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## HUMAN RIGHTS REPORT

1 JULY-31 DECEMBER 2009

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## I. INTRODUCTION

1. The United Nations Assistance Mission for Iraq (UNAMI) engages in the promotion and protection of human rights and the rule of law in close collaboration with the Government of Iraq and non-governmental sectors, in accordance with its mandate under UN Security Council resolution 1883 (2009)<sup>1</sup> to “promote the protection of human rights and judicial and legal reform in order to strengthen the rule of law in Iraq.”<sup>2</sup> To that end, UNAMI monitors the human rights situation in Iraq and assists, especially through its capacity-building activities, in the rehabilitation and reconstruction of state and civil society institutions. It collaborates closely with local human rights groups and seeks to maintain direct contact with victims and witnesses of human rights violations.

2. The human rights reports published by UNAMI and OHCHR are intended to assist the Government of Iraq and the Kurdistan Regional Government (KRG) in ensuring the protection of basic human rights and respect for the rule of law. Iraq remains bound by both its international treaty obligations and its domestic legislation in taking measures to curb violence and promote and protect human rights. *The International Covenant on Civil and Political Rights* (ICCPR) and *The International Covenant on Economic, Social and Cultural Rights* (ICESCR) are clear on the basic rights to be protected at all times, including in time of war and civil disturbances.<sup>3</sup> UNAMI remains committed to assisting the Iraqi authorities in order to achieve these objectives, and to providing capacity building and training programmes for the governmental and non-governmental sectors.

## II. EXECUTIVE SUMMARY

3. According to information provided by the Ministry of Human Rights, 4,068 civilians were killed and 15,935 injured in 2009.<sup>4</sup> This represents an overall decrease in comparison to 2008. However, the second half of 2009 saw a large increase in the number of injured civilians when compared to the first half. The majority of the violence remained concentrated in Baghdad, Ninewa and Diyala governorates, with Mosul in Ninewa governorate having the highest rate of per capita violence. Terrorist groups carried out three major coordinated attacks against government buildings in Baghdad in August, October and December, killing in total 357 people and injuring 1463, mostly civilians. Targeted assassinations against government officials and high profile figures such as judges, tribal leaders, ministers, provincial council members, persons affiliated with political entities and other key prominent civilians, as well as senior ranking security officials, continued throughout the reported period.

4. UNAMI notes with concern the continuation of attacks deliberately targeting religious and ethnic groups. In Kirkuk and Mosul, UNAMI received reports of targeted killings, abductions, extortion and other violent attacks targeting Christians.

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<sup>1</sup> Security Council resolution 1883 was passed on 7 August 2009, deciding that the Special Representative of the Secretary-General and UNAMI “shall continue to pursue their expanded mandate as stipulated in Resolution 1770 (2007) and 1830 (2008).”

<sup>2</sup> Security Council resolution 1770, para 2(c).

<sup>3</sup> Iraq ratified the ICCPR in 1971 and all successive governments are bound by this treaty.

<sup>4</sup> Iraq Body Count, an organization that maintains a public database on casualties claims that 4,644 civilians were killed in 2009. No figures were available regarding the wounded.

The reporting period saw several targeted attacks against Shabak communities<sup>5</sup> including the detonation of two trucks packed with explosives in Ninewa on 11 August which killed 35 civilians and injured approximately 200. Attacks against civilians at places of worship remain a grave concern, with reports of mosques and churches being targeted, mostly with improvised explosive devices. On 31 July, insurgents carried out five almost simultaneous attacks against Shia mosques in Baghdad, killing at least 29 worshippers as they were leaving Friday prayers. At least 11 churches were bombed between 1 July and 31 December, including the detonation of a car bomb near a church in eastern Baghdad as worshippers were leaving Sunday mass, killing four and injuring 18.

5. Gender-based violence remains prevalent throughout Iraq, with continued reports of honour killings, domestic violence, rape and sexual assault and related crimes. In the majority of cases, perpetrators have not been held accountable for their crimes. The Ministry of Women's Affairs' (MoWA) continued efforts toward repealing discriminatory provisions of domestic law, which resulted in the submission of recommendations to the Shura State Council that articles 41, 409 and 377 of the Penal Code of Iraq be repealed, in December 2009.

6. Between 1 July and 31 December, the Ministry of Human Rights reported that death sentences were carried out by the Government in 93 cases, including three women, bringing the total number of persons executed in 2009 to 124 (120 men and 4 women). No executions took place in the Region of Kurdistan during the reporting period. According to the Ministry of Human Rights, as of 31 December, 1,254 prisoners were facing executions. UNAMI and OHCHR reiterate their concern with the issuance of the death sentence by Iraqi courts and urge the Government of Iraq to declare a moratorium on all executions with a view to abolishing the death penalty.

7. UNAMI notes the efforts that have been deployed by the Government of Iraq to improve the human rights situation in prisons and places of detention. However, UNAMI continues to receive further reports of allegations of abuse, ill-treatment, detention without charge and poor conditions in prisons and detention centres. UNAMI reiterates the need for the Government to continue monitoring and investigating allegations of ill-treatment and torture of detainees and prisoners and to make recommendations for judicial proceedings against those responsible.

8. UNAMI continues to monitor the human rights situation at Camp Ashraf. Following unsuccessful negotiations between Iraqi security forces and the People's Mujahideen Organization of Iran (PMOI) over the establishment of a police station at Camp Ashraf, on 28 July Iraqi soldiers and police attempted to enter the camp but were met with resistance from the camp's residents. The ensuing clashes resulted in the death of eleven Ashraf residents, and injuries to approximately 310 residents and Iraqi security forces. A UNAMI fact-finding mission concluded that excessive force had been used by the Iraqi security forces. Since October 2009, UNAMI has maintained a monitoring presence at the Camp and has observed no further violent clashes. UNAMI reiterates that Iraqi sovereignty over Camp Ashraf is unquestionable whilst underlining the importance for the Government of Iraq to continue to ensure

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<sup>5</sup> The Shabak are a minority community living in Ninewa. Shabak are Muslims, the vast majority are Shiites, descending from both Arab and Kurdish tribes.

that Ashraf residents have unhindered access to humanitarian needs, particularly fuel, food and medical services, and that the principle of *non-refoulement* is upheld.

9. UNAMI notes with concern the ongoing violence against media workers and calls upon the Government of Iraq to protect journalists' security as well as their right to freedom of expression. During the reporting period, UNAMI received reports of killings, bomb attacks, and abductions of media workers by unknown groups, as well as reports of arbitrary detention. Four journalists were deliberately targeted and killed in relation to their work, and media workers continue to be subjected to arbitrary arrest and detention, harassment and censorship.

10. The Government of Iraq's continued legislative reform efforts resulted in the passing of several key pieces of legislation. On 1 October, the Iraqi Parliament passed *Law No. 20 Compensating the Victims of Military Operations, Military Mistakes and Terrorist Actions (2009)*, foreseeing compensation payments for death, disability, and temporary injuries to victims, and to persons whose parents, spouses, or children were killed in such circumstances. On 12 November, the Government of Iraq signed the *Convention on Cluster Munitions (CCM)* which is viewed as a positive step to eliminate the use of cluster munitions within its territory and address the issue of unexploded bomblets. UNAMI notes with satisfaction the efforts to promote the presence of Iraqi minorities in Parliament and increase their opportunity to participate in the democratic process by the passing of *Law No. 26 Amending the Electoral Law No. 16 (2005)*.

