

# IRAQ'S DISPLACED: WHERE TO TURN?

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## INTRODUCTION

Refugees and internally displaced persons (IDPs) are hardly a new phenomenon for Iraq. Under Saddam Hussein's long and brutal rule, forced displacement was a deliberate state policy. Expulsions were used as a tool to subdue recalcitrant populations and punish political opponents. The main victims were the Kurds -- Iraq's largest minority which staged repeated rebellions -- and the Shi'a majority, many of whose members opposed the regime, including hundreds of thousands of Marsh Arabs. Saddam Hussein also expelled more than 100,000 Kurds as well as members of the smaller Turkmen and Assyrian (Christian) minorities from the oil rich Kirkuk region in an effort to 'Arabize' the area. In all, close to one million people were internally displaced in Iraq when the United States invaded in 2003.<sup>1</sup> Another one to two million Iraqis lived abroad fearing persecution should they return. In fact, Iraq was one of the largest refugee-producing countries in the world prior to the US entry on the scene.<sup>2</sup>

The US invasion and the toppling of Saddam Hussein, far from resolving the problem however, made it worse. It catapulted the country into a near civil war between Shi'a, who had largely been excluded by Saddam Hussein's regime, and Sunnis who until then had dominated the government. Intense and bloody sectarian violence, combined with coalition military action, fighting among Shi'a militias and between the government and the Mahdi army as well as generalized violence and criminality caused massive uprooting. In 2007, some 60,000 Iraqis were reported to be fleeing their homes each month. New displacement diminished sharply in 2008 as overall security improved in Iraq. But together with those who had been displaced earlier, some fifteen to twenty percent of the Iraqi population -- or 4.7 million people out of a total of 27 million -- remained displaced. Of this total, 2.7 million (10 percent of Iraq's population) are inside the country while some 2 million are abroad, mostly in neighboring countries.<sup>3</sup>

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<sup>1</sup> An estimated 600,000 to 800,000 were displaced in the north of the country and an estimated 300,000 in the center/south. See Roberta Cohen and John Fawcett, "The Internally Displaced People of Iraq," Saban Center, Brookings Institution, Memo #6, November 20, 2002; and John Fawcett and Victor Tanner, *The Internally Displaced People of Iraq*, Brookings-SAIS Project on Internal Displacement, An Occasional Paper, October 2002.

<sup>2</sup> U.S. Committee for Refugees, *World Refugee Survey 2000*, Washington DC, pp.5, 185; and *World Refugee Survey 2002*, Washington DC, pp. 5, 170.

<sup>3</sup> The International Organization for Migration estimates 2.7 million IDPs, see IOM Emergency Needs Assessments, Bi-Weekly Report, 15 March 2008. The UN High Commissioner for Refugees estimates 500,000 to 700,000 refugees in Jordan (down from original estimates of one million) and up to 1.5 million in Syria, see [www.unhcr.org/iraq/html](http://www.unhcr.org/iraq/html), although the numbers are disputed. NGOs like the Danish Refugee

Today's displaced Iraqis are not viewed as sympathetically around the world as those persecuted and uprooted by Saddam Hussein.<sup>4</sup> One reason is that they are seen as a problem largely of America's making and one that America should therefore 'fix.' The US' failure to establish security in the country after its invasion or prepare effectively for the country's reconstruction is considered a major reason for the chaos and violence that caused the mass displacement. Many donor governments as a result have been reluctant to fully share the burden of Iraq's displaced, believing the United States should foot most of the bill together with the government of Iraq, which over the past year has been able to accumulate considerable oil wealth. Nor have they been overly forthcoming in resettling Iraqi refugees or in offering funds to the governments of Jordan and Syria which house most of the refugees.<sup>5</sup>

The government of Iraq's attitude toward its displaced population has contributed to this international unwillingness to extend needed support. Even though Iraq's budget surplus from oil revenues is projected to be \$79 billion by the end of 2008, the Shi'a-dominated government of Nuri Kamal al-Maliki has delivered only minimal amounts of funding to neighboring states for the refugees.<sup>6</sup> Some believe it is because many of the refugees are Sunni and Christian or because the refugees humiliated the government by departing. Still others argue that support for the refugees will discourage their returning home. Nor has the government been forthcoming with support for its internally displaced population, again dampening other countries' willingness to contribute.

US government fear of terrorism after September 11 has also cast a shadow of suspicion over Iraq's displaced. Alarm bells are constantly raised that some Iraqi refugees could be associated with terror cells whereas others could become potential terrorists if they

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Council and FAFO have said the figures are lower (in particular, less than one million in Syria), suggesting that the governments concerned have provided inflated figures to the international community. An additional 200,000 Iraqis can be found in the Gulf States, 130,000 in Egypt, 50,000 in Lebanon, and 57,000 in Iran. See Kenneth H. Bacon & Kristele Younes, "Outside and Inside Iraq's Border, a Forgotten Exodus," *Washington Post*, January 20, 2008. For the decrease in 60,000 fleeing each month, see Written Statement of L.Craig Johnstone, Deputy High Commissioner of UNHCR, before the House Committee on Foreign Affairs Subcommittee on International Organizations, Human Rights, and Oversight and the Subcommittee on Middle East and South Asia, February 26, 2008.

<sup>4</sup> The US and its allies, for example, set up a no fly zone at the end of the Gulf War in 1991 to protect displaced Kurds from Saddam Hussein's wrath. In 1996-7, the US rescued 6,600 Kurds from northern Iraq in Operation Pacific Haven and resettled them in the US, see Department of Defense, [www.globalsecurity.org/military/ops/pacific\\_haven.htm](http://www.globalsecurity.org/military/ops/pacific_haven.htm)

<sup>5</sup> Sweden has been an exception, taking in more than 25,000 in 2006-2007. From 2006-June 2007, Greece, the Netherlands, Germany and the UK took in small numbers although more than the United States (Greece, 4,900; the Netherlands, 3,327; Germany, 2882; and the UK, 1,970), see Kelly O'Donnell & Kathleen Newland, "The Iraqi Refugee Crisis: The Need For Action," Migration Policy Institute, 2008, pp. 3, 22.

<sup>6</sup> Iraq last year pledged \$25 million for refugees in 2008 (\$15 million for Syria, \$2 million for Lebanon, and \$8 million for Jordan), see Walter Pincus, "Iraq's Slow Refugee Funding Has Ripple Effect," *Washington Post*, May 17, 2008. For Iraq's increasing oil revenues, see James Glanz & Campbell Robertson, "As Iraq Surplus Rises, Little Goes Into Rebuilding," *New York Times*, August 6, 2008. For funding for IDPs, see below note 106.

remain displaced without assistance for long periods.<sup>7</sup> Although the UN High Commissioner for Refugees (UNHCR) and US Embassies in the area have identified 24,000 vulnerable Iraqis for resettlement in the United States, the Department of Homeland Security (DHS) has subjected them to such intense screening that resettlement has been excruciatingly slow and the number admitted excessively small – fewer than 6,000 of the Iraqis who fled since 2003.<sup>8</sup> The extensive delay even prompted the American Ambassador to Iraq to complain to Washington about the failure to expedite for resettlement the Iraqis who have worked for the US government.<sup>9</sup> By contrast, the victims of Saddam Hussein fared much better in gaining admission to the United States; in the past, the US resettled 37,000 Iraqi refugees fleeing that regime.<sup>10</sup>

Neighboring states, which to their credit have taken in up to 2 million Iraqis, also share fears that the refugees could bring their home grown ethnic and religious struggles to their countries of asylum. In Jordan, in November 2005, three Iraqi nationals recruited by al-Qaeda entered Jordan and blew themselves up at Amman hotels killing 60 people. Although this violent incident did not involve the ‘refugees’ *per se*, Jordan subsequently began to bar from entry Iraqi men from the ages of 18 to 35 and there have been repeated warnings that large numbers of Iraqi refugees could represent a security threat to the region. Displaced men and women desperate for funds, it is argued, could easily fall prey to militant groups. In fact, the Iraqi refugee situation is often compared to the worst refugee case studies (e.g. Afghanistan) in which refugees paid and armed by third parties undertook *jihad* against their countries.<sup>11</sup>

The Palestinian refugee problem has further affected how Iraqi refugees are seen and at times has undermined a willingness to help the Iraqis. For sixty years, Arab countries have borne the brunt of the Palestinian refugee crisis and are therefore mindful of the consequences of accepting large numbers of refugees for long periods. “Adding another large refugee population could seriously undermine the viability of a key US ally in the Middle East,” commented one Middle East specialist, when speaking of Jordan.<sup>12</sup> Although both Jordan and Syria have been widely commended for admitting large numbers of Iraqis, Jordan began to restrict entry at the end of 2006 while Syria began to

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<sup>7</sup> See for example Daniel Byman & Kenneth Pollack, *Things Fall Apart: Containing the Spillover from an Iraqi Civil War*, Brookings Institution, 2007. The Department of Homeland Security has expressed the fear that “terrorists will seek to infiltrate” the resettlement program if procedures are weakened and large numbers are put in the pipeline, Interview of author with Amelia Templeton of Human Rights First, March 3, 2008.

