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# Iraq

## Human rights protection and promotion vital in the transitional period

### INTRODUCTION

On 8 June 2004 the United Nations (UN) Security Council (SC) unanimously adopted Resolution 1546 (2004) on Iraq. The resolution endorses the formation of a sovereign Interim Government of Iraq (IGI) and declares that “by 30 June 2004, the occupation will end and the Coalition Provisional Authority will cease to exist, and that Iraq will reassert its full sovereignty.” It authorizes a multinational force (MNF) led by the United States (US) to have the authority to “take all necessary measures to contribute to the maintenance of security and stability in Iraq” in accordance with provisions set out in letters annexed to the resolution from US Secretary of State Colin Powell and Iraqi Prime Minister Iyyad al-‘Allawi.

Resolution 1546 also endorses a proposed timetable for a political transition in Iraq which includes the holding of a national conference, and organizing direct democratic elections by 31 January 2005 to a Transitional National Assembly (TNA), which will be responsible for forming a Transitional Government of Iraq and drafting a permanent constitution, culminating in the election of a government by 31 December 2005. The resolution calls for the UN to help organize elections, advise on drafting a constitution, provide reconstruction and humanitarian assistance, help plan for a census, and promote human rights.

The IGI was formed at the beginning of June 2004 following intense and arduous consultations between the UN Special Adviser on Iraq, Lakhdar Brahimi, the head of the Coalition Provisional Authority (CPA), Ambassador Paul Bremer, and the Iraqi Governing Council (IGC). Eventually Shaikh Ghazi al-Yawar, a 45-year-old civil engineer and Sunni Muslim from Mosul who had lived in Saudi Arabia for many years, and a member of the IGC, was appointed as President, a largely nominal post, reportedly on the insistence of the majority of IGC members. Iyyad al-‘Allawi, a secular Shi’a and a long-time opponent of the previous government with strong ties to the US, and the head of the Iraqi National Accord, one of the main opposition groups operating from exile during the previous regime, was selected as Prime Minister. The IGI is representative of most Iraq’s ethnic and religious groups. Most of its members lived in exile during Saddam Hussain’s rule.

The IGC, which has now ceased to exist, was established in July 2003. Its members were appointed by the CPA and also represented Iraq’s main ethnic and religious groups. However, the appointment of the IGC by the CPA sparked a controversy in Iraq and in the wider region about its legitimacy and powers. Three of its members, including one woman, were assassinated, apparently by armed groups opposed to the occupation of Iraq.

According to statements reported by the media, Kurdish leaders are not satisfied with the fact that Resolution 1546 does not refer explicitly to the Transitional Administrative Law (TAL - also known as the interim constitution, in effect until a permanent constitution is

drafted by the TNA), signed by the IGC on 8 March 2004. On the other hand, the prominent Shi'a cleric Grand Ayatollah 'Ali al-Sistani who exercises considerable influence among the Shi'a population, had written to the UN SC objecting to any reference to the TAL in the resolution.

The TAL sets out Iraq's immediate political future. It includes provisions for the protection of human rights, a quota of women in a future national assembly and the establishment of a federal state. Crucially, it stipulates the right of any three Iraqi governorates, by a two-thirds majority vote among the population, to reject the draft permanent constitution. This is a measure apparently introduced to guarantee the rights of minorities such as the Kurds. The Kurds, who have enjoyed an autonomous status since 1991, fear that this omission could threaten the guarantees of a self-rule contained in the TAL. They also fear that the Shi'a majority may try to impose Shari'a law through the permanent constitution. The Iraqi Prime Minister Iyyad al-'Allawi has reportedly promised Kurdish leaders that the IGI will be guided by the provisions contained in the TAL during the transitional period.

This report examines some of the complex issues relating to the transfer of power after 30 June and Amnesty International's continuing human rights concerns, and sets out recommendations to the UN, IGI, MNF and armed groups in Iraq, which, if implemented, would go some way to improving the human rights situation in Iraq.

## **OBLIGATIONS UNDER INTERNATIONAL HUMANITARIAN AND HUMAN RIGHTS LAW**

Amnesty International welcomes the reference in Resolution 1546 to the "commitment of the Interim Government of Iraq to work towards a federal, democratic, pluralist, and unified Iraq, in which there is full respect for political and human rights"<sup>1</sup>, and to "the commitment of all forces promoting the maintenance of security and stability in Iraq to act in accordance with international law, including obligations under international humanitarian law, and to cooperate with relevant international organizations". These forces include Iraqi forces as well as the MNF.<sup>2</sup> However, the resolution is silent about the fate of the thousands of prisoners and detainees now held by the MNF and how individual accountability for abuses by that force or those contracted to work for them will be effectively ensured after 30 June 2004. This is particularly worrying since the US has already announced that it intends to continue to hold, without charge, between 4,000 and 5,000 detainees and since it is clear that the US and UK forces have failed to meet their obligations under the Geneva Conventions to protect detainees and internees in their custody from torture and ill-treatment.

If the occupation of Iraq indeed ends as proclaimed in Resolution 1546, international humanitarian law requires that all detainees and internees must be released by the Occupying Powers, and any further detentions by the US and other members of the MNF after 30 June will be unlawful, unless at the request of the Iraqi authorities. Prisoners of War (POWs) must

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<sup>1</sup> Emphasis added by Amnesty International.

<sup>2</sup> The MNF were authorized under UN SC Resolution 1511 and re-affirmed under resolution 1546.

be released at the end of the international conflict. Those who were held may only be re-arrested by the Iraqi authorities if there are grounds under Iraqi law, consistent with international standards, to detain them (such as suspicion of having committed war crimes). The MNF must clarify as a matter of great urgency the legal status of any detainees, internees, or POWs it will continue to hold.

It is particularly important that now, and during this period of transition, the maximum amount of transparency and parties' obligations under international humanitarian and human rights law in respect to all those held by the occupying powers, are fully observed. This is necessary to ensure that all those held are fully accounted for and to prevent any further prisoners being tortured or ill-treated or "disappearing" as "ghost detainees".<sup>3</sup>

As long as hostilities continue, international law of armed conflict should be respected. If the occupation has in fact ended then the rules applicable to a non-international conflict must be respected. If, on the other hand, the MNF will continue to exercise effective control over Iraq, including acting as the *de facto* Occupying Powers<sup>4</sup>, they will be fully bound by their obligations under international humanitarian law governing situations of international armed conflict and occupation, including the Fourth Geneva Convention. The international community, as High Contracting Parties to the Geneva Conventions, is therefore obligated to ensure respect for its provisions.

The US, in an annex to the resolution, has indicated that it wishes to continue to exercise its powers as an occupier by including a specific reference to "internment where this is necessary for imperative reasons of security", a measure only provided for in Article 78 of the Fourth Geneva Convention dealing with occupation.<sup>5</sup> No such powers can be exercised without the US also assuming full responsibility and accountability under the applicable law of occupation.

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<sup>3</sup> These are detainees who were not registered in any prison or detention facility. See the section on detainees in this report.

<sup>4</sup> Article 42 of the 1907 Hague Regulations states that a "territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised." The question of whether there is occupation depends therefore on whether the country is under the authority of a hostile army; and who has *de jure* and *de facto* control over the territory in question.