11. In support of the Government of Iraq's participation in the Universal Periodic Review (UPR) process, UNAMI, with the support of UNOPS, provided technical assistance to the Government of Iraq and a consortium of NGOs to prepare their respective submissions to the Human Rights Council. UNAMI also provided technical support on several human rights initiatives, including UPR training for civil society organizations, several projects aimed at improving the lives of Iraqi children and various initiatives supporting women's right to be free from violence in Iraq.

### **III. RECOMMENDATIONS**

12. Based on its continuous monitoring and assessment of the human rights situation in Iraq, UNAMI reiterates its call on all parties concerned to implement the following recommendations:

#### **Recommendations to the Government of Iraq**

- a) Prepare a comprehensive action plan for the implementation of the UN Council of Human Rights recommendations resulting from the Universal Periodic Review process.
- b) Review the Law on Criminal Proceedings and the rules of evidence with a view of abolishing the practice of reliance on confessions in judicial proceedings, particularly confessions obtained under duress and torture, and ensuring that the rights of detainees not to incriminate themselves is respected.
- c) Take meaningful measures to reduce overcrowding in prisons and detention facilities and improve sanitation and hygiene conditions; in particular, institute

urgent measures to examine conditions at all detention facilities in respect of transmittable diseases, mental health of detainees and lack of adequate rehabilitation programs.

- d) Reform the current practice with a view to granting detainees the right to challenge the lawfulness of their arrest or detention; ensure prompt and regular access to defence counsel and relatives, and adopt measures to guarantee prompt and regular access to justice.
- e) Ensure that juveniles are detained only for serious crimes and for the shortest period possible. Ensure that when detained or imprisoned, juveniles are held at appropriate and separate facilities equipped with educational, rehabilitation and vocational training programmes.
- f) Prosecute those who are found to have committed human rights violations in prisons and detention places.
- g) Declare a moratorium on the death penalty pending a thorough review of the Penal Code and the Law on Criminal Proceedings in accordance with UN General Assembly resolutions 62/149 (2007) and 63/168 (2008).
- h) Investigate incidents involving gender-based violence, in particular the so-called “honour crimes” perpetrated against women, and take measures to ensure that persons found responsible for committing these crimes are prosecuted and subjected to other civil remedies.
- i) Review the Penal Code and the laws on criminal proceedings to ensure conformity with international standards and abolish the provisions permitting the application of mitigating circumstances for “honour crimes”.
- j) Adopt legislation banning female genital mutilation as an act of violence against women inflicting physical, mental and sexual harm and suffering, and the repeal of those sections of the Penal Code considered to be discriminatory against women.
- k) Establish as a matter of priority an independent high commission for human rights and ensure sufficient funding and legislative independence.
- l) Sustain efforts and adopt effective measures to protect vulnerable communities, including religious and ethnic minorities, against targeted killings, attacks against their religious institutions and their forced displacement.
- m) Finalize domestic procedures to enable accession to the Convention on the Rights of Persons with Disabilities and to pass the bill on the establishment of a national body for the welfare of persons with disabilities.
- n) Allocate additional resources to meet the needs of the large numbers of internally displaced persons; adopt measures to ensure that other vulnerable groups, including foreign nationals or stateless persons, are provided with adequate protection; and continue to reaffirm and honour the commitment to the principle of *non-refoulement*.
- o) Ensure the removal of the administrative and practical obstacles faced by refugees and internally displaced persons who have returned to their places of origin in Iraq, and that they are able to fully access government services, as well as ensuring that those persons returning to areas of disputed administrative boundaries have no restrictions on ownership of property.
- p) Continue to work in cooperation with the KRG authorities to locate and exhume mass graves, to take steps to identify remains and hand them over to their relatives and to investigate the killings and prosecute those responsible for such killings.

- q) Ensure that Iraqi security forces observe the UN Code of Conduct for Law Enforcement Officials, and respect human rights when engaged in security operations and that the Iraqi army complies, when engaged in military operations, with Iraq's obligations under international humanitarian law and international human rights law.

### **Recommendations to the Kurdistan Regional Government**

- a) Reform the current practice with a view to granting detainees the right to challenge the lawfulness of their detention; ensure prompt and regular access to defence counsel and relatives, and adopt measures to guarantee prompt and regular access to justice.
- b) Ensure that juveniles are detained only for serious crimes and for the shortest period possible. Ensure that when detained or imprisoned, juveniles are held at appropriate and separate facilities equipped with educational, rehabilitation and vocational training programmes.
- c) Ensure that all incidents involving violence against women are promptly and thoroughly investigated and that their perpetrators are prosecuted; ensure that the punishment of perpetrators and compensation of victims are proportionate to the gravity of the crime.
- d) Adopt legislation banning female genital mutilation as an act of violence against women inflicting physical, mental and sexual harm and suffering, and implement measures to prevent the possible stigmatization of victims.
- e) Declare a moratorium on the death penalty pending a thorough review of the Penal Code and the Law of Criminal Proceedings in accordance with UN General Assembly resolutions 62/149 (2007) and 63/168 (2008).
- f) Continue to work in cooperation with the Ministry of Human Rights to locate and exhume mass graves, to take steps to identify remains and hand them over to their relatives and to investigate the killings and prosecute those responsible for such killings.

### **Recommendations to USF-I**

- a) Continue the policy of investigating all allegations of unlawful killings by USF-I military personnel and take appropriate action against those found to have used excessive or indiscriminate force, or to have acted unlawfully. The investigations into such incidents should be transparent and their findings should be made public.
- b) While USF-I still holds detainees, continue to refrain from transferring detainees that are likely to be sentenced to death or prisoners that have been sentenced to death to the Iraqi authorities pending a thorough judicial review of their cases.
- c) Continue to cooperate with the Government of Iraq to hold U.S. Government contractors and contractor personnel accountable for criminal acts committed since 1 January 2009 in Iraq, and continue to ensure that offences committed in Iraq up to 31 December 2008<sup>6</sup> by all categories of U.S. Government

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<sup>6</sup> The 27 November 2008 status of forces agreement (SOFA) which came into effect Jan. 1, 2009, transfers the jurisdiction for the prosecution of contractors and their employees working in Iraq to the Government of Iraq.

contractors and contractors' employees remain subject to prosecution in the United States.

#### IV. PROTECTION OF HUMAN RIGHTS

##### Indiscriminate Attacks on Civilians

13. The total number of civilians killed and injured in Iraq decreased in 2009 when compared to 2008. According to figures provided to UNAMI by the Government of Iraq,<sup>7</sup> 4,068 civilians were killed and 15,935 injured in Iraq. In comparison, the figures from the Government of Iraq for 2008 were 6,787 civilians killed and 20,178 injured.<sup>8</sup> While the number of civilian deaths decreased slightly in the second half of 2009, the number of injured civilians increased dramatically over the first half, with 9,747 civilians injured during conflict attacks, compared with 6,188 from January to June.

