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Iraq

Memorandum on concerns relating to law and order

I. INTRODUCTION

This memorandum outlines a number of concerns and recommendations relating to law and order legislation and practices by the Coalition Provisional Authority (CPA) and the Coalition Forces in Iraq. It highlights issues relating to the overall legal framework; addresses in some detail concerns relating to the use of force, detention practices, treatment in custody, searches and the role of the judiciary; and outlines concerns relating to the need for ensuring accountability of the CPA and the Coalition Forces.

The memorandum also includes a number of cases illustrating the nature of Amnesty International's concerns. As part of its recommendations, Amnesty International calls on the CPA to carry out competent, independent and impartial investigations into these individual cases.

Amnesty International delegates have been present in Iraq since 24 April 2003, monitoring human rights issues, specifically in the areas of policing and detention. Places visited have included Baghdad, Ramadi, Fallujah, Basra, Amara, Najaf and Nassiriya, as well as Irbil, Kirkuk and Mosul. In the course of their work, Amnesty International delegates have interviewed victims of crime, former detainees and their families, lawyers, judges, police officers, as well as officials in the CPA and members of United States (US) and United Kingdom (UK) military forces.

Amnesty International remains deeply concerned by the lack of law and order prevailing in many areas of Iraq. Many Iraqis have repeatedly expressed to Amnesty International delegates their sense of fear and insecurity. In the document, *Iraq: The need for security* (AI Index: MDE 14/143/2003) issued earlier this month, Amnesty International outlined concerns about the law and order situation in Basra, including the impact on the lives of ordinary Iraqis of looting, revenge killings, kidnappings and other violent crime. This memorandum highlights continuing concerns in Baghdad and other parts of Iraq. Amnesty International calls on the CPA and the Coalition Forces to take urgent steps to fully restore law and order in all parts of Iraq.

II. AMNESTY INTERNATIONAL'S CONCERNS

1. Applicable international law

Amnesty International welcomes the fact that the US and UK governments, in exercising their authority as the occupying powers through the CPA, have made use of international human rights standards to inform the formation of new legislation and the suspension of certain provisions of Iraqi law which were inconsistent with such standards. For example, we welcome the use of provisions of the United Nations (UN) Standard Minimum Rules for the Treatment of Prisoners as a basis for CPA Memorandum Number 2 on Management of Detention and Prison Facilities. We also welcome the CPA's suspension of the death penalty, a step which is consistent with the internationally recognized desirability of its abolition.

However, we are concerned at the statement in a letter, dated 27 June 2003, to Amnesty International from Ambassador Paul Bremer, the CPA Administrator, that "the only relevant standard applicable to the Coalition's detention practices is the Fourth Geneva Convention of 1949. This Convention takes precedence, as a matter of law, over other human rights conventions."

Amnesty International stresses that, consistent with international humanitarian law, Coalition states are also under an obligation to respect the provisions of the human rights treaties to which they are a party, as well as those to which Iraq is a party, especially given that these treaties have been formally incorporated into Iraqi domestic law. Iraq is a party to the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights; the Convention on the Rights of the Child; the International Convention on the Elimination of All Forms of Racial Discrimination; and the Convention on the Elimination of All Forms of Discrimination against Women.

The Human Rights Committee, set up under the ICCPR, and other bodies monitoring the implementation by states of their human rights obligations under the treaties they have ratified, have consistently ruled that such obligations extend to any territory in which a state exercises jurisdiction or control, including territories occupied as a result of military action. International human rights law complements provisions of international humanitarian law, for example by providing content and standards of interpretation, such as on the use of force to respond to disorders outside combat situations or with regard to safeguards for criminal suspects.

Amnesty International also points out that the European Convention for the Protection of Human Rights and Fundamental Freedoms is applicable to the conduct of forces belonging to Coalition states, such as the UK, that are parties to this treaty. Commenting on the extra-territorial application of the Convention in its Decision as to Admissibility in *Bankovic* (Application no. 52207/99), the European Court of Human Rights stated (para 71):

“the case-law of the Court demonstrates that its recognition of the exercise of extra-territorial jurisdiction by a Contracting State is exceptional: it has done so when the respondent State, through the effective control of the relevant territory and its inhabitants abroad as a consequence of military occupation or through the consent, invitation or acquiescence of the Government of that territory, exercises all or some of the public powers normally to be exercised by that Government”.

Recommendation

Amnesty International urges the CPA to recognize the applicability of international human rights law and standards, as complementary to international humanitarian law, and to abide by all the relevant obligations.

2. Domestic law

Amnesty International welcomes the review undertaken by the CPA of the Iraqi Penal Code of 1969 and the Criminal Procedure Code of 1971, to evaluate their compatibility with international human rights standards. The organization is currently in the process of examining the codes, as well as the amendments introduced by the CPA, and intends to submit its overall observations separately, addressing in this memorandum only selected provisions.

Amnesty International is concerned that items of legislation issued by the CPA have entered into force prior to their publication in the Official Gazette, for example on the date of signature. Article 65 of the Fourth Geneva Convention states that the “penal provisions enacted by the Occupying Power shall not come into force before they have been published and brought to the knowledge of the inhabitants in their own language.” A strict observance of this provision by the CPA is all the more necessary in the current situation characterized by significant communications difficulties affecting Iraqi society, including the legal sector.

Amnesty International is also concerned at inconsistencies between the English and Arabic texts of legislation published by the CPA. These inconsistencies may cause the general public in Iraq, including the legal sector, to be misinformed about the law.

Recommendations

Amnesty International urges the CPA to ensure that its penal legislation enters into force after an appropriate period of time following its publication in Arabic in the Official Gazette.

Amnesty International calls on the CPA to ensure that all such legislation is adequately disseminated and that English and Arabic texts are consistent.

