

IRAQ

@ "Disappearance" of Shi'a Clerics and Students

ARREST OF SHI'A CLERICS AND RELIGIOUS STUDENTS

On 20 March 1991 the Grand Ayatollah Abu al-Qassem al-Kho'i, Shi'a Islam's most senior cleric, was taken into custody by Iraqi government forces following an armed raid on his residence in the southern city of al-Najaf. Seven members of the Grand Ayatollah's family, including two of his sons who were with him at the time of the raid, were also arrested. During the following days a total of 108 people including theology students, aides and staff of the Grand Ayatollah and seven of his relatives, were detained. A number of people attempting to guard the residence at the time of the raid were said to have been killed by Iraqi soldiers.

Immediately after their arrest, the Grand Ayatollah and one of his sons, Sayyid Muhammad Taqi al-Kho'i, were taken to the al-Najaf Military Command, on the road between al-Najaf and Karbala'. The six other family members arrested at the same time were taken to the al-Salam Hotel opposite the Military Command. Later the same day, the 95-year-old Grand Ayatollah and Sayyid Muhammad Taqi al-Kho'i were driven to Baghdad where the Grand Ayatollah appeared in a televised meeting with President Saddam Hussain. During this meeting the Grand Ayatollah appeared to criticise the Shi'a uprising against President Hussain's government which had begun in southern Iraq three weeks earlier. However, his family believe that he had appeared on Iraqi television only under considerable duress, and that the authorities had threatened to destroy the city of al-Najaf if he refused. The Grand Ayatollah was detained at the headquarters of *al-Istikhbarat al-'Askariyya* (Military Intelligence) in Baghdad, for two days before being returned to his home in al-Najaf on 22 March, where he effectively remained under house arrest until his death on 8 August 1992. Sayyid Muhammad Taqi al-Kho'i was returned to al-Najaf at the same time and was also held under house arrest for a period of time.

Of the 107 other people arrested at the end of March, 44 were Iraqi nationals and 28 were Iranians; the remaining 35 were nationals of India, Pakistan, Afghanistan, Lebanon and Bahrain. One of the them, a Pakistani national, Ja'far Ghulam Muhammad Ja'far, was released in early 1992. The fate and whereabouts of the other 106 remain unknown, and there are fears that some may have been tortured or executed.

The majority of those arrested were students of Shi'a Islam or followers of the Grand Ayatollah, who as one of the most revered *imams* in the Shi'a faith was looked to as a role model for religious actions and behaviour. Among them are:

- **Ayatollah al-Sayyid Murtadha Jawad al-Kadhimi al-Khalkhali** (Appendix A, no. 48) - a senior assistant and confidante of the late Grand Ayatollah and author of a number of books, he was in his late eighties when he was arrested together with two of his sons and three of his grandchildren;
- **Shaikh Taleb al-Khalil** (Appendix A, no. 92) - a Lebanese national he had lived in al-Najaf for some 30 years prior to his arrest and was a scholar and senior member of the Lebanese community in the city. All remaining members of his family were expelled from Iraq on his arrest;
- **Ayatollah Al-Sayyid 'Ala'uddin 'Ali Bahr al-'Ulum** (Appendix A, no. 34) - one of 22 members of the prominent Bahr al-'Ulum family arrested at this time. He had spent most of his life in teaching and research and was also a representative of the late Grand Ayatollah and led the congressional prayers in the shrine of Imam Ali, the first Shi'a *imam*. Three of his sons **Ali** (aged 30) and **Mustafa** (aged 26), both theology students and **Amin** (aged 24), a student of engineering in Baghdad (Appendix A nos. 35, 36 and 37 respectively), were also arrested;
- **Al-Sayyid Muhammad Ridah al-Sayyid Muhsin al-Hakim** (Appendix A, no. 14) - aged approximately 65, he is the second son of the Grand Ayatollah Mohsen al-Hakim A well known scholar and administrator of Dar al-Hikma school in Najaf (which was said to have been destroyed by the authorities after the uprising), he is married with eight children, six girls and two boys one of whom was executed in March 1985 together with 10 other members of the al-Hakim family¹.