<sup>8</sup> The total of 6,000 does not include the backlogged cases of those who fled the Saddam Hussein regime and who were still being admitted up to May 2007. Interview of author with Amelia Templeton of Human Rights First, May 14, 2008.

<sup>9</sup> Spencer S. Hsu & Robin Wright, “Crocker Blasts Refugee Process,” *Washington Post*, September 17, 2007. The US brought in 429 Iraqi translators and interpreters plus their family members in FY 2007 and 318 plus their family members in FY 2008 (as of April), see “US Humanitarian Assistance for Refugees and Internally Displaced Iraqis,” Office of the Spokesman, Department of State, April 15, 2008. Although a new law provides for admission of 5,000 each year, the law has not yet been implemented.

<sup>10</sup> Statement by Lawrence E. Bartlett, Department of State, “Iraq: the Human Cost of War,” Georgetown University, Institute for the Study of International Migration, March 21, 2007.

<sup>11</sup> Byman & Pollack, *supra* note 7, at 23-4.

<sup>12</sup> Interview of author with David A. Korn, January 24, 2008.

restrict entry in the fall of 2007. The two governments, it is feared, could in time deport the refugees back to Iraq or make life so untenable for them that they will have no choice but to return. By now, eight to twelve percent of the populations of Jordan and Syria have become Iraqis.<sup>13</sup>

Particularly unacceptable to both governments is the entry of Iraqi Palestinians. Jordan, already 70 percent Palestinian because of the Palestinian influxes of 1948 and 1967, has refused entry to Iraqi Palestinians, while Syria since 2006 has sought to bar their entry as well. After considerable negotiations, Syria did allow into a camp in its northeast those stranded on the Iraqi-Jordanian border, but other Palestinians were denied entry and remain in Al Tanf, a camp in a no-man's land between Syria and Iraq, as well as in a camp on the Iraqi side of the border.<sup>14</sup> Syria has now begun to deport hundreds of Iraqi Palestinians to Al Tanf.<sup>15</sup>

The perilous situation Iraq's more than 4 million displaced persons face is sometimes presented as a *temporary* problem, especially when filtered through the positive political prism of the Bush Administration. The return of tens of thousands of refugees since mid-2007 has been cited as evidence of an improved security environment, made possible by 'the surge' (the addition of 30,000 US troops to the 130,000 already there).<sup>16</sup> But when analyzing the returns more closely, UNHCR found that most of the refugees returned because their resources or visas ran out in Syria and Jordan.<sup>17</sup> Moreover, many of those who returned could not for security reasons reclaim their homes or found them damaged beyond repair. Nor could they find jobs or basic services. Some as a result went back to Syria, while most others became displaced inside the country.<sup>18</sup> Iraqi government authorities have acknowledged that they do not have sufficient capacity for handling returns.<sup>19</sup> In the words of one Middle East expert: "It would not be surprising if, 20 years from now, millions of Iraqis still lived outside their home country."<sup>20</sup>

Taking into account the unique situation in which Iraq's refugees and IDPs find themselves, this article examines the problems facing the displaced, the different solutions being proposed and possible ways forward.

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<sup>13</sup> See Bacon & Younes, *supra* note 3.

<sup>14</sup> Ashraf al-Khalidi, Sophia Hoffmann & Victor Tanner, "Iraqi Refugees in the Syrian Arab Republic: A Field-Based Snapshot," Brookings-Bern Project on Internal Displacement, June 2007, pp.14-15.

<sup>15</sup> Interview of author with UNHCR official, February 29, 2008.

<sup>16</sup> Integrated Regional Information Networks (IRIN), "Iraq-Jordan: Few Iraqis returning home," 10 December 2007; and "Syria: Not safe enough for Iraqi refugees to return – UNHCR chief," 14 February 2008.

<sup>17</sup> Integrated Regional Information Networks (IRIN), "Iraq-Syria: Starving to survive," 2 January 2008; and UNHCR, "Iraq government busses refugees home from Syria," November 28, 2007.

<sup>18</sup> Interview of author with UNHCR official, January 28, 2008.

<sup>19</sup> See Abed Al-Samad Rahman Sultan, "An unenviable task," *Forced Migration Review*, June 2007, p. 17; Integrated Regional Information Networks (IRIN), "Iraq: Parliament committee demands fixed budget to aid the displaced," February 11, 2008; and "Iraq: More government money for IDPs, refugees," 14 February 2008.

<sup>20</sup> Daniel L. Byman, "The Next Phase of the Iraq War," *Slate*, November 29, 2007.

## THE REFUGEE CRISIS

The flight across borders of some 2 million Iraqis, especially in 2006-7, has been described as “the world’s fastest growing displacement crisis”<sup>21</sup> and the largest in the Middle East since the Palestinian exodus. It is estimated that there are some one million Iraqi refugees in Syria, 500,000 to 700,000 in Jordan and more than 400,000 in other neighboring countries.<sup>22</sup> By the end of 2006, the high numbers caused Jordan to close its doors while Syria in the fall of 2007 imposed visa restrictions to reduce the refugee flow.<sup>23</sup>

In neither Syria nor Jordan do refugees have a clear legal status. Neither government is party to the 1951 Convention Relating to the Status of Refugees (Refugee Convention), nor does either recognize the rights to which refugees are entitled or the obligations signatory states have toward those on their territory. While both initially welcomed the refugees, their non-recognition of the Convention is now putting many of these same people in jeopardy, especially in Syria. The Convention, for example, provides that refugees have the right to work, including self-employment, and with treatment as favorable as that of nationals, but in Syria, where the refugees are considered tourists or guests, they are not officially allowed to work. Many as a result work illegally or are unemployed although some medical doctors, teachers and engineers have been issued work permits.<sup>24</sup> Unable to support themselves and their families, and with depleted financial reserves, hundreds are now leaving each day.<sup>25</sup> The Refugee Convention further provides that refugee children shall enjoy elementary education just as nationals. Although Iraqis have free access to schools in Syria, in 2007 only 47,000 out of an estimated 250,000 school-aged Iraqi children were enrolled in Syrian schools and many Iraqi families could not afford the required uniforms and school supplies.<sup>26</sup> Access to adequate health care is also limited even though Iraqis are provided with emergency medical and primary health care. Fifty-two percent of refugees registered with UNHCR in Syria had special medical needs.<sup>27</sup>

In Jordan, the refugees are in a precarious situation. Following the 2005 suicide bombings in Amman by Iraqi nationals and the high number of Iraqis seeking entry, the government began to restrict entry and by 2007 had largely closed its doors and also rounded up and deported some Iraqis. Treated as guests or sometimes as illegal

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<sup>21</sup> Kristele Younes, “The World’s Fastest Growing Displacement Crisis,” Refugees International, March 2007.

<sup>22</sup> See Bacon & Younes, *supra* note 3.

<sup>23</sup> See *id.*

<sup>24</sup> O’Donnell & Newland, *supra* note 5, at 13.

<sup>25</sup> Those entering Syria often outpace those departing from Syria, although in late 2007, 1500 were reported to be leaving each day compared to 500 entering, Interview with UNHCR official, February 29, 2008; and *supra* note 16.

<sup>26</sup> Interview of author with UNHCR official, February 29, 2008. In some cases, lack of documents kept the children from school or the children needed to work to help their families. See O’Donnell & Newland, *supra* note 5, at 13; and al-Khalidi, Hoffmann & Tanner, *supra* note 14, at 33-4.

