

A Fresh Start For Iraq

The case for debt relief

The reconstruction of Iraq is one of the most urgent challenges facing the international community. Over the past two decades the country has been devastated by successive wars and since 1990 sanctions. Ordinary Iraqis have suffered gross violations of human rights, along with one of the most dramatic deteriorations in living standards ever recorded. Now unsustainable debt threatens to undermine reconstruction efforts. This briefing paper argues that the country's debt is unpayable, but also that there are wider moral and legal grounds for reducing Iraq's debt burden. It sets out a case for treating Iraq's debt as odious and illegitimate – and it explains why ordinary Iraqis should not pay for a debt accumulated by a tyrannical regime, borrowing from irresponsible creditors.

Executive summary

'By fixing the reparations payments well within Germany's capacity to pay, we make possible the renewal of hope and enterprise within her territory, we avoid the perpetual friction and opportunity of improper pressure arising out of treaty clauses which are impossible of fulfilment....'

John Maynard Keynes, 1919¹

The reconstruction of Iraq is a pressing problem for the international community. Failure would have grave implications not just for the people of Iraq, but for regional and international peace and security. But the challenge is daunting. It extends beyond the immediate costs of financing physical infrastructure destroyed during the war, to reversing two decades of lost development. Since 1990, Iraq has suffered a catastrophic decline in living standards – and an associated increase in poverty. Human-development indicators for health, education, and nutrition have worsened dramatically. Improving them is the key to forging a new start for Iraq's people.

Of the many problems confronting attempts at social and economic recovery in Iraq, one crucial area which has received insufficient attention is foreign debt. After years of misrule, war, and deteriorating living conditions, Iraq's people are among the most indebted in the world. Each of the country's citizens owes its creditors around \$11,000, as much as 55 times the annual income of Iraq's most impoverished people. Saddam Hussein's regime was responsible for the borrowing that created the debt, but this was matched by irresponsible lending on the part of commercial creditors, Northern governments, and a number of Gulf States.

Iraq's debt is not re-payable. Repayment would require the transfer of all of Iraq's oil revenue, for twenty years. Even if the repayments were rescheduled, creditors' demands would divert resources from vital investments in social and economic infrastructure. The projected costs of these investments are far higher than those associated with other recent cases of post-war reconstruction, such as Afghanistan and Kosovo.²

Under any circumstances, foreign assistance will have to play a critical role in reconstruction. The danger is that creditors' demands will lead to an undue dependence on aid, with damaging consequences for governance and accountability. As the British economist Keynes warned after the First World War in relation to Germany's war reparations, unsustainable debt may act as a destructive political and economic force, undermining reconstruction efforts within Iraq and the harmonious integration of Iraq into the international community.

Powerful as the economic case for debt relief may be, it is reinforced by the fact that much of Iraq's debt is illegitimate in a wider sense. The doctrine of 'odious debt' clearly sets out the reasons for this illegitimacy. Debt is considered odious if borrowing was undertaken by a regime which had no popular mandate; if debt money was not used to the benefit of the population; and if creditors acted in the knowledge that lending was being

used to finance activities – such as gross corruption, invasion, human-rights violations, or genocide – damaging to human welfare.

Oxfam maintains that much, and perhaps all, of Iraq's debt falls into the odious category. Many creditors acted in full knowledge of the nature of the regime to which they were lending – and of the purposes to which their loans were put. Some of the governments most loath to discuss debt relief – including those of France, Germany, Russia, Kuwait, and Saudi Arabia – lent irresponsibly to and effectively buttressed Saddam Hussein's regime. And there is clear evidence that some governments – including those of the USA and Britain – encouraged commercial links with Saddam, despite clear evidence that debt was being used to finance the violation of human rights, military adventures, and the development of chemical weapons. Ignorance represents a weak defence. Information about the regime was publicly available. Yet loans were made which helped to finance war, perpetuate genocide, and violate human rights. Iraq's commercial creditors can legitimately claim that Northern governments and certain Gulf States encouraged them to lend to a brutal regime. The coalition governments that removed the regime account for only a small portion of the current debt burden. However, their predecessor governments bear a large share of responsibility for creating in the 1980s an environment in which lending to Iraq was deemed politically acceptable.

Iraq's creditors may claim, with some justification, that Western governments actively encouraged them to lend to Saddam Hussein's regime. However, if creditors feel that they were misled by the signals being sent by certain governments they should seek redress from those governments – and not from ordinary Iraqis.

Aside from the economic and moral arguments for debt relief, there is a political case. By recognising their own role in financing Saddam Hussein's regime and accepting the odious nature of the debt that they helped to generate, Northern governments and Gulf States would send an important signal to the people of Iraq. It would mark a willingness to accept their share of responsibility for sustaining a regime that they helped to nurture and – in the case of the coalition countries – ultimately destroy.

The question that remains is this: should ordinary Iraqis be held responsible for paying debt incurred as a result of reckless lending to one of the world's egregious violators of basic human rights? Expressed differently, even if Iraq could pay the economic costs associated with debt, is it morally right that it should pay?

Oxfam believes that the answer to both questions is an unequivocal 'no'. Now that Saddam Hussein has been removed from power, the people of Iraq should not bear the burden of debts accumulated in their name by a tyrannical ruler. The doctrine of odious debt provides a clear rationale for making such a case. Under law in many countries, individuals do not have to bear the cost if others fraudulently borrow in their name. Similarly, corporations are not liable for contracts entered into without proper authority. The doctrine of odious debt extends this principle to foreign debt. Its starting point is that people should not be held responsible for debts incurred without their consent and used against their interests.