Those arrested with the Grand Ayatollah included:

- **Al-Sayyid Ibrahim al-Sayyid Abul-Qassem al-Kho'i** (Appendix A, no. 45) - aged approximately 27 at the time of his arrest he is the Grand Ayatollah's youngest son. He is married with two children. His father-in-law, Sayyid Taqi al-Jalali was a senior cleric and a representative of the Grand Ayatollah in the town of Qassim in Hilla province before he was executed in 1981, after which his mother-in-law and two brothers-in-law were expelled from Iraq;
- **Al-Sayyid Muhammad Ridha Zain al-'Abidin al-Mussawi al-Khalkhali** (Appendix A, no. 53) - a 63-year-old scholar, who studied religion at the University of al-Najaf before becoming one of its senior scholars and an aide to the Grand Ayatollah. He is married with six children.

GOVERNMENT RESPONSE

In the week following the arrests Amnesty International issued an urgent action seeking immediate information about the Grand Ayatollah al-Kho'i and some of those

¹ *Children Innocent Victims of Political Repression* (page 6) (AI Index: MDE 14/04/89).

arrested with him. In December 1991, Amnesty International wrote to President Saddam Hussain to request information about the detainees. In its letter, Amnesty International asked to be informed of the precise reasons for the arrest of these people, the charges against them and any trial proceedings which had taken place. The organization also urged that the detainees should be released if they were not to be charged with a recognizable criminal offence. A request for details of the Grand Ayatollah's state of health and that he should be permitted access to a doctor if necessary was also included in this letter. No reply has been received from the Government of Iraq. The cases of the Shi'a detainees were also highlighted by Amnesty International in its report *Human Rights Violations Since the Uprising* (AI Index: MDE 14/05/91) published in July 1991 and in its written statement to the UN Commission on Human Rights in February 1992².

Requests for information about the detainees from the UN Special Rapporteur on Iraq also met with little success, the government's responses being inadequate, vague or contradictory. During his visit to Iraq in January 1992, the Special Rapporteur raised the matter with the Minister of Foreign Affairs, Tariq 'Aziz. The minister failed to provide any concrete information regarding the fate and whereabouts of these detainees. He informed the Special Rapporteur, however, that *"if they have been executed, I am not going to apologize for this"*.³

In a written response of 25 October 1992 to another inquiry by the Special Rapporteur, the Iraqi Government denied all knowledge of the detainees. This reply was in response to a memorandum dated September 1991 to the Minister for Foreign Affairs in which the Special Rapporteur asked for details on both the legal basis of the detentions and for an account of the whereabouts of 62 of those arrested with the Grand Ayatollah⁴. The government stated:

"After a careful investigation, the competent authorities have ascertained that the persons named... (by the Special Rapporteur) are not currently in Iraq and were probably either killed during the disturbances or fled to Iran, Saudi Arabia or other states with those who participated in the disturbances, particularly since, at that time, the State was unable to exercise full control over the border regions."

² Written statement submitted by Amnesty International to the Commission on Human Rights. 13 February 1992 (AI Index: ORG 41/02/92).

³ Report on the situation of human rights in Iraq, prepared by Mr. Max van der Stoep, Special Rapporteur of the Commission on Human Rights (page 64, para 149). 18 February 1992.

⁴ Interim report on the situation of human rights in Iraq prepared by Mr. Max van der Stoep, Special Rapporteur of the Commission on Human Rights (page 24). 13 November 1992.

Amnesty International has received no evidence indicating that any of the 106 students or clerics arrested in March 1991 are living outside of Iraq, or that they were killed during the uprising. Amnesty International believes that all were taken into custody and have since "disappeared" in detention. According to reports received, some of the detainees, including several members of the Grand Ayatollah's family, are being held separately from the others and are regularly moved between detention centres. Amnesty International considers that the continued unacknowledged detention of all 106 of the detainees makes them especially vulnerable to torture or other forms of ill-treatment, the routine and systematic nature of which has been well documented over the years⁵. Amnesty International further believes that all the detainees remain at serious risk of execution.