<sup>27</sup> UNHCR Briefing Note, “Iraq: Pressure on safe havens inside and outside fuels fears of increased internal displacement,” October 23, 2007.

immigrants, most Iraqis have been denied the right to work: in May 2007, only 22 percent of Iraqi adults were employed.<sup>28</sup> Only one-fifth of school-age refugee children were in public schools although all Iraqi children were theoretically given access to public education.<sup>29</sup> Refugees were able to access emergency treatment in public hospitals, but to receive continued treatment, they had to be residents.<sup>30</sup>

While Iraqi refugees have provided some benefits to their host countries (purchase of goods and services, additions to the job market), rising inflation and deteriorating economic conditions in Jordan and Syria have provided fertile ground for economic resentments to surface against them, overriding initial feelings of “Arab solidarity.” Schools and health services have become more crowded and apartments more scarce. Jordanians in particular have begun to blame Iraqis for a deteriorating quality of life due to higher gas prices, increasingly unavailable and expensive housing, inflation, and increased traffic and crime.<sup>31</sup> In Syria, many blame the refugees for the rise in unemployment, the higher cost of food, fuel and water, strains on electricity, and in particular, rent increases. As a result of the Iraqi influx, Syria’s government has had to spend more for public services and subsidies of goods such as bread, fuel, municipal water and electricity.<sup>32</sup>

It is unlikely therefore that Jordan or Syria will accommodate a long-term presence of Iraqis. Neither country has developed a plan to integrate Iraqi refugees. This makes return to Iraq the only serious option, even though most do not want to return<sup>33</sup> and the likelihood of their finding resettlement in the industrialized countries is small.<sup>34</sup> For the time being, the security situation in Iraq is still sufficiently uncertain that UNHCR has not revised the requests it made to the governments of Jordan and Syria that they not deport refugees back to Iraq.<sup>35</sup> Among the groups unlikely to return are religious minorities subject to persecution, in particular Christians (representing some 15 to 20

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<sup>28</sup>O’Donnell & Newland, *supra* note 5, at 15. Some of the wealthiest refugees in Jordan have been granted temporary legal status and the right to work.

<sup>29</sup> Presbyterian World Service & Development, “Iraq: Assistance needed for internally displaced and refugees,” 23 January 2008.

<sup>30</sup>Amnesty International, “Millions in flight: the Iraqi refugee crisis,” September 24, 2007.

<sup>31</sup> Patricia Weiss Fagen, “Iraqi Refugees: Seeking Stability in Syria and Jordan,” Institute for the Study of International Migration, Georgetown University and Center for International and Regional Studies, Georgetown University School of Foreign Service in Qatar, 2007. See also Robert F. Worth, “Rising Inflation Creates Unease in Middle East,” *New York Times*, February 25, 2008.

<sup>32</sup> See al-Khalidi, Hoffmann & Tanner, *supra* note 14, at 40-42; Elizabeth Ferris & Matthew Hall, “Update on Humanitarian Issues and Politics in Iraq,” Brookings-Bern Project on Internal Displacement, 6 July 2007, p. 8; and Andrew Harper, “Iraq: growing needs amid continuing displacement,” *Forced Migration Review*, December 2007, p. 53.

<sup>33</sup> A UNHCR survey found that only 4 percent of Syria’s refugees plan to return, Integrated Regional Information Networks (IRIN), “Iraq: UNHCR concerned about funding for refugees, IDPs,” 30 April 2008. See also IRIN, *supra* note 16.

<sup>34</sup> See O’Donnell & Newland, *supra* note 5, at 2-3, 22-3.

<sup>35</sup> See Deutsche Presse Agentur, “Jordan’s king meets Guterres, pledges continued hosting of Iraqis,” 12 February 2008; and Integrated Regional Information Networks (IRIN), “Syria; Not safe enough for Iraqi refugees to return – UNHCR chief,” 14 February 2008.

percent of the registered refugees).<sup>36</sup> Yet for Jordan and Syria to host many refugees for extended stays, they will need considerable international help. But even with more help, the governments in the region might not agree to accept long-term strains on their infrastructure and societies.

#### A. TERRORISTS OR VICTIMS?

Fears are often expressed that without adequate assistance the refugees in Syria and Jordan could become a source of terrorism and violence in the region. Iraqi specialist Daniel Byman for example has warned that the Iraqi refugee crisis could destabilize an already volatile Middle East.<sup>37</sup> Humanitarian advocates regularly bolster their arguments for providing aid to the refugees by pointing out the security consequences of not providing aid: “If the refugees do not receive sufficient support from the host governments and the international community, there is a very real danger that political actors will seek to fill the gap,” warns Elizabeth Ferris of the Brookings Institution.<sup>38</sup> Similarly a UNHCR official pointed out that the state security agencies in Jordan and Syria “are aware that Iraqis are changing the character of their societies and fear that their presence may ignite sectarian and ethnic conflict.”<sup>39</sup> Given the explosive environment in the Middle East, such concerns bear heeding. The presence of more than half a million Iraqis in Jordan, a country of only six million people, could well have consequences for its domestic politics and security. Although most of the refugees are Sunni, some one quarter are Shi’a and some have been moving into militant neighborhoods.<sup>40</sup> In the case of Syria, “numerous sources confirm that both Sunni and Shi’a radical armed groups have people” in that country, with the Sunni Ba’athist resistance having the strongest presence.<sup>41</sup> An influx of “politically active, Islamist-oriented Iraqis” could threaten the government’s secular rule.<sup>42</sup>

At the same time, it must be emphasized that most refugees in Syria and Jordan have been the *victims* of violence and threats, not the perpetrators. Nor is it clear that those who had radical ties in Iraq will remain part of those organizations once outside of the country. What might have been essential for survival in Iraq need not be continued in Jordan or Syria, so the argument that the refugees are potential security risks to their host countries must be carefully weighed against other factors:

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<sup>36</sup> There are many accounts of persecuted Christians. On March 13, 2008, the body of a kidnapped Chaldean Catholic archbishop was found near Mosul. See Lourdes Garcia-Navarro, “Archbishop’s Slaying Rocks Iraq’s Christian Minority,” National Public Radio, March 18, 2008.

<sup>37</sup> Byman, *supra* note 20.

<sup>38</sup> Elizabeth Ferris, “Security, Displacement and Iraq: A Deadly Combination,” Brookings-Bern Project on Internal Displacement, 27 August 2007, p. 17.

<sup>39</sup> Harper, *supra* note 32, at 53.

<sup>40</sup> *Id.* at 52-3; and Ferris, *supra* note 38, at 12-13.

<sup>41</sup> Al-Khalidi, Hoffmann & Tanner, *supra* note 14, at 15.

<sup>42</sup> Ferris, *supra* note 38, at 15. See also, Nir Rosen, “The Flight from Iraq,” *New York Times Magazine*, May 13, 2007, pp. 40-41.

- The refugees are not in camps, but dispersed in urban areas, mixed in with the general population where it would be far more difficult to militarize and manipulate their members.
- In a country like Syria, the police apparatus is so controlling that it is unlikely that terrorist plots could be easily hatched. In Jordan, King Abdullah II has publicly warned that “we will never allow Jordan to become a staging ground for initiating problems within Iraq.”<sup>43</sup>
- The profile of the refugees is markedly different from that of refugee populations where violence and jihad became a serious issue. The mujahadeen from Afghanistan and the Hutu *genocidaires* from Rwanda, often cited as precedents,<sup>44</sup> were imbued with the desire to overthrow or undermine the governments left behind (e.g., the Soviet dominated regime in Kabul and the Tutsi dominated government in Kigali). The Iraqi refugees by contrast are mostly middle class and urban professionals who fled sectarian and generalized violence.<sup>45</sup> While many do not identify with the ‘new Iraq,’ which since their departure has become more conservative, less secular, and dominated by Shi’a with ties to Iran, they do not fit the profile of people seeking to overthrow their government. In fact the profile of the refugees points more to a serious brain drain for Iraq than an insurgent threat. Since 2003, 40 percent of the country’s professional class has left, including a disproportionate number of people with managerial and administrative backgrounds, 50 percent of its 34,000 medical doctors, while the number of teachers in Baghdad has fallen by 80 percent.<sup>46</sup> Whereas “less than 1% of Iraqis had a postgraduate education, nearly 10 % of refugees in Syria had advanced degrees, including 4.5 % with doctorates...”<sup>47</sup> To be sure, since 2006, less affluent and educated Iraqis have also fled to Syria and Jordan, but according to one study, the influx has not produced the kind of “generalized poverty, misery or despair among the Iraqi refugees” that could lead to jihad and violence.<sup>48</sup> According to a UN official who served in the area, refugees needing to support themselves and their families have become “far more vulnerable to prostitution than to terrorism.”<sup>49</sup>

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<sup>43</sup> Interview of King Abdullah II with *Asharq Al Awsat* in 2007, cited in Ferris, *id.* at 14.