Iraq's debt problems cannot be viewed in isolation. It is imperative that any debt-reduction programme is financed from additional resources, rather than by a diversion of funds from Africa and other developing regions. More broadly, Iraq's plight powerfully demonstrates the need for an internationally agreed framework to deal with odious debt as situations arise, and ultimately to prevent them from occurring. Multilateral agreement to halt lending to egregious regimes is a more effective strategy than dealing retrospectively with the debt legacies that they leave behind. The development benefits that would be gained if such a strategy could be applied globally are potentially massive. The Iraqi case can therefore be seen as setting a precedent for both dealing with odious debts in other highly indebted countries – such as Nicaragua, Nigeria, and Haiti – and preventing such odious debts accruing in the first place. At the same time it is vital that debt relief for Iraq does not divert financing from other highly indebted countries.

What is needed now is a plan of action which addresses Iraq's immediate problems, while developing a longer-term strategy. In this context Oxfam is proposing the following measures:

- The creation under UN auspices of an independent panel of economists, jurists, and others to rule on the legitimacy of Iraq's debt.
- An immediate moratorium on all debt repayments until such a panel reports and odious debt is written off.
- Creditors to work with future legitimate Iraqi authorities, UN agencies, and civil society to convert debt into financing for development initiatives.
- The initiation of a process to create a standing body to establish and monitor world-wide norms to assess odious debt.

1. Development in decline: the economic case for debt relief

There are no parallels in recent history for the decline in development suffered by Iraq. Over the past 24 years of Saddam Hussein's rule, government mismanagement, gross human rights abuses on an enormous scale, war, and sanctions created a development disaster. The human costs have been immense:

- Average annual income has fallen from \$9,000 to as little as \$200.³
- Iraq's position on the UNDP Human Development Index slipped from 50th out of 130 countries to 126th out of 174 countries.⁴
- Death rates among children have more than doubled in just over a decade.

The economy

Oil is the mainstay of the Iraqi economy, which has been devastated since the imposition of sanctions following the invasion of Kuwait in August 1990. Since 1991, annual oil production has declined by an estimated 85% and GDP has fallen by two-thirds. In 1980, one Iraqi Dinar was worth \$3; today one thousand of them would not buy a postage stamp in neighbouring Jordan.⁵ Between 1989 and 1996, employment in four key sectors – construction, manufacturing, water supply, and electricity – fell by 54 per cent.⁶ In addition, the real income and purchasing power of the great majority of Iraqis plummeted, causing many salaried professionals and skilled workers to emigrate, or to shift to employment as casual unskilled labour.⁷

Health

Iraq's public-health indicators and the public-health system are in steep decline. In some areas, the interaction of deteriorating living standards with worsening social-sector provision has – quite literally – had lethal consequences. Between 1990 and 1999, Iraq's infant mortality rate rose from 40–60 deaths to 107 deaths per 1,000 live births.⁸ Under-five mortality rates have worsened even more dramatically, by 160 per cent. To put this in context, the death rate has risen some ten times more rapidly among Iraq's children than among their counterparts in countries affected by civil strife or HIV/AIDS in Africa.⁹ Poverty-related illness accounts for the bulk of the deterioration, highlighting the interaction between poverty and

public health.¹⁰ The latest conflict has resulted in huge increases in cases of diarrhoea among children, while outbreaks of typhoid have been reported in southern Iraq. Efforts to address Iraq's pressing public-health problems are constrained by critical shortages of hospital equipment and key drugs. Without adequate financing to end the shortages, many will die who could otherwise have been saved.¹¹

Food security

Deteriorating nutrition is one of the starkest consequences of declining living standards, as well as a major cause of public-health problems. Prior to the Gulf War in 1991, Iraq was reliant for 70 per cent of its food requirements on food imports paid for by its then extensive oil revenue. However, subsidy of food production and markets by the government of Iraq was already creating a cycle of dependency, with subsidised food being distributed to every Iraqi citizen. UN sanctions introduced in August 1990 meant that Iraq was forced suddenly to rely solely on domestic food production. The result was a drastic reduction in food availability and intake, which, together with the declining public-health environment, led to rates of malnutrition in children increasing fourfold between 1991 and 1995. Although introduction of a universal food ration by the UN in 1997 helped to increase food intake and improve nutritional status to some extent, the UN scheme, together with sanctions, has created a heavy dependency on food rations among more than half of all Iraqi people and has seriously undermined and distorted agricultural production, markets, livelihoods, and normal economic life for the vast majority of Iraqis. Data collected in northern Iraq in 2002 found that 60 per cent of the poor would be unable to feed themselves if the ration was suddenly removed, with the poorest households using 53 per cent of their income to buy 7 per cent of their food needs.¹² One in ten of all children in south/central Iraq under the age of five is under weight, and one quarter are chronically malnourished.¹³

Education

Iraq was once a regional leader in education. Now the education system is collapsing, negating the gains of the past. Prior to the latest conflict, one fifth of young Iraqi people did not attend primary school, and only one fifth of all children went on to secondary school. Adult literacy has fallen from 81 per cent to 53 per cent.¹⁴ Schools and universities have suffered, along with all other sectors, due to chronic shortages of resources resulting from the UN sanctions. Iraqi schools have little or no access to books (apart from those rooted in Baathist ideology), supplies, equipment, or any other resources.¹⁵

Women

Iraqi women have borne a disproportionate share of the burden associated with the reversal in development. Their health status has deteriorated, along with their economic status. In the oil-boom years, many women had jobs, but by 2002 it is estimated that nine-tenths of Iraqi women did not have formal jobs and were not trying to find them.¹⁶ There is evidence that girls are more likely than boys to be withdrawn from school in the face of economic pressures on households. One third of Iraqi girls do not go to school.¹⁷ According to UNICEF, by 1999 40 per cent of women in Iraq married before the age of 18. Women's health has also suffered: Iraqi women are more than 25 times as likely as their counterparts in Britain to die in child-birth, reflecting the appalling state of ante-natal and maternal health services. Iraq's maternal mortality ratio rose from 117 for every 100,000 births before 1990 to 294 in the 1990s.¹⁸

Lack of essential services

Functioning utilities are a pre-requisite for social and economic recovery. Iraq's water and electricity systems have been unable to function at the capacity required to meet the basic needs of the Iraqi population for more than a decade. Much of the country's electricity-generating capacity was destroyed in the 1991 Gulf War. Sanctions meant that Iraq could not import the equipment needed for repairs to the electricity grid or water-treatment plants. The sharp decrease in power supply led to deterioration in water and sanitation provision (both are dependent on mains power), and millions of people across Iraq were forced to use untreated water – one underlying cause of increased morbidity and mortality. Oxfam is currently involved, along with other NGOs, in rehabilitating the water and sanitation systems that have been further damaged by the latest conflict. However, the resources that are available for such initiatives are dwarfed by the actual needs. Addressing social and economic decline on this scale will require huge resources to be supplied by the international community. Iraq simply cannot pay its debt and reconstruct the country. The economic and social case for debt relief in Iraq is undisputable.