Inquiries regarding the terms of the Grand Ayatollah's detention and his state of health before his death met with similarly misleading responses or no response at all. Amnesty International received no reply to its request for precise information about the Grand Ayatollah's health in its December 1991 letter. In reply to the Special Rapporteur's request in the September 1991 memorandum for a detailed description of the terms of the Grand Ayatollah's detention, including whether or not he was permitted to receive visitors of his own choosing, the government stated:

*"His Eminence Grand Ayatollah Sayyid Abul Qasim al-Khoei was never detained... He can be visited at any time and no restrictions are placed on his personal freedom, since he receives Arab and foreign visitors and is carrying out his religious functions in a normal manner"*⁶.

The authorities also assured the Special Rapporteur that the Grand Ayatollah received "constant medical attention". However, according to members of the Grand Ayatollah's family, he had no access to medical attention until November 1991 when his health deteriorated seriously. In July 1992, one month before the Grand Ayatollah died, his condition deteriorated again. He was taken to a hospital in Baghdad where he had an operation to fit a pacemaker, after which his health was said to have improved.

The exact cause of the Grand Ayatollah's death is not known. What is known is that several hours before he died the telephone lines to his residence were disconnected. The burial of the Grand Ayatollah took place just 14 hours after his death, allowing no time for

⁵ *Iraq: Evidence of Torture* (AI Index: MDE 14/07/81).
Torture in Iraq 1982-1984 (AI Index: MDE 14/02/85).
Children: Innocent Victims of Political Repression (MDE 14/04/89).

⁶ *Interim report on the situation of human rights in Iraq prepared by Mr. Max van der Stoep, Special Rapporteur of the Commission on Human Rights* (page 24). 13 November 1992.

normal Shi'a burial ritual, such as the cleansing of the body at the one of the designated centres in al-Najaf. His supporters were also prevented from holding traditional ceremonies to commemorate the death of their spiritual leader, or travelling to al-Najaf to offer their condolences.

THE MARCH 1991 UPRISING AND ITS AFTERMATH

The arrest of the clerics, students, the Grand Ayatollah and members of his family took place in the context of the brutal suppression by Iraqi forces of the uprising which swept across country in the weeks following the defeat of the Iraqi army in the Gulf War. The uprising began on 1 March when Arab Shi'a Muslims in southern Iraq rose in revolt against the government and spread to the Kurdish towns and cities in northern Iraq in the following days. In the south opposition forces briefly seized control of several major towns and cities, including al-Najaf, Karbala' and Basra. However, by mid-to late March government forces had largely succeeded in crushing the uprising in this area. Thousands of people suspected of taking part were arrested, some of whom were subsequently summarily executed, while the fate of others remains unknown.

In the months that followed the crushing of the uprising widespread human rights violations were reported including arbitrary arrests, detention without trial, "disappearances" and extrajudicial executions. Amnesty International also received details of persistent military attacks on villages in the marshes of al-'Amara, Basra and al-Nasiriyya provinces from July 1991. Tens of thousands of people fled to Iran and towards the Kuwaiti and Saudi Arabian borders, while thousands of others went into hiding in the al-Ahwar (marshes) region in the south of Iraq, an area which in previous years has been used as a refuge by army deserters and government opponents generally. The violations continued into 1992, and in a speech in February 1992, President Saddam Hussain said that Shi'a Muslims who participated in the March 1991 uprising should be machinegunned for treason.

In April 1992, Iraq's National Assembly approved a decree authorizing the creation of resettlement camps outside the marshes region, and orders were issued to the local inhabitants to evacuate their villages to resettle in purpose-built camps outside the area. The rationale behind these moves, according to government statements, was to offer the local population improved living conditions. However, it is widely seen as an attempt by the government to force its opponents out of hiding and facilitate its military and security operations there. The intensification of military attacks by the armed forces on the southern marshes region after April is said to be in part a retaliatory measure for non-compliance with these orders.

Between April and August government armed forces and Republican Guards launched repeated military attacks on the area, in which helicopter gunships and fighter

planes were also used. The extent and persistence of the bombardment of civilian targets, which intensified in July, and the lack of attempts by the government to detain rather than kill alleged suspects, led Amnesty International to believe that the government was not only failing to discriminate between unarmed civilians and combatants but that it had apparently adopted a policy of deliberately targeting non-combatant civilians. In one incident on 20 May 1992, for example, 13 civilians were reported to have been killed as a result of helicopter gunship attacks on a wedding ceremony in the village of al-Agir in al-Amara province.

