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**REPORT OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN
RIGHTS AND FOLLOW-UP TO THE WORLD CONFERENCE ON HUMAN RIGHTS**

The present situation of human rights in Iraq*

* The annexes are circulated as received, in the language of submission only.

**LETTER FROM THE ACTING UNITED NATIONS HIGH COMMISSIONER
FOR HUMAN RIGHTS TO THE CHAIRPERSON OF THE COMMISSION
ON HUMAN RIGHTS**

4 June 2004

Dear Mr. Chairman,

The situation of human rights in Iraq has been the subject of concern in the Commission on Human Rights for a number of years. Its Special Rapporteur has looked into the situation for over a decade. The last Special Rapporteur submitted a report on past violations of human rights in Iraq to the Commission at its sixtieth session in 2004 (E/CN.4/2004/36 and Add.1). The mandate of the Special Rapporteur was not renewed at that session.

The situation in Iraq has been the subject of consideration by the Security Council and is currently engaging its attention, as well as that of the Special Adviser to the Secretary-General and other senior United Nations officials.

From a human rights point of view, the situation in Iraq presents various challenges. Firstly, the Coalition Provisional Authority and the Interim Governing Council established following military operations by the Coalition forces are shortly to be replaced by an Interim Government, which has just been named. Secondly, there have been acts of terrorism as well as acts of armed resistance against the armed forces of the Coalition. Thirdly, a large number of people have been detained, but the numbers and circumstances were largely unknown until recently. Fourthly, civilians are adversely affected in various ways, and there has been extensive loss of life. Lastly, there have been disturbing reports in the media about certain acts committed by some members of the Coalition forces that are at variance with international human rights norms.

At the same time, it has to be recognized that the Iraqi people have been relieved of the massive, systematic and institutionalized violations of human rights that took place under the preceding regime, and that they now have the prospect of arranging for their own democratic governance under the rule of law and in the spirit of international human rights norms.

It has long been the practice of the Commission on Human Rights to consider the state of respect for human rights and humanitarian law in conflict situations. At its sixtieth session, the Commission again adopted resolutions and decisions on a number of such conflict situations.

Having regard to the foregoing, and keeping in mind the lack of information on the situation of human rights in contemporary Iraq, I have arranged for the preparation of the attached report which I have the honour to submit to the members of the Commission.

Please accept, Mr. Chairman, the assurances of my highest consideration.

Bertrand Ramcharan
Acting United Nations High Commissioner for Human Rights

Summary

The fall of Saddam Hussein removed a Government that preyed on the Iraqi people and committed shocking, systematic and criminal violations of human rights, which have been documented in detail since 1991 by the Special Rapporteur on the situation of human rights in Iraq.

Following the occupation of Iraq by Coalition forces there have, sadly, been some violations of human rights committed by some Coalition soldiers. Governmental leaders of the countries concerned have, at the highest levels, condemned these violations and have pledged to bring those responsible to justice and to uphold the rule of law. It is imperative that this be done, with accountability to the international community.

The serious violations of human rights and humanitarian law that have taken place must not be allowed to recur. Preventive and protection systems must be put in place.

It is crucial that protection arrangements be strengthened as a matter of the utmost urgency. This would entail oversight of the military forces and the building up of protection institutions in the new Iraq. As far as the first area is concerned, consideration could be given to the designation of an international ombudsman on human rights and humanitarian law vested with competence to issue periodic public reports on the compliance by Coalition forces with international norms of human rights and humanitarian law.

The Interim Iraqi Government should rapidly announce the establishment of a legal and judicial reform commission to recommend immediate reform of Iraqi laws that violate international human rights standards and, where there is an absence of law, make provision for due process protections in accordance with Iraq's international obligations. In any event, since laws have not been substantially reformed since the 1960s, the commission should undertake long-term reform of the legal framework to ensure that egregious provisions of the Iraqi Penal Code, suspended by order of the Coalition Provisional Authority (CPA), are eliminated and that the separation of the judiciary into an independent branch of government, as reflected by CPA order and the Transitional Administrative Law (TAL), is maintained.

In its approach to transitional justice, the Interim Iraqi Government should develop a strategy for addressing the legacy of brutal authoritarian rule and massive human rights abuses in Iraq. Such a strategy must be centred on the population's needs, attitudes and perceptions of transitional justice. Only effective and meaningful consultation with legal actors and the public at large will ensure a process that is considered legitimate. This process must address such issues as past human rights abuses, justice and accountability mechanisms and non-judicial measures such as vetting, truth-seeking and reparations in a holistic, coordinated and coherent manner.

The Interim Iraqi Government may wish to undertake a review of the Statute of the Iraqi Special Tribunal so as to ensure that the criminal justice process complies with international fair trial standards and that recent developments in international criminal law are taken into account.

It would be important to consider whether there is a need to establish an Iraqi truth and reconciliation commission.

The Interim Iraqi Government should establish a reparations commission to develop a reparations programme.

Given the continuing violence, the Interim Iraqi Government will need to develop adequate mechanisms so as to ensure the effective security of legal actors, defendants, victims and witnesses.

The Interim Iraqi Government should name the members of an independent Iraqi national human rights commission as soon as possible.

The Interim Iraqi Government should also designate an Iraqi human rights ombudsman as soon as possible.

The Interim Iraqi Government should consider and take steps to support Iraqi civil society organizations for the promotion and protection of human rights. This task could be facilitated by the Iraqi Ministry of Human Rights, with international assistance.

The Ministry of Human Rights should be given all support, nationally and internationally, to help it discharge its responsibilities for the promotion and protection of human rights in Iraq.

An international fund for human rights education in Iraq should be established and supported.

There must be accountability for respect for human rights in conflict situations and in the struggle against terrorism. The letter and spirit of international human rights and humanitarian law must be upheld. This is an imperative duty of all involved.

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Introduction

1. The Government of Iraqi President Saddam Hussein was a brutal, murderous gang that preyed upon and tortured its own people. Human rights violations in Iraq under the previous regime have been documented in detail since 1991 by the Special Rapporteur on the situation of human rights in Iraq (see annex V).
2. That Government is no more, and the people of Iraq have the opportunity to move forward, away from the oppression and crimes of the past. It is not the business of this report to dwell either on the circumstances in which the Coalition forces entered Iraq or on the debate within the international community prior to that operation. These matters are now behind us. The removal of Saddam Hussein must be seen as a major contribution to human rights in Iraq.
3. This report is, however, concerned with the responsibility of protection that is incumbent upon the Coalition Provisional Authority (CPA), the Coalition forces, the Iraqi leadership and the international community at large.
4. About 1,000 members of the Coalition forces have died since April 2003, along with some 200 Coalition civilians. The Coalition authorities have apparently not kept count of Iraqi civilian deaths because it is asserted that the Iraqi authorities do so. Some have asserted that there have been some 10,000 civilian deaths. At least 10,000 persons have been taken into custody. In the aftermath of the hostilities, basic services, which were already in a state of serious disrepair, broke down and the Iraqi people suffered hardships exacerbated by looting. These hardships have now ameliorated somewhat. An Iraqi Governing Council (IGC), and then an Interim Iraqi Government, were established to take Iraq forward. New constitutional and legal instruments were worked on, drawing upon the norms of international human rights law, and work was done on the establishment of an Iraqi Special Tribunal to try those accused of criminal violations of human rights in the past. An Iraqi Ministry of Human Rights was created and it has sought to lay the foundations for the promotion of human rights in the new Iraq. The Security Council was briefed on these matters on 19 May 2004.
5. Notwithstanding these efforts, it is now a matter of public knowledge that detainees have been ill-treated and degraded and, before submissions were received from CPA and from the Governments of the United Kingdom of Great Britain and Northern Ireland and the United States of America (annexes I - III), it was unclear what protection arrangements existed in Iraq since the fall of the previous regime.

Sources and methods

6. In drawing up this report, the Acting United Nations High Commissioner for Human Rights wrote to the CPA Administrator to obtain information and insights from him on the situation of human rights in Iraq. The Acting High Commissioner also wrote to some 30 Governments with troops or personnel in Iraq, to the Head of the Iraqi Interim Governing Council, to the Minister for Foreign Affairs of Iraq and to the Iraqi Acting Minister of Human

Rights, asking them to provide him with such information as they consider would be of interest to the Commission on Human Rights.

7. Information was also requested from the heads of the following United Nations bodies and programmes and specialized agencies: Economic and Social Commission for Western Asia (ESCWA), Food and Agriculture Organization of the United Nations (FAO), United Nations Human Settlements Programme (UN-Habitat), United Nations Assistance Mission for Iraq (UNAMI), United Nations Development Programme (UNDP), Office of the United Nations High Commissioner for Refugees (UNHCR), United Nations Children's Fund (UNICEF), United Nations Development Fund for Women (UNIFEM), International Labour Organization (ILO), United Nations Educational, Scientific and Cultural Organization (UNESCO), World Health Organization (WHO), World Bank and World Food Programme (WFP). The Acting High Commissioner also asked for information from intergovernmental organizations such as the International Organization for Migration and the Organization of the Islamic Conference, regional organizations such as the League of Arab States and some non-governmental organizations (NGOs) in consultative status with the Economic and Social Council. Information available in the media was consulted as appropriate. Submissions and replies were received from CPA, and the Governments of Australia, the Czech Republic, Latvia, Japan, New Zealand, Poland, the United Kingdom and the United States, and from the NGOs Amnesty International, Arab Organization for Human Rights, Human Rights Watch, International Youth and Student Movement for the United Nations (ISMUN) and Women's International League for Peace and Freedom (WILPF), as well as from a number of United Nations bodies and programmes and specialized agencies. The submissions from CPA, the Government of the United States and the Government of the United Kingdom are reproduced in annexes I-III respectively.

8. From 24 to 28 May, a team from the Office of the High Commissioner for Human Rights (OHCHR) travelled to Amman to gather information. It met with over 30 Iraqis who represented NGOs working in the field of human rights or who came in their personal capacity as witnesses of human rights violations. They came from Baghdad, Basra, Erbil, Karbala, Mosul, Ramadi and Sulaymaniya to Amman for that purpose, some of them travelling for up to 18 hours. The team also consulted with representatives of the non-governmental humanitarian organizations Merlin (Medical Emergency Relief International), OXFAM and Première Urgence, as well as with representatives of FAO, UNICEF and WHO as members of the United Nations Country Team for Iraq, which is currently operating from Amman.

9. The OHCHR team would like to express its gratitude to the Iraqis whom it interviewed during its mission, who came generally well prepared and also submitted extensive documentation on the current human rights situation in Iraq, including individual case studies (see also annex V). Without exception, the interviewees placed high hopes in the United Nations to assist in rebuilding Iraq. This report presents in good faith witness accounts heard by the OHCHR team but which, under the circumstances, it was not possible to verify independently.

10. The purpose in presenting this report is to brief the Commission on Human Rights on the human rights aspects of a situation of international concern in order to enable the Commission and the wider international community to assess the situation with a view to strengthening

protection in the future. The report attempts to provide factual information to the extent possible, as well as the applicable legal framework. Another purpose is to present the situation in Iraq from a human rights point of view and to promote oversight and accountability in a complex and difficult situation. To begin with, the report looks briefly at the political context of contemporary Iraq.