3. Use of force

In a letter to Ambassador Paul Bremer of 26 May 2003, Amnesty International expressed concern about several incidents involving the shooting of Iraqi civilian demonstrators by US soldiers in disputed circumstances, including the incidents in which a number of demonstrators were killed in Mosul on 15 April and in Falujah on 29 and 30 April. Since then Amnesty International has documented other possibly unlawful killings of demonstrators which appear to have taken place when security forces failed to use non-lethal means initially to disperse the demonstrators.

Amnesty International acknowledges that the Coalition Forces are dealing with a complex situation. On the one hand, they are still engaged in combat situations, whereby the rules of international humanitarian law on the conduct of hostilities apply. Such rules include the prohibition of direct attacks on civilians, unless and for such time as they take a direct part in hostilities, and the requirement that responses to military attacks are consistent with the principle of proportionality with the concrete and direct military advantage anticipated.

On the other hand, the Coalition Forces are also dealing with situations where the use of force may be necessary in circumstances outside combat, for example the dispersal of a violent demonstration. In such circumstances it is policing methods that are required, in line with human rights standards of law enforcement such as the UN Code of Conduct for Law Enforcement Officials and the 1990 UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Amnesty International

is concerned that in several incidents such standards appear not to have been followed. In one meeting with a senior US military official Amnesty International delegates were told that the military Rules of Engagement were applicable in a situation that involved controlling a violent demonstration.

Amnesty International acknowledges the difficulties also faced by the Iraqi police. In many areas the Iraqi police has seen much of its equipment and premises destroyed, the departure of many of its officers, and the speedy recruitment and induction of new officers who have not received adequate training. Iraqi courts are functioning with limited capacity. In addition, the police force has been confronted with dramatic increases in the levels of serious crime in many areas. Its capacity to maintain law and order appears limited. At the same time many of the Coalition Forces soldiers and military police engaged in law enforcement do not appear to have basic skills in civilian policing or to be aware of local Iraqi law and the Fourth Geneva Convention.

Recommendations

Amnesty International calls on the CPA and the Coalition Forces to ensure that soldiers fully respect the rules of international humanitarian law when engaged in combat.

Outside combat situations, the Coalition Forces must abide by law enforcement standards and therefore use force in line with the principles of necessity and proportionality. In particular, they should use firearms only if lives are in danger and there is no other means to respond to that danger.

Iraqi police, assisted by international police officers where necessary, must replace combat soldiers as soon as possible in carrying out law enforcement duties. Police officers must be deployed in adequate numbers and provided with appropriate equipment and training, including in implementing standards on law enforcement.

4. Arrest and detention

4.1 Double standards for criminal suspects

Under international law, the Coalition Forces are entitled to hold prisoners of war, whose treatment is regulated by the Third Geneva Convention, as well as internees and criminal suspects, whose treatment is regulated by the Fourth Geneva Convention, complemented by international human rights law and standards, such as the ICCPR and UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles). The Body of Principles was adopted by consensus by the UN General Assembly in 1988 and its requirements apply to “any person deprived of personal liberty”.

While our concerns are not confined to the treatment of criminal suspects, in this memorandum we wish to draw attention to the situation of this category of detainees. Amnesty International’s overall concern in this respect is that suspects are currently accorded different rights depending on whether they are held by the Coalition Forces or by Iraqi law enforcement officials, despite their identical legal status. CPA Memorandums Numbers 2 and 3, dealing with the application of the Iraqi Code of Criminal Procedure, create a two-tier system whereby criminal suspects arrested and detained by the Coalition Forces have less safeguards than those detained by Iraqi officials.

For example, the standards contained in CPA Memorandum Number 2 only apply to the management of detention and prison facilities controlled by the Iraqi Ministry of Justice. They do not apply to facilities controlled by the Coalition Forces where criminal suspects are also held. As illustrated below, the rights set out in CPA Memorandum Number 3 are more comprehensive for criminal suspects held within the framework of the Code of Criminal Procedure than for those held by the Coalition Forces.

Recommendation

Amnesty International calls for a unified system, derived from the Iraqi Code of Criminal Procedure and CPA Memorandums, whereby all criminal suspects are treated in the same way and are afforded all safeguards provided for in international law. The rights of all suspects must be fully respected regardless of which authority is responsible for holding them.

4.2 Access to judges

Suspects held within the framework of the Iraqi Code of Criminal Procedure must have their case reviewed by an examining magistrate within 24 hours of arrest, according to Article 123. By contrast, suspects held by the Coalition Forces should be brought before a judicial officer as rapidly as possible and in no instance later than 90 days after induction, according to Section 6(1)(d) of CPA Memorandum Number 3.

According to information obtained by Amnesty International from US military lawyers, a classified US military order also requires a Judge Advocate General to review the detention of a criminal suspect held by US forces within 21 days of arrest. However, we understand that this review is carried out on paper without the presence of the detainee, and in any case a Judge Advocate General could not be considered a “judicial or other authority” whose “status and tenure should afford the strongest possible guarantees of competence, impartiality and independence” as required by the Body of Principles.

These provisions fail to provide the guarantees contained in Article 9(4) of the ICCPR, which states: “Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.”

The Body of Principles specifies that a “person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority” (Principle 11.1). Also, a detainee “or his counsel shall be entitled at any time to take proceedings according to domestic law before a judicial or other authority to challenge the lawfulness of his detention in order to obtain his release without delay, if it is unlawful” (Principle 32.1). The relevant proceedings “shall be simple and expeditious” and the “detaining authority shall produce without unreasonable delay the detained person before the reviewing authority” (Principle 32.2).

Recommendation

Amnesty International recommends that the CPA amend Memorandum Number 3 to ensure that all criminal suspects have available a simple mechanism to be brought before a judicial authority promptly after arrest, to review the lawfulness and necessity of their detention, as well as their treatment, in accordance with international standards.

