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IRAQI REFUGEES IN JORDAN: LEGAL PERSPECTIVE

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CARIM Analytic and Synthetic Notes 2009/22

Legal Module

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of immigrants, migration, and the movement
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Abstract

Jordan has traditionally been one of the most welcoming countries toward Iraqis in the Middle East. The country has received several flows of Iraqis in the last four decades, but most Iraqis residing in Jordan fled the precarious situation prevailing in Iraq following the US-led invasion of Iraq in March 2003. Jordan is not a party to the 1951 Convention on the Status of Refugees or the 1967 Protocol on Refugees, but Jordan cooperates with the United Nations High Commissioner for Refugees (UNHCR) and has helped with the implementation of a Memorandum of Understanding signed between the two parties in 1998. The provisions of this Memorandum are in many respects, similar to those of the 1951 Convention.

The focus of this study is the legal questions relating to those Iraqis residing in Jordan; and due to the scarcity of legal writing on the subject, it relies mainly on legal texts, both national and international, and to the Jordanian government's measures relating to this subject. The study has eight sections, they are as follows: entry of foreign nationals to the country; numbers of Iraqis in Jordan; entry restrictions; Non-Iraqi refugees, mainly Palestinians arriving from Iraq; the right of asylum in Jordan; temporary Protection Regime, expulsion and the *refoulement* of Iraqi refugees; as well as the living conditions of Iraqis in Jordan.

Résumé

La Jordanie a développé une tradition d'accueil à l'égard des migrants irakiens, elle en a accueilli plusieurs vagues au cours des quarante dernières années. Mais, aujourd'hui, la majorité des Irakiens présents sur son sol ont fui les troubles engendrés en Irak par l'invasion américaine de mars 2003. Bien que n'ayant pas ratifié la Convention des Nations Unies relative au statut des réfugiés (1951), les autorités jordaniennes coopèrent avec le Haut-commissariat aux Réfugiés des Nations-Unies (UNHCR) en vue de la mise en œuvre d'un Memorandum of Understanding convenu entre les deux parties en 1998. Memorandum qui en de nombreux aspects se rapproche des dispositions de la Convention de 1951.

Cette contribution est axée sur les aspects juridiques du séjour des Irakiens en Jordanie. En raison de la rareté de la doctrine sur ce sujet, elle s'appuie principalement sur les textes de loi, nationaux ou internationaux ainsi que sur les positions du gouvernement jordanien et les mesures prises dans ce domaine. L'étude est organisée en 8 sections : conditions d'entrée des étrangers; nombre d'Irakiens en Jordanie; limitations à l'entrée; les réfugiés non irakiens, soit essentiellement les Palestiniens d'Irak; le droit d'asile en Jordanie; le régime de protection temporaire; expulsion et refoulement à la frontière de réfugiés irakiens et finalement leurs conditions de vie en Jordanie.

1. Entry of foreign nationals to the country

The law on Residence and Foreigners' Affairs (law no 24 of 1973) stipulates the conditions under which a foreign national may enter the Kingdom. Thus, a foreign national will only be granted entry with a valid passport or travel document issued by his or her country and an entry visa. However the Minister of Interior may exempt any foreign national from the requirement that they should obtain a visa or carry a passport on entering the Kingdom (Article 4). Entry to the country should be via the Jordanian borders and crossing points, but may occur elsewhere due to *force majeure* (Articles 5 and 6 of the law).