Reports have also been received of the use of napalm by the Iraqi armed forces on the local population of the marshes in the weeks preceding the imposition of the air exclusion zone outside the immediate context of armed conflict. AI has received details of one incident said to have taken place on 16 July in the village of al-Agar in the al-Amara marshes. According to information received, Iraqi army helicopters circled the village and gave orders for immediate evacuation. The villagers were reportedly not given adequate time to comply with these orders before the military attacks began, and which were said to include the dropping of napalm containers into the reed dwellings in the village. Several unarmed civilians, all males aged between 19 and 75, are said to have been killed as a result.

In response to the continued aerial bombardment of villages in the south, the United States, United Kingdom and French forces imposed an "air exclusion" zone over southern Iraq on 27 August 1992, which prevented Iraqi fixed wing aircraft and helicopters from flying south of the 32 parallel. Although this prevented attacks from the air, Iraqi government forces stepped up ground attacks which were accompanied by widespread arbitrary arrests and the torture and execution of detainees. Eyewitness reports from the region suggested a pattern of tank and artillery shelling of towns and villages followed by arbitrary arrests by infantry brigades in areas penetrable on foot. Those detained were largely non-combatant civilians, including whole families, taken from their homes and public places in al-Nasiriyya, al-Hilla, Karbala', al-Diwaniyya, al-Amara and Basra and transferred to unknown destinations. Many of them were reported to have "disappeared" and there were fears that others were extrajudicially executed.

Reports from Iraq indicate that since the beginning 1993 the ground attacks have been accompanied by an increase in activity by the security forces. Numerous checkpoints have been set up both in and between cities in the region and have led to a large number of arrests. Among those detained are individuals suspected of having participated in the March 1991 uprising and their relatives.

A further threat to Iraq's Shi'a Muslims is posed by the government's project to drain the southern marshes. Already reported to be two thirds completed, the drainage scheme involves the building of a series of dams, dykes and canals designed to prevent the waters of the Euphrates and Tigris rivers from flowing into the marshes. According to the government the massive engineering project to dry out and desalinate the 3,000-year-old marshlands, will

result in the reclamation of 150 million hectares of land for agricultural use over the next five to 10 years. By depriving the villages of irrigation and drinking water, the drainage scheme will also both destroy the ancient way of life of the Marsh Arabs and, by enabling the army to move freely into this largely inaccessible area, will permit the extension of government control over the region. A number of other steps have been taken to increase the pressure on the local inhabitants, principally by isolating the area and cutting off food supplies. Dry agricultural lands bordering the marshes have been expropriated, crops have been burned and homes have been destroyed.

The existence of an official government policy for this region appears to be substantiated by a document containing *Plans of Action for the Marshes* dated 30 January 1989, which describes instructions approved by the President Saddam Hussain⁷. Among the instructions contained in this plan were the following:

B.1 *"Strategic security operations (such as poisoning, explosions and the burning of houses) must be conducted against the subversives in the Marsh areas through friends and trusted persons in order to show them that the Marsh areas are not safe havens."*

B.8 *"The principle of economic blockade must be applied to the villages and areas in which subversives are operating. This will be achieved in the following manner:*

- *through the withdrawal of all food supply agencies;*
- *through a ban on the sale of fish;*
- *by taking severest measures against persons who smuggle foodstuffs to deserters, outlaws and hostile groups;*
- *by prohibiting goods traffic from entering those villages and areas.-*

C.1 *"Sophisticated security operations must be undertaken against subversive elements in the Marsh areas."*

ATTACKS ON THE SHI'A FAITH AND CULTURE

As well as military attacks on Shi'a communities and the arrest, detention and execution of individuals members of that community, the government has also taken measures aimed at undermining spiritual and ritual aspects of Shi'a faith and culture. These measures have

⁷ *Report on the situation of human rights in Iraq, prepared by Mr. Max van der Stoel, special Rapporteur to the Commission on Human Rights. For the Forty-ninth session of the Commission on Human Rights, 19 February 1993.*

taken various forms including the destruction or desecration of holy sites or shrines. In Karbala', for example, approximately 80 *hussainiyas* (centres for religious instruction and rites), libraries and mosques were destroyed during and after the 1991 uprising. Despite offers from Shi'a religious institutions and private individuals to bear the costs, the government has so far refused to allow reconstruction of most of these sites. Shi'a schools have been closed, and the last remaining Shi'a college in al-Najaf, al-Fiqh College, has been turned into a market place and all of its students transferred to the al-Shari'a College in the town of Samarra' north of Baghdad, where Sunni rather than Shi'a theology is taught.