<sup>5</sup> This Article states that "If the Occupying Power considers it necessary, for imperative reasons of security, to take safety measures concerning protected person, it may, at the most, subject them to assigned residence or to internment.

Decisions regarding such assigned residence or internment shall be made according to a regular procedure to be prescribed by the Occupying Power in accordance with the provisions of the present Convention. This procedure shall include the right of appeal for the parties concerned. Appeals shall be decided with the least possible delay. In the event of the decision being upheld, it shall be subject to periodical review, if possible every six months, by a competent body set up by the said Power. Protected persons made subject to assigned residence and thus required to leave their homes shall enjoy the full benefit of Article 39 of the present Convention."

All those carrying out arrest and detentions after 30 June should do so in full respect of international standards related to the use of force and law enforcement. Specifically, these forces have the obligation to respect international human rights law in accordance with human rights treaties ratified by Iraq, as well as those to which the contributing state is a party. The Human Rights Committee, the body of independent experts that monitors the implementation of the International Covenant on Civil and Political Rights (ICCPR), explains that “a State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party. ... This principle also applies to those within the power or effective control of the forces of a State Party acting outside its territory, regardless of the circumstances in which such power or effective control was obtained, such as forces constituting a national contingent of a State Party assigned to an international peace-keeping or peace-enforcement operation.”<sup>6</sup>

Amnesty International notes that the resolution states that the new sovereign interim government is to refrain from “taking any actions affecting Iraq’s destiny beyond the limited interim period until an elected Transitional Government of Iraq assumes office...” This means that the IGI may not be able to ratify international human rights treaties since such treaties are normally ratified by parliaments. However, while the IGI may not be in a position to undertake new binding international obligations, Amnesty International urges the IGI to start working with national and international experts to bring its laws in line with its existing obligations under the human rights treaties to which it is a party<sup>7</sup>, and to lay the ground for the early ratification of other human rights treaties, such as the (UN) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UN Convention against Torture), and the Rome Statute of the International Criminal Court (ICC). These treaties are paramount to human rights protection, especially given the gross and endemic human rights violations which have plagued Iraq under both the previous government of Saddam Hussain and the Coalition Forces, and the IGI should embark on a nationwide programme of awareness of such treaties. The IGI must give utmost attention to human rights protection and promotion.

The post 30 June 2004 period is a crucial one for the future of Iraq in regard to the respect and promotion of human rights and international law. The IGI will start to exercise powers and duties, and will face enormous challenges, including providing security and safety to the Iraqi population. The human rights situation may even get worse as armed groups will undoubtedly continue to commit abuses. The IGI will be obligated to respect, and ensure the respect of, rights under international human rights treaties to which Iraq is a state party. It must demonstrate that human rights violations will not be tolerated, regardless of who is

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<sup>6</sup> Human Rights Committee, General Comment 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant, para. 10.

<sup>7</sup> These include the ICCPR, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC).

suspected to have committed them. It must also take steps to effectively promote human rights in Iraq.

## **PRISONERS AND DETAINEES MUST NOT BE LEFT IN LEGAL LIMBO**

Thousands of people are currently held indefinitely and without charge for real or perceived anti-Coalition activities, or are being held as “security detainees”. Some of those arrested were taken to jails or police stations run by Iraqi police, but most were taken to detention centres run by Coalition Forces, such as Camp Cropper in Baghdad International Airport, Abu Ghraib Prison, and other detention facilities such as the ones in Habbaniya Airport, Um Qasr, Tikrit and al-Shu’aiba (near Basra). Many of those detained were picked up in indiscriminate and violent raids, often at night. There are detainees whom the International Committee of the Red Cross (ICRC) is not aware of their detention. These detainees, known as “ghost detainees”, were hidden largely to prevent the ICRC from visiting them. On 17 June, the US Defence Secretary Donald H. Rumsfeld admitted that in November 2003 he ordered military officials in Iraq to detain a senior member of Ansar al-Islam<sup>8</sup> without listing him in the prison’s register.<sup>9</sup> This prisoner was reportedly arrested in late June or early July 2003 and was transferred to an undisclosed location outside Iraq. He was then returned to Iraq where he was detained in secret until May 2004 without being registered or assigned a prisoner number.<sup>10</sup>

There is in effect a two-tier system whereby people detained by the Coalition Forces have fewer safeguards than those held under Iraqi justice system. For example, those detained by Coalition Forces can be held for 90 days before being brought before a judge (according to CPA Memorandum No. 3), whereas those detained within the framework of the Iraqi Code of Criminal Procedure (Article 123) must have their case reviewed within 24 hours.<sup>11</sup> Those in Iraqi-run prisons usually have access to lawyers and judges at some point. Many of those held in prisons and detention centres run by the Coalition Forces have invariably been denied access to family or lawyers and any form of judicial review of their detention. Many are still illegally being held beyond the prescribed 90 days for judicial review:

**\*Sattam Hameed Farhan al-Gaood**, a 48-year-old businessman was arrested on 19 April 2003 from his home in the al-Mansur district of Baghdad by US soldiers. He has not been seen since and his place of detention is unknown. Since his arrest, his family has received a few messages from him via the ICRC to indicate that he was being held. The reasons for his detention are not known, but his relatives believe that it is connected with his criticism of the US-led occupation of Iraq in an interview with the Arabic satellite television channel al-Jazeera. According to his relatives, Sattam Hameed Farhan al-Gaood had no political background and was not involved with the Ba’ath Party or former government

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<sup>8</sup> Ansar al-Islam is an armed Islamist group based in Kurdistan, particularly around Halabja. It has been responsible for gross human rights abuses, including the killing of civilians.

<sup>9</sup> BBC News Online 18 June 2004.

<sup>10</sup> Ibid.

<sup>11</sup> See Amnesty International’s report issued in July 2003 and entitled “Iraq: Memorandum on concerns relating to law and order,” AI Index: MDE 14/157/2003.

security agencies. The name of Sattam Hameed Farhan al-Gaood is mentioned on the list of detainees published by the CPA. However, while the place of detention of the majority of detainees is stated, Sattam Hameed Farhan al-Gaood's, and others, is simply referred to as "HVD", meaning high value detainee.<sup>12</sup>

**\*Mohammad Jassem 'Abd al-'Issawi** has been detained incommunicado in Abu Ghraib prison since December 2003. US soldiers took him from his house in Baghdad on 17 December 2003, and reportedly kicked and punched him. His family only recently discovered where he was, when former detainees told them that he was held in the High Security section of Abu Ghraib. It is not known exactly why he has been detained, but his relatives believe that US forces may have suspected him of activities against Coalition Forces. According to his relatives, he was not involved in any such activities. Since his arrest Mohammad Jassem 'Abd al-'Issawi has not had access to his family, lawyers or the ICRC. Mohammad Jassem 'Abd al-'Issawi was involved in an Iraqi students' movement in the early 1980s, and fled the country in 1986 during a clampdown by the authorities. He lived as an asylum seeker in Syria, Pakistan and Iran. He returned to Iraq in 1989 after a presidential amnesty and has remained there since.