The visas by-law no. 3 of 1997 specifies visa types, their duration, conditions and the procedures for granting them, exemptions from visa requirements and visa fees and any exemptions from such fees. This by-law defines two types of visa: i) a single- or multiple-visit visa and ii) a single- or multiple-transit visa. Visit or transit visas are valid for not more than two months and are issued by the Ministry of Interior. Visas issued by Jordanian diplomatic missions abroad are valid for a period of one month from the date of issuance (Article 3). Transit Visas are granted for a period of seventy two hours, starting on the date of entry to the Kingdom (Article 4). Visas are issued on payment of a fee, but specific categories of persons are exempt from payment. A foreign national may not be employed unless he or she has a permit to reside in the Kingdom, but here too the requirement may be waived in certain cases (Article 16 of the law no. 24 of 1973). A foreign national staying or wishing to stay in the country must obtain a residence permit and is to leave the territory of the Kingdom on expiry of their residence permit unless it is renewed (Art. 18 of the law). The Minister may, either grant or refuse a foreign national's application for a residence permit or cancel a residence permit already granted to this foreign national ordering them to leave the Kingdom without specifying the reasons behind that decision (Article 19). The Director of Public Security may authorize a foreign national's stay in the Kingdom for up to three months, a period that may be extended for up to six months. (Article 20). A residence permit is valid for one year and is renewable but the Minister may grant a residence permit for five years to a foreign national who has lived lawfully in the Kingdom for ten years (Article 22). The residence permit shall be granted to a foreign national if the competent authorities are satisfied as to the reasons justifying his or her residence, provided that the applicant is a person holding an employment contract, a person who has come to the Kingdom to invest capital in commercial or industrial ventures, or a student admitted to a Jordanian educational establishment (Article 26).

Conditions for admission for temporary purposes are more lenient than those required for permanent residence. Residence may be refused on the grounds of a criminal record, a lack of economic means, infectious illnesses, or any risk to public order and security.

The provisions of the Law on Residence and Foreigners' Affairs are not applied to different categories of persons including '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 resident permit fees (Article 30).

According to 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 preserves the security of the state and the Minister does not need to specify the reasons behind the expulsion.

A foreign national entering the country lawfully, but failing 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 nationals of states with historical or traditional links to the Kingdom such as Syria, Iraq, and Egypt¹.

2. Numbers of Iraqis in Jordan

Several thousand Iraqis came to Jordan after the first Gulf war (between Iraq and Iran) at the end of 1979. But the overwhelming majority of Iraqis currently living in Jordan and elsewhere fled their country after the second Gulf war in 1991 and afterwards the US-led invasion of Iraq in March 2003.

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

Many estimates of the number of Iraqis residing in Jordan have been offered 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 were at one time accepted².

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 that the true number of resident Iraqis was between 450,000 and 500,000 as of May 2007. The report also found that about 23 percent of the Iraqis residing in Jordan in May 2007 were already in the country before 2003; and the remaining 77 percent came after 2003. The largest number of Iraqis entered Jordan in 2005. This estimate was based on immigration statistics, on phone subscribers as well as on a household survey of Iraqis carried out in May by FAFO working together with the Department of Statistics³.

The number of Iraqis in Jordan naturally fluctuates up and down because of the large number of Iraqis who move in and out of Jordan. Nevertheless, FAFO's number is an enormous figure for a country of less than six million people, and if we add to this number the Palestinian refugees many of whom are registered with the United Nations Relief and Work Agency for Palestinian Refugees in the Near East (UNRWA), Jordan has the world's highest refugee to total population ratio⁴.

The main reason that Iraqi's have left their country include the poor security situation in Iraq particularly since the invasion in March 2003 as well as the desire for a better life and a better livelihood .

3. Entry Restrictions

Jordan used to have a very open immigration policy towards Iraqis, who were permitted to enter Jordan with only valid passports – no special visa was necessary. They were normally given a one-

¹ M. Y. OLWAN, "Jordan: the legal dimension of international migration", available on the Website of CARIM: www.carim.org.

² <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.*

³ FAFO, *Ibid*, p.7.

⁴ Human Rights Watch, *The Silent Treatment, Fleeing Iraq, Surviving in Jordan*, 2006, Volume 18, No. 10(E), p.19.

month visa at the border and they were able to register as visitors for a period of three to six months without though being able to work and the residence permits they received were subject to renewal⁵.

Jordan became restrictive about entry and stay in Jordan after terrorist bombings in three luxury hotels in Amman 9 November, 2005 which killed sixty people and which were carried out by Iraqi nationals. Since then the Jordanian authorities have turned away Iraqis at the border and issue visas there that are only valid for two to three days. Renewal of Iraqi residency permits also became far more difficult. These new measures increased the number of Iraqis who reside illegally in Jordan. Nevertheless the Jordanian authorities still give out one-year renewable permits to Iraqi students, employees and investors.