4.3 Implementation of judicial decisions

Amnesty International is concerned that even when detainees are referred to the Iraqi courts, the Coalition Forces occasionally fail to implement decisions of the Iraqi examining magistrates who should decide whether a person should be remanded in custody, released on bail, or have the charges against them dropped. The organization has investigated a number of cases of unlawful detention, the result of failure by the Coalition Forces to implement promptly decisions issued by examining magistrates to release criminal suspects. As well as being a flagrant breach of the rule of law, the scarce resources available for the management of detentions and prisons are being expended on holding and processing prisoners who should be released, reducing the resources available for dealing with other detainees. Iraqi judges, lawyers and police officers interviewed by Amnesty International have frequently expressed concern about failures by the Coalition Forces to respect the jurisdiction of the Iraqi courts in relation to criminal matters.

Amnesty International understands that in Baghdad, it is the policy of the CPA and the Coalition Forces not to implement court decisions to release detainees on bail; court orders for the unconditional release of detainees are only implemented after approval from a senior military official. Such a policy contravenes Article 9(3) of the ICCPR, which clearly states that it “shall not be the general rule that persons awaiting trial shall be detained in custody”. It is also contrary to the provisions of the Code of Criminal Procedure, which require decisions regarding pre-trial detention of criminal suspects to be taken by the courts.

Amnesty International has also investigated a number of cases in which the Coalition Forces have failed to bring criminal suspects in their custody to court for trials and other hearings. For example, we understand that as of early July, seven cases had been sent for trial to the Felonies Court of Rasafa, Baghdad, since the start of the occupation. In six of these cases the accused, who numbered seven, had not been released on bail. The court ordered that the detainees be produced in court for trial on 5 July. However, the detainees were not brought to court by the US Military Police on that date. It later emerged that the Coalition Forces had released five of these detainees without informing the investigating magistrate.

The failure of the Coalition Forces to implement decisions of the Iraqi examining magistrates, whether in releasing a detainee or ordering them to appear in court, undermines the authority of Iraqi courts and the rule of law as a whole.

Recommendations

Amnesty International recommends that the CPA and the Coalition Forces rescind immediately the policy of not releasing on bail detainees held in the Baghdad area.

The Coalition Forces should also respect and promptly implement orders by Iraqi courts with regard to criminal suspects.

4.4 Access to lawyers

Section 8 of CPA Memorandum Number 3 provides that all criminal detainees suspected of a felony offence are entitled to consult with a lawyer while in detention, without setting out any time limitations, except in the case of a detainee held in a Coalition Forces detention centre, who is only entitled to exercise this right 72 hours after induction into the centre. There is no specific timeline for the induction, and it may take place some time after the actual arrest, thus prolonging the period of incommunicado detention.

In practice, criminal suspects held in a number of prisons and detention centres run by the Coalition Forces – such as Camp Cropper, Abu Ghraib Prison, Habbaniya Airport and Baghdadi Airport – appear to be invariably denied access to lawyers, sometimes for weeks. Amnesty International has also received several reports of cases where detainees held in Iraqi police stations in Baghdad were denied access to a lawyer by the US Military Police.

The Body of Principles stresses the need to ensure the right of detainees to be assisted by legal counsel and be allowed adequate time and facilities for confidential consultation (Principles 17 and 18). The UN Basic Principles on the Role of Lawyers state that “all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention” (Principle 6). The UN Special Rapporteur on torture has recommended that anyone who has been arrested be given such access “no later than 24 hours after the arrest” (UN Doc. E/CN.4/1990/17).

Recommendations

Amnesty International recommends that the CPA amend Memorandum Number 3 to ensure its consistency with international human rights standards regarding prompt access to lawyers.

In the meantime, access to a lawyer should be granted to all criminal suspects as soon as possible, within a matter of hours rather than days from the point of arrest, to take advice on any legal matter.

4.5 Access to families

Whereas Section 30(13) of CPA Memorandum Number 2 provides that untried prisoners shall be allowed to inform their families immediately of their detention, criminal detainees held by the Coalition Forces are not so entitled.

During a meeting in June with the Senior Adviser to the Ministry of Justice, a member of the General Counsel of the CPA and members of the Office of the Staff Judge Advocate Combined Joint Task Force 7, Amnesty International delegates raised concerns regarding the Coalition Forces' failure to notify the families of detainees of their arrest and place of detention. One official informed the delegates that families would now be able to seek this information in Humanitarian Assistance Centres (HAC) throughout Iraq, where web-based computerized lists of detainees would be maintained. However, this system does not appear to be reliable or accessible to families

Also, whereas Section 14(1) of CPA Memorandum Number 2 provides that detainees are entitled to communicate with family and friends through correspondence and regular visits, criminal detainees held by the Coalition Forces are not fully accorded these rights. Section 6(1)(e) of CPA Memorandum Number 3 enables detainees and their families to communicate through the International Committee of the Red Cross (ICRC), but they are not entitled to receive family visits.

The Body of Principles requires notification to the family or other appropriate person of the detainee's choice "[p]romptly after arrest and after each transfer from one place of detention or imprisonment to another" (Principle 16.1). Notification may only be delayed "for a reasonable period where exceptional needs of the investigation so require" (Principle 16.4). A detainee "shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world" (Principle 19). In any case,

“communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days” (Principle 15).

Recommendations

Amnesty International recommends that the CPA amend Memorandum Number 3 to allow for the prompt notification of families in all cases of arrest of criminal suspects, regardless of the identity of the arresting or detaining authority.

The CPA should put in place suitable mechanisms to ensure that such notification occurs in practice.