11. In the afternoon of Wednesday, 2 June 2004, a draft of the report was sent by e-mail to the Permanent Missions of the United Kingdom of Great Britain and Northern Ireland and the United States of America to the United Nations Office at Geneva, giving them an opportunity to submit any factual corrections or suggestions by 6 p.m. on Thursday, 6 June. At that time, written comments were received from the two Governments. Many of those comments were taken into account in finalizing the report, which contains references in places to points of view expressed by them.

I. THE POLITICAL CONTEXT

12. The end of major hostilities in Iraq resulted in a situation in which a coalition headed by the United States of America and the United Kingdom of Great Britain and Northern Ireland took on the role of occupying Powers – a situation that has been acknowledged by the Security Council: on 22 May 2003, the Council adopted resolution 1483 (2003) in which the Council requested the Secretary-General to appoint a special representative, and also mandated the Secretary-General to assist the people of Iraq in a number of areas, including human rights, in coordination with “the specific authorities, responsibilities and obligations under applicable international law of these States as occupying Powers under unified command (the ‘Authority’)”.

13. Upon the assumption of control of Iraq by the Coalition forces, a Coalition Provisional Authority was established under an Administrator named by the United States. For most of the period under review, this function has been carried out by Ambassador Paul Bremer. He has been, de facto, the principal political authority in the country. The Interim Iraqi Governing Council was nominated by CPA and given the functions of attending to the day-to-day business of the government ministries and working on the political architecture for the future. At the end of May 2003, the Secretary-General dispatched to Iraq his Special Representative, Sergio Vieira de Mello. In his report to the Security Council of 17 July 2003, the Secretary-General noted that the Special Representative had raised concerns about the conditions of detention and the treatment of detainees with the Administrator, Ambassador Bremer, who had given assurances that the matter was being addressed through remedial action (S/2003/715, para. 47). The Special Representative was killed in a terrorist attack on the United Nations headquarters in Baghdad after barely seven weeks on the ground.

14. In the ensuing months, the overall security situation in Iraq deteriorated significantly. Owing to the events of 19 August 2003 and the worsening security, the Secretary-General decided to temporarily relocate all international United Nations staff in Baghdad by setting up the core of UNAMI outside Iraq. This situation notwithstanding, United Nations agencies and programmes have managed to continue a broad range of essential assistance activities in all parts of the country.

15. On the basis of Security Council resolutions 1483 (2003) and 1511 (2003) of 16 October 2003, and at the request of CPA and IGC, as well as many Iraqis outside the process, the Special Adviser to the Secretary-General, Lakhdar Brahimi, helped facilitate the process of national dialogue and consensus-building among Iraqis with a view to ensuring a peaceful and successful political transition.

16. This process culminated in the announcement on 1 June 2004 of the composition of the Interim Iraqi Government and the subsequent dissolution of IGC. Attention is now focused on the full transfer of the exercise of sovereignty on 30 June and on preparing for elections for a constituent assembly, scheduled to take place no later than January 2005. The assembly is expected to draft a new constitution. Preparations have also started for the holding of a national conference in July 2004 to select an interim national council, which will assist the Government in its work and ensure that the transitional process is as broad and inclusive as possible. The Security Council is currently considering a new draft resolution on Iraq.

17. It is envisaged that, at the request of the Interim Iraqi Government, Coalition forces will remain in the country for some time to help the Interim Government maintain law and order and to safeguard the security and defence of the country. At the time of writing, these issues are the subject of consultations in the Security Council.

18. From a human rights point of view, witnesses interviewed by the OHCHR team in Amman brought two issues to the attention of the team. Several Iraqis pointed out that the participation of women should be actively encouraged in all governmental bodies and institutions and that decisions about the composition of such bodies should be made without discrimination on the basis of sex, ethnicity or religion.

II. THE MILITARY/SECURITY SITUATION INCLUDING ACTS OF TERRORISM

19. During the interviews in Amman, it became clear to the OHCHR team that for almost all the persons interviewed, the security situation was the key concern. The witnesses said that the main factors contributing to the volatile security situation were the following: the release of criminals from detention by Saddam Hussein shortly before the war; the distribution of weapons during and shortly after the war as a result of which basically every family was now armed; the dismissal by Coalition forces of the Iraqi army after the fall of the previous Government, which left a vacuum; and the looting, mainly of public buildings, while Coalition forces allegedly stood by and watched. In comments received by the Government of the United States, the point is made that Coalition forces took action to prevent looting when possible but that the security environment did not allow them to stop all looting.

20. Turning to the present situation, by May 2004, some 210,000 Iraqi security forces were in training or on duty. The Permanent Representative of the United States of America to the United Nations, in his address to the Security Council on 19 May 2004, stated that over 30 countries were contributing military and civilian personnel to the Coalition forces. The multinational force is divided into three sectors: Centre-South, South-East, and Northern Iraq, including Baghdad.

Forces in all sectors are engaged in stability operations, reconstruction efforts, training Iraqi security forces, and civil affairs training.

21. The Coalition forces, while endeavouring to maintain law and order, have had to face protests, resistance and acts of terrorism. Terrorists have attacked foreign embassies, religious centres, civilian locations, the United Nations, the International Committee of the Red Cross (ICRC) and Coalition forces, which has resulted in extensive loss of innocent civilian life. There is evidence of the infiltration into Iraq of elements of foreign fighters as well as of Al-Qaida, who have, in several instances, engaged in gruesome and barbaric acts such as the beheading of an American civilian and making a video tape of the act, which was then provided to media organizations. I would like to take this occasion to express my profound abhorrence at these acts of depravity.

22. Many foreigners, including journalists, have been taken hostage, especially since the beginning of April 2004. At the same time, the kidnapping for ransom of Iraqi civilians, including women and children, by Iraqi criminal groups has reached dramatic proportions. In some incidents, the victims were killed. Academics seem to be specifically targeted. Several of the witnesses interviewed in Amman reported that family members or friends had been kidnapped.

23. The witnesses interviewed in Amman understood the difficulties of responding to terrorist attacks and preventing crime. However, they voiced their discontent with the inactivity of the Coalition forces with respect to establishing law and order shortly after the war, which led to a total collapse of security. They stressed the responsibility of the Coalition forces under international humanitarian law to ensure security for Iraqi citizens.

24. Another aspect of the security situation is the hiring by the Coalition forces of private security organizations that have deployed personnel in significant numbers, estimated to be as high as 20,000. This raises the questions of what legal regime applies to them and what their duty of protection is. In comments submitted by United States authorities, the point is made that United States contract personnel are under the direction of the Coalition and are subject to criminal jurisdiction in United States federal courts.

25. In its written submission, CPA states: "The current security situation in Iraq is difficult and complex. Anti-MNF [Multinational Force] elements are attempting to thwart the efforts of the MNF to create a safe and secure environment within Iraq. They are attacking MNF directly. They are using intimidation and direct attacks on Iraq Security Force personnel to disrupt and prevent the creation of an effective and capable Iraqi security force. They are also attacking the infrastructure of the country" (see annex I). In its written submission, the Government of the United Kingdom states: "The UK is bound by the Geneva Conventions. UK operations in Iraq reflect that" (see annex III). The Government of the United States, for its part, stated in its submission (annex II) that United States forces captured and held POWs, who have been treated in accordance with the Geneva Convention relative to the Treatment of Prisoners of War (Third Geneva Convention). Detainees held for security reasons have been and continue to be provided

the protections of the Geneva Convention relative to the Protection of Civilians in Time of War (Fourth Geneva Convention).

III. THE PROTECTION OF CIVILIANS

26. This report will not go into the issue of whether, in the prosecution of the war, the Coalition forces, or the armed forces of Saddam Hussein, took care to avoid civilian casualties as required under the provisions of international humanitarian and human rights law. Rather, it is concerned with the situation in the aftermath of the war and the commencement of control by Coalition forces.

27. Besides concerns for the overall security situation, Iraqis interviewed in Amman voiced their distress about the lack of protection of civilians by Coalition forces. They said that the majority of Iraqis had welcomed the fall of the regime of Saddam Hussein and though many did not like their country to be occupied, they had accepted it, hoping for a better future.

28. However, probably as a reaction to the difficult security situation, Coalition forces reacted more and more warily towards the Iraqi population. Among the examples given were the following: An Iraqi driver fell asleep while driving and got too close to a Coalition forces jeep; he was shot and killed. In another incident, a father and son were driving on a highway, saw a line of Coalition forces cars behind them and pulled over to the side of the road to let them drive by. The Coalition forces, upon overtaking them, opened fire and the son was shot; he later died in hospital. Another Iraqi recounted an incident in which Iraqi police were in the process of arresting burglars when Coalition forces passed by. The forces mistook them all for burglars and started shooting, killing four people.

29. Interviewees said that such incidents often occurred in conjunction with attacks against the Coalition forces but that too often innocent bystanders were caught up in the fighting. For example, in one cited incident, an Iraqi threw a grenade at Coalition forces tanks which were stationed close to a peaceful demonstration. The Coalition soldiers opened fire, shooting into the demonstration and killing a girl, though it was clear that the perpetrator had run off in a different direction. Many of the interviewees argued that the Coalition forces simply overreact.

30. Other witnesses referred to traffic accidents, which occur on a daily basis, in which Coalition tanks and armoured vehicles bump into cars, drive up on the pavement, turn wherever they like and inflict damage on Iraqi cars, in some cases causing personal injuries. The witnesses said that compensation had been awarded only in a few instances.¹

31. Since 4 April 2004, there have been many clashes between Coalition forces and armed individuals belonging to the Mahdi Army, followers of Shi'ah cleric Muqtada Al-Sadr, in the predominantly Shi'ite districts of Baghdad, as well as southern cities including Amara, Kut, Karbala, Nassirya and Basra. The clashes involving the Mahdi Army were reportedly prompted by the closure of the *al-Hawza al-Natiqa* newspaper on 28 March 2004 by order of Ambassador Bremer, on the grounds that it was inciting violence. Another reason for the clashes was reportedly the arrest on 3 April 2004 of one of the closest allies of Muqtada Al-Sadr, Mustafa

Ya'qubi, on charges relating to the April 2003 assassination in Najaf of Shi'ah cleric Abd Al-Mahid Al-Khoei.

32. At the same time, Coalition forces launched military operations in Ramadi and Falluja following the killing, burning and mutilation of four contractors for the United States army by insurgents on 31 March 2004. The situation in those areas remains volatile despite several ceasefire agreements.

33. Several representatives of humanitarian NGOs to whom the OHCHR team spoke in Amman addressed the situation in Falluja, Najaf, Karbala and other cities. They reported that access to medical facilities was severely restricted for a number of reasons, including:

(a) The occupation of hospitals by Coalition forces, such as the only major health facility in Falluja and the hospital with the largest surgical capacity in Najaf;

(b) The military presence just outside hospital compounds. In Falluja, the bridge leading to the hospital was used as a checkpoint and a tank was stationed in front of the hospital in Karbala ;

(c) General insecurity in the streets. Street fighting and snipers often make it too dangerous for civilians to go to medical facilities;

(d) Persistent accounts of arrests in hospitals. There are apparently accounts of armed groups entering hospitals to seek out their opponents, and as a result many Iraqis do not feel safe in medical facilities.