According to 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 per day. Iraqi families willing to go home will, therefore, find it difficult to do so because of the financial burdens imposed on them. The government usually gives illegal Iraqi residents a period of grace 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 fines⁶. However, it seems that the vast majority of Iraqis living in the Kingdom have not rectified their status because they do not wish to present themselves to the Jordanian authorities and because of their lack of finances. Therefore, their stay in the country remains illegal⁷. Nevertheless Jordan does not typically launch inspections campaigns to ensure Iraqis are abiding by residency and labor laws as it does do towards illegal foreign workers⁸. The fact is that Jordan does not systematically enforce immigration laws against Iraqis who overstay and generally speaking Jordan has followed a policy of considerable tolerance and leniency in enforcing immigration and work laws toward Iraqis residing in Jordan. This is not, granted, an official stance. It must also be said that there is some opposition to the Iraqi presence: especially because of the socio-economic hardships undergone by Jordanians owing in part to the large numbers of Iraqi refugees and the consequent increase in living expenses in Jordan.

Jordan is seeking to regulate the flow of Iraqis. Iraqis wishing to enter the Kingdom as of 1 May 2008, have needed a visa issued in advance. Due to the absence of an active Jordanian embassy in Iraq they have had to apply at the international courier TNT's offices in Iraq or through Jordanian missions in third countries. Under an agreement between the Jordanian government and TNT, the company accepts visa applications from Iraqis through its 13 offices in Iraq, processes them and forwards them to the Jordanian 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 (\$12.50)⁹. The majority of Iraqi visa applications have been granted since the new visa system came into effect at the beginning of the month as reported by Linda Hindi in the *Jordan Times*, 18 May, 2008. Most of these applications were approved, the Jordan News Agency Petra reported, quoting ministry officials. The Ministry of Interior accepted 927 applications from a total of 2,811 during the period of 1 May to 11 May, 2008. The bulk of applications were sent to Jordan from the 13 TNT post offices in Iraq.¹⁰

4. Non-Iraqi refugees arriving from Iraq

Two refugee groups in Iraq found themselves being both recognized as refugees in Iraq and asylum seekers in Jordan: Palestinians and Iranian Kurds.

⁵ P. WEIS FAGEN, *Iraqi Refugees: Seeking Stability in Syria and Jordan*, 2007, p.8.

⁶ *The Jordan Times*, 17.1.2008; 13.2.2008.

⁷ *The Jordan Times*, April 17th 2008. They have not rectified their status because they do not want to present themselves to the Jordanian authorities and because of the financial difficulties associated with status rectification.

⁸ M. Y. OLWAN, "Circular and Permanent Migration, A Jordanian Perspective", CARIM Analytic and Synthetic Notes 2008/34, available on www.carim.org/circularmigration.

⁹ *The Jordan Times*, 15.4.2008.

¹⁰ *The Jordan times*, May 13th 2008.

The presence of Palestinians in Iraq goes back to 1948 when thousands of Palestinians fled to this country from the violence which accompanied the creation of Israel. Around 30,000 Palestinian refugees lived in Iraq until the invasion of Iraq in 2003 and the fall of the former regime. Since then these refugees have been subjected to gross human rights abuses and targeted by Shia militias and by government forces. This situation led to Palestinian refugees in Iraq seeking refuge in neighboring countries, but except for the earliest arrivals in April 2003, they were unable to gain entrance to Jordan. Unlike those Iraqis to whom Syria and Jordan opened its doors at the beginning of the war, most fleeing Palestinians with Iraqi documents sought but did not receive refuge at the borders of Syria and Jordan.

To host non-Iraqi refugees three camps were set up, 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 kilometers from the Iraqi border, hosted more than 2,000 people in the first days of the war. The camp hosted the first Palestinians before Jordan decided to shut its border 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, Somali, Iranian, Kurdistan, Iraqi, and Palestinian camp residents have been resettled in third countries including the Scandinavian countries, Canada, New-Zealand, Australia, Ireland, and the US. Others returned to Iraq or to their countries of origin. Most Palestinians could not return to Iraq for fear of retaliation from Iraqi armed groups and they could not go to their homeland because Israel denies the right of return. Nevertheless, hundreds of Palestinians married to Jordanian wives have been allowed to settle in the Kingdom.

Finally, and after spending about five years languishing in Al Ruwaished camp, the Government of Brazil generously accepted to resettle the 108 remaining Palestinians. The departure took place in three waves during September and October and the last remaining residents left for Brazil through Amman Airport on 5 November 2007.