Before the UN SC adopted Resolution 1546, Amnesty International wrote to Council members on 2 June 2004, urging the Council to address several concerns arising from the draft text then before it. Among them was the need to clarify responsibility for prisoners and detainees currently held by the occupying powers, as well as for any prisoners or detainees to be held by the MNF after 30 June 2004. The question is all the more pressing since the US has now announced that it will continue to hold detainees. Resolution 1546 provides that after 30 June 2004, the MNF will have the "authority to take all necessary measures to contribute to the maintenance of security and stability in Iraq in accordance with the letters annexed to this resolution". The letter attached to the resolution from Secretary of State Colin L. Powell, specifies that the MNF's activities will include combat operations against forces resorting to violence and will be able to resort to "internment where this is necessary for imperative reasons of security".

However, Resolution 1546 does not address what will happen to the thousands of prisoners held by Coalition Forces. These prisoners were arrested and detained by Coalition Forces after the war on Iraq started. While hundreds of those arrested in the weeks and months following the invasion of Iraq have now been released, thousands are still detained. At the beginning of 2004, the CPA published a list of 8,500 detainees on the Internet. The true figure however was believed to be much higher. The vast majority of Iraqis have no access to the Internet to check where detained relatives are being kept. Since the beginning of May 2004, hundreds of prisoners have been released, yet arrests have continued on a daily basis. On 10 June 2004, a spokesperson for the ICRC stated that a recent visit of an ICRC team to Abu Ghraib had found 3,291 internees there, including three women and 22 boys under 18, compared to 6,527 in March.<sup>13</sup> The spokesperson added that the ICRC had no precise

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<sup>12</sup> People who are suspected of having links with, or have information on, the insurgents, as well as former Iraqi government officials and nuclear scientists.

<sup>13</sup> Reuters 10 June 2004.

information about how many had been freed and how many had been transferred to other detention centres. On 13 June 2004, a US military official, Lieutenant Colonel Barry Johnson, stated that Coalition Forces were holding approximately 6,400 detainees<sup>14</sup>.

There is no reference in Resolution 1546 to the legal basis or legal safeguards that will apply if any future arrests or internment are carried out by US armed forces and other countries contributing troops to the MNF. This situation must immediately be clarified. International humanitarian law requires that at the end of occupation, as is proclaimed in Resolution 1546, all POWs, detainees and internees must be released, and they can only be re-arrested by Iraqi authorities on the basis of Iraqi law and consistent with international standards, which require that they must have regular access to their relatives, lawyers and medical doctors if necessary. However, there have already been contradicting statements from Iraqi and US officials on the issue of current detainees. The Iraqi Justice Minister stated that the files of all detainees would be transferred to the Iraqi authorities after 30 June 2004. The Iraqi Prime Minister too declared on 14 June that “all the detainees, without exception, will be handed over to the Iraqi authority. The hand over will take place within the next two weeks”.<sup>15</sup> However, on 13 June 2004 Lieutenant Colonel Barry Johnson, a spokesperson for detention operations in Iraq, said that after the 30 June hand over of power there would be approximately 4,000 to 5,000 detainees in the Coalition Forces’ custody.<sup>16</sup>

## **THE NEED TO TAKE DECISIVE ACTION TO ERADICATE AND PREVENT TORTURE**

The world watched with horror, shock and outrage the graphic pictures of Iraqi prisoners being tortured in Abu Ghraib Prison. Prisoners were severely beaten and repeatedly sexually humiliated by US soldiers. They were forced to eat pork and drink alcohol. They were assaulted, threatened with rape, forced to masturbate in front of female soldiers, and forced to wear women’s underwear. They were kept naked, sometimes for several days. They were also forced to walk like dogs on their hands and knees and bark like dogs. The US military investigation in Iraq headed by Major General Antonio Taguba found “systemic” and “illegal abuse of detainees” in Abu Ghraib Prison between August 2003 and February 2004, and concluded that soldiers had “committed egregious acts and grave breaches of international law at Abu Ghraib...”. Amnesty International condemned the latest reports of torture and ill-treatment of prisoners in Abu Ghraib as war crimes. The organization called on the US Government to fully investigate them in order to ensure that there is no impunity for anyone found responsible, regardless of position or rank.

In February 2004, the ICRC presented a report to the Coalition Forces detailing a number of serious violations of international humanitarian law by these forces in Iraq, including brutality against protected persons during arrest and initial detention, sometimes causing death or serious injury, as well as various methods of torture and ill-treatment

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<sup>14</sup> Reuters 13 June 2004.

<sup>15</sup> Reuters 14 June 2004.

<sup>16</sup> Reuters 13 June 2004.

inflicted on detainees. The report also highlighted human rights violations, including torture and ill-treatment, by the Iraqi police.

Since May 2003, Amnesty International has issued several reports detailing allegations of gross human rights violations by Coalition Forces in Iraq, including torture, ill-treatment and deaths in custody, amounting to grave breaches of the Geneva Conventions. Amnesty International has also raised its concerns relating to these violations with the CPA, as well as with government officials in the US and the United Kingdom (UK). The US authorities have rarely responded to Amnesty International's concerns relating to human rights violations committed by US troops in Iraq, which have been detailed in several public documents or in confidential letters.<sup>17</sup> Amnesty International has however received responses, albeit unsatisfactory, from UK officials on specific cases and concerns raised with them.

Many former detainees interviewed by Amnesty International alleged they were tortured or ill-treated during the first few days following arrest. They were forced to lie down on the ground, handcuffed, hooded or blindfolded for a long time. They were repeatedly beaten, restrained for prolonged periods in painful "stress" positions, while some were also subjected to sleep deprivation, prolonged forced standing, and exposed to loud music and bright lights.

**\*Khreisan Khalis Aballey**, aged 39, was arrested at his home in Baghdad on 30 April 2003 with his 80-year-old father. Coalition Forces were apparently looking for 'Izzat al-Duri, a senior member of the Ba'ath Party, at the time. Khreisan Aballey insisted that he had no knowledge of his whereabouts. During his interrogation at Baghdad's airport detention facility, he was made to stand or kneel facing a wall for seven-and-a-half days, hooded, and handcuffed tightly with plastic strips. At the same time, a bright light was placed next to his hood whilst distorted music was played. Throughout this period, he was deprived of sleep and he fell unconscious for some of the time. He reported that at one time a US soldier stamped on his foot, tearing off one of his toenails. The prolonged kneeling made his knees bloody, so he mostly stood; when, after seven-and-a-half days he was told he was to be released and that he could sit, one of his legs was the size of a football. He continued to be held for two more days, apparently to allow his health to improve, and was released on 9 May 2003.

**\*Baha Dawood Salem al-Maliki** was among eight Iraqis hotel workers arrested on 14 September 2003 by British soldiers in Basra. All eight were reportedly subjected to severe beatings by the soldiers. Three days later Baha's father was handed his son's body, severely bruised and covered in blood. Another detainee, Kefah Taha, was admitted to hospital in a critical condition, suffering renal failure and severe bruising. Amnesty International raised concerns about Baha's death and the other detainees with the UK's Ministry of Defence in a letter sent on 22 October 2003. A Ministry of Defence official responded in November 2003 to say that the case was being investigated by the Royal Military Police.