<sup>44</sup> Byman & Pollack, *supra* note 7. See also Stephen John Stedman & Fred Tanner, ed. *Refugee Manipulation: War, Politics, and the Abuse of Human Suffering*, Brookings Institution, 2003.

<sup>45</sup> Al-Khalidi, Hoffmann & Tanner, *supra* note 14, at 45.

<sup>46</sup> Elizabeth Ferris, “The Real Challenge of Internal Displacement in Iraq: The Future,” Center for American Progress, December 6, 2007; Elizabeth Ferris, “Humanitarian Issues and Politics in Iraq,” Brookings-Bern Project on Internal Displacement, 14 February 2007; and World Health Organization, “Violence Threatens Health in Iraq,” News Release, April 2007.

<sup>47</sup> Michael Schwartz, *War Without End: The Iraq Debacle in Context*, cited in Tom Engelhardt, “Like 50 Million US Refugees,” *Agence Global*, 11 February 2008.

<sup>48</sup> Al-Khalidi, Hoffmann & Tanner, *supra* note 14, at 44.

<sup>49</sup> Interview of author with UN official, January 19, 2008. See also Katherine Zoepf, “Desperate Iraqi Refugees Turn to Sex Trade in Syria,” *New York Times*, May 29, 2007.

## B. THE U.S. ROLE

Many have looked to the United States to play the principal role in resolving the Iraq refugee problem, but at a public forum at Georgetown University in March 2007, a representative of the State Department refused to acknowledge any special responsibility in this case.<sup>50</sup> Ellen Sauerbrey, the then Assistant Secretary of State for Population, Refugees and Migration, in testimony before Congress in January 2007 did state that the Iraqi refugees had become a “very top priority” for the US but expressed little urgency about expediting refugee resettlement.<sup>51</sup> As former US Ambassador to the United Nations John Bolton explained it, sectarian violence, not US actions, created the refugee problem so it was therefore not a US responsibility: “Our obligation was to give them new institutions and provide security. We have fulfilled that obligation. I don’t think we have an obligation to compensate for the hardships of war.”<sup>52</sup>

Pressure from members of Congress, humanitarian and human rights NGOs and the public has produced pledges by the Bush Administration to speed up resettlement, but only small numbers have been admitted thus far. In fiscal year (FY) 2006 (October 1, 2005 to September 30, 2006), 202 Iraqis were admitted, and in FY 2007 (October 1, 2006 to September 30, 2007), 1,608, but most of these were backlogged cases of Iraqis who had fled the Saddam Hussein regime. It was not until May 2007 that refugees who fled post-war Iraq began to enter the US. At present, the US is promising to admit 12,000 in FY 2008 (October 1, 2007 to September 30, 2008) in response to the adoption by Congress of the “Refugee Crisis in Iraq Act,” which seeks to expedite the entry into the US of Iraqi refugees.<sup>53</sup> Nonetheless, the numbers admitted so far have been below the target, only some 6,000 from October 2007 to July 2008.<sup>54</sup>

The resources made available have also been limited. In FY 2006, the US contributed \$43 million for Iraqi refugees and IDPs, increasing this to \$171 million in FY 2007, while the needs in Jordan and Syria were estimated at more than \$2.6 billion.<sup>55</sup> After members of Congress and NGOs urged the US to fund at least 50 percent of UNHCR’s January 2008 appeal for \$261 million, the US increased its share to \$95.4 million and added to its contributions to other international organizations, making for an overall total of \$208 million by April 2008.<sup>56</sup> But this starkly contrasted with the \$70 billion the US

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<sup>50</sup> Bartlett, *supra* note 10.

<sup>51</sup> Fox News, “Iraq Translators Face Closed Door U.S. Immigration Policy,” February 7, 2007; see also “Senators Denounce Bush Policy Limiting Refugee for Iraqis,” *New York Times*, January 17, 2007.

<sup>52</sup> Rosen, *supra* note 42, at 74-5.

<sup>53</sup> O’Donnell & Newland, *supra* note 5, at 2, 19-20. The Act is an amendment to the 2008 Department of Defense Authorization Act and was signed into law by President Bush in 2008.

<sup>54</sup> “Latest figures on Iraqi refugee admissions and humanitarian aid,” Office of the Spokesman, Department of State, 4 June 2008; and Refugees International, “The Iraqi displacement crisis,” Relief Web, 18 July 2008.

<sup>55</sup> Bacon & Younes, *supra* note 3. For US funding amounts, see “U.S. Humanitarian Assistance for Refugees and Internally Displaced Iraqis,” *supra* note 9; and “US Contributes More Than \$125 million to International Organizations to Aid Displaced Iraqis,” US Department of State, 14 February 2008.

<sup>56</sup> *Id.*

appropriated for the military effort in Iraq in FY2008 and led members of Congress to call for more than \$1 billion for Iraq's refugees and IDPs in FY2009.<sup>57</sup>

As matters stand in the closing months of 2008, the US can best help promote a solution to Iraq's displacement crisis by taking the following steps:

- Insist that the government of Iraq devote the resources and develop the plans for the safe and sustainable returns of the bulk of the refugees, and provide the training and guidance for it to do so. Although the government of Iraq has set aside funds to give free transportation and start-up money to returning families (a promise not always kept), and has been trying to promote the return of medical doctors, there appears to be no long-term planning or capacity to support those returning to Iraq. In fact, the UN reports relatively small numbers trying to return. Some face threats and violence upon return, encounter problems in gaining access to basic services, and have to struggle to revive their livelihoods or find new sources of income.<sup>58</sup>
- Press the government of Iraq to adequately compensate neighboring states for sheltering Iraqi refugees beyond the \$25 million given in 2008.
- Mobilize US and international resources to adequately help the refugees and ensure that Jordan, Syria and other neighboring states receive the assistance needed for assuming the lion's share of the burden.
- Press Saudi Arabia, Kuwait and the Gulf States to admit refugees and to provide financial aid to Jordan and Syria.
- Work with Syria and Jordan to develop plans for the integration of those who can not, or choose not to, return home.
- Take in greater numbers of refugees to the United States, including more Iraqis who worked for the US, and urge other states to increase the refugee numbers they admit.

One reason the Bush Administration has failed fully to do more to help Iraq's refugees is that doing so would require an implicit admission that its policies have not produced peace and stability in Iraq but rather a refugee crisis. A change in administration will therefore doubtless be needed before a more constructive policy can be adopted. The Democratic candidate Barack Obama has expressed support for a large increase in humanitarian aid for the refugees to total \$2 billion but has not yet provided many policy

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<sup>57</sup> See US Commission on Security and Cooperation in Europe, "Reps. Hastings and Dingell urge increased funding for Iraqi refugees," 23 January 2008.

<sup>58</sup> See International Organization for Migration, Press Release, 1 August 2008; UNHCR, *supra* note 33; Integrated Regional Information Networks (IRIN), "Iraq: government negligent in tackling human displacement, - MP," 13 May 2008, and "Iraq: Incentives announced to encourage return of IDPs, refugees," 20 July 2008.

details. Some experts have proposed a massive resettlement program modeled after the one that brought hundreds of thousands of Vietnamese to the United States.<sup>59</sup> But this followed a US defeat that no US administration may be ready to acknowledge in the case of Iraq. Although UNHCR has identified up to 100,000 Iraqis in pressing need of resettlement (they can neither remain safely in their host countries nor return safely to Iraq), leading Republican members of Congress have taken the position that “the last thing we want to do is to have people who are friendly to democracy...moving here in large numbers at a time when they’re needed to build a new, thriving Iraq... Now is the time that we should be calling on the refugees from Iraq to go home.”<sup>60</sup>

For Iraqis at risk because they worked for the US, attention has focused on Operation Pacific Haven, carried out by the Clinton Administration in 1996-97 to remove from northern Iraq 6,600 Kurds whose lives were in danger for having worked with the US. The US government successfully accelerated their screening and resettlement so that they could arrive (via Guam) in 90 to 120 days. When the operation ended, the Department of Defense predicted that it would “undoubtedly be a role model for future humanitarian efforts.”<sup>61</sup> To date, the Bush Administration has given no consideration to this option, but a future administration would do well to revisit the program.