The Palestinians were the first refugees from outside Latin America to benefit from the solidarity settlement programs adopted by 20 Latin America countries, proposed as one of the durable solutions for refugees in the 2004 Mexico Plan of Action¹¹. With the evacuation of Al-Ruwaished, the camp, established after the US-led war in Iraq was closed.

On the other side, a group of 40 Iranian Kurdish refugees are still stuck in the Al karama camp in the no-mans land between Iraq and Jordan, and have also been denied entry to Jordan. These refugees fled Iran to Iraq at the beginning of the Iran-Iraq war in the early 1980s. They lived in a refugee camp near Ramadi in Iraq till 2005 when they decided to leave for the Jordanian border after being attacked by insurgents. More than 650 Kurds were resettled abroad including in northern Iraq, but 190 of them remain in the camp. It is worth noting that UNHCR does not consider them refugees because it believes that they have an alternative durable solution in Northern Iraq and do not need to be resettled outside the region¹².

5. The Right of Asylum in Jordan

The Jordanian Constitution of 1952 stipulates that political refugees shall not be extradited on account of their political belief or for their defense of liberty (Article 21).

¹¹ UNHCR, Jordan 2007, in Review, *Achievement and Development*. It is worth noticing that Sudan too announced on 30 August 2007 its readiness to host Palestinians fleeing Iraq and held up at the countries border with Syria and Jordan. The Sudanese offer comes from a country hosting the largest displaced population in the world, but it seems that this offer has been refused by the Palestinian refugees.

¹² Human Rights Watch, *The Silent Treatment" Fleeing Iraq, Surviving in Jordan*, November 2006, volume 18, No.10 (E), p. 83.

Jordan has never adhered to the 1951 Convention on the Status of Refugees or the 1967 Protocol which extends the provisions of the Convention. Moreover, Jordan municipal law is deficient as far as asylum is concerned. The country has provided no legal definition of refugees and has not established domestic policies for the determination of refugee status¹³. However, Jordan, because of its political and geographic position, has been exposed to constant migratory waves of Palestinian refugees since the creation of the state of Israel in 1948. In the aftermath of the second Gulf War in 1991 UNHCR opened its Amman Office in October 1991, largely to provide international aid and protection to Iraqi asylum seekers. Moreover, on 30 July 1997 Jordan signed a cooperation agreement with UNHCR which allows UNHCR to operate in the Kingdom to help refugees and other persons under its mandate, with the exception of Palestinian refugees (Article3)¹⁴.

A Memorandum of Understanding (MOU) between the two parties was signed on 5 April 1998¹⁵. The MOU 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 1966 Protocol, both of which relate to the status of refugees, but without the geographic and time limitations (Article 1 of the MOU).

Something similar has happened with the principle of non-refoulement, according to which no state shall refuse to admit 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 or her life or freedom could be threatened on the basis of race, religion, nationality, membership of a particular social group or political opinion (Art.2).

It was agreed that UNHCR would be allowed to interview asylum seekers who entered Jordan clandestinely and who are being held by competent authorities. UNHCR would make its determination within seven days save in exceptional cases requiring other procedures and even then the period would not exceed a month (Article3). Although Jordan is required to consider the establishment of a national mechanism for status determination (Article 14), this mechanism has not yet been established.

The two parties have agreed that asylum seekers and refugees should receive treatment as *per* 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 resettlement in a third country. The sojourn of recognized refugees should not exceed six months (Article5).

It is clear that Jordan rejects the principle of local integration though this is what all Iraqis, Palestinians and Kurds who fled Iraq want. However, in practice the Jordanian Government has shown great flexibility in applying Article 5 of the MOU, because recognized refugees sometimes remain in the country for a long time without being resettled. Only a small fraction of the most vulnerable and exposed Iraqis can realistically expect to be considered for resettlement to third countries. So far 10,177 refugees have been submitted to thirteen countries of which twelve countries are European and North American countries. Brazil is the only country outside these two continents to host refugees (107 persons)¹⁶. As of 1 December those who had left their host countries, for example, Jordan and Syria, for resettlement were only 4,575, a paltry 22 percent of referred cases. The number of

¹³ For more details on the right of asylum in Jordan see M. Y. OLWAN, "The institution of asylum in Jordan", in A. ALZAGAL (ed.), *The evolution of asylum and displacement: Legislation, protection, and practice*, Center of Refugee and displaced and forced displacement, July 2003, p.91; A. HASLA, "The legal status of refugee non Palestinian in Jordan", *Muat'a Journal for studies and Researches*, volume 21, No.3, 2006, p.231. Both articles are in Arabic.