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<sup>17</sup> External documents on Iraq can be seen on Amnesty International's website:  
<http://www.amnesty.org>

Amnesty International welcomes recent statements made by the new Iraqi Justice Minister, Malek Dohan al-Hassan, in which he promised that Iraqi prisons and detention facilities would be totally free of any forms of torture or ill-treatment after 30 June 2004<sup>18</sup>. Amnesty International is however aware of cases of torture and ill-treatment inflicted by members of the Iraqi Police Service on detainees in their custody. In Basra, for example, Amnesty International delegates carrying out research between February and March 2004 met several people who said that Iraqi security men working in the *al-Istikhbarat* (Intelligence Unit), which is part of the Iraqi Police Service, were involved in torture and ill-treatment of detainees. This police intelligence unit was established in Basra in October 2003 and many of the officers were reportedly recruited by the Iraqi Ministry of the Interior from armed militia belonging to Iraqi political groups, in particular the Badr Organization. The head of this intelligence unit is Lt. Col. Khalaf Badran, who deserted from the previous Iraqi army after the 1991 Shi'a uprising, joined the underground armed opposition, and became a Badr commander later. Detainees arrested and held in the headquarters of the *al-Istikhbarat* in Hay al-Khalij in Basra are kept incommunicado, some for several days. A few people interviewed by Amnesty International stated that they were tortured or ill-treated there. Others were too scared to talk to Amnesty International for fear of reprisal. The cases below illustrate a growing pattern of torture and ill-treatment carried out by members of the Iraqi Police Service.

\***Anwar Mohammad Mansour**, aged 24, was driving his car on 18 December 2003 when he was stopped by the Iraqi police. After the car had been searched, he drove away at high speed. When he arrived outside his family house, he realized that a police pickup car had been following him. The police car stopped outside the house at around 2 p.m. and he was asked by six policemen to accompany them to the headquarters of *al-Istikhbarat* for five minutes. His brother **Khaled**, aged 27, heard the conversation and told the policemen that he would not let Anwar go with them without a judicial warrant. The policemen left the house, but a short while later four police pickup trucks arrived at the house. They arrested Anwar, Khaled and their 18-year-old brother **Ashraf**, and took them to the headquarters of *al-Istikhbarat*. Once there they separated them and put them in individual cells. The men were severely tortured. They were blindfolded with their hands tied behind their backs, and for an hour they were repeatedly punched and kicked on different parts of their bodies, and were hit with an iron bar on their backs and legs. They were not asked any questions. The three brothers screamed and begged their captors to stop the torture.

The father of the three, **Mohammad Mansour Jaber**, aged 60, heard that his sons had been arrested and went to enquire about them at the *al-Istikhbarat* office, where he too was arrested. He told Amnesty International that he heard his sons screaming, and told the officers that their treatment of his sons was no different from the behaviour of Saddam Hussain's security services. He was then blindfolded and had his hands tied behind his back. He was put in a cell and was hit several times on the head with a wooden stick, by more than one person. The torture lasted for about 15 minutes and he felt that blood was coming off his head. He was then moved from the cell to the reception where he met an official who apologized to him and said it was a mistake. When he asked about the fate of his sons, he was

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<sup>18</sup> Al-Sharq al-Awsat, 8 June 2004; al-Quds al-'Arabi, 8 June 2004.

told that they had been transferred to a police station in al-Rabat in Basra. He was then released.

Anwar, Khaled and Ashraf were kept in the al-Rabat police station for three days and then were released on bail. The day they were transferred to this police station armed men, reportedly belonging to an Iraqi Islamist armed group (Hizbollah – Party of God) stormed into the police station and filmed Anwar, Khaled and Ashraf with their fresh injuries. People demonstrated outside the police station calling for the release of the three.

The father and their uncle, Moussa Mansour Jaber, who worked as a translator for the CPA, took the three to al-Jumhuri hospital for forensic examination. They also filed a complaint before an Iraqi judge, who opened an enquiry. The judge sent a request to the head of *al-Istikhbarat* to come to the court for questioning, but as of March 2004, the latter has ignored this request. Moussa Mansour Jaber has received threats from the *al-Istikhbarat* that he should withdraw the complaint against them, but he has refused to do so.

The incident was published in the local weekly newspaper al-‘Ashaar. A day after its publication three officers from *al-Istikhbarat* went to the editor’s office and threatened to close the newspaper if he did not reveal the identity of the journalist who wrote the article. The editor refused and later informed the police and the governorate.

In adopting Resolution 1546, the Security Council has failed to address how all those who have subjected Iraqis to widely reported abuses of international human rights and humanitarian law, or who may do so in future, will be held individually accountable, or how that process will change after the IGI assumes authority after 30 June. This important question concerns not only members of the MNF themselves, but also contractors working for them, who have also been implicated in abuses in Iraqi prisons but who have so far not been held accountable.

Both US and UK forces operating in Iraq have failed to meet their obligations under the Geneva Convention as occupying powers, and under the human rights treaties to which Iraq is a party to protect detainees and internees in their custody from torture and ill-treatment, and to grant them the legal safeguards to which they are entitled. The Security Council, on its part, has not discharged the special responsibility for these prisoners which it assumed when it endorsed, in Resolution 1483 and 1511, the specific authorities, responsibilities and obligations under applicable international law on the part of the USA and UK as occupying powers.

## **PROTECTION AND PROMOTION OF WOMEN’S RIGHTS**

Iraqi women have endured severe hardship for decades: loss of male relatives in the 1980-1988 Iran-Iraq war; mass expulsions to Iran of entire families declared by the authorities to be of "Iranian descent"; government repression, including the chemical weapons attack on Kurds in Halabja in 1988; the 1991 Gulf war and the subsequent suppression of the Shi’a and Kurdish uprising; 13 years of UN sanctions from 1990 to 2003; and the US-led military action in 2003. Under the government of Saddam Hussein, women were arbitrarily arrested, tortured, "disappeared" and executed by the authorities on political grounds.

Since the end of major combat operations in May 2003 women and girls have been harassed, injured and killed by armed groups, coalition forces and members of their own family. Many women live under constant fear of being abducted, raped or murdered. Several female political leaders have become targets of politically motivated armed attacks. In September 2003 'Aquila al-Hashimi, one of only three female members in the IGC, was killed, reportedly by armed men opposed to the occupation.

Women who have been campaigning to protect women's rights have been threatened. Yanar Mohammed, a member of the Organization of Women's Freedom in Iraq, received several death threats, including one by e-mail from an Islamist group known as the Army of Sahaba. When she asked officials of the CPA for protection, she was reportedly told that they had more urgent matters to attend to. Amnesty International is not aware of any steps that have been taken by the CPA or IGC to ensure adequate protection of women and women's rights defenders.

Recent reports about torture or ill-treatment of detainees by members of the Coalition Forces have included allegations that women have been subjected to cruel, inhuman and degrading treatment. Sexual abuse, possibly including rape, has been reported. The findings of the Taguba report, mentioned above, contain the description of various abuses, including the following which relate specifically to women: "videotaping and photographing of male and female detainees" and "a male MP guard having sex with a female detainee".