2 Iraq's debt burden

National debt cannot be viewed in isolation. In Iraq's case, creditors' demands have to be assessed against two considerations of overwhelming importance: the costs of reconstruction and the legitimacy of creditors' claims.

Domestic resources are clearly insufficient to cover the costs of reconstruction in Iraq. These could rise to \$250bn over the next 10 years.¹⁹ Long-term development assistance will be vital under any conceivable scenario. So, too, will debt relief.

The facts of Iraq's debt crisis speak for themselves. While uncertainty and secrecy continue to obscure the precise details of the picture, Iraq owes creditors in the region of \$260bn, consisting of the following elements:

- \$126bn in external debt²⁰
- \$77bn in reparations for the 1991 Gulf War²¹
- \$57bn in payments for 'pending contracts' with foreign companies²²

The implied financing burden is enormous. Each Iraqi owes the country's creditors \$11,000, despite having an annual income of as little as \$200. External debt amounts to 800 per cent of GDP and 1,625 per cent of exports.²³ This makes Iraq one of the most highly indebted countries in the world. Iraq's debt/GDP and debt/export ratios are respectively some five and three times the equivalent ratios for the 41 countries covered under the Highly Indebted Poor Countries Initiative (HIPC).²⁴

Taking economic recovery as a given, it is still difficult to envisage any scenario under which full repayment would be possible, even if creditors' claims were accepted as legitimate. Attempting to honour inherited debt obligations would require extreme deflationary measures, with resources being squeezed out of the economy for transfer to creditors. The consequences would include high unemployment, lower investment, and reduced public spending on already decrepit basic services.

It is undeniable that, in the long term, Iraq is likely to generate more in export revenues than many highly indebted poor countries, given that it has the potential to become the second-largest oil producer in the world. However, the enormity of its debt burden dwarfs its current capacity for repayment. If all oil-export revenue (\$13.3bn in

2002²⁵) were to be devoted to wiping out debts, it would still take 20 years to clear the bill.²⁶

Who are Iraq's creditors? There are several major clusters of claimants:

- **The Gulf States** are the biggest creditors, with Saudi Arabia and Kuwait predominating.²⁷ Kuwait, Jordan, and Saudi Arabia are the biggest claimants of reparations from the 1991 Gulf War.²⁸
- **Russia and France** are the largest Western creditors. They each hold around \$8bn in claims, much of which can be traced back to arms sales.²⁹ These two countries were the chief suppliers of major weapons systems sold to Iraq in the 1980s.³⁰ In addition, Russia accounts for 90 per cent of the 'pending contract' claims as a result of deals with its private companies.
- **Other creditors:** Although Germany does not figure in most assessments, the German finance ministry has recently indicated that it is owed claims of \$3-4bn by Iraq. The USA is owed in the region of \$5bn. Britain is estimated to account for around \$1bn in export credit guarantee claims.³¹
- **Multilateral creditors:** In addition, Iraq owes multilateral institutions \$1.1 bn.³²

Consideration of creditors' claims – and of the case for debt relief – has to take into account the process through which Iraq's debt was accumulated. Much of the debt can be traced back to the 1980s. Foreign creditors played a critical role in financing Saddam's military spending for the Iran-Iraq war. Debt stock rose ten-fold over the decade.³³ Collapsing oil prices subsequently raised serious questions about the sustainability of Iraq's debt and capacity for repayment. However, the creditors continued to lend on an extravagant scale.

Only a small amount of the external debt accumulated in the 1980s was concessional.³⁴ More than 40 per cent was provided on a short-term basis, with repayments due within one year.³⁵ The interest rates on this kind of debt are generally higher. Repayments on short-term debt in 1990 were comparable to those on long-term debt, even though the former represented a smaller share of overall debt stock.³⁶ Accumulated arrears on short-term payments almost certainly represent a large share of the debt owed today.

During the 1990s, the external debt crisis was compounded by a halt in debt payments (and associated build-up of arrears). Reparations claims totalling \$320bn were also lodged after the 1991 Gulf War, and the UN Compensation Commission (UNCC) was established to assess them. Only individual and family claims, mostly from Kuwait,

have so far been settled, with company and government claims still outstanding. By Oxfam's estimations, Iraq will be expected to pay around \$77bn of the total claims lodged.

Saddam's dealings with foreign companies add another chapter to the debt story. The regime ran up debt estimated at \$57bn in deals with foreign companies. Around \$38bn of this is thought to have been for oil contracts, which could not be honoured under the sanctions arrangements.³⁷ Other contracts may have had a more direct military purpose. These include alleged deals with the Chinese (illegal under the UN sanctions), for the provision of fibre-optic cable.³⁸ One of the dangers facing Iraq now is that a large number of 'unofficial' creditors will seek to enforce their claims.

3. Odious debts: the moral case for debt relief

Even if the Iraqi people could pay their present debts, there is a compelling argument that they should not have to. This case is grounded in the 'doctrine of odious debts'.