All criminal suspects must be able to communicate with and receive regular visits from their families, in line with international standards.

5. Treatment in custody

5.1 Allegations of torture or ill-treatment

Amnesty International welcomes the explicit prohibition on the use of torture and cruel, inhuman or degrading treatment or punishment contained in Section 9 of CPA Memorandum Number 7. However the organization has received a number of reports of torture or ill-treatment by Coalition Forces not confined to criminal suspects. Reported methods include prolonged sleep deprivation; prolonged restraint in painful positions, sometimes combined with exposure to loud music; prolonged hooding; and exposure to bright lights. Such treatment would amount to “torture or inhuman treatment” prohibited by the Fourth Geneva Convention and by international human rights law.

Amnesty International’s concerns with regard to allegations of inhuman treatment immediately after arrest and in detention camps run by the US military have been raised in its letter to Ambassador Paul Bremer of 26 June 2003. Regrettably, testimonies from recently released detainees held at Camp Cropper and Abu Ghraib Prison do not suggest that conditions of detention have improved, although it is reported that Camp Cropper is due to be closed. Detainees continue to report suffering extreme heat while housed in tents; insufficient water; inadequate washing facilities; open trenches for toilets; no change of clothes, even after two months’ detention; no

hygiene packs and no books, newspapers, radios or writing materials. This is in addition to their denial of access to family and lawyers, as described above.

Similar conditions were witnessed at the Division Core Collection Centre in Mosul, which an Amnesty International delegate was able to visit on 2 July. In meetings with senior US military personnel, Amnesty International had been told that the detention facility usually only held two or three people. However, on the date of the visit, there were 27 detainees. The detainees were held in the open air, in two separate areas enclosed by barbed wire. Each area contained a small roof (approximately 2m by 4m) which provided some shelter from the sun. The detainees had not been able to wash or change their clothes since their detention. They had each been provided with one blanket. They slept on the ground, which was of fine dust and stones. When Amnesty International asked military personnel if they were able to wash, the delegate was told that they could wash using the water provided. However, the detainees said that the water provided was only sufficient for drinking. There was one toilet facility inside each enclosure which appeared to be a form of plastic tank open to view. The detainees had not been allowed any family visits, although the ICRC had been able to visit the facility recently.

A former detainee interviewed by Amnesty International described conditions in tents pitched in Abu Ghraib Prison. Detainees were not given blankets to lie on, water was limited and the toilet was an open trench in full view of all. During the whole of his detention he was unable to change his clothes, shave or cut his hair. He was apparently arrested after slapping his son and a nephew to stop them fighting. He was released by order of an examining magistrate on 30 June after 44 days without access to judicial review or to his family or lawyer. An Amnesty International delegate saw him, unkempt and with his hands and feet in cuffs, at al-Bayaa' Court in Baghdad on 28 June.

While the standards laid out for prisons under the authority of the Iraqi Ministry of Justice generally accord with the UN Standard Minimum Rules for the Treatment of Prisoners, it is not clear what standards, if any, regulate the management of detention centres and prisons holding criminal suspects and run by the Coalition Forces.

Recommendations

Amnesty International urges the CPA and the Coalition Forces to ensure that the prohibition of torture and any other form of ill-treatment is absolutely respected by the Coalition Forces and Iraqi law enforcement officials.

Amnesty International urges the CPA and the Coalition Forces to improve the conditions of detention for all detainees, as a matter of priority, so that they comply with the Standard Minimum Rules for the Treatment of Prisoners.

5.2 Deaths in custody

Amnesty International has received a number of reports of cases of detainees who have died in custody, mostly as a result of shooting by members of the Coalition Forces. Other cases of deaths in custody where ill-treatment may have caused or contributed to death have been reported; one case, the death of Radi Nu'ma in Basra on 8 May, is being investigated by UK authorities. In two other cases, where Iraqis were seriously wounded in operations to arrest or search, it is still not clear, in one case more than two months after the incident, whether the persons concerned have died or are still detained.

Recommendations

The CPA and the Coalition Forces should ensure that use of force with regard to detainees is in line with the principles of necessity and proportionality. In particular, firearms should only be used if lives are in danger and there are no other means to respond to that danger.

The CPA and the Coalition Forces should also clarify without delay the fate and whereabouts of anyone taken into custody.

6. Searches

There continue to be many reports of members of the Coalition Forces engaging in house searches and damaging or destroying property without justification. Iraqis have told Amnesty International that soldiers preferred to smash their way into cars and cupboards even when house owners offered keys and begged them to use them. There are also numerous reports of confiscation of property, including large sums of money, upon arrest. This property is not returned upon release. In its letter of 26 June 2003 Amnesty International stressed the importance of bringing in a local witness during house searches, as provided for in Iraqi law, to ensure that they are carried out properly. Amnesty International does not know whether such a suggestion has been considered.

Amnesty International is also concerned at the inadequacy of the system for dealing with complaints regarding searches. US officers at Civilian Military Operation Centre (CMOC) who dealt with the case of As'ad Ibrahim Mahdi, mentioned in our letter of 26 June, accepted that there was evidence that a crime had been committed by the officer of the 101st Division who reportedly removed more than three million dinars from this family's home. The officers complained that redress would be long and difficult as they lacked the means to find out where the division was now stationed so that the Judge Advocate General of that division could take action.

Amnesty International is also concerned that Article 70 of the Code of Criminal Procedure may facilitate abuses during searches. According to Article 70, the examining magistrate or investigator may compel the plaintiff or defendant in a felony or misdemeanour case to cooperate in a physical examination "or the taking of photographs, fingerprints, samples of his blood, hair or nails, or other", for the purposes of the investigation. Also according to Article 70, as far as possible, search of a female should be conducted by another female.