34. Insofar as civilians were concerned, the situation on the ground in the aftermath of the assumption of control by Coalition forces was undoubtedly quite difficult. However, the norms of international humanitarian law governing combatants' behaviour in action and command responsibilities cover the civilian population: civilians should be treated humanely at all times. All humiliating and degrading treatment and any form of indecent assault or other outrage upon personal dignity are strictly prohibited. The protection of civilians covers all civilians, without any adverse distinction based in particular on race, nationality, religion or political opinion. Violence to life, health, or to physical or mental well-being is prohibited. Women and children should receive special respect.

35. Under international humanitarian law, distinctions must be made between civilian objects and military targets. Civilians may not be directly targeted. Accordingly, an attack may only be directed at a specific military objective. If a choice is possible between several military options for obtaining a similar military objective, the option selected must be the one which would cause the least danger to civilian persons and objects. No attack is permitted if it treats as a single military objective a number of clearly separate and distinct military objectives in areas containing a concentration of civilian persons or objects. An attack must be proportionate in view of its military advantage and its effects on the civilian population (Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of

International Armed Conflicts (Protocol I), art. 57).² These precautions are of particular importance when fighting takes place in urban areas.

36. It should be noted that reprisals, or breaching the laws of war as a response to a breach by enemy forces, are strictly prohibited, in particular against civilians, protected objects and the environment. Collective punishments are prohibited.

37. As far as possible, parties to a conflict must avoid placing military objectives within or near densely populated areas and take other necessary precautions to protect the civilian population under their control against the dangers resulting from military operations. Belligerent forces are not allowed to use civilian objects, such as schools or specially protected areas like hospitals, for military purposes. It is strictly prohibited to use civilians to protect a military location.

38. Of relevance to the issue of the responsibility to protect is the question: What instructions were given to the Coalition forces when it came to issues of maintaining law and order in a manner that was respectful of the civilian population and respecting the rights of persons detained? The Government of the United Kingdom, in its written submission (annex III), states that its own forces, Iraqi civilians and law enforcement officials, humanitarian aid workers and contractors are regularly subject to lethal attacks. However, directives given to British forces require that all detained persons must be treated humanely and in accordance with the principles of international humanitarian law. In its submission (annex II), the Government of the United States states, "reviews of all detention operations in Iraq are being undertaken on multiple levels to identify any shortcomings and to implement procedures to strengthen our commitment to conducting detention operations humanely and in compliance with the law of armed conflict, including the Geneva Conventions."

39. Another question that is relevant to the responsibility to protect is whether any sanctions were imposed upon Coalition forces for excesses committed against the civilian population. In this regard, available information indicates that until recently, very few members of the Coalition forces were brought to justice for excesses committed by them. The United States authorities, in their comments, state that action has been taken when proved excesses have occurred. Disciplinary actions, including courts-martial, have taken place throughout the conflict.

IV. THE TREATMENT OF PERSONS DURING ARREST, DETENTION AND RELEASE FROM DETENTION

A. Introduction

40. Iraqis interviewed in Amman all spoke about arbitrary arrests and detentions as ongoing since April 2003. Allegedly, in many cases, Coalition forces break front doors or windows and throw hand grenades into the room before they enter a property. Searches are not conducted with care; no search or arrest warrants are shown. There have been cases where soldiers took money or jewelry found during a raid and did not return it. In others, the behaviour of Coalition soldiers is considered humiliating, for example when they send women outside the house in their nightgowns, or when they show disrespect for the Koran, throwing it on the floor or tearing it

apart. When a man they are searching for cannot be found, his wife or son may be arrested in his place. Children are allegedly interrogated during such raids.³

41. The international community knew that in the aftermath of the victory of the Coalition forces, many Iraqis were taken into detention. For a long while, no one knew how many people were taken into custody, where they were held, in what conditions they were kept and how they were being treated. From the point of view of international human rights and humanitarian law, there was a major lack of protection and an absence of accountability.

42. The first allegations of ill-treatment of Iraqi detainees by Coalition forces were raised by international human rights bodies, including Amnesty International, in July 2003.⁴ The allegations included beatings, electric shocks, sleep deprivation, hooding, and prolonged forced standing and kneeling. As mentioned above, the Special Representative of the Secretary-General had raised concerns about the conditions of detention and the treatment of detainees with the CPA Administrator in a meeting on 15 July 2003.

43. On 28 April 2004, the United States television news channel CBS aired photos showing male Iraqi detainees being humiliated by United States soldiers. The publication of photographs of Iraqi detainees being physically and mentally abused at the Abu Ghraib prison has caused shock and outrage across the world. On 30 April 2004, the magazine *The New Yorker* published an article on the classified 50-page investigative report of Major General Antonio Taguba, which concluded that the institutional failures of the army prison system raised serious problems.⁵ The United States authorities pointed out that this report was prepared after allegations of mistreatment were brought to the attention of United States commanders.

44. On 7 May 2004, *The Wall Street Journal* published extensive excerpts from a confidential 24-page report that was submitted to the Coalition forces by ICRC in February 2004.⁶ The report represented a summary of humanitarian concerns that were regularly brought to the attention of the Coalition forces throughout 2003.

45. The top-level United Kingdom and United States authorities had previously launched investigations into the allegations of torture and ill-treatment and said that they would be intensified, and stated that these were acts of a few soldiers who would be identified and consequently court-martialled.

B. The Taguba report

46. On 19 January 2004, Lieutenant General Ricardo S. Sanchez, Commander of Combined Joint Task Force Seven, requested that the Commander of the United States Central Command appoint an investigating officer to investigate detention and internment operations conducted by the 800th Military Police Brigade from 1 November 2003.

47. Major General Antonio Taguba was appointed. His report, based on the allegations and his investigation, identified the following practices:

- Punching, slapping and kicking detainees; jumping on their bare feet;

- Videotaping and photographing of naked male and female detainees;
- Forcibly arranging detainees in various sexually explicit positions for photographing;
- Forcing groups of male detainees to masturbate while being photographed and videotaped;
- Arranging naked detainees in a pile and then jumping on them;
- Positioning a naked detainee on a box, with a sandbag on his head, and attaching wires to his fingers, toes and penis to simulate electric shock torture;
- Writing "I am a Rapist" (sic) on the leg of a detainee alleged to have raped a 15-year-old fellow detainee, and then photographing him naked;
- Placing a dog leash around a naked detainee's neck and having a female soldier pose with him for a picture;
- A male military police guard having sex with a female detainee;⁷
- Breaking chemical lamps and pouring the phosphoric liquid on detainees;
- Threatening detainees with a charged 9-mm pistol;
- Pouring cold water on naked detainees;
- Beating detainees with a broom handle and a chair;
- Threatening male detainees with rape;
- Allowing a military police guard to stitch the wound of a detainee who was injured after being slammed against the wall in his cell;
- Sodomizing a detainee with a chemical lamp and perhaps a broomstick;
- Using military working dogs (without muzzles) to frighten detainees and threatening to allow the dogs to attack and in at least one case allowing a dog to bite and severely injure a detainee;
- Forcing detainees to remove their clothing and keeping them naked for several days at a time;
- Forcing naked male detainees to wear women's underwear;
- Taking pictures of dead Iraqi detainees.

48. In citing these practices, it is noted that they are being examined within the framework of broader investigations currently under way within the United States.

C. The ICRC report

49. The ICRC report drew the attention of the Coalition forces to serious violations of international humanitarian law that had been observed and documented during visits to the detainees between March and November 2003. The main violations of international humanitarian law as described by ICRC in the report included the following:

- Brutality against protected persons upon capture and initial custody, sometimes causing death or serious injury;
- Absence of notification of arrest and detention of persons to their families, causing distress among persons deprived of their liberty and their families;
- Physical or psychological coercion during interrogation to secure information;
- Prolonged solitary confinement in cells devoid of daylight;
- Excessive and disproportionate use of force against persons deprived of their liberty resulting in death or injury during their period of internment;
- Seizure and confiscation of private belongings of persons deprived of their liberty;
- Exposure of persons deprived of their liberty to dangerous tasks;
- Holding persons deprived of their liberty in dangerous places where they are not protected from shelling.

D. The legal framework

1. International humanitarian rights law

50. The situation in Iraq involves a military occupation to which international humanitarian law as well as the Hague Regulations of 1907 are applicable. Both the Third and the Fourth Geneva Conventions are also applicable to the conflict. The United States ratified the Geneva Conventions on 2 August 1955. The vast majority of POWs and civilian internees captured during major military operations have since been released. In case of doubt about the status of an individual, a detainee's case has to be considered by a competent tribunal, as required by article 5 of the Third Geneva Convention.⁸ Those individuals who commit criminal offences in Iraq, including those suspected of anti-Coalition activities, are normally detained as "criminal detainees". Those held by the Coalition forces fall within a process that requires a probable-cause determination by a military attorney within 21 days of every detention. The Coalition forces provide a second procedure that requires that the criminal detainee be brought before a judge as soon as possible and in no instance later than 90 days from the date of detention.⁹ A criminal detainee has to be distinguished from a civilian internee who has not been found guilty

of any infringement of the penal provisions enacted by the Coalition forces, but has been detained for "imperative reasons of security".¹⁰ There has to be an individualized decision linking the detainee to a threat to security. According to the Commentary to the Fourth Geneva Convention, "there can be no question of taking collective measures: each case must be decided separately".¹¹ As a procedural safeguard in order to ensure that principles of humanity are respected, a security detainee should have the right of appeal and any decision upholding detention should be reviewed every six months.¹²

51. The use of torture and other forms of physical and psychological coercion against any detainee to extract confessions or intelligence-related information is a violation of international humanitarian law¹³ and is prohibited. Evidence that has been obtained through coercion cannot be used by the Coalition forces.¹⁴

52. Wilful killing, torture or inhuman treatment, if committed against detainees protected by international humanitarian law, constitutes a grave breach under the Geneva Conventions¹⁵ and therefore of international humanitarian law and is prohibited at any time, irrespective of the status of the person detained. Such acts might be designated war crimes by a competent tribunal.¹⁶ The requirement that protected persons must at all times be treated humanely is a basic pillar of the Geneva Conventions.¹⁷ The detaining authorities are bound to put in place all measures to pre-empt the use of torture as well as any inhuman and degrading treatment. All States parties are obliged to exercise jurisdiction to investigate, prosecute and punish perpetrators.

2. International human rights law

53. The prohibition of torture laid down in international humanitarian law with regard to situations of armed conflict is reinforced by the body of international treaty law on human rights. These laws ban torture both in time of peace and during armed conflict.

54. Any practice of torture or other cruel, inhuman or degrading treatment or punishment violates international human rights standards to which both the United States and the United Kingdom are parties, including the International Covenant on Civil and Political Rights (ICCPR)¹⁸ and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.¹⁹ There is an absolute prohibition of torture that is applicable in times of conflict as well as in times of peace. The Convention defines torture as any act that is intentional, that causes severe pain or suffering, that is used to obtain information or confession, to punish, intimidate or coerce, and that has been authorized by someone in an official position. In addition to article 7 of ICCPR, which prohibits torture and cruel, inhuman or degrading treatment or punishment, article 10 specifically provides that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

E. Witness testimony²⁰

55. The OHCHR team met in Amman with Saddam Salah Abood Al-Rawi, a 29-year-old former political prisoner under the regime of Saddam Hussein and later detained in Abu Ghraib prison by the Coalition forces from 1 December 2003 to 28 March 2004. He reported that he was

arrested without being given any explanation of the charges against him. His release order is reproduced in annex IV. It states, "Whatever crime they have committed has been reviewed and any time required has been served. This individual, barring commission of another crime, has no further need for detention.... There is currently no reason for the continued detention of the individual, and further investigation into the case by way of a formal tribunal is not required." Even at the time of his release, he still did not know whether there had been any charges brought against him.