Allegations of ill-treatment of women detainees have also been published in the media and by human rights organizations. Some women detainees have spoken after their release to an Amnesty International delegate under condition of anonymity. Their accounts included being threatened, humiliating treatment and long periods of solitary confinement. However, several other released women detainees contacted by the delegate refused any meeting, apparently due to fear for their safety.

Even in their homes, Iraqi women may not be safe. The breakdown in law and order after the fall of Baghdad, combined with the disbanding of the police force by the occupying powers, has contributed to a rise in so-called "honour killings" and domestic violence. Most victims of "honour killings" are women or girls killed by male relatives in connection with alleged "immoral behaviour". These crimes are often ignored by the police, as the following case demonstrates:

\*Nineteen-year-old **Fatima** (not her real name) was shot in the legs by her husband in front of his family and their neighbours on 21 May 2003. Married at the age of 12, she was regularly beaten in her husband's family home, by her husband and by members of his family. She ran away to her own family, but her husband went to the family and demanded her return. When she refused, he became very angry and took a piece of wood to beat her. It broke, so he grew even angrier and took his gun and shot her. Despite the number of eyewitnesses and the seriousness of the crime, neither the family nor the hospital reported the case to the police and her husband was not arrested. The family said it was a matter to be solved within the tribe. Fatima returned to her father's house after she left hospital. Her husband expressed regret and

offered her compensation, seeking reconciliation with her through the mediation of elders of her tribe. However, she refused to return to him, despite the pressures.

Iraqi women continue to face various forms of discrimination in legislation. Iraq is a state party to international treaties prohibiting any discrimination of women in legislation or legal practice, including the ICCPR (Article 26) and the CEDAW (Article 2).

The principal of non-discrimination, including gender-based discrimination, is guaranteed in the TAL which states that “All Iraqis are equal in their rights without regard to gender, sect, opinion, belief, nationality, religion or origin, and they are all equal before the law. Discrimination against an Iraqi citizen on the basis of his gender, nationality, religion, or origin is prohibited” (Article 12). However, the TAL does not address the fact that the abolishment of the ongoing discrimination of women in Iraqi legislation requires legal reforms, including amendments to penal, personal status and nationality laws.

The CPA introduced several amendments to the Iraqi Penal Code, Law 111 of 1969. Although some amendments have increased penalties for offenders of violence against women, a number of discriminatory articles in the Penal Code have remained. CPA order number 31<sup>19</sup> has modified the Penal Code by introducing stiffer penalties for kidnapping offences. The order further suspended articles which provided for mitigating circumstances and the exemption from punishment in the event of the offender marrying the victim. The order also introduced stiffer punishment for rape and sexual assault.

In addition, Article 41 of the Penal Code encourages domestic violence since it prescribes for husbands to “punish” their wives within certain limits prescribed by law or by custom. Over the past year, some organizations have started working in Iraq in order to aid women victims of violence. However, for the vast majority of women victims of violence support facilities, such as shelters or rehabilitation centres, are not accessible.

The last time the situation of women in Iraq was examined by a UN expert body was the observation of the implementation of CEDAW in June 2000. However, the majority of the recommendations made at that time still apply to the post-war period.

In 2000, the Committee on the Elimination of Discrimination Against Women urged the Iraqi authorities to withdraw its reservations to CEDAW. Iraq’s reservations include substantial articles of CEDAW, namely Article 2 (f-g) regarding the abolishment of discrimination of women in law and practice and Article 16 on matters of marriage and family relations. In addition, Iraq has expressed reservations with regard to Article 9 of CEDAW which guarantees women equal rights in relation to obtaining and passing on nationality.

The Committee urged the Iraqi authorities to “implement awareness-raising campaigns to change stereotypical and discriminatory attitudes concerning roles of women and girls, in addition to providing a non-discriminatory legal basis”. It further called on the authorities to “work towards the elimination of the practice of polygamy.”<sup>20</sup> The UN High Commissioner for Human Rights has noted in his report of June 2004 that the TAL “did not

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<sup>19</sup> (CPA/ORD/10 Sep 2003/31)

<sup>20</sup> UN doc A/55/38, para 192

offer adequate protection against discrimination in marriage (no equal right to marry, within marriage or to divorce), inheritance and ability to pass citizenship to children.”<sup>21</sup>

The UN Resolution 1325, passed by the Security Council in 2000, reaffirms women's protection in armed conflict and post-conflict situations. It stresses the importance of women's participation in peace building and conflict resolutions. Equality and non-discrimination is a crucial part of eradicating violence against women. Women have to play an equal role in the political process and the rebuilding of Iraq.

Article 30 of the TAL provides for the representation of women and ethnic and religious communities in the National Assembly: “The electoral law shall aim to achieve the goal of having women constitute no less than one-quarter of the members of the National Assembly.”

However, Amnesty International notes that the IGI is composed of one president, two vice-presidents – all held by men - and 33 ministerial posts, 6 of which are occupied by women. Therefore, the representation of women in the current cabinet at about 18% is still below the percentage envisaged by the TAL for representation of women in an Iraqi National Assembly.

Amnesty International is concerned about reports of women being harassed into wearing headscarves, including by armed groups. As a consequence of such intimidation, most women and girls in Iraq, especially in the South, now wear the hijab (the strict Islamic dress). Amnesty International has learned that the appointment of a woman judge in Najaf was put on hold due to protests of religious leaders against this position being occupied by a woman. The refusal to appoint a woman to any position on the basis of her gender constitutes a violation of international treaties to which Iraq is a state party, including the CEDAW (*Article 11*) and the ICCPR.

## **URGENTLY-NEEDED LEGISLATIVE REFORMS**

It is not clear from Resolution 1546 or from the TAL, which is supposed to be the interim constitution for the transitional period, whether the IGI will have any legislative power. However, Iraqi government officials have already stated that they will introduce or change legislation after the transfer of power on 30 June. In the event that the IGI has the power to make amendments to existing legislation or introduce new laws Amnesty International would call on it to consider the following as priorities:

### *a) Commission of Experts*

Amnesty International recommends that a commission of experts, consisting of international and Iraqi experts in international law and criminal justice, should be established by the UN, in consultation with civil society, as soon as possible. The purpose of the commission would be to review the needs of the justice system in Iraq and advise on future measures to bring the Special Tribunal into line with international law and to reconstruct the Iraqi criminal and civil

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<sup>21</sup> UN doc E/CN.4/2005/4, para 86

justice system so that it can deal effectively with the crimes that have been committed in the past and become an effective bulwark against a repetition in the future. The proposed commission should take into account recommendations of international and national non-governmental organizations (NGOs).