Across the developing world, citizens of countries are repaying debts accumulated in their name by governments that they did not elect, which did not act in their interest, and which – in many cases – violated their basic rights. In Nigeria, Sani Abacha reportedly plundered \$2bn in public funds. The Somoza regime in Nicaragua looted up to \$500m, while Jean-Claude Duvalier absconded with an estimated \$900m in public funds from Haiti, one of the world's poorest countries. Other examples include the debt accumulated under the apartheid regime in South Africa, by Mobutu in today's Democratic Republic of Congo, and by Marcos in the Philippines. In all these cases, national debt generated huge private gains for individuals, while the public was left to bear the cost of repayment. These governments included rulers who either imposed extreme repression, or plundered transferred money, provided by creditors, to foreign bank accounts – or both.

Most people would accept that there are limits to the extent to which democratically elected governments should uphold the claims of creditors that financed brutal, unaccountable regimes. To take a case in point, it is not immediately obvious why South Africans are today repaying the debt of an apartheid regime which systematically abused human rights and was subject to international sanctions. However, there is no international framework for establishing the circumstances under which a creditor's claim cannot be considered

legitimate. This contrasts with principles enshrined in the national laws of many countries. In some, when corporate directors fail to disclose information fully, or accumulate company debt without going through proper channels, there are limits to corporate liability.

Developing a framework for the relief of odious debt raises difficult problems. Part of the reason why the doctrine of odious debts has so far failed to gain momentum at an international level is the fear of creditor countries and financial institutions that debtor governments will abuse the concept. Why repay a past government's creditor, when you can escape obligations by claiming that it was not legitimate? After all, how can any creditor know whether or not a particular government will one day be considered illegitimate? Badly designed and applied in the absence of clear and binding rules, an 'odious debt' framework could jeopardise the whole basis for international lending, as creditors would refuse to lend, on account of the increased risk of non-payment.

Such considerations explain why it is difficult to deal with odious debt after the event. That is why advocates of an odious-debt relief framework have called for the creation of a standing body to provide a 'legitimacy rating' on the basis of transparent and internationally agreed criteria. Any creditors lending to a government with a poor rating would know that their future ability to enforce claims would be weakened, and this would deter them from lending.

Setting up a viable 'legitimacy rating agency' is vital. However, the need to address Iraq's debts is immediate, and the absence of such an agency is insufficient grounds for accepting Iraq's debt as legitimate. Saddam Hussein's record for violating human rights is one of the worst in the world. The regime used foreign credit to finance activities which clearly and systematically violated international norms. The fact that some of his regime's debt was incurred at a time when chemical weapons were being used to carry out genocidal attacks demands that the question of legitimacy of the debt is addressed.

While the specific case of Iraq must be dealt with today, the framework that is used should be more widely applied. Indeed, the principles used to assess the legitimacy of Iraq's debt should also be strong enough to set a precedent for the formation of an international standing body in the future.

Oxfam believes that three broad principles should be applied when assessing whether a debt can be deemed odious for debt-relief purposes and when judging the legitimacy of creditors' claims. In

order for a debt to be deemed odious, these three principles must be applicable simultaneously:

- 1 Borrowing was undertaken by a regime which had no popular mandate.
- 2 Debt money was not used to the benefit of the population, but to finance activity harmful to human rights and the social and economic interests of the population.³⁹
- 3 Creditors acted in full knowledge of the nature of the regime to which they were lending, and the purposes to which their loans would be put;⁴⁰ or creditors failed to consult publicly available sources of information about a particular regime, which led to loans being used to wage war and/or perpetuate genocide and violations of international human-rights laws.

Clearly, problems will arise in judging what should constitute an international standard. Just how serious does a human-rights violation have to be before a debtor is deemed a non-legitimate actor? And what if a government is a poor performer in one area (say accountability), but a good performer in another (poverty reduction, for example)? There are no easy answers. However, on any scale, Iraq under Saddam Hussein would rank high on any list of candidates for odious regime status. His regime invaded neighbouring countries, inflicting great damage and causing massive loss of life, not least among its own population.

The case for treating Iraq's debt as odious on the basis of the government's actions and creditors' knowledge of those actions is set out below.

Borrowing was undertaken by a regime without popular mandate

There are no reasonable grounds for claiming that Saddam Hussein's regime enjoyed a popular mandate or met minimum standards for accountability. The 'show polls' in 1995 and 2002 were internationally regarded as a sham. No other candidates were permitted, and the leader gained 99.7 per cent of the vote in 1995 and 100 per cent in 2002. The Iraqi state since Saddam Hussein's ascension to power in 1979 functioned on the basis of personal loyalty to Saddam Hussein and the ruthless suppression of opposition, whether from military or civilian leaders or members of Saddam's own family. Saddam took all key decisions in conjunction with a tight circle of intimates, hand-picked from his own tribal group.⁴¹

Creditors may argue that, although the regime was classified as a dictatorship, it was internationally regarded as a legitimate regime, with a seat at the United Nations. However, the same regime has been repeatedly condemned by UN resolutions. The special rapporteur on human rights in Iraq in 1992, Max Van der Stoel, reported that violations of human rights by Saddam Hussein's regime were among 'the worst since World War Two – comparable in gravity to crimes of the Khmer Rouge (Cambodia) or Idi Amin (Uganda)'.

Borrowed money was not used to the benefit of the population, but to finance activity harmful to human rights and the social and economic interest of the population

If 'odious debts' can be thought of as debts incurred as a result of actions that harm a nation's well-being, or as loans misused for personal gain, then Saddam Hussein's regime would rank among the worst offenders. Creditor moneys' was channelled into military spending, intimidation, and personal aggrandisement. From the late 1980s, the government effectively abandoned the upkeep of Iraq's social-service sector.