56. Mr. Al-Rawi described the floor plan and the arrangement of the cells in the prison section (section I A) where he was detained. Many of the cells, including his (No. 42), were solitary confinement cells, but 10 of them, he stated, were set aside for detainees who were, he alleged, tortured. A few days after his arrest, Mr. Al-Rawi was moved from cell No. 42 to one of the alleged torture cells. For the following 18 days he was allegedly subjected to torture which at times lasted for up to 23 hours. After each torture session, loud music was played to prevent him from sleeping.

57. Mr. Al-Rawi gave a detailed account of the torture methods he was allegedly subjected to. These included pulling of teeth from his mouth (two of his teeth were missing), kicking, beatings, guards standing on his hands and infliction of mental cruelty, such as telling him he would first be raped by guards and then sent to Guantánamo Bay if he did not "confess". Following the 18 days of alleged torture, Mr. Al-Rawi was moved back to cell No. 42 where he was kept for approximately three months in solitary confinement until his release. At the time of a Red Cross visit to the Abu Ghraib prison in January 2004, he was warned that if he said anything to the Red Cross visitor which the prison guards did not like, he would not live to regret it. He stated that when he was interviewed by the Red Cross visitor, he did not dare to say anything about the treatment he had suffered and replied to most of the questions with "I don't know". Following the visit, he stated that torture at Abu Ghraib abated.

58. Mr. Al-Rawi said that the ill-treatment he suffered as a political prisoner under Saddam Hussein was bad, but that during his days in Abu Ghraib as a detainee of the Coalition forces he suffered humiliation and mental cruelty in addition to physical torture.

59. In their comments, the United States authorities stated that they were particularly concerned about these allegations which they considered extreme and inconsistent with other reports. They will be investigating and reporting on the allegations. However, the allegations were brought to their attention only 24 hours before the present report was to be finalized.

60. The OHCHR team also heard allegations regarding humiliation by Coalition forces when releasing prisoners. Among the examples given were that prisoners were released in the middle of the night, handcuffed, with Mickey Mouse drawn on their shirt, and that the personal items that were in their possession during arrest, including identification documents, were not returned to them.

F. Responsibility to protect

61. There are many unanswered questions regarding the treatment of detainees that are directly relevant to the issue of the responsibility to protect: What control systems were in place to safeguard against such excesses? Were acts of depravity against prisoners committed by guards acting on their own or were they part of a systematic process of information-gathering? It is clear that numerous questions of control and protection remain unanswered.

62. ICRC submits confidential reports to the detaining authorities and makes representations to them in respect of areas of concern that it might have. Because of the well-established and accepted policy of confidentiality of ICRC, the international community was not aware of how many people were detained, for what reasons, where, and in what conditions. In a world in which there must be a duty of accountability to the international community in respect of the custody and treatment of large numbers of people, the duty of care and the responsibility to protect were clearly not fulfilled.

63. When, at the end of April and in the beginning of May 2004, it was disclosed in the media that some detainees had been subjected to degrading and inhuman treatment and torture, the international community discovered that Coalition forces were holding some 10,000 or more prisoners. There has been a great international outcry over the ill-treatment and torture of detainees, particularly in the Abu Ghraib prison.

64. On 30 April 2004, the Secretary-General issued the following statement:

“The Secretary-General was deeply disturbed by the pictures of Iraqi prisoners being mistreated and humiliated by their guards in the Abu Ghraib prison. He hopes that this was an isolated incident and welcomes what appears to be a clear determination on the part of the US military to bring those responsible to justice, and to prevent such abuses in the future. In all circumstances, and in all places, the Secretary-General is strongly opposed to the mistreatment of detainees. He reiterates that all detainees should be fully protected in accordance with the provisions of international human rights law.”²¹

65. Whatever the failures of control and protection that occurred in respect of detainees, it is important to recognize that once the scandal of the treatment of detainees became public, Coalition leaders at the highest levels denounced the abuses and ordered investigations and prosecutions of those responsible. On 10 May 2004, for example, President Bush said that there would be “a full accounting for the cruel and disgraceful abuse of Iraqi detainees”. He considered the alleged conduct by military personnel and civilian contractors in Iraq “an insult to the Iraqi people and an affront to the most basic standards of morality and decency”. President Bush noted that some military personnel had already been charged and said that “those involved will answer for their conduct in an orderly and transparent process”. He declared that the United States would honour the rule of law and that Iraqi prison operations would be reviewed “to make certain that such offenses are not repeated”.²²

66. On 14 May 2004, the Commander of the United States forces in Iraq, Lieutenant General Ricardo S. Sanchez, reportedly barred virtually all coercive interrogation practices such as

forcing prisoners to crouch for long periods or depriving them of sleep. According to a senior Central Command official who briefed reporters that day, the Commander would still consider requests to hold prisoners in isolation for more than 30 days and had reportedly approved 25 such requests since October 2003.²³

67. Prime Minister Blair, for his part, has made comments similar to those of President Bush: "Let me make it clear that the abuse of prisoners, the torture of prisoners, degrading treatment of people in the custody of Coalition forces, those things are completely and totally unacceptable, they are inexcusable and there can be no possible justification for them. And we must do everything that we can do, and need to do, in order to root out such practices and bring to justice those people who are responsible for them."

68. To be fair, it bears mentioning that the issue of the treatment of prisoners has also been the subject of false propaganda campaigns. A notable case in point was the apparent use of fake photographs of Iraqi prisoners allegedly being abused by British soldiers. On Friday, 14 May 2004, *The Daily Mirror* acknowledged that it had published photographs in respect of which there was "sufficient evidence to suggest that these pictures are fakes and [that] *The Daily Mirror* has been the subject of a calculated and malicious hoax".

69. It is important, as a matter of justice, of accountability and respect for international human rights and humanitarian law, that there be full accountability in respect of the excesses that have undoubtedly taken place in some Iraqi detention facilities. The leadership of the major Coalition countries may also wish to consider designating a high-level international ombudsman to monitor the Coalition forces in this respect while they remain in Iraq. It should be mentioned that an office staffed by personnel from the Iraqi Ministry of Human Rights has recently been established within the Abu Ghraib prison.

V. DISPLACEMENT

70. Prior to the conflict, approximately 400,000 refugees and asylum-seekers as well as some 450,000 Iraqis "of concern", who are persons in a refugee-like situation, were outside Iraq. It is further estimated that the Government of Saddam Hussein was responsible for the internal displacement of 600,000 to 700,000 Kurds in the north of the country; over 100,000 Kurds, Turkmen and Assyrians from the Kirkuk area; tens of thousands of Arab Sh'ites in the central and southern parts of the country; and 100,000-200,000 Marsh Arabs from their habitat along the lower Tigris and Euphrates rivers. The written CPA submission (annex I) provides extensive information on the issue of displacement.

71. Following the fall of Saddam Hussein, both refugees and internally displaced persons have started to return. Although the majority of those displaced by the previous Government have integrated into their host communities or no longer wish to return, it is expected that large numbers may still wish to do so. Reliable statistics relating to returns are not available. However, by April 2004, an estimated 80,000-120,000 persons had returned from, inter alia, the Islamic Republic of Iran, Lebanon and Saudi Arabia. Most of the returns have been unassisted and spontaneous. It is assumed that many of those who have returned did so to a situation of displacement.

72. In the north, Kurds have also begun to return to their homes. The beginning of these return movements has caused a new wave of displacement. As several thousand Kurds have begun to reclaim their homes in the north of Iraq, about 100,000 Arabs who were installed there by the previous regime have fled in the months following the end of the war.

73. Clashes in Falluja have created additional internal displacement in that area, but recent reports indicate that these displaced persons have started to return. In Baghdad, a number of persons, including foreign refugees in Iraq, have been evicted from their homes as the rent controls imposed by the previous Government have been lifted. As a result, many have taken refuge in unoccupied public buildings.

74. The prevailing insecurity in many parts of the country exacerbates the already vulnerable human rights situation of most displaced persons. Following the bombing of the United Nations headquarters in Baghdad on 19 August 2003, most humanitarian agencies have withdrawn, and now only limited assistance reaches the internally displaced and there is no consistent monitoring of and reporting on the human rights situation of displaced persons.

75. Iraqis who return from western countries may well be exposed to the dangers mentioned above in relation to kidnapping because they are perceived as being financially privileged. In addition, since they did not suffer the same ordeals as the Iraqis who stayed, they are also viewed with suspicion. Furthermore, those who return to areas where their ethnic or religious group does not constitute a majority may find themselves in a particularly vulnerable situation and exposed to new forms and agents of persecution. Alternatively, they may find themselves displaced upon return, which will further complicate the displacement situation within Iraq, in addition to creating undue suffering for returning Iraqis and their families. In view of the foregoing, and of Iraq's limited absorption capacity, UNHCR, in March 2004, requested that States continue to grant some form of temporary protection to all Iraqi asylum-seekers, including those whose asylum claims have been rejected, and that they impose a ban on forced returns to all parts of Iraq until further notice.

76. The provision of security, the restoration of the rule of law throughout Iraq and the establishment of an efficient system to resolve property disputes are the key challenges. International support of the national authorities in addressing these issues will be essential. The international human rights treaties to which Iraq is a party provide the basic legal framework for addressing the protection needs of returning refugees and internally displaced persons alike. In addition, the Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2) provide a specific framework for addressing the protection needs of the internally displaced. In principle, it should be acknowledged that persons who were displaced have the right to return to their home areas, to integrate locally or to resettle in existing or new areas in Iraq. The relevant authorities (at both the national and regional levels) have the responsibility to create conditions, as well as provide the means, to allow displaced persons to exercise their preferences voluntarily, in safety and dignity.

VI. THE SITUATION OF WOMEN

A. Introduction

77. Iraq is a party to the international human rights instruments protecting the rights of women and girls, including the Convention on the Elimination of All Forms of Discrimination against Women.²⁴ The Committee on the Elimination of Discrimination against Women (CEDAW) examined the combined second and third periodic reports of Iraq on 14 June 2000. In its concluding observations (A/55/38, paras. 166-210), the Committee noted "the failure of the State party to revoke legislative provisions that discriminate against women" and called for a review of such discriminatory legislation and for the adoption of measures, including temporary special measures, aimed at creating a non-discriminatory legislative and de facto environment for women.

78. The Special Rapporteur on violence against women, in her report to the Commission in 2003 (E/CN.4/2003/75/Add.1), echoed the concerns of CEDAW about the failure to revoke legislative provisions that discriminate against women and to address discriminatory views and attitudes that impede women's enjoyment of their rights.

79. Since the assumption of control by the Coalition, steps have been taken to lay the foundations for improving the status of women in Iraq. According to the CPA submission (annex I), newly formed Iraqi women's groups have taken an active role in advocating fair representation in the government bodies and calling attention to the rights of women in all spheres of Iraq's democratic development. Over the last year, Iraqi women have organized conferences in Baghdad and in the regions to discuss women's political participation and human rights issues. Eighteen women's centres have been established throughout the country.