CIVILIAN CASUALTIES IN IRAQ IN 2009								
	Killed				Injured			
Time Period	Men	Women	Children	Total killed	Men	Women	Children	Total injured
January – June	1,634	266	170	2,070	4,991	767	430	6,188
July-December	1,633	173	192	1,998	7,562	1,571	614	9,747
2009 total	3,267	439	362	4,068	12,553	2,338	1,044	15,935

14. The increase can be attributed to large scale attacks targeting government ministries located in Baghdad. Major coordinated terrorist attacks occurred in August, October and December 2009. On 19 August, which was the sixth anniversary of the attacks against the United Nations in Baghdad that killed 22 persons, truck and car bombs, as well as mortars, were used against the ministries of Foreign Affairs, Finance, Health and Housing killing 95 people and injuring 563. On 25 October, two suicide bombers, using cars loaded with explosives, targeted three government buildings in central Baghdad, including the Ministry of Justice and the Baghdad Provincial Council, killing at least 132 civilians and injuring approximately 500, making it the deadliest attack since 2007. On 8 December, a series of suicide bombers targeted government buildings and other civilian locations in Baghdad, killing approximately 130 civilians and wounding over 400. Outside of Baghdad, the majority of the violence remains concentrated in Ninewa and Diyala governorates.

<sup>7</sup> The numbers of injured and killed for 2009 were made available to UNAMI in February 2010.

<sup>8</sup> See 14<sup>th</sup> UNAMI Human Rights Report, para. 12.



15. UNAMI also expresses concern regarding attacks against civilians at places of worship and against minorities. On 31 July, a series of almost simultaneous bombings took place at five Shia mosques in northern, eastern and south-eastern Baghdad, killing at least 29 worshippers as they were leaving Friday prayers. There were at least 11 incidents of churches being attacked during the reporting period. On 11 August, two flatbed trucks laden with explosives detonated in Al-Khazna, a Shabak village in Ninewa governorate, killing over 35 people and wounding almost 200 people. Attacks continued in Kirkuk with five incidents of car bombs targeting Kurdish, Arab and Turkmen populated areas during the reporting period, killing a total of 21 civilians and injuring 67. These attacks followed two high profile attacks in Taza and Shorja areas of Kirkuk in June 2009 that killed 115 civilians and injured 347.

#### *Attacks Targeting Prominent Individuals*

16. Targeted attacks against judges, tribal and religious leaders, ministers, provincial council members, persons associated with political entities and other key prominent civilians continued throughout the reporting period as a tactic by insurgents to undermine the functioning of state institutions or punish persons who work for them. UNAMI received reports of numerous incidents of targeted attacks that took place in Kirkuk, Anbar, Baghdad, Mosul, Salah Al-Din, Maysan and Diyala governorates, killing in total 10 people. The attacks consisted of roadside bombs, explosives placed in or on the victim's vehicle, or armed attacks by unknown gunmen. Five judges were targeted in three separate incidents in Anbar and Kirkuk, although all survived the attacks.

17. The trend of attacks against those responsible for security in Iraq continued and the number of casualties increased during the reporting period in comparison with the first half of 2009. UNAMI's security section in Iraq (SSI), which liaises with Iraqi security forces, reports that the estimated number of Iraqi security forces killed increased to 542 police and soldiers between July and December compared with 535 in the first half of the year. The majority of the attacks occurred in Mosul, followed by Baghdad and Anbar governorates. Furthermore, attacks against members of the Awakening Councils (also known as Sahwa militias, formed to combat Al-Qaeda) also increased slightly, with UNAMI receiving information that at least thirty attacks took the lives of over fifty Sahwa members, including nine leaders.

#### *Mass Graves*

18. UNAMI is encouraged by the increased cooperation between the Ministry of Human Rights and the KRG Ministry of Martyrs and Anfal Affairs to address issues of transitional justice by locating and conducting exhumations of mass graves and identifying the remains of victims. In December, the first joint operation between the two ministries entailed excavations at three mass graves located in Topzawa, ten kilometres west of the city of Kirkuk. It was reported that the graves may contain Kurdish victims of the Anfal campaign in 1988 as well as those killed in 1991 after the uprisings against Saddam Hussein's regime. The remains of nineteen individuals were exhumed and samples were taken from the remains and sent to Baghdad for DNA analysis.

19. Mass graves continued to be found during the reporting period. In July, the Ministry of Human Rights reported that in Al-Qibla, near Basra, it had located a grave containing the remains of ten victims believed to be Shia males killed during the 1991 uprisings. In December, mass graves containing the remains of those believed to be victims of the Anfal campaign were discovered by the KRG Ministry of Martyrs and Anfal Affairs in Dubiz, western Kirkuk governorate. According to officials from the Ministry, the three mass graves reportedly contained the remains of 272 children from the areas of Chamchamal and Garmyan. Another mass grave site consisting of 70 holes with an undetermined number of victims was found by the Ministry in the Hemreen Mountains between Tikrit and Duz.

#### *Civilian Casualties Involving Private Security Companies*

20. During the reporting period, UNAMI received one report of killing involving private security companies (PSCs), in the case of a British security contractor employed by ArmorGroup who shot dead two fellow contractors on 9 August 2009, a Briton and an Australian, and wounded an Iraqi colleague. The perpetrator will be the first Westerner from a private security company to be tried by an Iraqi court in the first case since the 1 January 2009 U.S.-Iraqi Bilateral Security Agreement which lifts immunity for foreign contractors.<sup>9</sup> The absence of other such incidents may be the result of the increased regulation and scrutiny of the activities of PSCs by the Government of Iraq and the US Government. On 17 July 2009, the US Department of Defence passed an interim rule which regulates the selection, accountability, training, equipping, and conduct of PSCs providing security services in areas of U.S. combat operations. The rule also provides a regulatory and procedural framework for incident reporting, use of and accountability for equipment and rules for the use of force.<sup>10</sup>

21. On 31 December, the Federal District Court for the District of Columbia dismissed the charges against the five former Blackwater security guards charged with the deaths of 14 Iraqis<sup>11</sup> and injuries to at least 20 on 16 September 2007 in Baghdad. The ruling was based on legal technicalities, rather than the merits of the case. Despite conclusions by investigators that the guards had indiscriminately opened fire on a crowd of unarmed civilians at a crowded traffic circle in Baghdad, and a trial for manslaughter and firearm offenses expected to be held in February 2010, the judge contended that the charges against the defendants should be dismissed on the basis of the Government's mishandling of the case: specifically, the misuse of statements made by the guards. The judge reasoned that the prosecutors had relied on statements that the Blackwater employees<sup>12</sup> had made to the Department of State investigators under the promise that they would enjoy immunity from prosecution. The Judge's

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<sup>9</sup> Jones, Sam and Martin Chulov, "Iraq Contractor held for murder of fellow Briton and Australian in Baghdad," *The Guardian*, 9 August, 2009. Available online: <http://www.guardian.co.uk/world/2009/aug/09/british-contractor-iraq-murder/print>, accessed 26 March 2010.