Restrictions have also been placed on traditional religious practices. For example, the Shi'a call to prayer remains banned in cities north of Baghdad including Samarra' (the third among the sacred cities of Shi'a Islam after al-Najaf and Karbala'), and is only permitted on a limited scale in southern cities. Radio and television broadcasts of the call to prayer and other Shi'a religious broadcasts are no longer allowed, and Shi'a books, pamphlets and magazines are strictly censored. Intimidation is widely used to force Shi'a clerics to publicly endorse government sponsored policies. The government is also reportedly interfering in the running of religious establishments by appointing its own supporters as *imams*, religious leaders, a position traditionally appointed by the Shi'a community.

The very validity of the Shi'a faith has also been publicly questioned and criticised in a series of articles published in government newspapers. The Shi'a population of the marshes came in for particular condemnation in articles in *al-Thawra* (one of several Ba'th Party newspapers) in April 1991. One article described the Marsh Arabs as a "monkey-faced" people who are not "real Iraqis" but the descendants of black slaves brought to the south in the Middle Ages. The article went on to condemn the Marsh Arab's culture as "primitive, debased and un-Iraqi".

A HISTORY OF PERSECUTION

Although the intensity of attacks on Iraq's Shi'a population has increased since March 1991, Shi'a Muslims, together with other religious, racial and ethnic groups in Iraq, such as Kurds, Turcomans and Assyrians, have been the victims of continuous and serious human rights violations for many years. Shi'a Muslims represent Iraq's largest group composing an estimated 60 percent of its 14 million population. Despite this numerical supremacy, Shi'a Muslims traditionally have not enjoyed an effective role in government and have largely been excluded from high public office, senior ranks of the armed forces and other more influential positions state institutions.

Their fate has been inextricably linked to the state of Iraq's relations with its predominantly Shi'a neighbour Iran. Worsening relations with the Shah of Iran during the 1970s resulted in arrests of Shi'a clerics and scholars and the imposition of restrictions on

religious practice and teaching. The Islamic Revolution in Iran and the coming to power of Ayatollah Khomeini in February 1979 increased fears in Iraq that these developments would incite its own considerable Shi'a Muslim population to revolt. In late 1979 and early 1980, thousands of Iraqi Shi'a Muslims were arrested on suspicion of being sympathetic to the Islamic revolution; many were executed or died under torture, while others remain in prison to this day. In the early 1980s, following the outbreak of the Iran-Iraq war, at least 200,000 Iraqis were expelled to Iran on the grounds that they were of Iranian origin (commonly referred to as *taba'iyya*), "Iranian origin", the vast majority of whom are Shi'a Muslims. Most of those expelled were women, children and aged men; the younger men from these families were arrested by Iraqi security forces and have since "disappeared" in detention. Also expelled during this period were thousands of Feyli Kurds (Shi'a Muslims), who have historically been associated with opposition groups in Iraq. Other measures were introduced by the central government aimed at encouraging sectarian strife within Iraq. These included the infamous Resolution 474 passed by Iraq's Revolutionary Command Council (RCC) on 14 April 1981, which offered Iraqi men married to women deemed to be of "Iranian origin" sums of money (4,000 dinars for military personnel and 2,500 dinars for civilians) in return for divorcing their wives or arranging for their expulsion from Iraq. The resolution also stipulates that such men must re-marry "Iraqi" women.