## THE IDP PROBLEM

The 2.7 million people internally displaced in Iraq serve as a constant reminder that the country in many respects is a dysfunctional state. The government proved unable to prevent the forced displacement of people in Baghdad, its own capital, as well as in other urban centers. In fact, radical Sunni and Shi’a militias who drove the 2006-2007 sectarian violence were tied to political parties, police and army units. The Ministry of the Interior is still widely reported to be infiltrated by Shi’a militias, which assaulted and expelled people from their homes, sometimes in police uniforms. In such a political environment, it is not surprising that the government has failed to exhibit the will, resources or skills to deal with the needs of the displaced. In its Ministry of Displacement and Migration, it is not unusual to find staff that sees the displaced only from the perspective of their own ethnic or religious group.<sup>62</sup>

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<sup>59</sup> See for example Byman, *supra* note 20. However, states in Southeast Asia were largely unwilling to host the refugees and pressed for resettlement, which contributed to the US commitment to this option, see Fagen, *supra* note 31, p. 24.

<sup>60</sup> Rep. Dana Rohrabacher (ranking minority member of the Subcommittee on International Organizations, Human Rights and Oversight of the House Foreign Affairs Committee) as cited in Walter Pincus, “House Panel Debates Iraq Refugee Quandary,” *Washington Post*, March 17, 2008.

<sup>61</sup> US Department of Defense, News Release, “Operation Pacific Haven Wraps Up Humanitarian Efforts,” April 15, 1997; and “The Guam Option,” *The New Yorker*, November 9, 2007.

<sup>62</sup> For ties of militias to political parties and ministries, see Ashraf al-Khalidi and Victor Tanner, *Sectarian Violence: Radical Groups Drive Internal Displacement in Iraq*, An Occasional Paper, Brookings-Bern Project on Internal Displacement, October 2006, pp. 13-1; and Solomon Moore, “Ominous Signs Remain in City Run by Iraqis,” *New York Times*, February 23, 2008. For views of staff members of Ministry of Displacement and Migration, Meeting of the author with ministry staff in Washington DC, July 13, 2005.

More than 1.5 million of Iraq's IDPs were uprooted following the February 2006 bombing of the al-Aksari Shi'a shrine in Samarra. Although the sectarian violence had started earlier, once Shi'a restraint ended, the violence accelerated and sectarian-induced displacement sharply overtook the displacement caused by military operations, generalized violence, and the expulsions from the Saddam Hussein period.<sup>63</sup> Shi'a and Sunni militias systematically and purposefully began to intimidate, harass, kill and expel people of the opposite ethnicity from their home areas in order to gain control over those areas and expand their power base. The result has been an Iraq increasingly fragmented along religious and ethnic lines, with segregated areas in Baghdad and other urban centers. Sunnis and Shi'a pushed from their homes have mostly gone to areas where their group is in the majority while Christians have fled to parts of Ninewah province and Kurds to the northern Kurdish areas.<sup>64</sup>

At least 40 percent of those who fled do not expect to return<sup>65</sup> since their displacement reflects deep-seated political divisions within the country. Indeed, the brutality used in uprooting them was intended to ensure that they would not return to their home areas.<sup>66</sup> Many, in fact, sold their homes or abandoned their property when they fled, indicating that they do not plan to return.<sup>67</sup> Given "the departure of entire families and, in some cases, communities," internal displacement "is likely to be long-term."<sup>68</sup> The more prolonged it becomes, the less likely substantial returns will occur.

Sizeable numbers of minority groups – Kurds, Christians, Sabeans, Turkmen, Roma as well as foreign nationals – Palestinians and Sudanese – were also uprooted by the sectarian violence. These came in addition to earlier expulsions of Kurds from areas in the north. Under Saddam Hussein, more than 100,000 Kurds (and also Turkmen and Assyrians) were expelled from Kirkuk and its surrounding areas in order to 'Arabize' this highly fertile region which contains from 10 to 20 percent of Iraq's oil reserves. When Kurds began to return to reclaim their homes and land after the 2003 war, many found them to be occupied by others and became displaced again. Soon thereafter, Kurdish authorities began to reestablish control over the region, and some 100,000 Arabs fled or were pushed out by the Pesh Merga. Meanwhile, Kirkuk's Turkmen looked to Turkey to

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<sup>63</sup> See al-Khalidi & Tanner, *id.*, pp. 7-8; and International Organization for Migration, "Iraq Displacement: 2007 Year in Review."

<sup>64</sup> See al-Khalidi & Tanner, *id.*, pp. 14-20. In 2008, UNHCR found increasing numbers of Christians who fled to Ninewah fleeing again, this time abroad in search of safety, Interview of author with UNHCR official, February 29, 2008. Of the estimated 1.5 million IDPs uprooted since the Samarra bombing, most (560,000) are in the center of the country in Baghdad governorate, 27 percent in the south and 15 percent in the northern governorates. Of the estimated million displaced before 2006, 53 percent are in the north and 33 percent in the south. See UNHCR, *id.*

<sup>65</sup> International Organization for Migration, *supra* note 63, at 4, 7. As of April 2008, some 6,000 IDP families returned (2 percent of those uprooted since 2006), mostly to areas where their communities were in the majority, see UNHCR, "Internal displacement update for Iraq," 1 April 2008.

<sup>66</sup> See al-Khalidi & Tanner, *supra* note 62, at 14.

<sup>67</sup> International Medical Corps, as cited in Ferris & Hall, *supra* note 32, at 2.

<sup>68</sup> Harper, *supra* note 32, at 51. See also International Medical Corps, "Iraqis on the Move; Sectarian Displacement in Baghdad," January 2007, cited in Ferris, *supra* note 46.

protect their interests there. Because of the intensity of competing claims, Kirkuk has become a tinder box of potential conflict and displacement.<sup>69</sup>

Most of Iraq's internally displaced persons, whether in the north, center or south, face extreme hardship, many with urgent needs for shelter, food, medicine, clean water, employment and basic security. The decrease in sectarian violence since the summer of 2007 has reduced displacement but has not significantly improved conditions for the displaced.<sup>70</sup> In fact, in August 2008, IOM reported a "worsening" in the situation, estimating that more than 70 percent of IDPs do not have regular access to food rations from the Public Distribution System; 14 percent have no access to health care; 33 percent cannot obtain the medications they need; and 31 percent have found their property occupied by others.<sup>71</sup> While the vast majority of IDPs stay with families and friends that support them or rent homes, their situation has become precarious as rents increase, jobs are unavailable, and their hosts begin to run out of resources. At least 20 percent of the displaced can now be found in abandoned buildings, military bases, schools, parks, cemeteries and soccer fields. One to two percent resides in tented camps, which lack basic services and tend to be in remote areas.<sup>72</sup> Although most of Iraq's 18 governorates have set up camp areas for IDPs, by the beginning of 2008 they began to restrict the number coming into their areas. According to a UNHCR official, the displaced have been "left largely to fend for themselves."<sup>73</sup>

#### A. NATIONAL AND INTERNATIONAL RESPONSE

Thus far the national government has not demonstrated that it has the skills, resources or political will to take care of its displaced population or provide the security, access to basic services and livelihoods needed for the return of large numbers to their homes. Government agencies have often been described as incompetent, negligent, corrupt or sectarian in approach.<sup>74</sup> The Iraqi Minister of Displacement and Migration himself explained that "Our ministry, unlike others established when the state of Iraq was founded, is without any administrative legacy or institutional knowledge in the field of

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<sup>69</sup> See al-Khalidi & Tanner, *supra* note 62, at 23-24. See also Human Rights Watch, "Claims in Conflict: Reversing Ethnic Cleansing in Northern Iraq," August 2004. The Iraqi Constitution provides for a census and referendum on the status of Kirkuk. However, the referendum has been regularly postponed. For discussion of Kirkuk's future, see Michael O'Hanlon and Omer Taspinar, "Time for Kurdish Realism," *Washington Post*, February 9, 2008; and Elizabeth Ferris & Kimberly Stoltz, "The Future of Kirkuk: The Referendum and its Potential Impact on Displacement," Brookings-Bern Project on Internal Displacement, 3 March 2008.