<sup>10</sup> United States Department of Defense, Office of the Secretary. 32 CFR Part 159. [DOD-2008-OS-0125/RIN 0790-AI38] Private Security Contractors (PSCs) Operating in Contingency Operations. Available on-line, accessed 14 April 2010, <http://edocket.access.gpo.gov/2009/E9-17059.htm>

<sup>11</sup> The US Department of Justice indictment refers to only 14 confirmed deaths, while media reports stated there were 17.

<sup>12</sup> United States Department of Defense, Office of the Secretary. 32 CFR Part 159. [DOD-2008-OS-0125/RIN 0790-AI38] Private Security Contractors (PSCs) Operating in Contingency Operations. Available on-line, accessed 14 April 2010, <http://edocket.access.gpo.gov/2009/E9-17059.htm>.

opinion also cited allegations of prosecutorial misconduct.<sup>13</sup> The ruling may still be appealed by prosecutors of the US Department of Justice. A separate civil court case filed by the estates of some of the victims is still pending before a court in Virginia.

### *Civilian Deaths as Result of Military Operations*

22. Under the legal framework provided by the *Agreement between the United States of America and the Republic of Iraq on the Withdrawal of the United States Forces from Iraq and the Organization of their Activities during their Temporary Presence in Iraq*, USF-I combat forces withdrew from cities, villages, and localities by 30 June, as Iraqi security forces assumed full responsibility for security. USF-I could continue to conduct military operations in urban areas, but only with the agreement and coordination of the Government of Iraq. Military operations by USF-I in populated areas were therefore infrequent during the reporting period resulting in fewer possibilities of conflict between USF-I and insurgent groups that could result in the deaths of civilians.

23. UNAMI is not aware of any incidents in which USF-I air strikes injured or killed civilians. However, as in previous reports, UNAMI notes with concern that some civilians were killed or injured as a result of military ground operations or checkpoint confrontations. It was reported to UNAMI that on 11 July USF-I opened fire on a civilian vehicle on the Dujail-Balad motorway, killing one person. On 17 September, it was reported that one civilian was allegedly accidentally killed by an USF-I patrol as it was being attacked by gunmen in Hawijah district near Kirkuk. UNAMI also received unconfirmed reports of civilians being killed in joint Iraqi-USF-I operations in the same area but was unable to verify the reports due to accessibility restraints.

24. As Iraqi security forces took over the security responsibilities previously held by USF-I, UNAMI received few reports of Iraqi civilians being wounded or killed by Iraqi security personnel. One incident that was reported to UNAMI allegedly occurred on 16 October in Mosul when Iraqi police opened fire on an ambulance, killing one civilian. It is not yet clear whether the lack of reports of civilian casualties possibly caused by Iraqi security forces is a result of fewer confrontations or because of lack of investigation and documentation.

### *Court Proceedings for International Humanitarian Law Violations*

25. In the United States and in the United Kingdom court proceedings took place during the reporting period to address cases in which soldiers have committed violations of international humanitarian law while serving in Iraq. In the United States, Master Sergeant John Hatley, who had been convicted of the murder of four Iraqi detainees in spring 2007 and sentenced to life in prison on 16 April 2009,<sup>14</sup> had his sentence reduced to 40 years in August by Colonel Charles Preysler, the acting

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<sup>13</sup> Charlie Savage, "Judge drops charges from Blackwater deaths in Iraq", *The New York Times*, 31 December, 2009 Available online: <http://www.nytimes.com/2010/01/01/us/01blackwater.html?pagewanted=print>, accessed 13 March 2010.

<sup>14</sup> See UNAMI Human Rights Report, January to June 2009, para. 32.

commander of the Joint Multinational Training Command. On 29 September, a military judge in Camp Pendleton, California, dropped murder charges against Sergeant Jermaine Nelson, who had admitted killing an unarmed Iraqi detainee in Fallujah in November 2004 on orders from his squad leader Sergeant Jose Luis Nazario, who himself was acquitted by a civilian court in 2008.<sup>15</sup> Instead, Sergeant Nelson pleaded guilty to dereliction of duty and faces a maximum of one year in prison.

26. In July 2009, the Minister of Defence of the United Kingdom decided to open an investigation into incidents that took place eight kilometres from Majar Al-Kabir, located between Amarah and Basra. It is alleged that following an ambush by the Mahdi Army, British soldiers killed or tortured Iraqi detainees at their Camp Abu Naji (south of Amarah) on 14 and 15 May 2004 and ill-treated detainees at a temporary detention facility at Shaibah Logistics Base, southwest of Basra, between 14 May and 23 September 2004. The victims allegedly included non-combatants. An earlier investigation by British military police had cleared the soldiers of any wrongdoing.

### **Situation of Women**

27. During the reporting period, UNAMI continued to receive reports of gender-based violence and related crimes, including honour killings and domestic violence. Most perpetrators have not been brought to justice. Major obstacles prevent victims from seeking accountability: many victims do not report incidents, out of fear of reprisals, or insensitive treatment of victims by the authorities, and are discouraged from reporting due to the lack of effective redress for gender based violence. Additionally, continued impunity for perpetrators is a significant factor perpetuating gender-based violence.

28. UNAMI received reports of cases of alleged honour killings perpetrated in Kirkuk province. In the first case, a 22 year-old woman from Kirkuk city, was allegedly killed by her father. The victim's body was found in a northern district in Kirkuk province, with her legs tied and shot in the chest. The case was registered at the local police station but no arrests were made. In the second case, a 17 year old girl was allegedly killed by her father. The case was registered at the local police station as a case of suicide. UNAMI has received reports that many other cases of honour killings may be misreported as suicides to avoid prosecution.

29. According to local sources of information interviewed by UNAMI, incidents of domestic violence in Kirkuk province are reported to be high but it is believed that the majority of cases are either not reported at all or not investigated when reported to the police. Additionally, the lack of shelters for survivors of gender-based violence in the province is yet another major obstacle to the prevention of and response to violence against women. Victims are reportedly referred to governorates in the Region of Kurdistan or elsewhere in the country for treatment and protection.

30. During the reporting period, 228 cases of violence against women in the Region of Kurdistan were brought to the attention of UNAMI. These include cases of

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<sup>15</sup> See UNAMI Human Rights Report, July to December 2008, para. 34.

killings and self-immolation. In an encouraging sign of combating violence against women in Kurdistan, UNAMI received information that during the same period there were 545 convictions for violent crimes against women.

31. In Sulaymaniyah, UNAMI received information that 149 women were accommodated at women's shelters in 2009. Most of the girls and women were between 14 and 30 years old. In such cases, the police typically facilitate agreements whereby the family must provide a written statement guaranteeing the victim's security upon return to her home. However, the monitoring mechanisms in place thus far have been demonstrably weak. While the shelters' procedures for victim follow-up stipulate repeated monitoring visits for the initial six months after the return of the victim, in practice this procedure is not always followed. In some cases, victims are known to have disappeared or been killed upon return to their families. Although shelters are not a long term solution for women and girls who are at risk of violence, UNAMI is concerned that mediation instead of criminal prosecutions appears to be the norm when dealing with criminal violence against women.