*b) The Statute of the Iraqi Special Tribunal.*

The Statute of the Iraqi Special Tribunal, adopted by the IGC on 10 December 2003, should be amended before it becomes operational. Amnesty International urges the IGI to review the document and take on board comments and proposals made by international human rights NGOs and experts. Amnesty International's concerns on the Statute can be summarized as follows:

- \* There is no provision in the Statute that prohibits arbitrary arrest or detention, and deprivation of liberty, except on grounds and in accordance with such procedure as are established by law.
- \* The Statute does not prohibit the use of any form of torture, coercion, duress or threat, or any other form of cruel, inhuman or degrading treatment or punishment during the pre-trial arrest and investigation period. Iraqi law also does not prohibit the use of statements that were obtained as the result of torture or in violation of fundamental rights. Article 218 of the Code of Criminal Procedure permits the admission of confessions by persons who have been subjected to physical coercion "if there is no causal link between the coercion and the confession or if the confession is corroborated by other evidence which convinces the court that it is true or which has led to uncovering a certain truth".
- \* The Statute limits the jurisdiction of the Special Tribunal with respect to when the crimes occurred and the nationality of the persons who can be tried, calling into question its impartiality. These limits ensure that nationals of the occupying powers, for example, can not be tried under that Tribunal.
- \* Every effort should be made to ensure that some of the judges have special legal expertise in issues coming before the Special Tribunal, including human rights, international humanitarian law and violence against women and children. Judges should have a demonstrated respect for the rule of law and human rights, but no one should be barred based on arbitrary criteria.
- \* Further, the Statute should be amended to require that the investigative judges and judges of the Trial and Appeals Chambers act impartially and without discrimination. The Statute should also include provisions for excusing judges from sitting in cases where their impartiality could be questioned. The Statute allows for non-Iraqi judges to sit on the Tribunal, if agreed upon by the IGC, which has now ceased to exist. However, it does not permit non-Iraqis from the Middle East and other regions with appropriate experience to serve as prosecutors.

### *c) Comprehensive approach to justice*

The Special Tribunal cannot be seen in isolation. It must be part of a broader effort to bring to justice all those responsible for crimes under international law committed in Iraq or by Iraqi nationals or residents abroad in the past decades, to establish the truth about what occurred and to provide full reparations to the victims and their families. Three pillars in the fight against impunity – justice, truth and reparations - are all essential if there is to be a lasting peace and true reconciliation in Iraq. There should be no amnesties for major crimes under international law. In addition to the right to truth, and the right to justice, the victims of human rights violations and their families have the right to reparations, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

### *d) Iraqi Penal Legislation*

Amnesty International has concerns over specific provisions in the Iraqi penal and criminal procedures codes. Amendments to these codes should be considered a priority by the IGI. Such concerns include the fact that the law does not prohibit torture and cruel, inhuman and degrading treatment or punishment in a way consistent with international standards. The law also does not include many important guarantees of fair trial; including provisions of translation and interpretation in all proceedings during arrest, detention and trial, for every detainee to be able to challenge the lawfulness of his or her detention, and that anyone convicted of a criminal offence to be able to have his or her conviction or sentences reviewed by a court of appeal, and finally that there is no immunity for crimes under international law, whether through amnesties, interference by the executive authorities, statute of limitations or limitations on the jurisdiction.

### *e) The death penalty*

The death penalty was suspended in Iraq first by General Tommy Franks, the former US Central Command chief, in April 2003 and then by the CPA on 10 June 2003 through order number 7 (Section 3(1)). Several officials in the IGI have recently stated that Iraq would restore the death penalty after 30 June 2004. For example, on 6 June 2004 the Minister of Justice stated that “the death penalty is suspended in Iraq but with the return of sovereignty, nothing obliges us to maintain this suspension. We want to reinstate it for very specific cases.”<sup>22</sup> The Minister did not provide any clarification as to which crimes would be punishable by death. Amnesty International is against the death penalty which it considers as a violation of the right to life and the most cruel form of punishment. Amnesty International urges the IGI not to reinstate the death penalty and to consider abolishing it on a permanent basis.

## **HUMAN RIGHTS ABUSES BY ARMED GROUPS**

Several senior officials in the new IGI, including the Prime Minister have stressed that restoring security is the most urgent task of the government after 30 June. Since the start of

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<sup>22</sup> Agence France Press (AFP), 6 June 2004.

Iraq's occupation by the Coalition Forces, Iraqi people's main concern has been the lack of security and law and order. The fall of the previous government left a power vacuum and for months the situation was dominated by a total lawlessness. This was exacerbated by the decision of the CPA to disband the Iraqi National Army, the police and all security agencies that existed before the war. With the collapse of the previous government, weapons became available. Many warehouses belonging to the army and containing weapons, as well as police stations and headquarters of the various security agencies, were abandoned when Coalition Forces took control of the country. They were looted and subsequently different types of weapons became available throughout the country. Further, just before the war the previous government of Iraq had distributed weapons to people loyal to the regime to fight against the Coalition Forces. Almost every Iraqi family has at its disposal at least one weapon. CPA orders provided for the possession of small arms in people's homes or businesses.

In the lawlessness that prevailed in the aftermath of the war many armed groups emerged. While many of these groups are affiliated to, or inspired by, political and religious organizations, others are criminal gangs apparently encouraged by the collapse of law and order. Criminal gangs have been responsible for kidnapping, rape and murder. Boys and girls have been abducted and were released only when their families paid hefty ransoms. In some cases when families did not pay the kidnapers, their abducted sons or daughters were killed. Dozens of top Iraqi medical doctors, as well as businessmen, have left Iraq because of fear of kidnapping or other veiled threats. Doctors and other professionals have been amongst the primary targets for kidnapping or killing because they are perceived to be wealthy.

**\*Dr Gayath Tawfiq**, a surgeon, was going home when two cars blocked the road. His driver managed to flee and a number of armed men grabbed his 22-year-old son. Both Gayath Tawfiq and his son were blindfolded and hit with the kidnapers' guns. His abductors lifted his blindfold for a moment to see his son with a rope around his neck. "They told me they would hang him if I didn't pay," he said.<sup>23</sup> After the kidnapers received \$70,000, they ordered him to leave the country permanently but Gayath Tawfiq has not left because the kidnapers took all his money.<sup>24</sup>

A number of political and religious opposition groups which had been operating in exile before the war have now moved back to Iraq. They have armed wings such as the Badr Battalion, now the Badr Organization, which belongs to the Supreme Council of the Islamic Revolution in Iraq (SCIRI), one of the biggest Shi'a political groups in Iraq, and which had been stationed in Iran until the fall of the previous government. Several small radical groups, Sunni and Shi'a alike, were set up in different parts of Iraq after the war. Some of them have been responsible for gross human rights abuses, including killing of civilians, torture and kidnapping. They have taken the law into their own hands and resorted to putting pressure on women and girls to wear the hijab or the strict Islamic dress. Other people targeted by these groups, include members of religious minorities such as Christians and Sabean/Mandeans, alcohol sellers, well-known secularists, Ba'athists, former civil servants and former members of the old security services.

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<sup>23</sup> Los Angeles Times, 31 May 2004.

<sup>24</sup> Ibid.