¹⁴ The Agreement is Published in the *Jordanian Official Gazette*, No. 4228 on September 16, 1997.

¹⁵ The Memorandum is Published in the *Jordanian Official Gazette*, No.4277 on May 3rd, 1998, p.1463.

¹⁶ UNHCR, *Fact Sheet*, April 2008.

departures from Jordan as of the end of November 2007, was 1,534 refugees¹⁷. There are still tens of thousands of extremely vulnerable Iraqi refugees in the Middle East in need of resettlement. The fact is that 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. This explains how it is that the overwhelming majority of Iraqis residing in Jordan are not recognized as refugees by UNHCR.

According to the MOU, Jordan agrees to admit asylum seekers, including undocumented entrants and to respect UNHCR refugee status determination (RSD).

In many respects the MOU resembles the 1951 Convention, which has received world-wide acceptance. The Jordanian authorities defend their non-adherence to the Convention on the grounds of a possible expansion of the UNHCR mandate over the 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). And the position of the National Centre for Human Rights regarding the ratification of the Convention, which has been set out in many of its annual reports, is that there are no substantive legal obstacles preventing Jordan from adhering to the 1951 Convention.

6. Temporary Protection Regime (T.P.R)

Following the US-led invasion and in response to an anticipated exodus from Iraq, UNHCR decided to offer Iraqis in Jordan, Syria and Lebanon the possibility of registering with the U.N. Agency¹⁸.

The legal basis for the Temporary Protection Regime (T.P.R.) is a Letter of Understanding which UNHCR concluded with the Jordanian government on 15 April 2003. The purpose of the letter is to provide safe facilities for the temporary protection of 'beneficiaries,' who are 'persons in urgent need of humanitarian assistance caused by possible hostilities'.

For this purpose the parties agreed on the establishment of a center in the border area. This centre would provide accommodation to Iraqi and other nationals in need of temporary protection pending longer-term, more durable solutions, in particular safe return to their country of origin or habitual residence or resettlement in third countries (Article 2 of the Letter). 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' (Article 2). 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 on the temporary protection regime initiated by UNHCR¹⁹.

UNHCR, nevertheless, continues to issue asylum-seeker cards and renew them every six months. The Jordanian authorities give no weight to these documents for residency purposes, but they do always notify the United Nations Refugees Agency in the case of the arrest for deportation of an asylum-seeker card holder, and they give the Agency access to conduct a refugee status determination (RSD) to examine any refugee claim²⁰.

¹⁷ *The Jordan Times*, December 14th, 2008.

¹⁸ Human Rights Watch, *The Silent Treatment*, *op.cit.*, p.43.

¹⁹ *Ibid.*

²⁰ Human Rights Watch, *The Silent Treatment*, *op.cit.*, p.43.

Protection services provided to persons registered with UNHCR include legal counseling, intervention in the case of detained individuals and the submission of the most vulnerable cases for resettlement²¹.

As of 1 January, 2008, UNHCR has registered 52,078 individuals (of whom 51,191 were Iraqis)²², and as of 17 April 2008, UNHCR has cumulatively registered over 54,000 individuals in its active files. While Iraqis are by far the largest group, (52,997) UNHCR also assists many other nationalities including Syrian and Egyptian individuals²³. These numbers mean that UNHCR has registered only a small fraction (about 10%) of the total number of the estimated Iraqi population in Jordan. The vast majority of Iraqis have neither registered as asylum seekers nor been recognized as refugees.

7. The Expulsion and Refoulement of Iraqi Refugees

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 refugee²⁴. 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'. State practice indicates that Article 32 does not apply to refugees who are in a state unlawfully, that is without authorization. The protection of Article 32 (1) is not restricted to those formally recognized as refugees and, as in the case of non-refoulement, the prohibition of expulsion does not presuppose the formal recognition of refugee status. The decision to expel a refugee, the same as any alien, can 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 to seek admission into another country (Article 32 (3) of the 1951 convention).