32. During a visit to a female detention centre in Dahuk on 3 August, UNAMI observed that nine women were being detained there for their "own safety". The authorities argued that detention was the only safe solution due to threats on grounds of family honour. According to the investigating judge, the women may be released with a written guarantee for their safety from a male family member. The likelihood of such a guarantee is remote, as many of them are facing threat to life from their families for honour-related issues.

33. The practice of female genital mutilation continues in the Kurdish areas. In a study released in February 2010,<sup>16</sup> the Association for Crisis Assistance and Development Co-operation (WADI) reported that 72.7 % of women interviewed in the governorates of Erbil and Sulaymaniyah, as well as in areas of Kirkuk and Diyala inhabited by Kurds, have undergone this procedure. According to the report, FGM is most prevalent in Garmyan/New Kirkuk with 81.2% of females over the age of 14 having undergone the process, followed by Sulaymaniyah (77.9 %) percent and Erbil (63 %). 100% of women over the age of 80 are believed to have been mutilated.<sup>17</sup>

34. According to the Organization of Women's Freedom in Iraq, at least 200 Iraqi women are sold into sexual slavery each year, many trafficked internally and to neighbouring countries including Syria and the Gulf states.<sup>18</sup> The UNAMI office in Kirkuk followed up three reports of women trafficked internally into Kirkuk from central and southern Iraqi provinces. In two of the cases, sexual violence was also perpetrated on the victims by individuals or the militia groups who kidnapped them in Baghdad before taking them into the province.

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<sup>16</sup> The study is based upon 1692 interviews conducted in the Iraqi Kurdish Autonomous Region from September 2007 to May 2008.

<sup>17</sup> WADI. 2010. "Female Genital Mutilation in Iraqi-Kurdistan", 2 February, 2010. Available online: [http://www.stopfgmkurdistan.org/study\\_fgm\\_iraqi\\_kurdistan\\_en.pdf](http://www.stopfgmkurdistan.org/study_fgm_iraqi_kurdistan_en.pdf), accessed 15 March 2010.

<sup>18</sup> Organisation of Women's Freedom in Iraq, "Prostitution and Trafficking of Women and Girls in Iraq", February 2010.

35. UNAMI notes that the constitution provides for equality before the law without discrimination on the basis of sex. Yet article 41 of the Iraqi Penal Code provides men with the legal authority to ‘discipline’ their wives. Article 393 of the Penal Code refers to rape as a private offence, does not stipulate a minimum penalty and permits consideration of the victim’s sexual history. Article 409 limits the sentence for the honour killing of a man’s wife to less than three years, which in effect condones the crime. Furthermore, article 377 excludes men from punishment for adultery providing he did not commit the act in the marital home and/or can prove that he did not know that the woman was married. These laws are inherently discriminatory as men may effectively be exonerated from punishment for crimes such as murder and assault. They criminalise adultery committed by women while granting to men broad exemptions from punishment for the same act.

36. Efforts to enable the repealing of these discriminatory provisions of the Penal Code continued throughout the reporting period. In December 2009, acting in response to a legislative reform initiative spearheaded by a consortium of women legal practitioners in 2008, the Ministry of Women’s Affairs submitted documentation to the Ministry of Justice recommending that articles 41, 409 and 377 of the Penal Code be repealed. The recommendations were then sent to the Shura State Council in December 2009 for review. According to information received by UNAMI, the Minister of Justice allegedly rejected amendments to article 409 stating that the article’s provisions were consistent with Iraqi cultural practices.

37. The representation of women in public life was also reviewed. Women held 73 of the 275 seats in parliament during the reporting period. While women were well represented on the parliamentary committees for human rights, education and women during 2009, UNAMI notes that in several committees women were either underrepresented or not represented at all. For example, the committees on security and defence as well as oil and gas did not include women members, while the committees on finance and foreign affairs included one and two female members, respectively. UNAMI encourages the Government of Iraq to ensure that women are represented in all committees in the post-2010 elections committee assignments.

<b>REPRESENTATION OF WOMEN ON PARLIAMENTARY COMMITTEES 2009</b>			
<b>Committee name</b>	<b>Total members</b>	<b>Male members</b>	<b>Female members</b>
<b>Security and Defence</b>	15	15	0
<b>Oil and Gas</b>	9	9	0
<b>Legal</b>	13	12	1
<b>Human Rights</b>	13	5	8
<b>Finance</b>	7	6	1
<b>Foreign Affairs</b>	15	13	2
<b>Economic and Investment</b>	12	10	2

<b>Health and Environment</b>	12	8	4
<b>Education</b>	15	8	7
<b>Women</b>	7	0	7

### **Situation of Children**

38. Children in Iraq continue to be killed and injured as a result of the continuing violence. According to figures provided to UNAMI by the Government of Iraq, during the reporting period 192 children were killed and 614 were injured because of violent acts. As an example, on 7 August in Mosul, 11 children were killed and 77 injured when a vehicle-borne suicide bomber detonated his car at a Shia mosque after Friday prayers.

39. UNAMI continues to receive allegations that insurgent groups operate camps that actively recruit and train children to carry out terrorist activities. UNAMI also received reports that children were used by insurgent groups in Hawija district, Kirkuk governorate, during the reporting period but was unable to verify them due to mobility restrictions to access this volatile area. Regarding the use of children within the Iraqi security forces, UNAMI received information that there are approximately 350 children working for Awakening Councils. The Government of Iraq is a party to the *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict*, and UNAMI notes that article four states that “armed groups that are distinct from armed forces of the State should not, under any circumstances, recruit or use in hostilities persons under the age of 18” and calls upon the Government to ensure that no children are employed with Awakening Councils.

### **Situation of Minorities and Other Groups**

40. UNAMI remains concerned about deliberate attacks against Iraqis, allegedly on the basis of their religion.<sup>19</sup> In Kirkuk, UNAMI received reports of four separate incidents in which Christians were targeted and killed, including two women whose bodies were found with gunshot wounds on 3 August 2009. In Mosul periodic waves of violence against Christians continued: on 6 August 2009, a group of armed men reportedly attacked the home of a Christian family in Raqzaliyah-Mosul with an improvised explosive device to force the family to leave the area. On 2 November, an armed group attacked the home of a Christian family in Maqrib neighbourhood with explosives, displacing the family. The attackers had previously kidnapped the father of the household and reportedly released him after a ransom was paid. In a similar incident, the home of a Christian family in Al-Hadbaa was attacked with explosives on 7 December. UNAMI also received reports of eleven separate incidents of Christians being kidnapped. While in most cases the victims were released after paying a ransom, in two cases they have disappeared.

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<sup>19</sup> See also para. 15, above.