Military spending and adventurism

Military spending increased during the 1970s, fuelled by the oil boom. However, this 'militarisation' of the economy became ever more intense during the 1980s, and resources were shifted away from social spending to fund the 1980-88 war against Iran. Such military adventurism had a huge human cost: an estimated 400,000 Iraqis died during the war, and 60,000 were taken prisoner.⁴² During the peak of the war, in the mid-1980s, Saddam Hussein was spending an estimated \$14bn on arms and defence, nearly half the country's GDP.⁴³ Between 1981 and 1988, Iraq purchased arms and military equipment worth nearly \$50bn from foreign suppliers – more than any other developing-country nation at the time.⁴⁴ The Western powers supported Iraq against Iran, by providing direct military aid and training, grants, and export credit guarantees. Although there are no overall figures to indicate how much of the external debt load is explicitly linked to military spending, most of Iraq's present debt to France and Russia is the legacy of arms sales in the 1980s. Even if funding was not directly linked to arms sales, there was no guarantee that equipment supposedly for 'civil use' was not put to military purposes. Chemical-weapons supplies are the most difficult to control, as chemicals needed for their manufacture are also used in

agriculture and the pharmaceuticals industry.⁴⁵ Reparations from the Iran-Iraq War and the Gulf War represent the consequences of this military expenditure and adventurism, and are therefore clearly relevant to the 'odious debt' framework.

Internal repression

External lending to Saddam Hussein's regime for military purposes had an international rationale - to restrict Iranian power - which is impossible to distinguish from the use of military equipment by Saddam Hussein to oppress his own people. It is doubly reprehensible that the Iraqi people should pay for the maintenance of a repressive apparatus that was employed against them: in attacks against the Iraqi Kurds which culminated in chemical gas attacks against the Kurdish population in 1988; in implementing a policy of 'Arabisation' by forcibly expelling ethnic minorities from Kirkuk; in the repression of the Marsh Arabs and other Shi'a communities following the 1991 Gulf War; and in other, widespread violations of internationally recognised human rights.⁴⁶

Personal gain

Saddam Hussein's regime was marked by inordinate mismanagement and misuse of funds. This compounded the debt problem and diverted national revenues from productive investment. More than 78 luxury palaces were built solely for use by Saddam, his family, or his close supporters.⁴⁷ Saddam Hussein's personal wealth is an estimated \$6bn.⁴⁸ Money was also used to sustain the vast network of patronage upon which the regime relied for its existence. Privileges, including special monthly allowances, were extended to some 3.5 million people, mainly members of the military, police, and other elite security forces.⁴⁹

Creditors acted in full knowledge of the nature of the regime to which they were lending, and the purposes to which their loans would be put. *OR* the failure of creditors to consult publicly available sources of information about a particular regime led to loans being used to wage war and/or perpetuate acts of genocide and violations of international human-rights laws.

Some of Iraq's creditors are likely to claim that they were conducting purely commercial deals, and were not aware of what their loans were used for. Both commercial creditors and governments have traditionally used this defence. In the case of Iraq, it amounts to a gross distortion of the facts. Commercial creditors were either aware of the facts, or failed to take reasonable steps to establish them. The record of creditor governments is even more clear-cut – and arguably more damning. Many were only too willing to circumvent political processes, in order to do business with Saddam. Some companies – often implicitly supported by governments – actively broke national laws. And they did so with full knowledge of the regime's record at their disposal. There are four grounds for rejecting claims of creditor ignorance. These are:

- Clear evidence that information was available
- Evidence that national laws were flouted to facilitate arms transfers
- Evidence that governments actively promoted arms sales to Iraq
- Evidence that governments sent signals that it was politically acceptable to lend to the Iraqi government

Knowledge about the nature of Saddam Hussein's regime was firmly in the public domain from the early 1980s. If companies were not already aware of it, it was easily accessible.

News of Saddam Hussein's first use of chemical weapons broke early in the 1980s. At this time, UN diplomats presented photographs of Iranian victims of chemical warfare to the Security Council.⁵⁰ In February 1984, Western journalists reporting on the war between Iraq and Iran verified the use of chemical weapons.⁵¹ In March 1984, a UN inspection team concluded that the Iraqis had used chemical weapons against the Iranian army.⁵² Iraq's use of chemical weapons

was also made public through the testimony of US State Department Officials. In 1980, a US Defense Intelligence Agency document reported that Iraq had been 'actively acquiring' chemical weapons since the mid-1970s.⁵³ In September 1988, the US Senate unanimously passed the Prevention of Genocide Act, which made Iraq ineligible to receive US loans, military and non-military assistance, credits, credit guarantees, and items subject to export controls, although the Reagan administration subsequently overturned it.

Some companies deliberately broke government export-control guidelines which would have restricted their sales to Iraq.

Despite export-control laws and guidelines to prevent the arming of 'odious' regimes, these were flouted in several countries by certain companies. According to the International Security Information Service, 'Iraq's civil and military procurement efforts in the 1980s benefited enormously from low-interest, unauthorised loans from Banca Nazionale de Lavoro (BNL),' an Italian government owned bank with branches throughout the world.⁵⁴ Iraq managed to establish a special relationship with the Atlanta branch of BNL that enabled Iraq to obtain credit and borrow about \$2.16 billion for its procurement of Western industrial commodities. These funds went to build both its civilian and military infrastructure.⁵⁵ In Germany, in 1991 the Federal Economics Ministry investigated approximately 100 German firms on suspicion of a violation of the embargo against Iraq, of which nine were under criminal investigation in 1992.⁵⁶ Several of these investigations ended in prison sentences.

Governments encouraged military sales to Iraq by promoting the sale of 'civil use' equipment, or by claiming that military equipment was 'non-lethal', when in fact it was known that such items could have a military purpose.

