since most of them are not offered resettlement in third countries, these countries have no option but to integrate the Iraqis into local society. Jordan, Syria and Lebanon should adhere to the 1951 Refugee Convention and 1967 Protocol, and the same countries together with Egypt need to adopt domestic refugee laws consistent with international refugee law.

Finally, the presence of such a large number of Iraqis in the host countries creates several challenges to these countries, which already suffer from limited resources. International solidarity is out of proportion with the Iraqi refugee crisis. Donor countries, UN agencies and NGOs provide humanitarian assistance that alleviate suffering of Iraqi refugees but is far from meeting the magnitude of the Iraqi refugee crisis. The industrialized countries response to the human crisis resulting from the war in Iraq is, thus far, wholly inadequate. The USA in particular has a responsibility towards displaced Iraqis and the countries hosting them. In order to enable the host countries meeting the needs to cope with the mass influx of Iraqis, the reaction of the international society to the humanitarian crisis of Iraqi refugees should be, therefore, more responsive. The Iraqi government should also be more engaged in supporting refugee population.

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