41. Places of worship also came under attack during the reporting period. As noted above in the indiscriminate attacks against civilians section, UNAMI received reports that there were 11 churches attacked, five in Mosul and six in Baghdad during the last six months of 2009, mostly involving bombs placed on cars or at the churches. According to the Ministry of the Interior, the worst attack occurred in eastern Baghdad on 12 July when militants detonated a car bomb in the vicinity of a church as worshippers were leaving Sunday mass killing four people and injuring 18.

### **Persons with Disabilities**

42. The number of Iraqis living with disabilities is disproportionately higher than the international average due to decades of conflict, ongoing terrorist attacks and unexploded remnants of war. Although accurate statistics are not available, the Iraqi Alliance of Disability Organizations estimates approximately 3,000,000 persons with disabilities living in Iraq. The disabled community is extremely active in Iraq, carrying out regular, advocacy, policy development initiatives, and lobbying efforts, with the support of the Government, domestic and international NGOs, civil society organizations and the United Nations.

43. Iraq has not signed the *Convention on the Rights of Persons with Disabilities*, nor its *Optional Protocol*, although the State has committed to doing so and is completing domestic procedures for accession. Article 32 of the Iraqi Constitution stipulates that the “The State shall care for the handicapped and those with special needs, and shall ensure their rehabilitation in order to reintegrate them into society, and this shall be regulated by law”. The Government of Iraq has taken some measures to promote the participation of the Iraqi disabled community, such as a quota for governmental posts to be held by persons with disabilities. The Council of Representatives is reviewing a bill on the establishment of a national body to protect and promote the well-being of persons living with disabilities,<sup>20</sup> submitted in June 2009.

44. Structures have been established to support the disabled community, for example, the Ministry of Labour and Social Affairs runs various programmes for the disabled community, including a modest monthly stipend to approximately 50,000 disabled Iraqis. ICRC operates at least 12 physical rehabilitation centres but accessibility is an issue due to security reasons and lack of transportation.

### **Refugees and Internally Displaced Persons**

45. According to information provided by UNHCR, while the number of internally displaced persons (IDPs) in Iraq at the end of the reporting period remained high, at 2,764,111,<sup>21</sup> the overall total number of IDPs decreased for 2009. In 2009, approximately 205,000 individuals returned to their places of origin consisting of

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<sup>20</sup> Human Rights Council, ‘National report submitted in accordance with paragraph 15 (A) of the annex to Human Rights Council Resolution 5/1 Iraq’. Working Group on the Universal Periodic Review, A/HRC/WG.6/7/IRQ/1, 18 January 2010.

<sup>21</sup> These IDPs are from three main groups: pre-2003, 1,021,962; 2003-2005, 190,146; and post-February 2006, 1,552,003. The latter group were displaced after the Samarra in February 2006.



167,740 IDPs and 37,090 refugees mainly from Syria, Jordan and Iran. This number is comparable to that of 2008 (221,000 individuals).<sup>22</sup> 90% of IDPs returned to Baghdad and Diyala.

46. Of concern to both UNHCR and UNAMI is the situation of some 450,000 “squatters,” or persons who have taken up informal residence in public buildings where basic services, such as water, sanitation and electricity, are frequently inadequate. These groups, which include host community as well as IDPs, returnees and former refugees who have returned to internal displacement, face the threat of eviction, but lack alternatives for sustainable solutions in their places of origin or residence. UNHCR continues to receive complaints from IDPs and refugees whose return is not fully sustainable due to administrative and practical obstacles to their enjoyment of basic rights, such as timely issuance of documentation of civil status, as well as a lack of services. General security, access to documentation of civil status, housing and livelihood opportunities were cited as being among the key challenges of return.

47. Of particular concern is the situation faced by those returning to areas that continue to experience administrative uncertainties. Many have experienced multiple displacement; and persons from these areas remain among the displaced population in Iraq. In addition to regulatory limitations on access to government assistance<sup>23</sup> individual IDPs and returnees have asserted consistently that access to residency and certain rights such as ownership of property are restricted for those persons originating from the disputed areas or those whose local integration could be seen as significantly modifying the ethnic and political demography in certain areas.

48. UNAMI notes that Iraq is also host to some 35,218 refugees of Iranian, Syrian, Turkish and Palestinian origin, as well as 3,800 asylum seekers. Their status in Iraq is regulated by the *Political Refugee Law, No. 51 (1971)*, pending enactment of the new refugee law which has been drafted. Once documented as legally resident in Iraq, refugees and asylum seekers have access to a range of social services and to date no reports have been received by UNCHR of expulsions. The Government of Iraq’s continued commitment to protecting refugees whose status was accorded to them under the previous regime is commendable.

### **Camp Ashraf**

49. Following the handover of Camp Ashraf with its 3,383 residents<sup>24</sup> from USF-I to the Government of Iraq on 22 February 2009, Iraqi authorities attempted to exercise authority over the Camp, which is currently run by the People’s Mujahideen of Iran (PMOI). After the breakdown of negotiations with the PMOI regarding the establishment of a police station within the Camp, Iraqi soldiers and police attempted to enter Camp Ashraf on 28 July. The residents clashed with several hundred Iraqi security forces for two days and eleven residents of the Camp died or later succumbed

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<sup>22</sup> UNHCR Statistical Report on Registered Iraqis.

<sup>23</sup> Council of Ministers Decree number 262 of 2008.

<sup>24</sup> USF-I figure as of 14 January 2010.

to their injuries. Over 200 were injured. The Iraqi authorities claimed that approximately one hundred policemen and 13 soldiers were also wounded.

50. A UNAMI request to visit Camp Ashraf on 2 August to investigate the clash was rejected by the Government of Iraq for security reasons. The mission eventually took place from 10-11 August and received allegations that the Iraqi forces had used firearms against the residents. UNAMI also received reports that Iraqi security forces prevented doctors from entering the Camp to provide assistance during the attack and the days after. The conclusion of the UNAMI mission was that excessive force had been used by the Iraqi security forces. Additionally, 36 male residents were arrested by the Iraqi authorities and charged first with assault, then with immigration offences, but released on 7 October due to a lack of evidence.

51. With the consent of the Government of Iraq and PMOI, and with the operational support of USF-I, UNAMI deployed a small monitoring team to Camp Ashraf in late October. Since then, the team has been monitoring the situation and observed no further clashes involving the use of force. UNAMI observed that the delivery of supplies into the Camp, including food and fuel, was controlled by Government officials on the basis of security concerns, but that sufficient supplies were allowed to enter the Camp to ensure an adequate standard of living. The Iraqi authorities announced in October that the residents would be moved to another location in Iraq on 15 December. On 15 December, announcements were made by Government officials<sup>25</sup> to residents encouraging them to depart and offering free transport but without success. The Government of Iraq has since stated that another attempt at relocation may be made after the March 2010 elections.