Article 33 (1) of the Convention Relating to the Status of Refugees states that '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 their 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 recognized as refugees'. The practical effect of non-refoulement is that states give limited but critical protection to refugees in the form of temporary refuge.

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

Yet Jordan is accused of regularly deporting Iraqis, even those registered with UNHCR, and those who overstay their visa, after having detained them for up to a week. The Kingdom is also accused of turning back Iraqis at the frontiers without giving them any opportunity to make refugee claims²⁵. These

²¹ UNHCR Branch Office Amman, 2007, in Numbers, p.1.

²² UNHCR Jordan, 2007, in Review, *Achievements and Developments*, p.2.

²³ UNHCR Jordan, *Fact Sheet*, April 2008.

²⁴ See for more details L. B. SOHN and T. BUERGETHAL (ed.), *The Movement of Persons Across Borders*, The American Society of International Law, Washington, 1992, p.89.

²⁵ Human Rights Watch, *The Silent Treatment*, *op.cit.*, p.24, 33.

accusations reported in 2005 were shown to be based on fact in the following year and they contravene not only International Customary law prohibiting refoulement of refugees but also the MOU.

Iraq still lacks good security and decent living conditions, and to force Iraqis to return to their country arguably amounts to a violation of the principle of non-refoulement²⁶.

Expulsion or deportation orders are administrative decisions and as such they are subject to judicial review before the High Court of Justice within 60 days of their issuance in accordance with law no. 19 of 1992 relating to the High Court of Justice. But few deportees ask for a review and, in any case, lawsuits against decisions of the Ministry of Interior in matters relating to residency have proved, as with lawsuits over citizenship, to be of no use²⁷.

Nevertheless, it seems that the vast majority of Iraqis admitted into the territory, were granted at least temporary asylum, and protected from refoulement. The departure from the principle is then exceptional. Jordan usually denies any intention of violating the basic principle of non-refoulement to which it is committed by the MOU with UNHCR.²⁸

It is worth mentioning that Iraqi deportees choose Syria or Yemen if they fear returning to their country. Furthermore Jordan notifies UNHCR if an asylum seeker card holder is detained for residency violations and allow UNHCR staff to visit him or her in the detention center for the purpose of refugee status determination (RSD). Asylum seekers in detention are held in a single detention center in order to accelerate the refugee status determination (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 determined²⁹. Finally, the Jordanian authorities have tolerated the stay of Iraqis beyond the maximum stay of six months, on the basis of the MOU, especially those who are classified by UNHCR as asylum seekers, and they have tolerated stays too beyond the expiration of a visit permit.

Jordan denies that Iraqis residing in the country are refugees because they do not, Jordan insists, meet the criteria of refugees as set out in the 1951 Refugee Convention. Instead Jordan describes these Iraqis as 'guests' or 'temporary residents' or even 'illegal aliens'. But Jordan is bound by UNHCR's status determination process. If UNHCR declares someone as a refugee, that person has to be recognized as a refugee by the Jordanian authorities.

Iraqis are foreigners by legal definition, but they are not considered as such by the Jordanian authorities or by the Jordanian people. When they arrive to the airport and at border crossing points they are channeled into the line for Arabs and not into the one for foreigners.

The Jordanian point of view is shared by UNHCR and by the Iraqis themselves. Most Iraqis residing in Jordan have not approached UNHCR and have not requested refugee status. A small fraction of Iraqis have been recognized as refugees by UNHCR. So far, a total of 10,177 individuals have been referred for resettlement and are currently awaiting a third country to host them³⁰. In 2003 UNHCR initiated the Temporary Protection Regime and in practice it suspended refugees status determination. Only about 50,000 Iraqi are registered with UNHCR as asylum seekers and have been provided with an asylum seeker card. The remaining Iraqis living in Jordan have no connection with UNHCR. It is also worth noting that Iraqi officials have expressed their satisfaction that Jordan does not consider Iraqis in the Kingdom as refugees. They are of the opinion that the Jordanian position

²⁶ *Ibid*, p. 33. *The Jordan Times*, 12.12.2007.