Basra, for example, has seen the emergence of numerous armed groups, some related to Shi'a Islamist political groups such as the Badr Organization, but many are new such as *Tha'r Allah* (God's Revenge), *Harakat 15 Sha'ban*,<sup>25</sup> *al-Talee'a* (The Vanguard) and *Jama'at al-Fudhala* (Group of Virtue). These groups have occupied former government buildings which had been looted during the war and use them now as their headquarters. They are feared by many people in Basra because they have been responsible for gross human rights abuses, including killing a large number of former Ba'ath party members or supporters, former security men and alcohol sellers. Amnesty International has documented some of these abuses, in particular the killing of civilians, in a report published in May 2004.<sup>26</sup>

The cases below represent a sample of a pattern of human rights abuses, in particular kidnapping and torture, committed by these groups:

\***Karim Sami**<sup>27</sup>, a goldsmith in al-'Ashaar, Basra, received threats from an armed group, said to be a religious one. One day in October 2003, six armed and hooded men went to his shop and kidnapped his 22-year-old son Ahmad<sup>28</sup>. Three days later, he received a letter from this group delivered by a child. The letter stated that they would release his son if he gave them \$100,000. Karim Sami went to report the kidnapping to British soldiers at a British military base in Basra. He was advised to report the kidnapping to the Iraqi police. However, he did not go to the police because he was too frightened. Through an intermediary, the kidnappers reduced the sum asked for to 10 million Iraqi Dinars (around \$ 7,000). Karim Sami did not respond to this offer. Ten days later his son was released after British soldiers had stormed the house of the kidnappers in al-Diar area, near al-Qarna, just outside Basra. The British soldiers took Ahmad to the al-Diar police station. Karim Sami was then informed by the police that his son had been released and asked him to go there and collect him. Ahmad was tortured by the kidnappers. He was punched and kicked repeatedly, and was also hit on the head with a weapon on several occasions. After this incident Karim Sami, fearing for his life, moved with his family to Baghdad where they stayed with relatives for two months. They returned to Basra at the end of December 2003.

\***Jamal Salem**<sup>29</sup>, an entrepreneur who worked with the CPA, was in his office in Basra on 24 December 2003 when armed men stormed his office and kidnapped him. The kidnappers also took \$ 2000, two weapons and a satellite phone. They told him that they belonged to an Islamist organization and that they wanted to take him with them. He was driven to a house where he was beaten repeatedly. As a result, he sustained injuries to his head. After 3 hours of captivity, he managed to escape from the window. Some of his captors tried to run after him with their weapons but could not reach him. He then realized that the house he was being held in was opposite a popular restaurant in Basra. He knew that the house was the headquarters of an Islamist group called *Sawt al-Haq* (Voice of Right Party).

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<sup>25</sup> Sha'ban is the 7<sup>th</sup> month of the Islamic Lunar Calendar and precedes Ramadhan, the month of fasting. 15 Sha'ban refers to the start of the Shi'a uprising immediately after the end of the Gulf War in 1991.

<sup>26</sup> Iraq: Killings of civilians in Basra and al-'Amara, AI Index: MDE 14/007/2004, 11 May 2004.

<sup>27</sup> Real name withheld.

<sup>28</sup> Real name withheld

<sup>29</sup> Real name withheld.

He immediately went to the republican palace and spoke to a British military official who told him that he should go to the Iraqi police to lodge a complaint and that the British military could not do anything about it. He went to a police station and filed a complaint but a police officer told him that the police was not mandated to enter an Islamist group's headquarters. Jamal Salem decided to move his family to Baghdad because he felt they would be at risk of being kidnapped while he stayed in Basra. As of the end of February 2004, the police had not contacted him about his complaint.

\***Mohammad 'Abdu**<sup>30</sup>, aged 28, was working in his father's shop with one of his cousins selling CDs when, during the last day of Ramadhan in 2003 he was visited by several armed men. He was in the shop with one of his cousins. The armed men told him that they believed that the CDs contained pornographic films, but he denied this. They confiscated more than 100 CDs and at gunpoint, they took him away with them in a car, with his face covered by a shirt. They arrived at a building and once inside it Mohammad 'Abdu was asked about the CDs, which he again denied that they contained any pornographic materials. He was asked if he was fasting and he replied that he was. They tied his hands behind his back and forced him to lie on the floor. He was repeatedly hit with a cable on the back, arms and legs. He told Amnesty International that while he was being tortured he felt that there were other people held there, and he could hear someone else being interrogated. He was threatened with execution if he did not cooperate. He repeatedly denied their accusation. He was repeatedly punched in the face and the head. According to him, the torture lasted for three hours. After talking to witnesses and neighbours, his family knew about the identity of the armed men. They were told they belonged to an armed group called *Jama'at al-Fudhala*. They took the blindfold off and forced him to sign a written statement saying that "I would never sell these films again". He was then released and the following day he went to a private clinic to have an x-ray. His family filmed the marks of torture on his body. He said that he went to complain to the British military and gave them all the details, but as of March 2004 he had not heard anything from them.

The occupation of Iraq also led to the emergence of armed groups who vowed to end the occupation using all available violent means including suicide attacks. These groups, said to be a mixture of former Ba'ath supporters, former members of the various security services, Sunni radical Islamist groups and foreign fighters, have targeted Coalition Forces, members of the IGC, Iraqis cooperating with or working for the CPA and Coalition Forces, as well as international aid workers and journalists. Hundreds of civilians, Iraqi and foreign, have been killed as a result of suicide and other attacks. For example, on 2 March 2004 more than 100 civilians were killed and over 400 injured when nine coordinated bomb attacks were carried out in Karbala and Baghdad as millions of Muslims were marking 'Ashura, the holiest day in the Shi'a Muslims' calendar. These groups have also resorted to hostage-taking and killing of hostages to put pressure on countries that have troops in Iraq to withdraw them. Amnesty International has on numerous occasions publicly condemned the deliberate or indiscriminate attacks on civilians carried out by armed groups. Some of these attacks constitute crimes against humanity and as such, they are among the most serious crimes under international law.

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<sup>30</sup> Real name withheld.

While fighting against armed insurgents in many areas of Iraq Coalition Forces have over the last 14 months committed gross human rights violations, including unlawful killing of civilians, torture and ill-treatment, house demolition and other forms of collective punishment, arbitrary detention and violent house searches.

After June 30, Iraqi security forces will ultimately be more involved in policing and fighting against armed resistance. The IGI will undoubtedly face a mammoth task to bring stability and restore law and order in the next few months. Only three weeks after the formation of the IGI two senior civil servants have already been assassinated. On 12 June 2004 Bassam Kubba, the Director-General of the Ministry of Foreign Affairs and a former Ambassador, was shot and later died in hospital as he was on his way to work from his home in Baghdad's al-'Adhamiya district. A day later, on 13 June, Kamal Jarrah, the director of cultural affairs in the Ministry of Education, was gunned down in front of his home in the al-Ghazalia district of Baghdad. Indiscriminate attacks by armed insurgents, including suicide attacks, have continued unabated. On 14 June 13 people, mostly civilians were killed and at least 14 injured in a suicide car-bomb attack in central Baghdad. On 17 June, at least 41 people were killed and more than 138 injured in a suicide car-bomb attack outside an army recruitment centre in the al-Muthana district in Baghdad. Most of the victims were civilians who were applying for jobs.