B. Impact of the deterioration of the security situation on women

80. The OHCHR team addressed the situation of women with interviewees in Amman. Both women and men have suffered from the impact of the conflict on civilians, injuries and death as a result of the fighting, the deterioration in standards of living resulting from exposure to the conflict, damaged infrastructure and the collapse of public security. However, women felt specifically vulnerable during the past year owing to the deteriorating security situation, including the kidnapping of civilians, which has led to increased restrictions on their freedom of movement and their access to education, health services and employment opportunities.

C. Participation in political and public life

81. The Iraqi women interviewed in Amman complained about the lack of adequate representation of women in political and public life during the past year. After the occupation, CPA appointed three women to the 25-member Interim Governing Council (none of the three served on the Presidential Council, and were thus not able to serve as President). Out of 25 ministries established, the Governing Council selected one woman to serve as minister. The five posts of deputy minister promised to women were not filled. No women were chosen for the committee established to plan for the selection of delegates to the constitutional convention, nor

to the committee that drafted the Transitional Administrative Law (TAL). CPA did not appoint one woman to the 18 posts of provincial governor, and few women to provincial councils. However, more recently, six of the ministerial portfolios in the Interim Iraqi Government have been assumed by women.

82. Some religious leaders and groups have objected to women's participation and there have been increased harassment and intimidation of women and their organizations. CPA efforts to nominate a woman judge in Najaf met with opposition from religious leaders, as well as from the local council, lawyers and other local groups. The OHCHR team was told that women in Basra have complained about being harassed by groups of men into wearing headscarves or not using make-up and being under pressure, sometimes from religious group militias, to follow strict Islamic codes. Journalists, activists and organizations campaigning for women's rights have been targeted. Threats range from harassment to death threats received by prominent women and by organizations campaigning for women's rights and advocating against conservative interpretations of Islamic law. Similar incidents were reported from Al Mustansiriya University in Baghdad, where, apparently, different staircases for women and men have been introduced and women are also harassed regarding their dress.

83. Much public attention was devoted to Governing Council decision No. 137, adopted on 29 December 2003 to replace the 1959 Personal Status Law with Shariah, with little discussion and no public consultation. The decision led to different interpretations by rival Islamic groups. The CPA Administrator did not endorse the decision, and members of the Governing Council declared that it was "on hold" and that the 1959 law could not be annulled except by another law. Iraqi women's organizations had mobilized extensively to block the adoption of the decision.

84. CPA has sponsored programmes to assist women to set up small businesses, organize discussions of women's issues and support shelters for victims of violence. Reportedly, US\$ 27 million had been allocated to women's programmes.

D. Abuses allegedly committed by Coalition forces personnel

85. There have been repeated complaints about the lack of respect by the Coalition forces for local customs and traditions that protect women's privacy. In addition, recent allegations of torture and mistreatment of prisoners by members of the Coalition forces in Iraq have included allegations that women have been exposed to degrading treatment and to rape, sexual abuse and violence. The impact of such degrading treatment and abuse of women can have added serious consequences in a society where having suffered sexual abuse (including being humiliated through nudity, etc.) and violence can be a reason for women to be rejected by their own families or communities and, in more serious cases, lead to so-called honour crimes. In Amman, some of the representatives of women's organizations told the team that there have been reports of women being killed or threatened with death by their families or friends because they work or worked as translators, or in other functions, for the Coalition forces. At present, there is apparently only one shelter for women operating, located in Sulaymaniya.²⁵

E. Gender discrimination and access to justice

86. The Transitional Administrative Law (TAL), adopted by the Governing Council on 8 March 2004, prohibits sex discrimination but does not offer adequate protection against discrimination in marriage (no equal rights to marry, within the marriage, or to divorce), inheritance and ability to pass citizenship on to their children.

87. According to information received, rape, sexual violence and abduction are felonies under Iraqi law, punishable by lengthy prison sentences. Yet, victims of abduction and sexual violence still face important legal and social barriers to obtaining justice. Some of these barriers are the provisions in the Penal Code that allow a man to escape punishment for abduction if he marries the victim. The Penal Code also allows perpetrators of rape, sodomy, sexual violence, or attempted sexual violence to receive reduced sentences if they marry their victims. Other provisions allow for significantly reduced sentences for so-called honour killings. According to information received in July 2003, these provisions were unaffected by the CPA order of 9 June 2003 that suspended certain provisions of the Penal Code.

VII. THE SITUATION OF CHILDREN

88. Iraq acceded to the Convention on the Rights of the Child on 15 July 1994 with a reservation to article 14, paragraph 1 (freedom of thought, conscience and religion). The Committee on the Rights of the Child considered the initial report of Iraq (CRC/C/41/Add.3) in September 1998 (its second report has been overdue since 14 July 2001). Its main issues of concern and recommendations (CRC/C/15/Add.94) included:

(a) The deteriorating health situation of children; absence of data on adolescent health, including on teenage pregnancy, abortion, suicide, violence and substance abuse; the availability of facilities and services for persons with disabilities;

(b) Economic exploitation of children, which had increased dramatically in previous years, and an increasing number of children, especially girls, leaving school, sometimes at an early age, to work to support themselves and their families.

89. According to UNICEF and international NGOs, since August 2003, owing to the security situation on the ground, it has been impossible to sustain appropriate monitoring of the rights of the child in the country.

90. Child malnutrition drastically increased in the early 1990s, owing mainly to the imposition of economic sanctions. According to UNICEF, it reached its peak in 1996, when chronic malnutrition affected almost one third of children (32 per cent), and up to 23.4 per cent of children were underweight. Over the following years, UNICEF and other international agencies succeeded in achieving decreases in the number of children suffering from chronic malnutrition (30 per cent less in 2002) and underweight (50 per cent less in 2002). These figures are, however, still higher than they were in 1991.

91. UNICEF reported that, owing to the violence that affects many parts of the country, school attendance has dropped, sometimes to less than 50 per cent. Access to quality health care and services has also increasingly become a challenge to many children and their parents.

92. The OHCHR team in Amman learned about cases of abduction of children for ransom by Iraqi criminal gangs. Owing to the prevailing volatile security situation, the right to life, survival and development of children is seriously threatened. Persons below the age of 18 are indirectly and directly affected by acts of violence perpetrated by all parties in conflict; they are also vulnerable to becoming involved in conflict: there have been worrying reports from Falluja of children being armed and participating in the conflict.

93. On 11 May 2004, UNICEF issued a statement noting that it was "profoundly disturbed by alarming news reports alleging that children may have been among those abused in detention centres and prisons in Iraq. Although the news reports [had] not been independently substantiated, they were alarming nonetheless". The rights of juvenile detainees to be detained only as a measure of last resort and for the shortest appropriate time, and their separation from adult detainees, need to be strictly guaranteed.

94. Vulnerable groups of children, including children living in poverty, children living in institutions, street children, working children, children belonging to minority groups and children with disabilities, are particularly at risk of neglect, abuse and exploitation. Access to quality education and health services is increasingly tenuous owing to the poor functioning of public services and the security situation. There has apparently been a dramatic increase in the number of street children, as parents can no longer support their children.

95. The rights of girls, including access to health and education services and to be protected from any form of discrimination and violence, including sexual abuse, exploitation and honour killings, need to be ensured.

96. Another issue that was brought to the attention of OHCHR in Amman was that, following the dismissal of staff of the Ministry of Education and of the Ministry of Labour and Social Affairs, as well as of teachers, during the process of de-Baathification, those ministries and educational institutions were, for a period of time, not able to respond adequately to the needs of children. Competence for juvenile justice was transferred from the Ministry of Labour and Social Affairs to the Ministry of Justice. While such restructuring processes in and of themselves may not be bad, they contributed to insecurity. It is imperative that a governmental institutional framework be put in place to respond to the rights of children.

VIII. CIVIL AND POLITICAL RIGHTS

97. The OHCHR team received reports in relation to the freedom of religion and belief. A number of reports have also been published in the areas of freedom of expression and administration of justice. This section focuses on these three subjects. In addition, it addresses issues of accountability for, and abuses of, applicable international norms of human rights and humanitarian law committed by Coalition forces personnel.

A. Freedom of opinion and expression

98. Many of the people interviewed by the OHCHR team in Amman stressed that one of the great gains for freedom in Iraq since the fall of Saddam Hussein has been the flourishing of freedom of opinion and expression. Iraqi newspapers and journals have sprung up across the country and Iraqis are able to express their views freely, to take part in demonstrations and protests against Coalition forces and to engage in political activities for which they would have been brutally murdered in the past. It is important to recognize these gains for human rights in Iraq at present.

99. However, it should be pointed out that the former legal regime applicable to the exercise of freedom of opinion and expression is for the most part still in force, despite article 13 of TAL, which provides that "the right to freedom of expression shall be protected".

100. In particular, the criminal provisions regulating insult and defamation (Penal Code, arts. 202, 227, 229, 372(1) and (5), 433, 434 and 435 of the), the publication of false news (arts. 179, 180, 210 and 211) and public order and national security (arts. 201, 208, 214 and 215) remain in force; they should be reviewed urgently and amended in accordance with international human rights norms and standards.

101. Similarly, the Law on Publications – which provides, inter alia, that all owners of "political periodicals" should possess a Government-approved "merit certificate" issued by the journalists' union and that all publications shall be licensed by the Ministry of Information – should be repealed urgently or be comprehensively reviewed.

102. The 1980 Law on Censorship of Classified Material and Cinema Films also seems still to be in force. It designates the Ministry of Information as the agency responsible for censoring all films produced in and imported into Iraq.

103. Many provisions of the Penal Code – articles 178, paragraph 2, 182, 228, 327 and 437 – unduly restrict freedom of information, including the right to access information held by public authorities.

104. In the context of the recent development of vibrant media in the country, instances of temporary suspension of or restrictions on the media for incitement of violence and the closure of a publication for incitement of killings have been reported.

105. In parallel, the security situation of journalists – Iraqis and foreign alike – is very difficult. Many cases of killing and abduction have been reported since the end of the war. It should be noted that many Iraqi journalists working for Western media are being targeted by insurgent groups. It is also reported that there are no proper investigations into attacks on and threats against journalists, and it is feared that this will lead to self-censorship, in particular by Iraqi and other Arab journalists, to preserve their security.

B. Freedom of religion or belief

106. The right to freedom of religion or belief is governed mainly by article 18 of the International Covenant on Civil and Political Rights, article 18 of the Universal Declaration of Human Rights and the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. The International Covenant on Civil and Political Rights has been ratified by both Iraq and most of the States participating in the Coalition.

107. Between 93 and 97 per cent of the total population of Iraq is Muslim. The remaining portion of the population is composed of Christians (Assyrians, Chaldeans, Roman Catholics and Armenians), Yazidis, Mandeans, Baha'is and Jews.

108. Some of the witnesses in Amman told the OHCHR team that Coalition forces at times were offensive to Iraqi religious and cultural traditions. As mentioned above, incidents were reported of disrespect of women and the Koran. In addition, prisoners were allegedly forced to eat pork and drink alcohol. The Secretary-General of the Organization of the Islamic Conference, Dr. Abdelouahed Belkeziz, in a press release dated 16 May 2004, expressed his concern over the critical situation in Najaf, Karbala and other Iraqi cities that threatened the safety of holy shrines. He stressed the necessity of respecting the inviolability of holy places, including mausoleums, mosques and cemeteries. In their comments, the United States authorities stated that holy sites are being misused by forces attacking the Coalition.