People belonging to, or suspected of belonging to, Shi'a opposition parties such as *al-Da'wa al-Islamiyya*, Islamic Call, have been particularly at risk from arbitrary arrest, "disappearance" or execution. This party was founded in 1968 largely in response to Shi'a resentment to the ruling Ba'th Party's efforts to interfere with religious rituals and weaken the authority of the religious hierarchy. Membership of, or support for, the party had always been illegal, but was made a capital offence retroactively in RCC Resolution 461 on 31 March 1980. In April 1980 Ayatollah Mohammad Baqer al-Sadr, a religious leader and scholar who became a rallying point for the Shi'a opposition was executed together with his sister, Bint al-Sadr. Two years later 166 members of the party were reportedly executed, while in May 1983, over 130 members of the family of prominent Shi'a cleric and opposition figure, Ayatollah Baqer al-Hakim, were arrested. Six of those arrested were executed on 19 May after being tortured, and another 10 were executed in 1985. The fate and whereabouts of the other 114 remains unknown. In January 1988, one of the most prominent Shi'a opposition figures outside Iraq, Sayyid Mahdi al-Hakim, was assassinated by a gunman in the lobby of the Khartoum Hilton Hotel, Sudan. According to a Sudan News Agency (SUNA) dispatch of 22 July 1988, the Sudanese Government's investigation revealed that the escape car used by the gunman belonged to the Iraqi Embassy in Khartoum, and that eye-witness descriptions of the suspect implicated a diplomat at the embassy.

AMNESTY INTERNATIONAL'S RECOMMENDATIONS TO THE IRAQI GOVERNMENT

Amnesty International is concerned that the 106 Shi'a clerics, theology students and relatives of Grand Ayatollah al-Kho'i arrested in March 1991 have "disappeared" in detention. The organization fears that some of the detainees may have been subjected to torture or other forms of ill-treatment, and that they remain at serious risk of being executed.

The United Nations has condemned "disappearance" as a grave violation of human rights and has said their systematic practice is of the nature of a crime against humanity. "Disappearance" violates basic human rights established in the Universal Declaration of Human Rights and other international instruments adopted since the Second World War. It violates the right to liberty and security of person, the right to recognition as a person before the law and the right not to be subjected to torture and cruel, inhuman or degrading treatment or punishment. It also violates, or constitute a grave threat to, the right to life.

Amnesty International urges the Government of Iraq to take immediate steps to clarify the situation of the 106 Shi'a clerics, theology students and relatives of the late Grand Ayatollah al-Kho'i whose names are listed in Appendix A. To this end, the Government of Iraq should:

1. Confirm as a matter of urgency that the 106 detainees listed in Appendix A are alive and in custody;
2. Immediately inform the families of the detainees of their exact places of detention and make available to them accurate information about any subsequent transfers to other prisons or detention centres;
3. Allow the detainees immediate and regular access to their families and lawyers;
4. Provide information about the health of the detainees and assure that they receive prompt and regular medical treatment as necessary; take steps to ensure that they are not being subjected to torture or other forms of ill-treatment;
5. Provide information about the reasons and legal basis for the arrest of the detainees and for their continued detention, as well as details of any legal proceedings that may have been followed in their cases (including trial and sentencing);
6. Immediately and unconditionally release any of the detainees held solely for their non-violent religious or political beliefs, or for their association with the late Grand Ayatollah al-Kho'i, and any other detainees in this group if they are not to be charged with a recognizable criminal offence.

Amnesty International further urges the Government of Iraq to demonstrate its opposition to "disappearances" by taking the following measures:

7. Make it clear to all members of the police, military and other security forces that "disappearance" will not be tolerated under any circumstances;
8. Those in charge of the security forces should maintain strict chain-of-command control to ensure that officers under their command do not commit "disappearances". Officials with chain-of-command responsibility who order or tolerate "disappearance" by those under their command should be held criminally responsible for these acts.
9. Ensure that effective judicial remedies are available which enable relatives and lawyers to find out immediately where a prisoner is held and under what authority, to ensure his or her safety, and to obtain the release of anyone arbitrarily detained.
10. Ensure that prisoners are held only in publicly recognized places of detention. Up-to-date registers of all prisoners should be maintained in every place of detention and centrally. The information in these registers should be made available to relatives, lawyers, judges, official bodies trying to trace people who have been detained, and others with a legitimate interest. No one should be secretly detained.
11. All prisoners should be brought before a judicial authority without delay after being taken into custody. Relatives, lawyers and doctors should have prompt and regular access to them. There should be regular, independent, unannounced and unrestricted visits of inspection to all places of detention.