²⁷ N. ELKATIB, *The General Principles of the High court of Justice between 1972 – 1997*, Amman, Daralthaqafa, pages 12, 17, 330.

²⁸ <http://www.amnesty.org> April 26th 2008.

²⁹ A. HALASA, "Refugee Protection in Jordan", local focus, available at the Website RSDWatch.org, 4/26/2008.

³⁰ UNHCR Jordan 2007, in Review, *Achievements and Developments*; UNHCR, *Fact Sheet*, April 2008.

prevents other countries from poaching qualified, skilled and educated Iraqis who will be needed to rebuild Iraq³¹.

8. Living conditions of Iraqis in Jordan

Living conditions for Iraqis in Jordan are governed by national law, bilateral agreements signed with UNHCR, international human rights conventions and general international law.

Education

Prior to the 2006-2007 school year, foreign children, included Iraqis, were not allowed to attend public schools. Only those holding residency permits were allowed to enrol in private schools³².

As a result only about 14,000 school-age Iraqi children were enrolled in Jordanian schools during the 2005/2006 school year and between 18,000 to 19,000 students were enrolled in public and private schools in the 2006/2007 school year; a small proportion when it is remembered that about 200,000 Iraqi children reside in the Kingdom³³.

7 August 2007 the Ministry of Education decided to allow school-age Iraqi children to enrol henceforth in both public and private schools in the Kingdom regardless of their residency status. The Ministry predicted that public schools would accommodate around 50,000 new Iraqi students, but the number of the Iraqi students enrolled was below expectation. In fact as of September 2007 only 22,000 Iraqi children had been registered³⁴.

Different factors could be slowing down the enrollment process including the fact that Iraqi families who have overstayed their visas live in fear that they will be caught and sent back to their country and, therefore, are reluctant to enrol their children in Jordanian schools. The low turnout is also attributed to the fact that many Iraqi children work in Jordan, and to the fact that many families cannot pay fees for primary or secondary schools. In any case, a total of 24,000 Iraqi students are enrolled in public and private schools across the Kingdom³⁵. Of that figure 6,000 are in private schools³⁶. This means that the vast majority of Iraqi children that are of a school age are now receiving education³⁷. The survey of FAFO found that 'there is a group of Iraqi children who are not attending school even though they are within school age'. The survey added that, of a total population of Iraqi children between 6 and 17, 78 percent are currently enrolled in school (including both public and private education facilities)³⁸.

It is also worth noting that the Palestinian children who used to live at Ruwaished Camp did not receive an adequate education³⁹. This is also the case with the Iranian Kurds who lived and still live on the border between Iraq and Jordan. Unlike the Iraqis in Jordan who live in urban areas and specially

³¹ *The Jordan Times*, 12.12. 2007.

³² *The Jordan Times*, March 22, 2006.

³³ This number is an estimate since there is so much movement and little official registration. It is worth noting that according to a UNHCR press statement the correct number is about 375,000.

³⁴ *The Jordan Times* 26.8.2007; 14.9.2007; UNHCR, Jordan, 2007, in Review, *Achievements and Developments*.

³⁵ But it may be that the actual number of Iraqi families who found refuge in Jordan is lower than official estimates – Figures available are to be used with caution.

³⁶ *The Jordan Times* 4.2.2008; see other figures in FAFO, *op.cit.*, p.21.

³⁷ *Ibid.*

³⁸ FAFO, *op.cit.*, p.21.

³⁹ FAFO, *op.cit.*, p.21.

in big cities, the Palestinian refugees and the Iranian Kurds who fled Iraq were not permitted to cross the borders and they lived in camps, in very desert-like areas.

The fact that the 1952 Jordanian constitution guarantees free primary education in government schools (Article 20) to nationals does not mean that foreign children are not allowed to attend schools in Jordan. It should be remembered too that Jordan is a party to the 1989 Convention on the Rights of the Child (CRC) which provides, in Article 28, for 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 Jordan⁴⁰. However, an amendment in the Jordan Constitution to reflect its international commitments is unlikely.

Right to Work

The Jordanian Constitution stipulates in Article 23 that every Jordanian citizen has a right to work and the state provides opportunities for work to all citizens by directing the national economy. Furthermore, Article 12 of the Jordanian Labor Law no 8 of 1996 deals with the employment of non-Jordanian workers. It requires the approval of the Ministry of Labor for any recruitment among foreign workers; 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.