109. Since the intervention by Coalition forces, prominent Shi'ah Muslim leaders have publicly called for the creation of an Islamic State governed according to Islamic law (Shariah). In this context, in particular in southern Iraq where the country's Shi'ah Muslim majority are concentrated, attempts have been made to apply Shariah.

C. Administration of justice

110. Over a period of 30 years, all aspects of the justice sector - the administration of justice, law enforcement, corrections, judicial training and legal education - have degraded substantially. Corruption, torture and other abuses were endemic throughout the system.

111. The national legal framework became outdated and inadequate. Not modernized since the 1960s, the applicable law and the legal process were also superseded by arbitrary decrees issued by the Revolutionary Command Council, some of which remain part of the applicable law.

112. Iraqi laws, most of which remain applicable, do not meet international human rights standards in the area of criminal procedures. The Criminal Procedure Code (CPC) is insufficiently clear on powers of arrest, detention and judicial review of detention. There is no right to challenge the lawfulness of detention. CPC is equally non-specific on other due process rights such as the right to counsel and the right to be protected against self-incrimination. The public prosecutor is effectively marginalized in criminal investigations, prosecutions and appeals. Since the end of the war, CPA has instituted certain amendments to the Code, including voiding a provision that permitted the introduction of evidence obtained through means of torture and establishing a right to counsel at the first hearing, the right to be protected against self-

incrimination, the right of defendants to be informed of their rights and the suspension of capital punishment. CPA restarted the *Official Gazette*, the official publication of all Iraqi laws since the 1920s.

113. As regards powers of detention by Coalition forces, CPA memorandum No. 3 states that a criminal detainee shall be brought before a judicial officer no later than 90 days after induction into a Coalition force detention centre and provides for access to a lawyer within 72 hours after induction into a Coalition detention centre. However, reports indicate that in most cases, access to lawyers for persons detained in Coalition forces detention centres is denied for long periods after arrest, as induction generally takes place weeks, sometimes months, after the actual arrest. Lawyers interviewed in Amman stated that they had repeatedly been denied access to detainees, both in the Abu Ghraib prison and in Mosul. Interviewees in Amman also reported that visits, including visits by family members, are most of the time denied by Coalition forces. Reports also indicate that detainees in Baghdad police stations have been denied access to a lawyer by the United States Military Police. These acts are contrary to principles 17 and 18 of the 1988 United Nations Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, as well as principle 6 of the United Nations Basic Principles on the Role of Lawyers, which should apply to all civilians, including civilian criminal suspects.

114. In this respect, it is reported that in detention facilities managed by Iraqi police, access to a lawyer and appearance before a judge occur within 24 hours of arrest, in accordance with the provisions of the Penal Code.

115. As regards the relationship between Coalition forces and Iraqi judicial authorities with respect to the "management" of civilian detainees, there are documented reports of cases where orders issued by Iraqi examining magistrates for the release of a detainee on bail or to have him/her brought before a court have been ignored by Coalition forces, thereby undermining the rule of law.

116. Other reports mention cases where Coalition forces having detained family members of alleged "insurgents" in order to compel their cooperation and exert pressure on the "insurgents", and of Coalition forces allegedly having destroyed the houses of families of "insurgents" and the crops and houses in a given area in retaliation for attacks by "insurgents" against Coalition forces in that area. It should be emphasized in this respect that under international humanitarian law, occupation forces are prohibited from carrying out reprisals and collective penalties against civilians and from taking hostages, acts which are considered war crimes.

D. Accountability for human rights abuses committed by Coalition forces personnel

117. CPA Order No. 17 provides that Coalition forces are subject to the jurisdiction of their sending States; they are not subject to Iraqi jurisdiction. Sections 2 (3) and 6(2) of memorandum No. 3 state respectively that Coalition personnel are "immune from local criminal, civil and administrative jurisdiction and from any form of arrest or detention other than by persons acting on behalf of their parent states"; that "no Iraqi court, including the Central Criminal Court of Iraq

... shall have jurisdiction over any personnel of a Coalition member state in any matter, whether civil or criminal"; and that "where any criminal detainee held by Coalition Forces is subsequently transferred to an Iraqi Court, a failure to comply with [the] procedures [relating to the treatment of detainees] shall not constitute grounds for any legal remedy" In effect, there is immunity for Coalition forces personnel for any wrongful acts, including human rights abuses, committed in Iraq as far as Iraqi jurisdiction is concerned.

IX. TRANSITIONAL JUSTICE

118. For the past 30 years, Iraqi society has been brutalized by authoritarian rule, political violence and gross human rights violations and has suffered from a degraded justice system. The present report recognizes that, in the past 12 months, CPA has undertaken a number of substantive initiatives in the area of transitional justice. As the Interim Iraqi Government develops its transitional justice policy, it may wish to reconsider some of these initiatives in order to ensure that they comply with Iraq's obligations under international law.

A. Institutional initiatives

1. Policy

119. The development of the CPA policy on how to address the crimes of the previous regime was assigned to the Office of Human Rights and Transitional Justice, created in June 2003. The Office was tasked with addressing human rights concerns and the transitional justice policy process in Iraq through the development of mechanisms to address the issues of justice, truth and reconciliation. It advised on the creation of the Iraqi Special Tribunal, established a human rights archive which received documentation on past atrocities, developed a policy on mass graves and missing persons, facilitated the work and development of NGOs in Iraq and created a national civic education programme to raise awareness on international human rights.

2. Reparations

120. In May 2004, the creation of the Special Task Force on Compensation for the Victims of the Previous Regime and the contribution by CPA of US\$ 25 million for initial compensation payments were announced. Headed by the current President of the Iraqi Bar Association, the Task Force has been asked to define the types of injustice that merit compensation, the eligibility requirements, the levels of compensation and the mechanisms for the delivery of such compensation. The report of the Task Force is to be provided to the Interim Iraqi Government by 1 August 2004. The development of a reparations programme by the Interim Iraqi Government will be of the utmost importance.

3. Vetting

121. CPA suspended the Iraqi Organization of the Judiciary Act of 1979 and established an entity called the Judicial Review Committee (JRC). Located within the Ministry of Justice, JRC was established to vet judges and prosecutors for Ba'athist party links, criminal activity and complicity in human rights abuses. The Committee was designed to establish a measure of public

trust in the legal system by assessing and removing those judicial officials found to be unqualified and corrupt. CPA has reported that some 180 judges have been removed and replaced. CPA has also established the Council of Judges with authority to appoint, discipline and remove judges and prosecutors.

122. The Iraqi De-Ba'athification Council was established to vet all employees of the Government of Iraq for Ba'ath party involvement. The intent was to eliminate the threat posed by the continuation of Ba'ath party networks and personnel in the administration of Iraq and the intimidation of the public by Ba'ath party officials. Given the political realities of living under the previous regime, most professionals had little choice but to join the ranks of the Ba'ath party. The policy of wholesale removal of legal and law enforcement officials risked removing the institutional memory of the justice sector. CPA has apparently reconsidered this approach.

B. The courts

1. The Central Criminal Court

123. One of the first tasks of JRC was to review judicial personnel for the newly created Central Criminal Court. Established in June 2003 and operational since August 2003, the Court was established in Baghdad "as a model of procedural fairness and judicial integrity", to try designated serious offences committed since 19 March 2003. Persons having any "involvement in Ba'ath party activity" were excluded from being appointed to the Court. Though the first cases began in August 2003, because of the absence of the United Nations in Baghdad OHCHR has been unable to follow the operation of the Court. CPA does not release publicly either the cases and how they have been dealt with, or public reports about the success of the initiative to establish the Court.

2. The Iraqi Special Tribunal

124. On 10 December 2003, the Interim Governing Council established the Iraqi Special Tribunal to try senior members of the former regime for war crimes, crimes against humanity, genocide and designated offences under Iraqi law (TAL reaffirmed the Tribunal's Statute). There are some questions about the consistency of some of the Statute's provisions with international standards and the capacity of the Iraqi judiciary to undertake these complex tasks. The Statute does not seem to take account of the significant developments in international criminal law so as to ensure a legitimate process. It makes reference to the adoption of rules of evidence and procedure, though to date, these essential rules have not been completed. This is critical, since provisions of Iraqi criminal law appear to violate Iraq's international obligations. The Interim Iraqi Government may wish to undertake a review of the Statute of the Iraqi Special Tribunal as well as other transitional justice initiatives in a holistic approach that would ensure that all initiatives comply with international standards and that they are part of an integrated approach to justice, truth and reconciliation. The rules of evidence and procedure are currently the subject of consultations with international NGOs. It would be valuable if this process of consultation could be completed before the rules are finalized and adopted.

125. The Iraqi Special Tribunal allows for international assistance for judges, prosecutors and investigators. An international team is being recruited for that purpose. Some US\$ 75 million have been allocated for the operation of the Special Tribunal in addition to more than US\$ 214 million from Iraqi funds.

126. The Office of Human Rights and Transitional Justice forensic staff has been assessing over 250 suspected mass graves, with a view to providing evidence to the Special Tribunal and in preparation for examinations for the purpose of clarifying the fate of missing persons and returning the bodily remains to the families for reburial.

X. ECONOMIC, SOCIAL AND CULTURAL RIGHTS

A. Introduction

127. Iraq ratified the International Covenant on Economic, Social and Cultural Rights in 1976. It has already been noted that in the aftermath of the hostilities, and upon the assumption of control by Coalition forces, the situation was difficult for the civilian population inasmuch as there was severe disruption of economic activity and there was a breakdown of basic services for a prolonged period.

128. When asked about economic, social and cultural rights, one witness said that looting directly after the war mainly affected the public sector. However, the private sector became affected once there were bigger electricity cuts. At the same time, he said that the demand for energy had also increased after the war. Electrical appliances flooded the market and the already stretched electricity network could not have coped, even under normal circumstances. Tens of thousand of cars also appeared in Iraq, needing roads and petrol.

129. A representative of a humanitarian NGO said that Iraq was not experiencing a humanitarian crisis. However, Iraqis were disappointed with the slow pace of reconstruction as they had expected more from the Coalition forces. On a positive note, several witnesses said that salaries had increased drastically (from as little as US\$ 2 to US\$ 200 per month).

130. At the same time, the high levels of insecurity impacted negatively on the lives of Iraqis, many of whom did not have access to basic services such as safe drinking water and health care. The restriction of the freedom of movement of women and girls owing to fear of violence had a particularly negative impact since it limited their ability to participate in education and employment. High levels of insecurity also created serious risks for humanitarian workers and hampered efforts to provide humanitarian aid, including emergency health care. In much of the country, insecurity and institutional instability continued to hamper the restoration of basic services including electricity, water and sanitation.

B. Health

131. According to the United Nations Revised Humanitarian Appeal for Iraq, as the conflict came to a close in April 2003, the health system deteriorated dramatically. The standard in the provision of curative and preventive health care remained well below public health norms, and

there was an increasing risk of disease. Health structures were affected by the looting and chaos which followed the conflict, as were the Ministry of Health and health directorates at both governorate and district levels. Institutional capacity was further weakened by lack of funding for recurrent costs and uncertainty over the division of responsibilities and decision-making at all levels within the health system following moves toward a more decentralized approach. The levels and distribution of available human resources for health remained inadequate.