Amnesty International is concerned that some of the practices ordered under this article may constitute cruel, inhuman or degrading treatment, prohibited by international law. For example, the inclusion of the phrase "or other" could be interpreted to include abusive forms of bodily or other search. It is also of particular concern that the law does not require that women should be searched only by other women.

The Human Rights Committee in its general comment 16 to Article 17 of the ICCPR stated that persons "being subjected to body search by State officials, or medical personnel acting at the request of the State, should only be examined by persons of the same sex" (para 8).

Recommendations

Amnesty International calls for a review of the conduct of searches by the Coalition Forces. Wherever possible an independent witness, possibly a representative of a local civilian authority, should be called to witness the search.

Article 70 of the Code of Criminal Procedure must be reviewed to ensure that it is consistent with international human rights standards.

7. The Central Criminal Court of Iraq

Amnesty International welcomes the CPA's abolition of the Revolutionary, Special and National Security Courts, as trials before these courts were grossly unfair. It also notes the establishment of a new Central Criminal Court of Iraq by Order Number 13 with jurisdiction over crimes committed in Iraq since 19 March 2003 and applying the Iraqi Criminal Code and the Code of Criminal Procedure.

Amnesty International understands that the Central Criminal Court is intended to ensure that persons accused of serious crimes, such as looting, crimes against the person and security threats, are brought to trial promptly and fairly, while the rest of the Iraqi judicial system is being rehabilitated. It also understands that this court is intended to serve as a best practice model for other Iraqi courts.

Amnesty International would welcome clarification as to the precise status of the Central Criminal Court and the way in which it may relate to a wider program of judicial reform. Under the Fourth Geneva Convention, the establishment of tribunals by occupying powers remains an exceptional measure, as indicated by Article 64 which states the principle that the tribunals of the occupied territory shall continue to function.

Amnesty International is also concerned at a number of specific aspects of Order Number 13. For example, the order imposes the sweeping condition that judges appointed to the court were not members of the Ba'ath party or, if they were, that their membership did not fall within the leadership tiers "and entailed no involvement in Ba'ath Party activity" (Section 6,1,b). Also, the judges are appointed for a term of one year by the Administrator of the CPA. The term of appointment may be extended by agreement. Renewable terms of appointment of one year may not provide sufficient security of tenure and therefore may violate the principle of judicial independence. The UN Special Rapporteur on the independence of the judiciary has noted that "judges appointed on contracts generally have no security of tenure; such judges cannot therefore be perceived to be independent" (see E/CN.4/2001/65, para 95).

In addition, Section 7(2) of Order Number 13 does not list gender or political opinion among the grounds upon which judges are not allowed to discriminate. Only the CPA or the Coalition Forces have the right to appear before the court as *amicus curiae* "for the purpose of adducing or providing evidence".

Recommendations

Amnesty International would welcome clarification from the CPA that the establishment of the Central Criminal Court of Iraq is consistent with the responsibilities of the occupying powers and would not adversely affect the reform of the Iraqi judiciary.

The CPA should ensure that the provisions of Order Number 13 dealing with membership of the Ba'ath party do not unfairly penalize potential judges and prosecutors.

The CPA should ensure that judges are appointed for the duration of the existence of the court and guaranteed tenure as judges afterwards.

The grounds of prohibited discrimination outlined in Order 13 should include gender and political opinion.

The right to appear before the court as amicus curiae should not be limited to the CPA or the Coalition Forces.

8. Accountability of the CPA and the Coalition Forces

Amnesty International is concerned at what appears to be a lack of accountability as regards CPA officials and Coalition Forces personnel. Section 2(3) of CPA Memorandum Number 3 removes the jurisdiction of the Iraqi courts over any Coalition personnel, in relation to both civil and criminal matters. Also, section 6(2) states that a failure to comply with procedures set out in Section 6(1) relating to the treatment of criminal detainees held by the Coalition Forces shall not constitute grounds for any legal remedy if a detainee is subsequently transferred to an Iraqi court. In this context we understand that available mechanisms of redress would be primarily those afforded by the military internal investigation systems of the Coalition Forces.

In accordance with international standards, any credible allegations of violations of human rights, in the context of use of force, treatment while in custody, or any other context, must be properly investigated and anyone found responsible brought to justice. Victims must receive reparation. There is an urgent need to clarify to the public what are the disciplinary and criminal mechanisms of accountability operated by the CPA and the Coalition Forces. Information about such mechanisms

should be widely disseminated. Clarity as to the procedures that are followed is the first essential step to ensure that victims can use such mechanisms, which should also be easily accessible. Openness and transparency, including the publication of investigation findings, are important in order to inspire the confidence of those who have been victims of abuses.

Allegations of human rights violations, including breaches of international humanitarian law, by CPA officials or the Coalition Forces should be investigated by a body that is competent, impartial and independent, and seen to be so, of those against whom the allegations are made. Amnesty International considers that this may require the use of civilian personnel rather than, or in addition to, the ordinary military investigation system. Using the model of the ombudsperson, a high-level CPA official could also be appointed with the authority to ensure that investigations are initiated and properly conducted, and any systemic problems redressed.

Recommendations

Amnesty International calls on the CPA to ensure that proper mechanisms are in place to ensure competent, impartial and independent investigations into allegations of violations of international human rights and humanitarian law by the CPA and the Coalition Forces.

Depending on the gravity of the violation, disciplinary or criminal measures must be taken against the perpetrators.

Information about such mechanisms and the investigations carried out should be widely disseminated, and the submission of complaints facilitated.

The CPA should consider employing civilian staff, including a high-level official, with the authority to oversee the investigation process into allegations of violations by CPA officials and Coalition Forces.

Amnesty International calls on the CPA to carry out appropriate investigations into the cases detailed in Part III and would welcome information about the progress and outcomes of such investigations.