<sup>70</sup> International Organization for Migration, *supra* note 63, at 7; and Iraqi Red Crescent, "The internally displaced people in Iraq – Update 28," 4 December 2007. The pause in sectarian violence has been attributed to: 'the surge'; a cease fire by Moqtada al Sadr's Mahdi army; and the fact that many areas have already become homogenous.

<sup>71</sup> International Organization for Migration, press release, 1 August 2008; and IOM *id.* at 6.

<sup>72</sup> Harper, *supra* note 32, at 51-2. Most of the tented camps are in Ninevah province.

<sup>73</sup> See *id.* at 53.

<sup>74</sup> See Integrated Regional Information Networks (IRIN), "Iraq: NGOs urge action on displacement crisis," 13 August 2008, "Iraq: government negligent in tackling human displacement – MP," 13 May 2008, and "Iraq: IDPs demand government return them home," 15 June 2008. For ethnic partiality, see Refugees International, *Uprooted and Unstable: Meeting Urgent Humanitarian Needs in Iraq*, April 2008, pp. 3, 6.

migration and displacement.”<sup>75</sup> He therefore has called for a local, regional and international response. In January 2008, the head of parliament’s displacement committee Abdul-Khaliq Zankana announced that the government would allocate additional funds for IDPs, but acknowledged that “a plan for using this money has not been drawn up yet.”<sup>76</sup>

Local authorities, local neighborhoods and mosques have sometimes proved more effective in aid distribution although they can also be partisan and do not usually provide housing and jobs. Assisting them have been local NGOs like the Iraqi Red Crescent which have provided assistance to large numbers of IDPs, but most have limited capacity and have not been able to reach many of those in need because of lack of security.

Filling the void left by the government have been radical sectarian Sunni and Shi’a groups (the largest being the movement affiliated with Moqtada al-Sadr). Indeed, a Feinstein International Center study found that, “Increasingly, Iraqis are looking to militias and ad hoc neighborhood organizations as their option of first resort when seeking protection and assistance.”<sup>77</sup> Similarly, members of Parliament have warned that continued inattention to the displaced could make them “easy prey to militias and armed gangs inside Iraq and possible recruits to intelligence services outside Iraq.”<sup>78</sup>

In July 2008, the government introduced a National Policy on Displacement,<sup>79</sup> launched at a two-day conference that brought together central and local government officials, UN agencies and national and international NGOs. It commits the government to assist and protect IDPs, as well as refugees who return, without discrimination and promises to mobilize the resources required and strengthen government offices to improve the national response. In particular, it promises to improve the access of the displaced to basic services, to help them find employment, to protect them from evictions and violence, to assist them reclaim their property, and to encourage reconciliation between the different ethnic and religious groups upon return. Much of the policy, however, is in the form of recommendations that will need to be carried out. While it marks an important first step toward addressing displacement, the capacity and will of the government to implement its provisions will need to be demonstrated.

The international community has also been slow to recognize the humanitarian and security crisis inside Iraq. For years, the US and Iraqi governments assumed that the domestic situation would stabilize and that the IDPs would return home. As a result, billions of dollars in international aid focused on recovery and development programs

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<sup>75</sup> Abed Al-Samad Rahman Sultan, “An unenviable task,” *Forced Migration Review*, June 2007, pp. 16-17.

<sup>76</sup> See Integrated Regional Information Networks (IRIN), “Iraq: Parliament allocates more money for IDPs,” 24 January 2008. It was announced in February 2008 that the government had earmarked \$40 million for IDPs and refugees. See Integrated Regional Information Networks (IRIN), “Iraq: More government money for IDPs, refugees,” 14 February 2008.

<sup>77</sup> Greg Hansen, “Coming to Terms with the Humanitarian Imperative in Iraq,” Feinstein International Center, Tufts University, January 2007, p. 8. For IDPs joining militias to secure food, clothing and security, see Refugees International, *Uprooted and Unstable*, *supra* note 74, pp. i, 2-4.

<sup>78</sup> See IRIN, “Iraq: government negligent,” *supra* note 74.

<sup>79</sup> National Policy on Displacement, Ministry of Displacement & Migration, Baghdad, July 2008.

that couldn't be implemented because of the violence. More recently, a reassessment of donor priorities and UN programs has begun to take place.

Greater international humanitarian presence is one of the priorities. Unlike in most other crises, international humanitarian organizations and international NGOs do not operate directly on the ground in Iraq except in parts of the north. Since the 2003 bombing of UN headquarters, most humanitarian organizations moved their international staff out of Baghdad to Amman where they have operated by 'remote management.'<sup>80</sup> In August 2007, the United Nations Security Council voted to expand the UN's mandate and presence in the country.<sup>81</sup> The UN Assistance Mission for Iraq (UNAMI) is expected to work with the government in support of the delivery of humanitarian aid and to promote the safe and voluntary return of IDPs and refugees.

The extent, however, to which the UN will be able to increase its humanitarian presence throughout Iraq is not yet known. The decrease in violence since the summer of 2007 has not ended security threats against humanitarian staff, especially United Nations staff that are often perceived as being identified with coalition forces. For IOM, "Iraq continues to be one of the most dangerous places in the world for humanitarian agencies to work."<sup>82</sup> Between March 2003 and late 2006, some 81 local and international humanitarian and human rights workers were killed there.<sup>83</sup> When UN Under-Secretary-General for Humanitarian Affairs John Holmes visited the area in April 2008, he did not go into Iraq for security reasons. At the same time, international agencies have begun to expand their staff on the ground.<sup>84</sup> It is hoped they will find that direct cooperation with local leaders, local communities and local NGOs will prove an important way of increasing assistance and protection for IDPs and reinforcing local capacity.

## **B. PROPOSED SOLUTIONS**

Camps or Safe Havens. One solution put forward during the height of the sectarian violence was the creation of large scale IDP camps or safe havens to enhance access to the displaced, take the strain off host families and contain refugee flows.<sup>85</sup> Camps, it was argued, could provide public services to the displaced and a modicum of security. But

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<sup>80</sup> Cecile Pouilly, "Difficult delivery: The 'remote management' of aid in Iraq," *Refugees*, No. 146, 2007, pp. 14-15. Some organizations, however, such as UNICEF and the International Organization for Migration, manage well by directing local staff on the ground, see Refugees International, *Uprooted and Unstable*, *supra* note 74, p. 8.

<sup>81</sup> United Nations Security Council Resolution 1770, 10 August 2007.

<sup>82</sup> See International Organization for Migration, *supra* note 63, at 6; and UN Office for the Coordination of Humanitarian Affairs, "UN officials call for improved security and access to reach Iraqis in need," 4 April 2008.

<sup>83</sup> Hansen, *supra* note 77, at 7, 10.

<sup>84</sup> In February 2008, UNHCR announced that it would increase its Baghdad-based staff from two to five internationals, and the World Health Organization also "quietly redeployed expatriate workers to Iraq," see "Foreign aid workers slowly returning to Iraq," Reuters, 31 July 2008; UNHCR, "Guterres visits Iraq; announces strengthened UNHCR presence," 19 February 2008, and "Iraq: Q& A – A day in the life of our man in Baghdad," 5 July 2008. Overall UN staff (non-humanitarian and humanitarian) has increased in Baghdad and Erbil to some 200, UN Security Council, SC/9311, 28 April 2008.

