

AMNESTY INTERNATIONAL

Open Letter

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Open letter to state members of the Coalition in Iraq

Sent to the governments of Albania, Australia, Azerbaijan, Bulgaria, Singapore, the Czech Republic, Denmark, El Salvador, Estonia, Georgia, Hungary, Italy, Japan, Latvia, Lithuania, Macedonia, Moldova, Mongolia, the Netherlands, New Zealand, Norway, Poland, Portugal, Thailand, the Philippines, Romania, Slovakia, South Korea, Ukraine, USA and the United Kingdom

20 May 2004

Dear ,

As you have no doubt seen all the recent reports of torture and cruel, inhuman and degrading treatment of Iraqi prisoners by Coalition Forces in Abu Ghraib and other detention facilities in Iraq, I am writing to you to emphasise your government's responsibilities as a member of the Coalition with troops deployed in Iraq and a party to the Geneva Conventions of 1949. Common Article 1 of each convention requires states parties to undertake "to ensure respect for the present Convention in all circumstances".

Since May 2003, Amnesty International has issued several reports detailing allegations of gross human rights violations, including torture, ill-treatment and deaths in custody, amounting to grave breaches of the Geneva Conventions, by Coalition Forces in Iraq. We have also raised our concerns relating to these violations with the Coalition Provisional Authority (CPA) as well as with government officials in the United States of America (USA) and the United Kingdom (UK).

In February 2004 the International Committee of the Red Cross (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 inflicted on detainees. The report also highlights human rights violations, including torture and ill-treatment, by the Iraqi police.

As a member of the Coalition your government is under the obligation to respect and ensure respect for the Geneva Conventions. Article 147 of the Fourth Geneva Convention and Article 130 of the Third Geneva Convention list the following acts as grave breaches if committed against persons protected by the Convention: wilful killing, torture or inhuman treatment and wilfully causing great suffering or serious injury to body or health. Article 146 of the Fourth Geneva Convention and Article 129 of the Third Geneva Convention require each state party "to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts". Grave breaches, as confirmed by Article 85 (5) of Protocol I Additional to the Geneva Conventions, "shall be regarded as war crimes".

The conduct of your armed forces in Iraq is also regulated by international human rights treaties that your country has ratified. Under international law, torture and cruel, inhuman and degrading treatment are prohibited at all times and in all circumstances. The International Covenant on Civil and Political Rights (ICCPR) states that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" (Article 7).

Article 2(2) of the United Nations (UN) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment states that "no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture". Article 27 of the Fourth Geneva Convention states that "protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity".

In this context, I urge your government to ensure that no person detained by your government's troops in Iraq is subjected to any form of torture or other cruel, inhuman or degrading treatment.

I also urge you that in the event of handing over any prisoners to other Coalition forces or to the Iraqi police your government first seek and obtain assurances that the detainees will not be subjected to torture or ill-treatment; that effective measures are taken to ensure that those assurances are fully respected; and that, in case of abuses, criminal investigations and, where there is sufficient admissible evidence, prosecutions take place. Article 45 of the Fourth Geneva Convention provides that persons protected by that convention may only be transferred to another state party after the detaining state

"has satisfied itself of the willingness and ability of such transferee Power to apply the present Convention. If protected persons are transferred under such circumstances, responsibility for the application of the present Convention rests on the Power accepting them, while they are in its custody. Nevertheless, if that Power fails to carry out the provisions of the present Convention in any important respect, the Power by which the protected persons were transferred shall, upon being so notified by the Protecting Power, take effective measures to correct the situation or shall request the return of the protected persons. Such request must be complied with."

Article 46 of the Third Geneva Convention requires that "[t]he transfer of prisoners of war shall always be effected humanely and in conditions not less favourable than those under which the forces of the Detaining Power are transferred".

When arrests are made by your troops in Iraq, international standards require that those carrying out the arrest must register the full names of the detained persons, inform them of the reasons for their arrest and notify their families of the whereabouts of their arrested relatives. The legal basis for the detention must also be recorded, including whether the arrested person is a prisoner of war or a criminal suspect.

No person may be detained in secret, incommunicado detention outside the protection of the law, including the fundamental right recognized in Article 9 (4) of the ICCPR to judicial review of the lawfulness of the detention and release if that detention is determined to be unlawful.

If prisoners are handed over to other Coalition forces or to the Iraqi police then your government must inform the families of the arrested relatives of the transfer as well as the detention facility the arrested persons are being transferred to. In any event your government must inform the ICRC in Iraq, if possible, otherwise in Geneva. I would appreciate receiving information regarding the mechanisms available to your government to monitor the situation of detainees after they have been handed over to other Coalition forces or to the Iraqi police. I would also welcome any information relating to any detention facilities that are under your government's troops' control in Iraq.

On a related matter, I would appreciate receiving details regarding the rules of engagement that regulate

the circumstances in which your government's troops in Iraq can use force. Your government's troops should ensure that the use of force with regard to detainees is in line with the principles of necessity of proportionality. In particular, firearms should only be used if lives are in danger and there are no other means to respond to that danger. This is in line with human rights standards of law enforcement such as the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (the Basic Principles). Principle 9 of the Basic Principles states that "intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life".

I would welcome any clarification as to whether your government's troops on the ground exercise any supervision on the Iraqi police. I would also like to know if they have undertaken any human rights training for the Iraqi police, either on your own government's initiative or jointly with other Coalition members, and, if so, details about the training program, including the curriculum, the extent to which UN and other international experts were consulted in drafting and implementing the program and the procedures for monitoring the effectiveness of the implementation of the program.

I look forward to receiving your response on this matter.

Yours sincerely,

Irene Khan
Secretary General

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