III: CASE STUDIES

Below are cases of reported violations by Coalition Forces, as described to Amnesty International by witnesses, the victims or other sources.

Use of Force

Killing of Sa'adi Suleiman Ibrahim al-'Ubaydi in Ramadi, 14 May

In the early morning of 14 May, two US armed vehicles crashed through the stone perimeter wall surrounding the home of Sa'adi Suleiman Ibrahim al-'Ubaydi, located behind the courthouse in Ramadi, and drove right up to the door of the house. Sa'adi al-'Ubaydi, unarmed and in his nightclothes, rushed to shut the exterior door in the kitchen. Several soldiers forced their way in and beat him with their rifle butts. He ran out of the house to get away from them; soldiers shot him a few meters away and he died immediately.

Demonstration in Mosul, 12 and 13 June

On 12 June former Iraqi military officers demonstrated in front of the City Hall in Mosul about arrangements concerning their salaries. The City Hall was guarded by Iraqi police. Amnesty International has not been able to ascertain the precise sequence of events that followed the start of the demonstration. A senior US military official told Amnesty International that on 12 June, Iraqi police opened fire after the City Hall building had been fired on by elements within the crowd, killing two people and wounding two. At some stage crowds of people reportedly attempted to storm the building. The mayor's assistant was also reportedly killed. On 13 June disturbances continued. According to the same senior US military official, Coalition Forces killed two Iraqis who had fired against them. Three were injured when they threw grenades at Coalition Forces. Amnesty International has received reports that as many as 29 people were injured during these two days. In addition to the four killed on 12 and 13 June, four others later died from their injuries.

The senior Coalition military official said that he had personally witnessed these events and was satisfied that all action taken, by both the Iraqi police and Coalition Forces had been "appropriate" and that therefore there would be no investigation. He said that the Iraqi police and the Coalition Forces who had shot and killed four Iraqis had been identified and remained in service. However, some Iraqi police had been sacked for deserting their posts.

When questioned about the decision to put Iraqi police in charge of policing the demonstration the military official said that this was part of a process to hand over to the Iraqis the responsibility for policing. From information made available to Amnesty International it appears that the Iraqi police in charge of policing the demonstration had not received any specific training from the Coalition Forces on this element of policing.

Shooting at demonstrators in Baghdad, 18 June

During a demonstration held outside the entrance to the Republican Palace in Baghdad on 18 June, US soldiers shot and killed at least two demonstrators, including Ja'far Musa Hashem. US forces at the palace gates confirmed to Amnesty International delegates that soldiers had opened fire on demonstrators throwing stones. They stated that there had been no use of firearms by Iraqis during the demonstration.

Shooting of Mohammad al-Kubaisi in Baghdad, 26 June

US forces shot 12-year-old Mohammad al-Kubaisi in the Hay al-Jihad area of Baghdad on 26 June. It was the rule in his family that Mohammad should carry the bedding up to the roof where the family slept during the summer and his twin brother Mustafa should carry it down in the morning. From 9.30pm dozens of US troops were carrying out search operations in the houses and around 10.30pm Mohammad stopped on the stairs up to the roof to watch the soldiers. One soldier saw him from the house opposite and aimed his gun. Three Iraqis were close to him. One told Amnesty International delegates that he said: "That baby", but the soldier said "No baby" and opened fire.

The family were in the house of a neighbour who had been taken to hospital by Mohammad's father when someone ran in saying "Mohammad's dead". They came back to the house and Mohammad's mother, Wafa, embraced him. She said he was still alive. About 20 US soldiers had entered the house after the shot and started to search it, but she said they kicked her aside as she held the heavily bleeding boy and did not offer medical treatment. A neighbour, Yaser Ala', aged 17, rushed to fetch his car and he and another neighbour, Jassem Mohammad, put the boy in the car to drive him to hospital, a seven-minute drive away in a fast car with no traffic. But they were stopped by a tank guarding the road out. They explained to the interpreter that there was a wounded boy in the back of the car, but the US soldiers handcuffed them behind their back and threw them face down on the ground. Yaser said that when Jassem tried to get up they put a gun to his head. After about 15 minutes they were allowed up and told they must go back home; it was 11pm and the curfew had started. They saw Mohammad was dead; the halting of the car with the wounded boy in the back and the arrest of the drivers had taken half an hour.

On 9 July US soldiers came to the family's home, examined the scene of the killing and interviewed at least two witnesses. They informed the family that a soldier had been detained in connection with the killing. They stated that they would report to their superiors on what they had seen.

Shooting in Kirkuk, 1 July

On 1 July US troops opened fire on the car of Merdan Muhammad 'Ali, aged 74, in Jama' Kirkuk, a district of Kirkuk, killing his wife, and injuring him. At about 9 pm on that day Merdan Muhammad 'Ali was leaving his home in his car, with his wife sitting beside him in the passenger seat. As Merdan 'Ali was driving he saw four US military vehicles blocking the top of the road. Merdan 'Ali told Amnesty International delegates that when he was at a distance of about 50 meters from the vehicles, he heard gunshots coming from behind his car. He stopped the car, heard some shouting and decided to take a left turn to get away from the apparent danger. As he was turning, US soldiers opened fire on the car: the shooting lasted for about two minutes.

Merdan 'Ali was not aware of any warning shots having been fired. His right knee was fractured by a bullet while his wife was hit by several bullets in her abdomen and her heart. Merdan 'Ali sounded his car horn to attract attention but although members of his family came out of the house they were allegedly prevented from assisting him or his wife for a period of time he estimated to be about 15 minutes. His wife died of her injuries. Amnesty International delegates visited the scene of the incident on 3 July and were told by local residents that they were not aware of any shooting at US soldiers on 1 July. Merdan 'Ali was visited in hospital by a US military representative, who reportedly apologised, but made no reference to the possibility of an investigation.