<sup>85</sup> Byman & Pollack, *supra* note 7, at 85-91.

many compelling reasons dictated against the setting up of camps and would do so in future. Safe areas in today's Iraq could easily be taken over by one ethnic group or another and become targets of sectarian attack. Moreover, unless the camps were to become detention centers surrounded by troops or police, it would be difficult to protect the people inside. There is also the question of whose troops or police would do the protecting. The reliability of the army and the police in Iraq remains questionable as there have been clear connections between these officers and the militias undertaking the sectarian cleansing. Camps could also become an easy source of recruitment for militias while the serious restrictions on human rights and freedom of movement would undermine IDP protection. Iraqis, moreover, clearly prefer to stay with extended families and friends, and only a small percentage can be found in camps. The Representative of the UN Secretary-General on the Human Rights of IDPs, Walter Kalin, therefore called for camps to be used in Iraq as "a last resort." He recommended alternative measures such as providing resources to families to allow them to construct additional rooms in their homes for the displaced or supporting communities to enable them to build housing for the displaced and expand public services for them.<sup>86</sup>

Population Transfers. Another solution put forward at the height of the violence was organized population transfers so that Sunni, Shi'a and Kurds, with the help of the international community, could relocate, albeit voluntarily, to areas of the country where their ethnic group was in the majority. The population transfers were intended to accompany "a soft partition" of the country into Kurdish, Shi'a and Sunni areas.<sup>87</sup> Not surprisingly, this solution proved distasteful to many because it put the international community in the position of facilitating ethnic cleansing and of promoting mass displacement.

Historically, population transfers have been viewed in a positive light as a means of lessening loss of life in communal conflicts, creating more cohesive societies and promoting more stable border demarcations. Such exchanges were carried out after the first and second world wars and also on the Indian subcontinent in the late 1940s. But as human rights expert Felice Gaer has noted, "These mass population exchanges came with tremendous costs."<sup>88</sup> Millions of people were uprooted and persons became "dispossessed, and sent penniless and homeless on what, for many, were death marches."<sup>89</sup> Although billed as voluntary, they were not in fact: "There was no

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<sup>86</sup> Walter Kalin, "A tragedy of increasing proportions: internal displacement in Iraq," *Forced Migration Review*, June 2007, p. 15.

<sup>87</sup> See Joseph P. Edwards & Michael E. O'Hanlon, "The Case for Soft Partition in Iraq," Analysis paper 12, The Saban Center for Middle East Policy, The Brookings Institution, June 2007; and Chaim Kaufmann, "Separating Iraqis, Saving Iraq," *Foreign Affairs*, July/August 2006, pp. 159-160.

<sup>88</sup> Felice Gaer, "Resolving Conflicts and Upholding Human Rights Principles: Population Exchanges," Jacob Blaustein Institute for the Advancement of Human Rights, February 15, 2007 (internal memorandum). For an excellent study of the impact of partition, see K.Hill, W. Selzer, J. Leaning, S.J. Malik & S.S. Russell, "The demographic impact of Partition in Punjab in 1947," *Population Studies*, 62:2, 155-170. See too Rama Lakshmi, "'India's Survivors of Partition begin to Break Long Silence,'" *Washington Post*, March 12, 2008. It notes that "According to conservative estimates, about half a million Hindus and Muslims were slaughtered and 14 million displaced, and about 70,000 women were abducted and raped, leaving both countries with deep psychological and political scars."

<sup>89</sup> David Fromkin, *Kosovo Crossing*, The Free Press, 1999, pp. 189-190.

individual buy-in, or consent, to the exchanges, and little in the way of compensation or restitution of property.”<sup>90</sup>

In the case of Iraq, population exchanges could easily turn into coerced actions, with transfers possibly leading to unemployment, homelessness, poverty and vulnerability to violence. Nor would they be easy to accomplish in Iraq since 35 percent of marriages, at least in the past, were mixed and people of different ethnic and religious backgrounds were used to living and working together. Advocates of the idea have argued that population transfers, however painful, might be the only way to protect people from sectarian violence; moreover, if people asked to be relocated for protection, they should be helped: “If Iraqis tell us that they would feel safer in religiously homogenous neighborhoods...we should support and protect them in their voluntary, peaceful evacuation,” said genocide scholar Samantha Power.<sup>91</sup> However, another expert responded that population transfers overlooked the right of IDPs to return to their homes once the threat to their safety had ended. In fact, there has been a growing international consensus that displaced people should have the option not only of resettlement but of return to reclaim their property and even their homes. Population transfers remove this choice.<sup>92</sup>

In deciding the future status of Kirkuk, however, population transfers could become an essential part of the solution.<sup>93</sup> The liabilities of the approach should therefore be carefully studied and steps taken to counter them.

Property and Compensation Mechanisms. To encourage the return of IDPs and refugees to their homes as well as enhance their ability to resettle elsewhere, it is crucial that effective property restitution or compensation mechanisms be established for those forced from their homes since 2003.

For Iraqis who lost their land and property as a result of the policies of Saddam Hussein, mechanisms were created in cooperation with the UN. These procedures need to be extended to those more recently displaced and improvements made in how they work. The processing of claims for the victims of Saddam Hussein has taken far too long. By the end of 2007, the Commission for the Resolution of Real Property Disputes was able to decide only one-fourth of the claims submitted (some 37,000 out of 135,000<sup>94</sup>). There was also a low rate of enforcement. Other problems arose as well -- people with informal or collective land claims (such as the Marsh Arabs) found little or no help in retrieving property; there was little legal clarity over whether damages to property were covered; and too many claims were excluded by the requirement of formal documentation to prove

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<sup>90</sup> Gaer, *supra* note 88.

<sup>91</sup> Samantha Power, “How to stop genocide in Iraq,” *Los Angeles Times*, March 5, 2007.

<sup>92</sup> See Rhodri Williams, “Applying the Lessons of Bosnia in Iraq: Whatever the Solution, Property Rights Should be Secured,” Brookings-Bern Project on Internal Displacement, January 8, 2008, p. 2.

<sup>93</sup> Stephen Farrell, “U.N. Readies ‘Grand Deal’ to Resolve Iraq’s Dispute Over Kirkuk,” *New York Times*, August 21, 2008.

<sup>94</sup> Peter Van der Auweraert, “Property Restitution in Iraq,” presentation at Symposium on Post-Conflict Property Restitution, Arlington, September 6-7, 2007, pp. 8-9.

ownership, pointing to the need for more flexible interpretations and applications of the law.<sup>95</sup>

Property specialist Rhodri Williams who worked on claims in Bosnia for the UN recommends that the Iraqi authorities make an announcement that the appropriation and destruction of property since 2003 will be reversed through the use of legal remedies. Iraq, he says, should stand behind the provisions in its Civil Code, which specify that “true title does not pass with property acquired unlawfully; that transfers of property made under duress are invalid; and that those wrongfully dispossessed are entitled to the return of their property as well as compensation...” Williams warns that the absence of a meaningful legal process of restitution in which hundreds of thousands are dispossessed could threaten long-term national and regional stability.<sup>96</sup>

In Bosnia, he notes, by 2004, families were able to reclaim approximately 200,000 abandoned homes, and as many as one million persons (or half of those displaced) may have permanently returned to their former homes.<sup>97</sup> At the same time, the Balkans experience shows that many refugees and IDPs do not return to their home areas unless their ethnic group is in the majority.<sup>98</sup> Similarly, in Iraq, many of the refugees and IDPs may not return home, but being able to resolve their property claims may at least enable them to earn the means for reintegration elsewhere in the country.

Because of the international community’s long experience with property claims and the lack of capacity and frequent politicization of state institutions in Iraq, international organizations should be tapped to help set up such mechanisms in Iraq, in particular the “independent and impartial commission” to resolve property claims called for in the government’s new National Policy on Displacement.<sup>99</sup>

A Viable Political System. How Iraq evolves politically will naturally affect solutions for the displaced. The Bush Administration has by and large supported a unitary state as the best way of preventing Iraq from falling into chaos. The Shi’a led al-Maliki government, it believes, will ultimately transform itself into one of national unity.<sup>100</sup> Others, however, argue that the only way to preserve a unified Iraq is by the development of a “loose federalism.” Joseph Biden, chair of the Senate Foreign Relations Committee, has called for a decentralized, federal state as the best political solution for Iraq.<sup>101</sup> Author Peter Galbraith has gone further, arguing in favor of partition and pointing out that a loose confederation has already become “the reality on the ground.” The existence of an autonomous Kurdish north, a Shi’a region in the south, a Sunni enclave in the center and west, with a weak national government in Baghdad constitutes a form of partition, which

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<sup>95</sup> See *id.*; and Norbert Wuehler, presentation at Conference on Internally Displaced Persons – An Ongoing Dialogue, The Amar International Charitable Foundation, London, 1-2 March 2006.

<sup>96</sup> See Williams, *supra* note 92, at.4-6.

<sup>97</sup> *Id.* at 3.