52. UNAMI recalls that it has repeatedly appealed for the residents of Camp Ashraf to be treated in accordance with international human rights law, and to be protected from forcible deportation, expulsion and repatriation in violation of the principle of *non-refoulement*. UNAMI also recalls its concern over consistent allegations that the PMOI engages in psychological pressure, intimidation and physical abuses against residents of the Camp. UNAMI requests that the Government of Iraq ensures that no further violent incidents, such as the 28-29 July incident occur, and uphold its obligations under international human rights law regarding the residents of the Camp. Additionally, UNAMI calls upon the PMOI to recognize and respect the sovereignty of Iraq over its own territory and to respect the laws and authority of the Government of Iraq, and ensure that residents of the Camp are given the opportunity to fulfil their individual wishes to remain or leave without pressure.

### **Freedom of Expression and the Targeting of Media Workers**

53. UNAMI received reports that at least four journalists were killed during the reporting period, including an 18 year-old cameraman working for a Baghdad-based television station who died on 21 October after a bomb exploded outside his house in Kirkuk city. The bomb also wounded correspondent Mohammed Shaib of Al-Baghdadiyah TV. On 23 December, police forces in Basra found the body of an

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<sup>25</sup> The announcements were made in the presence of media representatives and the Government of Iraq extended an invitation to representatives of the diplomatic community present in Baghdad to observe.

employee from the Al-Furat satellite TV channel, who had been kidnapped by gunmen a day earlier. Additionally, according to the Iraq Journalists Right to Defence Association (IJRDA), journalist Irfan Al-Dawoodi has been missing since 21 December 2009.

54. UNAMI also received reports of other attacks and abductions against media workers and media outlets. On 23 November a television host was critically injured after an unknown armed group of men shot him in the head with a silenced pistol. Prior to the attack, the victim had hosted a program on Iraqi satellite television and was well known for exposing and criticizing corruption in Iraq. On 29 December, Al-Bayyina Al-Jadeeda newspaper was targeted by a bomb concealed inside a civilian car that was parked behind the newspaper's building; the blast caused damage to the building. Additionally, UNAMI documented eight separate incidents of journalists arrested or harassed by governmental authorities in Erbil, usually following the broadcast of material perceived to be critical of the Government or allegedly against public morals.

55. On 31 July, the Iraqi government published its draft law to protect the rights of journalists which then proceeded to parliamentary review. The expectation from the media community is that the law will better protect the right to freedom of expression by preventing authorities from abusing articles of the *Penal Code No. 111 (1969)* that allow for the initiation of criminal charges against those who criticize the Government. The draft law aims to protect the rights of journalists and provides for the prosecution of those who violate the rights and freedoms of journalists. The law guarantees journalists the right to access governmental sources of information and includes an explicit prohibition against pressuring journalists to publish material that conflicts with their own beliefs. Further, the draft law maintains that an attack on a media worker is of the same seriousness as an attack against a government worker.

56. Some of the law's provisions, however, give rise to concern. For example, the law gives broad discretionary power to government, which could be used to restrict the right to freedom of expression. Several provisions of the law clearly inhibit the realization of the rights of media workers; the prohibition of publishing materials which "compromise the security and stability of the country" is open to broad interpretation and may be abused by authorities. The draft law does not provide a guarantee for the protection of sources: rather, provisions state that the law requires the source to be revealed

57. The draft law's narrow definition of a journalist as "one who works for press ... and who is affiliated with the Iraqi Journalists' Syndicate" raises concerns about the ability of other media workers, such as editors, commentators, bloggers, and freelancers to exercise their right to express their views publicly and in effect imposes a *de facto* obligation to register journalists. According to the law, media organizations operating in Iraq must issue contracts to journalists that have been prepared and authorized by the Iraqi Journalists' Syndicate. Not only contradicting article 39 of the Constitution which stipulates that no one shall be compelled to join any party, association or political entity, this provision also limits the full enjoyment of the right to freedom of expression by limiting the scope of those who may be protected by the law, given the broad diversity of print, radio, television and online media sources.

58. On 14 August, hundreds of Iraqi media workers held a peaceful demonstration in Baghdad to protest the restrictive elements of this draft law.

## Legislative Developments

59. UNAMI notes with satisfaction the legislative accomplishments in Iraq which move towards ensuring that victims of violence and their families are compensated for death or injuries sustained as a result of military operations, military errors or terrorist operations. On 1 October, the Iraqi Parliament passed *Law No. 20 Compensating the Victims of Military Operations, Military Mistakes and Terrorist Actions (2009)*, which will provide for compensation payments for death, disability, and temporary injuries. Compensation is payable to victims and to dependants who lose parents, spouses, or children. Additionally, the law will compensate individuals whose property has been damaged and will apply retroactively from 20 March 2003. An eight member central commission consisting of representatives from the judiciary and the line ministries<sup>26</sup> will administer the law from Baghdad. The commission will be able to issue payments in cases of death of five million Iraqi Dinar to the relatives of deceased members of the security services and 3.75 million for civilians.<sup>27</sup> Once the law comes into effect,<sup>28</sup> UNAMI anticipates that this law, if effectively implemented, will be able to provide support to address in particular the financial needs of some of the three million Iraqi widows and their families, whose hardship has been the subject of repeated appeals for help by civil society groups.

60. The Government of Iraq has also taken a positive step towards eliminating the use of cluster munitions within its territory and in addressing the issue of unexploded bomblets, which continue to maim and kill Iraqis. On 12 November, the Government of Iraq signed the *Convention on Cluster Munitions (CCM)*, which awaits ratification. Article 1 of the CCM requires that each State Party will under no circumstances: a) use cluster munitions; b) develop, produce, otherwise acquire, stockpile, retain or transfer to anyone, directly or indirectly, cluster munitions; and c) assist, encourage or induce anyone to engage in any activity prohibited to a State Party under the CCM. Additionally, the CCM also requires clearance of land contaminated by the presence of unexploded bomblets and to provide assistance to victims. The use of cluster munitions in Iraq by other states conducting military operations within its territory has been a longstanding problem. An international NGO that monitors the presence of landmines and explosive remnants of war in Iraq states that between 1991 and 2006 cluster munitions containing 50 million bomblets were used in Iraq, of which it is estimated that 2.6-six million failed to explode.<sup>29</sup> According to a recent UNDP-UNICEF report written in consultation with the Iraqi Ministry of the Environment

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<sup>26</sup> There will be one representative from the High Judicial Council, and one each from the ministries of Defence, Interior, Finance, Justice, Health, Labour and Social Affairs, and Human Rights.

<sup>27</sup> Approximately US\$4,300 and \$3,250. For members of the security services: Iraqi Dinars 5 million for death; 5 million for 75-100% incapacitation; 2.5-4.5 million for 50-74% incapacitation; and 2 million for less than 50% incapacitation. For civilians: Iraqi Dinars 3.75 million for death; 3.75 million for 75-100% incapacitation; 2-3 million for 50-74% incapacitation; and 1.75 million for less than 50% incapacitation.

<sup>28</sup> Once published in the official gazette.