While Amnesty International recognizes the IGI's urgent need to provide security for the Iraqi population and its right to arrest and punish those responsible for criminal activities, including acts of "terrorism", this, however, should be undertaken with utmost respect for human rights. Amnesty International has noted reports in which the CPA and the Iraqi Prime Minister, Iyyad al-'Allawi, announced on 5 and 7 June 2004, respectively, that an agreement had been reached between the IGI and leaders of nine political groups that have armed wings<sup>31</sup>. According to this agreement, 90% of around 100,000 forces belonging to these groups would either enter civilian life or one of the Iraqi state security services, such as the Iraqi Armed Forces, the Iraqi Police Service, or the internal security agencies that belong to the two Kurdish groups, the Patriotic Union of Kurdistan (PUK) or the Kurdistan Democratic Party (KDP). The agreement excludes all other armed groups, including the Mahdi Army, followers of Muqtada al-Sadr, which for more than two months was involved in fierce fighting with Coalition Forces in several towns and cities, including Baghdad, al-Najaf, Karbala, Basra and al-'Amara. According to the Iraqi Prime Minister, all other militias would be disbanded or would be forced to disarm. Muqtada al-Sadr has reportedly welcomed the formation of the IGI and according to some of his aides he intends to form a political party to contest the general elections due to be held by 31 January 2005.

Amnesty International is concerned that some members of these militias that will be incorporated in the Iraqi Armed forces or in the Iraqi Police Services may have been involved in human rights abuses.

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<sup>31</sup> They include three secular parties, the Iraqi National Accord (headed by Dr Iyyad al-'Allawi), the Iraqi National Congress and the Iraqi Communist Party, two Kurdish parties, KDP and PUK, three Shi'a Islamist parties SCIRI, al-Da'wa and Iraqi Hizbollah, and one Sunni Islamist party, the Iraqi Islamic Party. All these parties were represented in the now defunct Iraqi Governing Council.

## **AMNESTY INTERNATIONAL RECOMMENDATIONS**

### **1) To the United Nations**

- \* Establish a commission of experts, consisting of international and Iraqi experts in international law and criminal justice, to review the needs of the justice system in Iraq, and propose amendments to the laws, including the Penal and Criminal Procedure Codes, the Statute of the Special Tribunal and the personal status and nationality laws. The aim of this would be to bring Iraqi laws into harmony with international human right standards and to strengthen the rule of law, and for the commission to advise the IGI on measures to be taken in this direction..
- \* Deploy human rights monitors, a dedicated unit of which to supervise all places of detention. The monitors should enjoy full access to prisons and detention facilities, have the power to carry out unannounced visits, and make recommendations to the detaining authorities. Their findings and activities should be regularly included in the Secretary-General's reports to the Security Council.

### **2) To the Interim Government of Iraq**

#### *Protection of prisoners and detainees*

- \* Provide unhindered access to all prisons and detention facilities by relevant international organizations and bodies, including the UN Special Rapporteur on torture, and by Iraqi human rights organizations.
- \* Ensure that all prisoners and detainees are informed promptly of the reasons of their detention; that they are brought promptly before an independent judicial authority; and that they have access to relatives, lawyers and doctors without delay.
- \* Ensure that prisoners are held only in officially recognized places of detention and that accurate information about their arrest and whereabouts is made immediately available to relatives, lawyers and the courts.
- \* Ensure that prisoners are immediately informed of their rights. These include the right to lodge complaints about their treatment and to have a judge rule without delay on the lawfulness of their detention. Judges should investigate any evidence of torture and order release if the detention is unlawful. A lawyer should be present during interrogations.
- \* Ensure that conditions of detention conform to international standards for the treatment of prisoners. The authorities responsible for detention should be separate from those in charge of interrogation. There should be regular, independent, unannounced and unrestricted visits of inspection to all places of detention.

### ***Prevention of torture and accountability for human rights abuses***

- \* Declare publicly the government's total opposition to torture and make clear to all members of the Iraqi Police Service, the Iraqi Armed Forces, prison guards and members of other security agencies that torture will never be tolerated.
- \* Maintain the prohibition of torture and cruel, degrading or inhuman treatment or punishment contained in CPA's order number 7 (of 10 June 2003).
- \* Ensure that all complaints of torture are promptly, impartially and effectively investigated by an independent body and that the methods and findings of such investigations are made public.
- \* Suspend officials suspected of committing torture from active duty during the investigation.
- \* Ensure that complainants, witnesses and others at risk should be protected from intimidation and reprisals.
- \* Bring to justice those responsible for torture and other serious human rights violations and try them according to international standards for fair trial and with no possibility of the death penalty.
- \* Ensure that statements and other evidence obtained through torture may not be invoked in any proceedings, except against a person accused of torture.
- \* Ensure that victims of torture and their dependants should be entitled to obtain prompt reparation from the state including restitution, fair and adequate financial compensation and appropriate medical care and rehabilitation.

### ***Law enforcement***

- \* Set up an independent and impartial commission to vet all those militia members who will be joining the army and police forces, and ensure that no blanket immunity is granted to those suspected of having committed serious human rights abuses. Vetting processes must be respectful both of the needs of the victims and of the human rights of those suspected of abuses.
- \* Initiate a human rights training program for all those responsible for law enforcement, especially in areas related to arrest, searches, detentions and the use of firearms.
- \* Ensure that all Iraqi security forces engaged in law enforcement respect and protect the population and uphold the human rights of all people. They should secure the right to life through respect for the Code of Conduct for Law Enforcement Officials, the UN Basic Principles on the Use of Force and Firearms.

### ***End violence against women***

- \* Set up an independent and impartial agency to monitor and ensure effective judicial responses to acts of violence against women, including torture, kidnapping, rape and murder.
- \* Train the police on gender issues in order to deal with violence against women.
- \* Improve safeguards of women in detention, by ensuring that female staff supervise the detention of women in all detention facilities.
- \* Review all legislation discriminating against women, including penal, personal status and nationality law, and abolish any provision which do so.
- \* Ensure that "honour crimes" and domestic violence are treated as serious criminal offences.
- \* Involve women's rights organizations in the reform of the judicial system, in particular to strengthen women's rights and equality in law.
- \* Encourage and support the establishment of facilities for women victims of violence, in consultation with women's rights organisations.
- \* Ensure that no women will be refused work on the basis of their gender, and support the equal representation of women in the public and political life.

### **3) Amnesty International calls on the US as unified command of the MNF**

- \* To immediately provide full, up-to-date details about all persons currently in custody of the Coalition Forces and the places where they are held.
- \* To urgently clarify the legal status of any prisoners and detainees the US may continue to hold after 30 June 2004 and the legal safeguards that will apply to them.
- \* To guarantee to all prisoners the full protection they are entitled to under international human rights and humanitarian law.
- \* To ensure unhindered access to prisoners and detainees by international bodies, UN mechanisms, lawyers, families and national and international human rights organizations.
- \* To prohibit holding persons without record as "ghost" prisoners and prohibit any transfer of persons currently held by Coalition Forces outside of the Iraqi territory.
- \* To create an independent monitoring body to verify that the treatment of prisoners and the use of force in the context of the MNF mandate in Iraq are carried out in full respect of international human rights standards and that investigations into any alleged abuses are carried out promptly, fairly and transparently.

#### **4) Amnesty International calls on armed groups**

- \* To stop immediately the hostage-taking, torture and ill-treatment, and killing of civilians, including hostages.
- \* To stop indiscriminate attacks in densely populated areas.
- \* To respect minimum standards of international humanitarian law, justice and humanity in their actions.