<sup>98</sup> See Deniz Sert, “Property Rights in IDP Return and Resettlement,” Ph.D. thesis, City University of New York Graduate Center, February 2008 (author’s file).

<sup>99</sup> See *supra* note 79, p. 9.

<sup>100</sup> Charles Krauthammer, “The Partitioning of Iraq,” *Washington Post*, September 7, 2007.

<sup>101</sup> Joseph R. Biden, Jr. and Leslie H. Gelb, “Federalism, Not Partition,” *Washington Post*, October 3, 2007.

Galbraith considers “a better outcome than a Sunni-Shiite civil war.”<sup>102</sup> Such a war would lead to a Shi’a victory given the preponderance of Shi’a in the country and the strong potential influence of Iran. What is needed instead, Galbraith argues, is a blueprint for working out the borders of the three ethnic areas, an arrangement for the sharing of oil revenues, and a formula to share or divide Baghdad. Opponents of partition, however, consider the reality on the ground more complex. Iraq in their view risks “total collapse” because local militia leaders and sheiks have begun to control areas that have shifting boundaries, and in which “Shia are often at odds with other Shia and Sunni at odds with other Sunni.”<sup>103</sup> Any move to partition the country into three parts, these experts contend, will not only have little bearing on what now exists but will meet with substantial resistance.

As of this writing, the Shi’a dominated government has been consolidating its strength over the center and south of the country, but whatever the nature of the political system that emerges, both the central and local authorities must initiate and carry forward programs to address the needs of internally displaced populations. Reintegrating IDPs is not only a humanitarian imperative but a strategic one. Large masses of people without the basic necessities of life are a threat to national as well as local security.

Implementation of the National Policy on Displacement. Launched in July 2008, the policy sets forth the rights of the displaced and the government’s obligations toward these populations. It promises to ensure that IDPs are registered, can readily access basic services, obtain documentation, secure compensation for lost or damaged property, find employment and housing, receive pensions, and obtain assistance and legal aid when subject to human rights abuse.<sup>104</sup> To promote its implementation, it will need to be reinforced by:

- A comprehensive data base to provide information about the needs of the displaced in all governorates, updated by regular countrywide assessments.
- The setting up of consultation mechanisms to achieve a close working relationship with IDPs, local communities and NGOs in applying the policy.
- The active involvement and coordination of all relevant central and local government offices (eg. displacement and migration, housing, health, education, finance, human rights and the judicial system) in implementing the policy and carrying out its recommendations.
- The assignment to government offices of staff in sufficient numbers and with adequate training to carry out the policy and apply the principle of non-discrimination in so doing.

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<sup>102</sup> Peter W. Galbraith, “Make Walls, Not War,” *New York Times*, October 23, 2007; and Peter W Galbraith, “The Surge,” *The New York Review of Books*, March 15, 2007, pp. 4-8.

<sup>103</sup> Thom Shanker, “Divided They Stand, but on Graves,” *News of the Week in Review, New York Times*, August 19, 2007, p. 4.

<sup>104</sup> See *supra* note 79.

- The training of police and military to protect displaced persons and humanitarian staff and hold accountable those involved in sectarian violence, forced displacement, the destruction of houses, the expropriation of land, and attacks on aid workers and their supplies.
- The allocation of adequate resources, in particular a fixed percentage of oil revenues, to address the needs of the displaced.<sup>105</sup> The Iraqi Parliament has urged the government to allocate \$1.5 billion for this purpose.<sup>106</sup> Part of the funds should be given directly to displaced families, with resources also assigned to governorates, local communities and families hosting the displaced. Local NGOs should also be apportioned funds to build up their capacity in helping IDPs.
- The setting up, in collaboration with the UN, of property restitution and compensation mechanisms for those uprooted since 2003, with special attention paid to Kirkuk where property claims are becoming explosive and where mechanisms instituted now could prevent violence and more displacement later on. In addition, there should be more rigorous application of existing compensation laws applicable to claims prior to 2003.
- Evaluations of conditions for return throughout the country, and the setting up of special programs to help returning IDPs and refugees once conditions are deemed safe and sustainable. Dialogue and reconciliation programs should be introduced in return areas, such as the joint rebuilding of houses and infrastructure by different ethnic and religious groups, and the strengthening of the judicial system to deal with issues of justice, reconciliation and human rights.

## CONCLUSION

Absent a political accommodation among Shi'a, Sunnis and Kurds, the return and reintegration of most of Iraq's displaced will be difficult to achieve. Although some steps have been taken on the political front,<sup>107</sup> progress has been limited on the major issues -- the sharing of oil revenues; the development of an effective national police able to deal with sectarian and tribal violence (there appears to be progress with respect to the army);

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<sup>105</sup> The head of Parliament's Displacement and Migration Committee Abdul-Khaliq Zankana has recommended 3 to 5 percent of oil revenues to be allocated for assistance to refugees and IDPs, see Integrated Regional Information Networks (IRIN), "Iraq: Parliament committee demands fixed budget to aid the displaced," February 11, 2008.

<sup>106</sup> Integrated Regional Information Networks (IRIN), "Iraq: Parliament urges government to reallocate development money to those in need," 13 April 2008.

<sup>107</sup> For example, Parliament in February 2008 agreed to measures that would benefit not only Shi'a but other groups, for example, an amnesty that would benefit mostly Sunnis; a law intended to bring back more former Ba'athists (e.g. Sunnis) into government service; efforts by the government to tackle militias, in particular the Mahdi Army; the allocation of 17 percent of national revenues for the Kurdish regional government; and the holding of provincial elections which Sunnis, Kurds and Shi'a supported in an effort to transfer more power to provincial governments (although disagreements over Kirkuk and other issues have thus far prevented the elections from going forward).

the disbanding of local militias; the implementation of a more decentralized form of government; and a decision on the future status of Kirkuk. Without movement on these issues, large scale violence could potentially resume in different parts of the country with substantial deaths and the increased displacement of people.

One clear test of whether Iraq will emerge as a functioning state is how it addresses the needs of the more than 4 million persons displaced inside the country and throughout the region. Government action too often has been marred by sectarian preferences, a lack of urgency, and incompetence. The International Medical Corps has called for a “civilian surge” to develop the technical capacity and efficiency of the Iraqi government to deal with the humanitarian emergency.<sup>108</sup> The urgency felt by the displaced and their supporters was expressed by the chair of an Iraqi coalition of NGOs who called upon the government “to shoulder the majority of the responsibility” for Iraq’s IDPs and refugees.<sup>109</sup> The government’s new National Policy on National Displacement, a welcome development, constitutes an important framework for addressing the needs of the displaced but it will require a great deal of national and international effort to implement its provisions, reinforced by greater portions of Iraq’s growing oil revenues. To date, the government has set aside only meager amounts of its \$70 billion budget for 2008 for refugees and IDPs. Unless it is willing to tackle the humanitarian crisis inside the country and the refugee crisis and brain drain that it has caused, Iraq will not be able to work out effective responses to the larger issues of its internal stability and political future.

The United States must fully acknowledge the special obligation it has toward Iraq’s displaced, since its actions have spawned the overall crisis in Iraq. Assuming this responsibility will mean working with the government of Iraq to support its development of programs for the safe and sustainable returns of most refugees and IDPs. It will also mean sharp increases in its own financial support for refugees and IDPs as well as a willingness to bring into the US larger numbers of Iraqis and to mobilize a more generous international response. The United States will also have to pay greater attention to how security will be provided for civilians once the US draws down its troop levels. It remains unclear how effectively Iraqi national police and army will be able to provide security for IDPs and returning refugees and contain radical militias should they resume propagating sectarian violence. This makes the option of an international or regional police force worth considering.

UN envoy Sergio Vieira de Mello while dying in the rubble of the Canal Hotel bombing in 2003 urged that the United Nations not leave Iraq. It is time for the world community to heed his appeal and play a more engaged role in the reconstruction and development of Iraq, the return and reintegration of its displaced populations and its movement toward a more politically sound future.

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<sup>108</sup> International Medical Corps, “Concerned Over Crisis – International Medical Corps Calls for Long-Term Assistance to Iraqis,” April 14, 2008.

<sup>109</sup> Integrated Regional Information Networks (IRIN), “Iraq: More government money for IDPs, refugees,” 24 February 2008.