Implementation of judicial decisions

Iyad Tareq Khalil

On 4 June an examining magistrate at al-'Azamiyeh court ordered the release on bail of Iyad Tareq Khalil, who had been arrested on suspicion of obtaining stolen goods, subject to a guarantee of Iraqi dinars 500,000. On 5 June, an Iraqi police officer in Bab al-Sheikh police station wrote to the Military Police informing them that Iyad Khalil had been summoned by court order and requesting them to bring him to the police station. By that time Iyad Khalil had been transferred to Camp Cropper. Despite this court order, Iyad Khalil was not released by The Coalition Forces until 20 June.

Hashem Hussein Hindi

Hashem Hussein Hindi, aged 49, a building foreman, was arrested on 19 June on suspicion of involvement in the burglary of a house; he was later transferred into US custody, reportedly at Camp Cropper detention centre. On about 25 June an examining magistrate in Bab al-Jadideh Magistrates Court summoned Hashem Hussein Hindi for further questioning because two other accused had given contradictory statements regarding the detainee's connection to the burglary. As of 10 July, he remained in custody and had not appeared before the examining magistrate.

Access to lawyers

Saddam Wahid and Fadil Jassem

On the morning of 26 June, Saddam Wahid, aged 66, and Fadil Jassem, in his 20s, were arrested in Zayuneh on suspicion of armed robbery. Saddam Wahid had been wounded in the leg and Fadil Jassem in the right shoulder by a homeowner, who had shot at them. The police did not immediately provide them with medical treatment but first transferred them to Muthanna Police Station where they were interrogated for three hours. They were then transferred to al-Kindi Hospital for treatment. Muhammad Faisal, a lawyer, was informed of their arrest and went to the station at about 2pm in order to obtain a power of attorney from them and to take instructions. He spoke to a member of the US Military Police who refused to allow him to see the detainees or take a power of attorney on the grounds that his orders did not permit this. He reportedly justified his position by saying: "These people are criminals."

The following day at about 9am the lawyer tried to visit the detainees again, but the same member of the US Military Police refused him access. Attorney Muhammad Faisal was only able to see the detainees and take a power of attorney when they were brought before an examining magistrate in Baghdad al-Jadida court on 28 June. They were later transferred to Camp Cropper and their lawyer no longer had access to them.

Information and access to families

Duraïd Khalis Aballey

Duraïd Khalis Aballey, a 48-year-old businessman, was shot on 30 April, apparently when he opened fire on US military forces who were attacking the house where he lived. According to his father, Duraïd Aballey opened fire because he thought the house was being attacked by armed looters. His brother, Khreisan Khalis Aballey, who was also held in detention (see below) was first told that Duraïd Aballey was alive, then told he was dead and buried. However, when he was referred to a cemetery run by the US military, he found that the paper he was given by US soldiers to collect his brother's body was not such an authorization. The only unnamed body of the relevant date was that of a soldier. Since then Khreisan Aballey has spent two months appealing to the US authorities to give him information about his brother; he says he has visited the Institute of Forensic Medicine and the morgue of every hospital in Baghdad searching for his brother.

Nasrat Mohammad 'Amer 'Abd al-Latif

Nasrat Mohammad 'Amer 'Abd al-Latif, a 23-year-old physics student, was shot on 12 June 2003 by armed men in plain clothes, who were apparently US nationals. They raided the house his family had rented 16 days before, apparently looking for Taha al-Jazrawi, a senior member of the Ba'ath party. His father and two brothers were detained for five days, apparently near Baghdad International Airport. They were not allowed to speak to each other for two days when they were in the same room. They were told that Nasrat Mohammad 'Amer was dead, and the corpse would be transferred to them. However, no body has yet been brought to them at the time of writing. Meanwhile they have frequently inquired at the Airport (where they were told that a wounded person like Nasrat had been flown to Kuwait) and visited hospitals and morgues in Baghdad without success.

Ahmad Suhail

On 1 July an Amnesty International delegate accompanied Dr Suhail Laibi to the HAC in Baghdad in order to find out the whereabouts of his son Ahmad. A final year high school student, Ahmad Suhail had been arrested on 15 May 2003 with his father, apparently because his father's pistol was in the car. His father, who had been released from Abu Ghraib Prison on 14 June 2003, had been told that his son had been transferred to Nassiriya and had travelled there himself to try to find out. He was not given any information in Nassiriya but an officer warned him not to go himself to the prison camp to enquire about his son, as, if he presented himself at the camp, he might be arrested.

At the HAC in Baghdad Ahmad Suhail was at first difficult to locate on the database because of the spelling of his name. However, Dr Suhail was able to locate him by means of his date of birth and prison number. The officer in charge told Dr Suhail that his son was in Camp Bucca, but neither he nor any other officer in the room could provide any information on Ahmad Suhail's legal status or say where Camp Bucca was. Amnesty International delegates later found that this was the official name for the Umm Qasr camp, which remains inaccessible to families.

Zakariya Zakher Sa'ad

Zakariya Zakher Sa'ad, aged 55, an Egyptian national married to an Iraqi, works as a gardener and night watchman at the house of the Russian Consul in Baghdad. He was arrested at 12am on 6 June. Apparently a gang of thieves came to burgle the house of the Russian consul. A nearby house had been burgled twice before. Upon hearing the noises Zakariya Zakher Sa'ad rushed to the house with his Kalashnikov but did not shoot; the thieves escaped but he was arrested by seven US soldiers who had then arrived at the scene accompanied with an Iraqi interpreter. Eye witnesses said that the US soldiers threw Zakariya to the ground as he struggled and tied his hands behind his back before taking him away. The neighbours tried to tell the US soldiers that he was the guard, not the thief, but the soldiers would not listen. A month later Zakariya Zakher Sa'ad, who earned \$14 a week and was the sole support of his family, was still in detention. His family heard that he was held at Camp Cropper but have had no access to him.