132. Gender violence and generally high levels of insecurity continued to prevent access to health care for women. A lack of freedom of movement for women, combined with other restrictions on women's human rights, had adverse health consequences for women and girls. One recent survey found that fewer than half of women had access to a health care provider when pregnant or giving birth. Maternal and infant mortality and malnutrition remained high.

C. Food, water and sanitation

133. Prior to the conflict, over 60 per cent of the population were dependent on food rations. This created a serious risk of malnutrition both during the conflict and afterwards.

134. Disease and inadequate food intake, together with the overall deterioration of the economy, the pervasive poverty of households, the breakdown in key infrastructure such as power grids and water distribution networks, and the deterioration of social services infrastructure resulted in high levels of malnutrition among children. Malnutrition is one of the most comprehensive indicators of the well-being of children. One assessment suggested that 7 out of 10 children suffered to some degree from diarrhoea, primarily as a result of contaminated drinking water. Poor food hygiene also contributed to children's ill-health as power cuts disabled refrigeration and cooking gas became scarce.

135. FAO has highlighted the vulnerability of rural communities to the security situation. The harvesting cycle is affected. Farmers become beggars and have to relocate; large areas lose their population. The farming sector can only recover if security is restored, and then it would take two to three years.

136. Central water and sewage systems reportedly were looted and sabotaged, which decimated stocks and equipment supplies, including water purification chemicals, and damaged water-testing labs. A lack of spare parts and fuel for generators, the difficulty of movement and transportation, and the lack of communication between locations within and outside Baghdad led to a severe disruption of the system. In rural areas, the supply of raw water sources for washing and hygiene was interrupted. Power shortages also contributed to the insufficient supply of water to the population. Sewage treatment facilities were frequently not operational owing to the breakdown of the fuel supply line, lack of maintenance and looting. One serious consequence of the poor water and sanitation conditions was an increase in diarrhoeal and water-borne diseases.

D. Education

137. According to an assessment by UNICEF and the Ministry of Education, the education sector was seriously affected by the conflict and its aftermath. The buildings of the Ministry of

Education and the Ministry of Higher Education were completely destroyed. According to reports, most schools lost all educational materials and equipment as a result of looting and sabotage. A critical loss was the national Educational Management Information System established just prior to the conflict.

138. High levels of insecurity continued to keep school attendance levels, particularly of girls, at unacceptably low levels. According to the United Nations/World Bank needs assessment, one quarter of students had not been attending school regularly. Considerable gender and geographic imbalances persisted, with far fewer girls and children in rural areas attending school. A major obstacle to attendance remained household poverty, while the poor quality of instruction and politicization of the curriculum also influenced attendance.

XI. OVERSIGHT AND ACCOUNTABILITY

139. Having reviewed in the preceding sections how human rights have fared in different areas since the Coalition forces took control of Iraq, the report turns now to the crucial issue of oversight and accountability. These issues are at the heart of the responsibility to protect.

140. The principal Coalition partners with forces on the ground in Iraq are parties to the Geneva Conventions of 12 August 1949. Writing in *The New York Times* on 15 May 2003, the Legal Counsel to President Bush stated: "Both the United States and Iraq are parties to the Geneva Conventions. The United States recognizes that these treaties are binding in the war for liberation of Iraq. There has never been any suggestion by our government that the Conventions do not apply in that conflict.... [T]he United States is bound to observe the rules of war in the Geneva Conventions".²⁶ British authorities have also recognized that they are bound by the Geneva Conventions and the Additional Protocols thereto in relation to the situation in Iraq. Of particular relevance are the Third and Fourth Geneva Conventions on the treatment of civilians and prisoners of war.

141. Iraq, the United States, the United Kingdom and most of the other Coalition partners with forces on the ground are also parties to the International Covenant on Civil and Political Rights. Article 4 of the Covenant provides in part:

"1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the State Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

"2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision."

142. American and British forces stationed in Iraq are governed by their countries' military manuals, which are referred to in their written submission (see annexes II and III). The forces of other Coalition partners are likewise bound by their respective national military codes.

143. From distillation of principles contained in the military manuals, it appears that there is a duty on the part of the Coalition forces in Iraq to use no more force than is necessary and proportional to the situation they are dealing with; for commanding officers to be aware of, and responsible for, the conduct of their forces; for commanding officers to investigate allegations of excesses; and for commanding officers to bring to justice those alleged to have committed excesses in breach of international humanitarian and human rights law and in breach of the provisions of military codes.

144. In addition to the foregoing, it is a stark reality that there was no international oversight and accountability in respect of the situation that has obtained in Iraq since the taking of control by Coalition forces. At its fifty-ninth session in April 2003, the Commission on Human Rights decided to extend the mandate of the Special Rapporteur on the situation of human rights in Iraq, established in 1991, but to give him the mandate to inquire into past violations of human rights under the previous regime. The Special Rapporteur was not given a specific mandate to monitor the present situation. The mandate of the Special Rapporteur was discontinued altogether a year later at the sixtieth session of the Commission. The international community was thus left in a situation in which there was no international scrutiny of human rights in present-day Iraq. At the time of writing, investigations were under way in the United Kingdom and the United States. It would be important for these investigations to be completed expeditiously.

XII. HUMAN RIGHTS LEGISLATION AND INSTITUTIONS

145. This report has so far looked at the protection of civilians, the treatment of persons in detention, the situation of women, the situation of children, civil and political rights, and economic, social and cultural rights, and has discussed the question of oversight and accountability. In this section, it turns to a review of the human rights norms and institutions that are currently in place from the point of view of their adequacy for the protection of human rights in the difficult period ahead.

A. International human rights treaties and applicable constitutional framework

146. Iraq became a party to the following international human rights instruments, which are therefore binding upon Iraqi institutions:

- The International Covenant on Civil and Political Rights (on 23 March 1976);
- The International Covenant on Economic, Social and Cultural Rights (on 3 January 1976);
- The International Convention for the Elimination of All Forms of Racial Discrimination (on 13 February 1970);
- The Convention on the Elimination of All Forms of Discrimination against Women (on 12 September 1986);

- The Convention on the Rights of the Child (on 15 July 1994).

147. As mentioned earlier in this report, the Iraqi Governing Council had promulgated a constitutional framework and related legislation that took into account certain aspects of international human rights law. The new Interim Iraqi Government will need to bring these national instruments further into conformity with international human rights law.

B. Legislation

148. Article 23 of TAL provides that the Iraqi people enjoy all the rights that befit a free people possessed of their human dignity, including the rights stipulated in international treaties and agreements, other instruments of international law that Iraq has signed and to which it has acceded and others that are deemed binding upon it, and the law of nations (annex I).

149. According to CPA regulation No. 1, all laws in force in Iraq as of 16 April 2003 shall continue to apply unless suspended or replaced by CPA, provided these laws do not prevent CPA from exercising its rights and fulfilling its international obligations or are in conflict with any CPA order or regulation.

150. Many laws of the former Iraqi regime remain in effect. CPA has undertaken a review of the Iraqi Penal Code of 1969 and the Criminal Procedure Code of 1971 in order to evaluate their compatibility with international human rights standards. CPA has consequently suspended the death penalty (order No.7) and introduced the United Nations Standard Minimum Rules for the Treatment of Prisoners (memorandum No. 2). Welcome amendments to the Iraqi Penal Code were made by CPA, prohibiting inhuman or degrading treatment or punishment.

C. Judicial protection of human rights

151. Against the background of the prevailing constitutional and legislative framework in Iraq described above, the judicial system has been functioning under severe constraints. Under the previous regime there was clearly little possibility of having recourse to the courts for the protection of human rights because there was no independent judiciary, and there were massive violations of human rights of the worst kinds imaginable. Since the assumption of control by the Coalition forces, Iraqis have had few opportunities of recourse to the courts for the legal protection of their rights because of military insecurity and political instability. Legal and judicial reform must be a matter of priority attention by the Interim Iraqi Government, necessitating the establishment of a legal and judicial reform commission.

152. CPA has begun this process, as stated in its written submission (annex I). The judiciary has been re-established as separate branch of government under the supervision of a Council of Judges. The Judicial Review Committee has vetted all 860 judges and prosecutors nationwide for past corruption. Approximately 180 judges were removed and replaced. Training for judges is in progress to inculcate a culture of respect for human rights, due process and basic tenets of the rule of law.

D. The Ministry of Human Rights

153. As part of the arrangements introduced by the Iraqi Governing Council, an Iraqi Ministry of Human Rights was established in September 2003. It was given the mandate of addressing past human rights atrocities and safeguarding the human rights and fundamental freedoms of all persons within the territory of Iraq in the future. Specifically, the Ministry of Human Rights is to help establish conditions conducive to the protection of human rights and fundamental freedoms in Iraq and prevent human rights violations in Iraq; to make formal recommendations for measures to prevent human rights violations; to assist all people in society in healing the wounds of past atrocities; to serve as focal point for relations with international human rights bodies; and to provide advice to lawmakers (see annex I).

154. OHCHR provided human rights training to 10 staff members of the Ministry in February 2004 and invited two additional staff members (as well as two staff members from the Ministry of Justice) to Geneva for a human rights training during the sixtieth session of the Commission. In talking to Iraqis in Amman, it became clear that they wished the Ministry to play a strong role in the future. Some interviewees referred to the Ministry's important role in dealing with the past and initiating national dialogue on this issue. Others felt that the Ministry would have to be closely involved in legal reform and should receive reports from NGOs and to submit them to the relevant government institutions for their response. As the Iraqi constitutional and political framework evolves, it will be important to retain this concept of an Iraqi Ministry of Human Rights and to strengthen it in the future.

E. The proposed national commission for human rights

155. Article 50 of TAL provides for the establishment of a national commission for human rights to carry out the commitments of the Law and to examine complaints pertaining to violations of human rights. TAL provides that the commission shall be established in accordance with the Paris Principles, adopted by the General Assembly in its resolution 48/134 of 20 December 1993. The commission shall also include an ombudsman's office dealing with complaints with powers of investigation, including on its own initiative, regarding any allegation of conduct by governmental authorities considered arbitrary or contrary to law.

156. The establishment of a national human rights commission for Iraq should be a priority for the Interim Iraqi Government. It is very important that the procedure for appointing and dismissing commissioners be open and transparent. These individuals should be of high standing and integrity, with appropriate human rights expertise, and must represent the various elements of society. Their independence will need to be assured through effective provisions within the founding legislation.

157. It would be advisable to establish a selection committee, comprising members of all social forces in Iraq, to nominate the members of the commission. The committee would make recommendations to the Interim Iraqi Government, which would appoint the commissioners. The Interim Iraqi Government could appoint the chairperson, or the commissioners could do so themselves. The members of the commission should be Iraqi women and men drawn from each of the principal ethnic and religious groups of Iraq, from inside the country and the Iraqi diaspora, as well as Iraqi refugee and internally displaced communities. All the commissioners

should be Iraqi nationals. A commission operating in a large and diverse country like Iraq would ideally have between 7 and 11 members.