Western governments and Gulf States had prior geopolitical interests in the region which governed the provision of loans. In part, this meant turning a blind eye to the potential military use of supposedly non-military equipment. British government policy was to refuse to supply 'lethal' equipment to either side, despite statements by officials at the Ministry of Defence that there was no such thing as a 'non-lethal' weapon. Detailed media investigations have reached the conclusion that the British government knowingly facilitated the transfer of military equipment. According to an article in the Observer on April 6, 2003, the Conservative government under Margaret Thatcher actively assisted in the provision of 'non-lethal' weapons and 'dual-use' equipment to Iraq, knowing that Saddam Hussein was working on projects to develop missiles and nuclear arms.⁵⁷ The Guardian reported that in 1985, the Thatcher government

gave financial backing to Uhde Ltd through insurance guarantees to aid in the construction of the Falluja 2 plant, despite senior officials recording a 'strong possibility' that the chlorine plant would be used for the production of mustard and nerve gas.⁵⁸ Similarly Human Rights Watch documents that the US government approved the sale of 45 Bell helicopters to Iraq in 1985, a \$200 million deal. The sale was conditional on Iraqi government assurances that the helicopters would be used only for civilian transport. In September 1988 it was discovered that some, if not all, of the aircraft had been transferred to the Iraqi military.⁵⁹

Motivated by a desire to shore up Saddam Hussein's regime against Iran and maintain trade relations with Iraq, governments sent signals that it was politically acceptable to lend to the Iraqi government.

Key Western leaders sent signals throughout the 1980s that lending to Iraq was a politically acceptable thing to do. Although the USA and UK account for only a small proportion of Iraq's debt burden, their political clout was significant. In 1982, the USA removed Iraq from the State Department's list of states sponsoring terrorism. After Saddam Hussein's regime gassed the Kurds at Halabja in 1988, the US approved exports to Iraq of items with dual civilian and military use at double the previous rate. The UK Foreign Office verbally condemned the Halabja massacre, but ten days later the UK Secretary of State for Trade and Industry extended £400m in export credits to Iraq. At the UN Security Council, both countries blocked condemnation of Iraq's known use of chemical weapons. The USA was also more directly involved in encouraging other states to arm Saddam. In 1988, Jordan, Saudi Arabia, Kuwait, and Egypt supplied Iraq with US howitzers, helicopters, bombs, and other weapons.⁶⁰ It is unthinkable that these sales would have taken place had they been actively opposed by the Reagan administration. In fact, there is evidence that, far from being opposed, the sales were actively promoted. One detailed investigative account concluded that President Reagan personally requested Italian Prime Minister Giulio Andreotti to funnel arms to Iraq.⁶¹ There are therefore clear lines of responsibility from the USA and UK governments in terms of the signals given by their close relationship with Saddam Hussein's regime and by the lending and trade that occurred more widely with his regime. Creditors who lent to the regime at a time when the USA and UK had such a relationship with Iraq could hold these governments responsible for the debts owing to them. A similar case can be made vis-à-vis the Gulf States. Most of the money owed by Iraq to Kuwait and Saudi Arabia was actually lent during the Iran-

Iraq War, with the explicit aim of reinforcing the Iraqi Sunni power base against Iran's Shia-dominated government.

Conclusion and policy recommendations: the political case for debt relief

The distribution of responsibility for Iraq's debt crisis is certain to be a matter for debate. What ought not to be a matter for debate is a simple principle: namely, Iraq's people should not bear the costs of a debt that helped to keep a tyrannical ruler in power and contributed to immense suffering.

The urgent needs for reconstruction add a crucial dimension to consideration of Iraq's debt. It is vital that the country's oil wealth is not squandered on attempts to repay an illegitimate – and unpayable – debt. This is not to suggest that debt relief is a panacea for the current plight of the country. Debt relief should complement the prudent management of oil revenue and effective aid flows. Active policies are needed to reduce economic dependence on oil. The boom-and-bust cycles associated with the trade in oil can exacerbate corruption and lead to fiscal crises at times of downturn.

Government revenue and expenditure should be closely monitored, with international support for capacity-building initiatives provided to ensure strong fiscal management. A stabilisation fund should be set up, to absorb excess oil revenue in times of high oil prices, and provide for stable levels of funds to cover periods of price slumps. Economic diversification should also be encouraged.

None of this detracts from the case for debt relief – or from the case for international action to deal with systemic problems of odious debt. By recognising the odious nature of debt in Iraq, the international community would both redress a fundamental injustice and send out important political signals. By acknowledging their own role and their own responsibilities in sustaining Saddam Hussein's regime, Northern governments and Gulf States could open the door to a new era in relations with Iraq. By addressing Iraq's debts through an independent panel, the international community would also send a clear message to creditors that irresponsible lending practices were no longer acceptable.

Against this background, Oxfam calls for the following measures:

- 1. Creation of an independent panel, appointed under UN auspices, to adjudicate on the classification of ‘odious debts’ in Iraq. The panel should make recommendations about appropriate debt forgiveness/rescheduling, based on the doctrine of odious debts and an assessment of Iraq’s development needs.**

The panel could function as a judicial body consisting of professional jurists, or prominent individuals.⁶² It should include reparations in its considerations, as well as external debt, given that the Iraqi people should not have to pay for the consequences of the expansionist ambitions of past regimes. Pending contracts should also be investigated, to establish what types of deal were concluded and whether they conform to odious-debt criteria.

- 2. An immediate moratorium on Iraq’s debt payments until such a panel reports and odious debt is written off.**

This includes the suspension of the United Nations Compensation Commission, responsible for distributing reparations payments from the 1991 Gulf War. A moratorium would provide the space for the international debt panel to be established, allow for a full assessment of creditor claims and financing needs, and prevent resources from being diverted from urgent reconstruction priorities. A substantial time lapse should also allow for representative and accountable structures of government to emerge. Iraq has paid no dues on its debts since the UN imposed sanctions in 1990. An additional allowance of time to give the country breathing space to recover and -to permit an accurate and just settlement of its debts will make little difference to creditors. In any case, under no circumstances should any debt repayments be made while Iraq is under occupation.