Non-Jordanian workers must obtain a work permit given by the Ministry of Labor (MOL). The period of the permit, that is renewable, is one year. The MOL charges the employer a fee both for issuance and for any subsequent 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 for three years after the date of deportation⁴¹.

Jordan applies stricter rules for the admission of foreign nationals for purpose of work because of the socio-economic conditions prevailing in the country. This is why certain categories of employment such as the public and government sectors, the free professions, and occupations connected with national security and defense are reserved for Jordanian nationals.

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

In regards to Iraqis it is worth noting that the MOU signed with UNHCR 15 April 1998 provided that a legally resident refugee could work 'for his own account whenever the laws and regulations permit' (Article 8). The following article adds that '[r]efugees holding degrees recognized by the competent authorities could practice liberal professions if the laws and regulations permit'.

Jordan is a party to the International Covenant on Economic, Social and Cultural Rights (ICESR) of 1966 and to the Convention on the Elimination of all Forms of Racial Discrimination (CERD) of 1965. Both conventions prohibit discrimination against non-citizens in the field of work⁴².

⁴⁰ Human Rights Watch, *Silent Treatment*, *op. cit.*, p.62.

⁴¹ See for more details: M. Y. OLWAN, "Circular and Permanent migration: A Jordanian Perspective", available at the CARIM website, www.carim.org/circularmigration; see also by the same author; "Jordan: The legal dimension of International migration", available at the same website.

⁴² Human Rights Watch, *The Silent Treatment*, *op.cit.*, p.57.

In fact, Iraqis are not denied the right to work in Jordan. A good number of professionals are issued work permits and allowed to work; others, meanwhile, work illegally. Nevertheless the participation of Iraqis residing in Jordan in the labor market is still low in comparison to that of Jordanian Nationals.

Health Care

There are two public hospitals and twenty private hospitals in Jordan. Iraqis have access to subsidized health care at public health institutions regardless of their resident status. However, if Iraqis want continued treatment they have to pay for private hospitals. Iraqis often utilize the private sector health care system when they need medical care. Most Iraqis cannot afford the expenses associated with hospitalization⁴³. 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 the Convention of the Child (CRC) of 1989. All these Conventions guarantee the right of non-citizens to an adequate standard of physical and mental health.

Religious Freedom

Iraqi Shiites perform the annual pilgrimage to the shrine of Jaafar Ben Abi Taleb in the southern town of Mazar⁴⁴.

Housing

In regards to housing, Iraqis in Jordan do not live in camps in the way that Palestinian refugees and Iranian Kurdish refugees. They often find apartments to rent and buy.⁴⁵

Conclusion

Iraqis willing to enter Jordan and Iraqis already residing in the country are increasingly subject to scrutiny. Iraq owing to the precarious situation in the country, benefits from the migration of its citizens to Jordan and other neighboring countries.

Iraqis whether they are in need of international protection or simply searching for a better life claim to be asylum seekers or refugees in the hope of acquiring the right to a temporary or permanent stay in Jordan and most of them do not approach UNHCR when they are in Jordan. They can become irregular migrants in the eyes of the Jordanian authorities and they could therefore be subjected to a forced return to their country. This attitude of the Jordanian authorities is not in compliance with the international obligations of the Kingdom and with the protection needs and the special status that irregular migrants are entitled to under International Law. It is, therefore, recommended that the Jordanian government provide Iraqis residing in Jordan with access to regular migration channels, assist the 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 Jordan choose not to return to Iraq, and since most of them are not offered resettlement in third countries, the Jordanian Government has no option but to integrate those Iraqis into Jordanian society.

⁴³ Amnesty International, *Millions in flight: The Iraqi refugee crisis*, September 24, 2007; K. O'DONNELL and K. NEWLAND, *The Iraqi Refugee Crisis: the Need for Action*, Washington, DC, Migration Policy Institute, 2008 p. 16; Human Right Watch, *The Silent Treatment*, op.cit, p.67; Jordan Times 13.2.2008.

⁴⁴ *The Jordan Times*, 20.1.2008.

⁴⁵ Human Rights Watch, *The Silent Treatment*, op. cit, p. 65.