158. The possible functions of the commission could include:

- (a) Advising the Interim Iraqi Government, the future legislature and any other competent body on any matters concerning the promotion and protection of human rights;
- (b) Publicizing its advice and opinions, recommendations, proposals and reports;
- (c) Examining and reporting on the legislative and administrative provisions in force, drafting laws and proposals and making such recommendations as it deems appropriate to ensure that these provisions conform to the fundamental principles of human rights;
- (d) Recommending the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;
- (e) Investigating, reporting on and attempting to resolve any situation of violation of human rights;
- (f) Preparing reports on the situation in Iraq with regard to human rights in general and on more specific matters;
- (g) Drawing attention to situations in any part of Iraq where human rights are violated and making proposals for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;
- (h) Promoting and ensuring the harmonization of legislation, regulations and practices with international human rights law and its effective implementation;
- (i) Assisting in the formulation of programmes for the teaching of and research into human rights and taking part in their implementation in schools, universities and professional circles;
- (j) Publicizing human rights and efforts to combat all forms of discrimination by increasing public awareness, especially through information and education and by making use of all media; and
- (k) Cooperating with the United Nations, the Office of the United Nations High Commissioner for Human Rights and any organization in the United Nations system, and regional institutions and the institutions of other countries that are competent in the areas of the promotion and protection of human rights.

159. The inclusion of the office of an ombudsman within the commission will ensure that the broader areas of maladministration are seen as intrinsic human rights concerns. The enjoyment of human rights by combating administrative excesses and inequities would be promoted.

XIII. CONCLUDING OBSERVATIONS

160. Coalition forces went to Iraq to help bring freedom to that country. Whether they acted in accordance with international law in doing so is the subject of debate but is not within the province of this report. What is within the province of this report is how human rights and humanitarian law have been respected and protected since Coalition forces took control of the country.

161. Everyone accepts the good intentions of the Coalition Governments as regards the behaviour of their forces in Iraq. No one imputes to Coalition Governments any intention to violate the rights of ordinary Iraqis.

162. In weighing what has happened in Iraq, one should take into account the prospect that, as a result of the actions of the Coalition Governments, Iraq could well be launched on the road to democracy, the rule of law and governance that is respectful of human rights.

163. From the point of view of human rights, there have been gains during the period since Coalition forces took control of the country. These include an internal debate on a constitutional architecture mindful of international human rights norms; the establishment of an Iraqi Ministry of Human Rights; greater freedoms for ordinary Iraqis; greater participation of women in the public life of Iraq; and greater freedom of opinion and expression.

164. Nevertheless, there have been serious human rights problems that must be recognized. It is a fact that large numbers of people were incarcerated without it being publicly known how many, for what reasons, where they were kept, in what conditions, and how they were being treated.

165. The hardships suffered by Iraqis in the aftermath of the victory of the Coalition forces were clearly not intended, but the fact is that they occurred. Ordinary Iraqis did suffer privations in respect of basic economic and social rights. Fortunately, the situation has improved.

166. The treatment of Iraqi detainees was, as recognized by Coalition leaders at the highest levels, a stain upon the effort to bring freedom to Iraq.

167. The central purpose of this report has been to look to the future from the point of view of the duty of care and control, protection and accountability in a post-conflict – but still fraught - situation. From this perspective, the following recommendations are offered:

(a) The Coalition authorities should immediately arrange for regular inspections of all places of detention and also immediately appoint an international ombudsman or commissioner to monitor respect for human rights in Iraq, to submit periodic public reports and to make recommendations to Coalition and Iraqi authorities;

(b) The Interim Iraqi Government should establish an independent Iraqi national human rights commission and empower it to work for the promotion and protection of human rights in the country;

(c) The Coalition authorities should bring to justice those members of the Coalition forces responsible for serious violations of human rights and report to the Secretary-General on the prosecutions and the results of the trials;

(d) The Coalition authorities should establish a human rights fund for Iraq and give generously to it to enable it to promote human rights education and to provide human rights materials to Iraqi judges, lawyers, prosecutors and prison officials;

(e) The Interim Iraqi Government should urgently promulgate a human rights policy for Iraq and adhere to it;

(f) The Interim Iraqi Government should rapidly announce the establishment of an Iraqi legal and judicial reform commission to recommend reform of Iraqi laws that are inconsistent with international human rights standards and, where there is an absence of law in this regard, make provision for due process protections in accordance with Iraq's international obligations. In any event, since many laws have not been substantially reformed since the 1960s, the commission should undertake long-term reform of the legal framework;

(g) In its approach to transitional justice, the Interim Iraqi Government should develop a strategy for addressing the legacy of brutal authoritarian rule and massive human rights abuses in Iraq. Such a strategy must be centred on the population's needs, attitudes and perceptions of transitional justice. Only effective and meaningful consultation with legal actors and the public at large will ensure a process that is seen to be legitimate. This process must address such issues as past human rights abuses, justice and accountability mechanisms and non-judicial measures such as vetting, truth-seeking and reparations in a holistic, coordinated and coherent manner;

(h) The Interim Iraqi Government may wish to undertake a review of the Statute of the Iraq Special Tribunal so as to ensure that the criminal justice process complies with international fair trial standards, that recent developments in international criminal law are taken into account and that the application of the death penalty remains suspended;

(i) If the Statute remains law and if only a nominal number of perpetrators of human rights violations are prosecuted by the Iraq Special Tribunal, it will be important to consider carefully whether there is a need to establish an Iraqi truth and reconciliation commission;

(j) The Interim Iraqi Government should designate a reparations commission to develop a reparations programme for past crimes, taking further the work begun by the Special Task Force;

(k) Given the continuing violence, the Interim Iraqi Government will need to develop adequate mechanisms to ensure the effective security of legal actors, defendants, victims and witnesses;

(l) The Interim Iraqi Government should consider and take steps to support Iraqi civil society organizations for the promotion and protection of human rights. This task could be facilitated by the Iraqi Ministry of Human Rights, with international assistance;

(m) The Iraqi Ministry of Human Rights should be given all necessary support, nationally and internationally, to help it discharge its responsibilities for the promotion and protection of human rights in Iraq;

(n) The United Nations, as circumstances permit, should continue to provide human rights training for officials of the Government of Iraq, judges, prosecutors and lawyers, as well as representatives of non-governmental organizations and civil society.

Notes

¹ As indicated in the "Sources and methods" section of this report, witness statements could not be independently verified.

² The United States of America has not ratified the Additional Protocols to the Geneva Conventions and neither has Iraq but, in general, many parts of the Additional Protocols are considered part of customary international law. The United Kingdom is a party to the Additional Protocols.

³ As indicated in the "Sources and methods" section of this report, witness statements could not be independently verified.

⁴ The Amnesty International report, "Memorandum on concerns relating to law and order", formed the basis for talks with the Coalition forces; press release AI 07/05/2004: "USA: Pattern of brutality-war crimes at Abu Ghraib".

⁵ Investigative report on alleged abuses at United States military prisons in Abu Ghraib and Camp Bucca, Iraq, by Maj. Gen. Antonio M. Taguba, "Article 15-6 Investigation of the 800th Military Police Brigade", hereafter the "Taguba report",

⁶ "Report of the International Committee of the Red Cross (ICRC) on the treatment by the Coalition forces of Prisoners of War and other Protected Persons by the Geneva Conventions in Iraq during arrest, internment and interrogation", hereafter "ICRC report"; the report included observations and recommendations from visits that took place between March and November 2003 and was handed to Ambassador Bremer and Lt. Gen. Sanchez.

⁷ Taguba report, p. 17; classified Criminal Investigation Division report on criminal abuses at Abu Ghraib, 28 January 2004; a synopsis prepared by the Criminal Investigation Command, dated 5 May 2004, categorizes as a sexual assault a case of abuse at Abu Ghraib last fall that involved three soldiers, who "entered the female wing of the prison and took a female detainee to a vacant cell. While one allegedly stood as look-out and one held the detainee's hand, the third soldier allegedly kissed the detainee". The report says that the female detainee was reportedly threatened with being left with a naked male detainee, but that "investigation failed to either prove or disprove the indecent-assault allegations".

⁸ "Should any doubt arise as to whether persons, having committed a belligerent act and having fallen into the hands of the enemy, belong to any of the categories enumerated in article 4, such persons shall enjoy the protection of the present Convention until such time as their status has been determined by a competent tribunal".

⁹ CPA memorandum No. 3, section 6 (d), states that "a criminal detainee shall be brought before a judicial officer as rapidly as possible and in no instance later than 90 days from the date in induction into a Coalition Force detention centre".

¹⁰ Article 78, Fourth Geneva Convention; Commentary on the Fourth Geneva Convention article. 78, p. 368.

¹¹ Commentary on the Fourth Geneva Convention, p. 367.

¹² Article 78, Fourth Geneva Convention.

¹³ Articles 13, 14 and 130, Third Geneva Convention; articles 27, 32 and 147, Fourth Geneva Convention.

¹⁴ Articles 17, 87 and 99, Third Geneva Convention; articles 5, 31 and 32, Fourth Geneva Convention.

¹⁵ Article 130, Third Geneva Convention and article 147, Fourth Geneva Convention.

¹⁶ Notably, under international law, "inhuman treatment" includes "not only acts such as torture and intentionally causing great suffering or inflicting serious injury to body, mind or health but also extends to other acts contravening the fundamental principle of humane treatment, in particular those which constitute an attack on human dignity". Similarly, "willfully causing great suffering or serious injury to body or health includes injury to mental health and includes those acts which do not fulfill the conditions set for the characterization of torture, even though acts of torture may also fit the definition given"; *Kemal Mehinovic, et al. v. Nikola Vuckovic, a.k.a Nikola Nikolac*, US District Court for the Northern District of Georgia, Atlanta Division, 198 F. Supp. 2d 1322, 29 April 2002.

¹⁷ Article 13, Third Geneva Convention; article 27, Fourth Geneva Convention; Commentary on the Third Geneva Convention, p. 140; Commentary on the Fourth Geneva Convention, p. 200.

¹⁸ Article 7 ICCPR states: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". General comment No. 31 on article. 2 of the Covenant, "The Nature of the General Legal Obligation Imposed on States Parties to the Covenant" (CCPR/C/74/CRP.4/Rev.6), adopted by the Human Rights Committee at its eightieth session in March 2004, states: "...to ensure the Covenant rights to all persons who may be within their territory and to all persons subject to their jurisdiction. This means that a State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party.... This principle also applies to those within the power or effective control of the forces of a State Party acting outside its territory, regardless of the circumstances in which such power or effective control was obtained, such as forces constituting a national contingent of a State Party assigned to an international peace-keeping or peace-enforcement operation" (para. 10); "...the Covenant applies also in situations of armed conflict to which the rules of international humanitarian law are applicable. While, in respect of certain Covenant rights, more specific rules of international humanitarian law may be specially relevant for the purposes of the interpretation of Covenant rights, both spheres of law are complementary, not mutually exclusive" (para. 11).

¹⁹ Article 1 of the Convention against Torture defines "torture" as following: "Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed, or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity".

²⁰ As mentioned in the "Sources and methods" section of this report, witness statements could not be independently verified.

²¹ Press release SG/SM/9283 -IK/432, 30 April 2004.

²² Daily Bulletin published by the Permanent Mission of the United States to the United Nations Office at Geneva, 11 May 2004, p. 1.

²³ *The New York Times*, 15 May 2004, p. 1.

²⁴ Reservations were made to the General Declaration and to articles 2 (f) and (g), 9, paragraphs 1 and 2, 16, and 29, paragraph 1; two States filed objections to all or some aspects of the reservations.

²⁵ As mentioned in the "Sources and methods" section of this report, witness statements could not be independently verified.

²⁶ *The New York Times*, Saturday, 15 May 2004, p. A17.