- 3. Creditors to work with future legitimate Iraqi authorities, UN agencies, and civil society to convert debt into financing for development initiatives.**

To ensure a direct link between debt relief and development aims, creditors should be offered the option to make ‘debt-for-development’ swaps. Through these arrangements, commercial banks could donate all or part of the debt relief to future legitimate Iraqi authorities, UN agencies, and local civil-society actors, who would receive the equivalent in funds in local currencies from the developing country in question, which would then be used to fund programmes in the country.⁶³

4. The Iraqi case should set a precedent for the creation of a standing body to establish and monitor world-wide norms to assess odious debt.

The need to address Iraq's debts is immediate, and an independent panel should be established for this case as soon as possible. However, the Iraqi case should be seen as setting a precedent for the way in which debts are assessed in the future. The current international uncertainty concerning the Iraqi debt has exposed both the huge gap in the debt-relief framework and the hypocrisy that consequently ensues. Creditors are virtually immune to the consequences of their lending, however bad the record of debtor governments may be. Meanwhile, poor people pay the price. What is needed is a set of transparent rules and procedures for rating the legitimacy of debtor countries. In cases where that legitimacy falls below a certain level, any debt subsequently lent would be deemed odious. Creditors would lose their right to enforce repayment claims on subsequent governments. Such a process for the resolution of debt crises should also be governed by considerations of sustainability and a country's ability to meet the Millennium Development Goals, along the lines suggested by other NGOs.⁶⁴ Clearly, any such arrangement would require international co-ordination and domestic legal reforms to limit creditor claims. The alternative is to continue with a system that is *ad hoc*, potentially destabilising, and fundamentally unjust.

The Iraqi case could prove to be the catalyst which leads to the establishment of a new, independent panel which has the 'odious debt' doctrine as its guiding principle, and which ties middle-income indebted countries into its structure. At the same time it is vital that action on Iraqi debt is financed through *additional* resources, and that it does not divert funding from debt relief in Africa.

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Appendix

Fig 1: Estimates of Iraq's financial burden		
Type of obligation	Estimated amount	Source
External debt	\$62-\$130bn	<i>CSIS, 2003</i>
	\$126bn	<i>World Bank, 1998</i>
	\$53bn*	<i>Economist Intelligence Unit, 2000</i>
	\$42.1bn*	<i>Iraqi government memorandum to the UN, 1990</i>
	\$84.2bn	<i>Jiyad, 1998, based on 1990 Iraqi government figure</i>
	<p><i>*NOTE: These figures are unlikely to include interest.</i></p> <p><i>Discrepancies in the figures are also due to the disputed status of \$30bn in funding by the Gulf States during the Iran-Iraq war.</i></p>	
Reparations	<p>Claims from 1991 Gulf War:</p> <p>\$320bn</p> <p>So far awarded: \$148bn</p> <p>Of which: Paid: \$16bn</p> <p>Owed: \$27bn</p> <p>To be awarded: \$172bn</p> <p>Claims from Iran-Iraq war:</p> <p>\$100bn</p>	<i>CSIS, 2003</i>
Pending contracts	\$57.2bn	<i>CSIS, 2003</i>
Oxfam calculations:		
<i>External debt</i>	\$126bn	<i>World Bank, 1998</i>
<i>Reparations from 1991 Gulf War</i>	\$77bn	<i>\$27bn + \$50bn likely to be awarded if remaining claims are made at the same rate as previous claims</i>
<i>Pending contracts</i>	\$57bn	<i>CSIS, 2003</i>
Total financing burden	\$260bn	

Fig. 2 Estimates of Iraq's external debt by major creditor		
Creditor	Estimates	Source
Gulf States	\$55bn	<i>Exotix</i> <i>(Saudi Arabia, Kuwait & non-Kuwait UAE. Does not include \$30bn in finances to Iraq during the 1980s which Iraq claims are grants, not loans)</i>
France	\$8bn	<i>Exotix</i>
	\$4-8bn	<i>Jubilee Iraq</i>
Russia	\$12bn	<i>CSIS</i>
	\$8bn	<i>Exotix</i>
	\$8-16bn	<i>Jubilee Iraq</i>
Germany	\$4.3bn	<i>Jubilee Iraq</i>
US	\$5bn	<i>Jubilee Iraq</i>
UK	\$1bn	<i>Jubilee Iraq</i>
Eastern Europe	\$4bn	<i>Exotix (Bulgaria, Poland, Czech Republic, Romania, Yugoslavia)</i>
Multilateral institutions	\$1.1bn	<i>Exotix</i>

Notes

- ¹ John Maynard Keynes, *The Economic Consequences of the Peace*, New York, 1920.
- ² UN, 'Portrait of the Current Socio-Economic Developmental Situation and Implications in Iraq based on specific Scenarios', 20 January 2003.
- ³ World Bank and William D. Nordhaus, 'The Economic Consequences of a War with Iraq', article posted on nthposition.com online magazine. Figures based on period from 1979 to 2001 and given in 2002 values. Current figures for average incomes given in this report are \$1000 - \$1200. However, impoverished households are lucky to bring in \$200 per annum.
- ⁴ This measures national achievements in health, education, and per capita GDP from 1990 to 2000.
- ⁵ *Iraq: The Bradt Travel Guide*, Karen Dabrowska 2002.
- ⁶ UN, 'Portrait of the Current Socio-Economic Developmental Situation and Implications in Iraq based on Specified Scenarios', 20 January 2003.
- ⁷ Global IDP database, 'Iraq: Sanctions raise serious concern at international level despite Oil-for-food Programme' (1999-2002).
- ⁸ Medical specialists estimate that Iraq should have had an infant mortality rate of 20 – 30 per 1000 live births by 1999.
- ⁹ UNICEF 2002, Chapter 2: 'National Context: Development in Iraq', www.casi.org.uk/unicef/sit0202/context.html
- ¹⁰ 'The Situation of Children in Iraq: An Assessment Based on the United Nations Convention on the Rights of the Child', UNICEF Iraq, February 2002, page 20.
- ¹¹ For example, drugs for chronic illnesses are in short supply. Lack of power means cold stores for vaccines are not working, and the vaccines are spoiled. There is even a shortage of painkillers.
- ¹² FAO, 1993, 'Assessment of food and nutrition situation in Iraq', Technical Cooperation Programme; Save the Children UK, 'Understanding Kurdish Livelihoods in Northern Iraq', January 2002.
- ¹³ UNICEF 2002, op.cit.
- ¹⁴ 'Educating Iraq: What kind of school and university system is Washington planning, asks Joanna Walters', 1 April 2003, *Guardian*.
- ¹⁵ Information taken from Middle East schools country guide - Iraq <http://www.me-schools.com/countries/iraq.htm>
- ¹⁶ UNDP in Iraq, 'National Development Report', 2002: 158.
- ¹⁷ *Guardian* op. cit.