Fadel 'Abbas Ibrahim al-'Amari

On 5 July, an Amnesty International delegate accompanied Lamia Khaled Dayekh, the wife of Fadel 'Abbas Ibrahim al-'Amari, a former member of Iraqi intelligence, to the HAC centre in Baghdad. The detainee had been arrested on 7 June by men in civilian clothes with American accents from his home in Hay al-Jihad, Baghdad. The wife of the detainee told Amnesty International that she had tried on numerous occasions to access the HAC and the Republican Palace but had been turned away by US soldiers at the entrance. A member of the US military informed Lamia Dayekh that her husband's name could not be found on the list of detainees, but that did not necessarily mean that her husband was not in the custody of the Coalition Forces. The soldier provided her with a list of police stations and told her that she could obtain information within 72 hours on her husband's legal status and place of detention from the station nearest to her home.

Lamia Dayekh, accompanied by the Amnesty International delegate, went to Hay al-Amil police station later that day. Neither the Iraqi police nor the US Military

Police were even aware of this tracing procedure. A member of the US Military Police took details regarding ‘Abbas al-‘Amari’s arrest and contact details for the family. The soldier said that she would send this information up the chain of command and that the family would be contacted directly with the information either by telephone or by a visit to her home. As of 14 July, Lamia Dayekh had received no further information from the US military.

Treatment in custody

Abdallah Khudhran al-Shamran

Abdallah Khudhran al-Shamran, a Saudi Arabian national, was arrested with six others of different nationalities in al-Rutba in early April 2003 by US and allied Iraqi forces while travelling from Syria to Baghdad.

Following the arrest all were blindfolded with hands tied behind their backs and forced to walk for three hours. Upon reaching an unknown site, Abdallah Shamran alleged that he was subjected to beatings and electric shocks. Other torture methods reported included being suspended from his legs and having his penis tied. He also reported sleep deprivation through constant loud music. The arresting authorities accused him of being a “terrorist”.

He was held for four days, blindfolded, before being transported to a camp hospital in Um Qasr for three days of treatment. He was then interrogated and released, left to sleep on the streets for eight days without money or his passport. Abdallah decided to speak to a British soldier about his passport whereupon he was driven to another place of detention before being forced with two other detainees into a lorry and taken to a military field hospital and again interrogated and tortured. He told Amnesty International delegates in Basra who interviewed him on 13 May:

“He stuck the pen he was holding into my right shoulder. The scar is still fresh and visible.....They tied my hands behind my back and put me exposed in the sun from noon to early evening. Then they transferred me to a container and locked me in. The next morning they put me in the sun until about 10 am”.

Abdallah was then transferred to hospital, given treatment and later met with representatives of the ICRC to seek help in getting his passport returned. He reported being questioned by a British officer while in hospital who accused him of being part of Saddam Hussein’s Fedayeen and threatened him with execution.

Khreisan Khalis Aballey

Khreisan Khalis Aballey, aged 39, was arrested at his home on 30 April with his 80-year-old father by a large force of US military. His brother was shot during the operation; two months later the family still did not know whether he was alive or dead.

The military were apparently looking for ‘Izzat al-Duri, a senior member of the Ba’ath Party. Khreisan Aballey insisted that he had no knowledge of his whereabouts. During his interrogation, 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 and distorted music was playing the whole time. During all this period he was deprived of sleep (though he may have been unconscious for some periods). He reported that at one time a US soldier stamped on his foot and as a result one of his toenails was torn off. 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 told he could sit, he said that his leg 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. His father, who was released at the same time, was held in the cell beside his son, where he could hear his son’s voice and his screams.

Sa’dun Hamadi

According to a detainee released on 30 June who had been held in a tent neighbouring that apparently reserved for political detainees, Sa’dun Hamadi, aged 75, former speaker of the Iraqi National Assembly, was seen at Camp Cropper lying on a single blanket in an extremely hot tent, using his shoes as a pillow.

Deaths in custody

Radi Nu’ma

On 8 May, Radi Nu’ma, a labourer and father of three children, was arrested by the UK Royal Military Police and died in custody later the same day. For two days, his family visited different police stations, but could obtain no information. On 10 May, UK soldiers delivered a written note to the family’s house that read: “*Radi Nu’ma suffered a heart attack while we were asking him questions about his son. We took him to the military hospital. For further information, go to the hospital.*”

The family, unaware that Radi Nu’ma was dead, were told at the hospital that no person of that name had been admitted. They subsequently discovered his body in the morgue. According to hospital staff, the Royal Military Police had delivered an

unidentified corpse on the evening of 8 May, told staff that the cause of death was a heart attack but failed to provide other information, including the date and place of death. Hospital officials later told Amnesty International delegates that the Royal Military Police Special Investigations Branch had visited the hospital. On 18 May a soldier at the army base at the presidential palace in Basra told the family that the relevant Royal Military Police official had too much work and would not be able to see them. On 19 June soldiers came to the family's home and told them to go to the presidential palace on 21 June, but after waiting for two hours on 21 June, family members were again refused entry. Amnesty International has been informed by the UK authorities that the Royal Military Police has launched an investigation into this case.

Ala' Jassem

Ala' Jassem, aged 22, was killed when soldiers fired on detainees who were reportedly rioting on 13 June at Abu Ghraib Prison. Demonstrators were apparently throwing bricks and poles at the soldiers, but reportedly remained within the razor wire surrounding the tents and the lives of others were not in danger. According to eyewitnesses, Ala' Jassem was in a tent when he was shot. Seven other detainees were wounded.