¹⁸ 'Iraq Situation Analysis', report prepared by the UNICEF Iraq Office with the support of the Planning Commission/Manpower Planning Department of the Government of Iraq, February 2002.

¹⁹ Noreena Hertz, UK based economist, 'Drop Saddam's Debt', 9 April 2003, speech delivered at a Jubilee Netherlands seminar held in Utrecht, the Netherlands on 29 March 2003.

²⁰ World Bank, 1998. Figures for external debt vary. For a fuller summary of estimates of Iraq's financial burden, see Appendix, Figures 1 and 2.

²¹ For the purposes of this paper, reparations are included in the overall debt figure, as they form a substantial part of Iraq's external debt. \$320bn was claimed for the 1991 Gulf War, of which \$172bn still has to be awarded. The \$77bn figure is based on the amount owed from those claims already awarded (\$27bn), and the amount likely to be owed after adjudications have taken place on the \$172bn claims (\$50bn). This assumes that claims will continue to be awarded at a similar rate (29% of claims deemed to be owed). We have not included the \$100bn claimed in reparations by Iran from the Iran-Iraq war, as the status of these claims is still so uncertain – there has been no consideration or ruling on them.

²² Centre for Strategic and International Studies (CSIS), *A Wiser Peace: An Action Strategy for a Post-Conflict Iraq*, Frederick Barton and Bathsheba Crocker, 2003.

²³ Based on nominal GDP of \$31.8bn in 2000, and exports of \$16bn in 2001 (EIU).

²⁴ The debt-to-GNP ratio for the 41 countries qualifying for debt relief under the Highly Indebted Poor Countries Initiative (HIPC) is 159%, while their debt-to-export ratio is 620% (Jubilee Research). These figures are for debt stock to GNP and to exports of goods and services, and do not include debt servicing.

²⁵ Human Rights Watch, 'Considerations for the Management of Oil in Iraq', Human Rights Watch Background Briefing, April 2003.

²⁶ This does not include interest payments on external debt going forward.

²⁷ Data on creditors also vary. The analysis here is based on calculations by Exotix, which exclude \$30bn in payments claimed by the Gulf States, but which Iraq regards as grants.

²⁸ CSIS, 2003.

²⁹ Colum Lynch, 'Russia is Top Iraqi Importer', *Washington Post*, 16 January 2002.

³⁰ Stockholm International Peace Research Institute Yearbook, 1989.

³¹ See Assessment of Iraq's Debts by Jubilee Iraq, <http://www.jubileeiraq.org>

³² Ibid.

³³ 'Jiyad, An Economy in a Debt Trap', *Arab Studies Quarterly*, Vol 23 No 4, Fall 2001.

³⁴ Jiyad, 2001.

³⁵ Ibid.

³⁶ Ibid.

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- ³⁷ Business Week Online, <http://www.businessweek.com>, April 2003.
- ³⁸ Colum Lynch, 'Iraq Uses Its Buying Power As Leverage', *Washington Post*, 3 July 2001.
- ³⁹ Conditions set out by Michael Kremer and Seema Jayachandran, 'Odious Debt', paper presented at IMF February 2002 conference on macroeconomics and poverty, also article in *Finance and Development*, June 2002.
- ⁴⁰ Patricia Adams argues that creditors therefore commit a 'hostile act' against that nation. See 'The doctrine of odious debts', *National Post*, 12 February 2003.
- ⁴¹ Historian Charles Tripp claims that the dictatorship 'demanded obedience and used violence on a scale unmatched in Iraq's history' (Tripp, *A History of Iraq*, Cambridge University Press, 2000).
- ⁴² Federation of American Scientists Military Analysis Network, <http://www.fas.org/man>, Iran-Iraq War.
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- ⁴⁶ Human Rights Watch, 'Justice for Iraq', December 2002.
- ⁴⁷ Elabi, 'Dealing with Iraq's Foreign Indebtedness', *Thunderbird International Business Review*, Vol 42 (1) 65-83, Jan-Feb 2000.
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- ⁵⁰ Elaine Sciolona, 'Threats and Responses: The Iranians; Iraq, Chemical Arms Condemned, but West Once looked Other Way', *New York Times*, 13 February 2003.
- ⁵¹ *New York Times*, 13 February 2003.
- ⁵² ISIS Briefing Paper No. 75, January 2000, *Controlling Chemical Weapons*, Ian Kenyon.
- ⁵³ 'Officers say US Aided Iraq in War Despite Use of Gas', Patrick Tyler, 18 August 2002, reported earlier in *Financial Times*, 23 February 1983.
- ⁵⁴ International Security Information Service, 'BNL', <http://www.exportcontrols.org/print/bnl/html>, accessed 20th May 2003
- ⁵⁵ *Ibid.*, The ISIS report also states that all the charged BNL Atlanta officials eventually plead guilty to a portion of the charges relating to this case. ISIS gives sources for the report as the following: a document from the House Banking Committee, US Congress, 'Background on BNL Loans to Iraq,' 1991, and documents seized by the US government in the fall of 1990 at the Matrix Churchill Corporation in Ohio; John Hogan, 'BNL Task Force – Final Report,' Report to the Attorney General, October 21 1994.

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