<sup>29</sup> Handicap International, *Circle of Impact: The Fatal Footprint of Cluster Munitions on People and Communities*, May 2007 at 104.

stated that landmines and bomblets from cluster munitions contaminated more than 1,700 square kilometres of land.<sup>30</sup>

61. UNAMI notes with satisfaction the Iraqi Parliament's efforts to promote the representation of Iraqi minorities in Parliament and increase their opportunity to participate in the democratic process by the passing of *Law No. 26 Amending the Electoral Law No. 16 (2005)*. The law provides for eight seats out of 325 in Parliament to be permanently dedicated to Iraqi minorities. Of the eight seats, five are allocated to Christians with one each in the governorates of Baghdad, Ninewa, Kirkuk, Dahuk and Erbil. The remaining three seats are allocated one each to members of the Shabak minority in Ninewa, the Sabian Mandeans in Baghdad and the Yezidi in Ninewa.

### **The Independent High Commission for Human Rights**

62. During the reporting period, UNAMI provided technical assistance and worked closely with the Council of Representatives on the appointment of members of the expert committee responsible for the selection process of the commissioners for the Independent High Commission for Human Rights (IHCHR) in Iraq. UNAMI's assistance included providing advice on the law establishing the IHCHR, in setting the selection criteria for commissioners, and in fundraising and secretarial assistance. By the end of September, all fifteen members of the expert committee had been identified and began to meet regularly. UNAMI also worked with the expert committee to develop the selection criteria for the commissioners, the application and the process for selection. On 5 October, members of the expert committee held a press conference to invite applications from the public for positions as commissioners. Over 1,400 applications were received prior to the deadline on 30 November. However, citing procedural concerns regarding the composition of the expert committee the speaker of the Council of Representatives sent the issue for review after the 2010 parliamentary elections.

## **V. HUMAN RIGHTS AND THE ADMINISTRATION OF JUSTICE**

### **The Death Penalty**

63. The Government of Iraq continued during the reporting period to carry out executions of persons sentenced to death and whose execution orders had been signed by the Presidency Council.<sup>31</sup> The 15<sup>th</sup> Human Rights Report covering the period of 1 January to 30 June 2009 noted with concern that the Government of Iraq had resumed executions of prisoners sentenced to death, after almost two years of a moratorium on executions,<sup>32</sup> by executing thirty men and one woman between May and June.<sup>33</sup>

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<sup>30</sup> UNICEF and UNDP, *Overview of Landmines and Explosive Remnants of War in Iraq*, June 2009 at 10.

<sup>31</sup> The three members of the Presidency Council must approve a death sentence before an individual can be executed.

<sup>32</sup> Prior to the previous report, the last executions by the Government of Iraq that were recorded by UNAMI took place in August 2007.

According to statistics regarding the death penalty provided to UNAMI by the Ministry of Human Rights, the number of persons executed during the current reporting period was 93, of which three were women. This increase brings the total number of persons executed since the resumption in May to 120 men and 4 women—approximately 15 persons per month. Additionally, the Ministry further reports that at the end of December there were 1,254 persons with capital sentences being held in detention facilities run by the Ministries of Justice, Interior and Defence.<sup>34</sup> No executions were reported as having been carried out under the jurisdiction of the KRG during the reporting period.

64. UNAMI and OHCHR continue to express concern regarding death sentences in Iraq. This concern is particularly acute given that the judicial and rule of law institutions do not sufficiently guarantee fair trial procedures in accordance with article 14 of the ICCPR. UNAMI continues to receive reports of persons detained or imprisoned on the basis of confessions obtained under duress or torture. Until the issues surrounding such violations are addressed, the concern will remain that the use of death penalty may be arbitrary and contrary to international human rights standards. The UN advocates for the abolition of the death penalty in all circumstances and has recommended to the Government of Iraq that it establish a moratorium on the death penalty pending a comprehensive review of legislation, including the Penal Code, the Military Penal Law, the Internal Security Forces Penal Law and the Anti-Terrorism Law in accordance with UN General Assembly Resolution 62/149.

#### *Detention under the Authority of the Government of Iraq*

65. The total number of detainees, security internees and sentenced prisoners in the custody of the Ministries of Justice, Interior, Defence and Labour and Social Affairs decreased slightly from 29,871 persons at the end of June 2009 to 28,956 by the end of the reporting period. However, in comparison to the beginning of the previous reporting period (January 2009, 27,466) the number in custody increased by 1,490 persons, which could be attributed to the continued transfer of detainees from the custody of USF-I.<sup>35</sup>

TOTAL DETAINEE FIGURES: JULY – DECEMBER 2009						
Detention Authority	July	August	Sept.	Oct.	Nov.	Dec.
Ministry of Justice	19,366	19,457	19,413	19,475	19,832	20,263
Ministry of Interior	7,883	7,989	8,074	7,824	8,556	7,006

<sup>33</sup> On 3 May, 12 persons were executed by hanging followed by a group of 19—including one woman—on 10 June.

<sup>34</sup> The Ministry of Justice, 964; the Ministry of Interior, 287; and the Ministry of Defence, 3.

<sup>35</sup> Detainees in the custody of USF-I are being transferred to Iraqi authority pursuant to the Iraq-United States Bilateral Security Agreement. The Ministry of Defence does not have the legal authority to detain civilians and during the reporting period began the process of transferring them to the custody of either Ministry of Justice or Ministry of the Interior.

<b>Ministry of Defence</b>	1,024	678	542	759	432	695
<b>MoLSA</b>	857	931	964	967	995	992
<b>Total Iraqi Custody</b>	<b>29,130</b>	<b>29,055</b>	<b>28,993</b>	<b>29,025</b>	<b>29,815</b>	<b>28,956</b>
<b>USF-I</b>	9,947	8,799	7,821	7,040	6,473	6,036
<b>KRG</b>	2,980	2,948	2,954	2,894	2,502	2,689
<b>Overall Total</b>	<b>42,057</b>	<b>40,802</b>	<b>39,768</b>	<b>38,959</b>	<b>38,790</b>	<b>37,681</b>

66. UNAMI remains concerned as allegations of abuse, ill-treatment, detention without charge and poor conditions in prisons and detention centres continued to be received during the reporting period. In Kirkuk, during a prison monitoring visit to the Ministry of Interior detention centre, UNAMI interviewed a female detainee who claimed that she had been beaten while in detention and forced to confess to a crime she did not commit. In September, journalist Muntadhar Al-Zaidi publicly stated after his release that he had been beaten with metal pipes and cables, and had received electric shocks while in custody. In Basra, UNAMI received allegations that 25 Sunni men had been detained for up to four years without charge and forced to confess. Iraqi media also reported the deaths of three prisoners in the Baghdad's Khadmiya prison from an outbreak of tuberculosis, which is an indicator of poor hygiene conditions within the facility.

67. UNAMI also received reports of severe overcrowding in facilities run by the Ministry of Justice. In July, UNAMI conducted a prison monitoring visit to Fort Suse in Sulaymaniyah governorate. Although located in the Kurdistan Region, it is under the authority of the Ministry of Justice in Baghdad. UNAMI received the full cooperation of the authorities during the visit and noted that due to construction, prisoners were detained in conditions of overcrowding. UNAMI also received reports of overcrowding at the Ministry of Justice facility in Samawah, Muthanna governorate. Additionally, in the newly re-opened Baghdad Central Prison—formerly known as Abu Ghraib—on 10 September prisoners rioted demanding better conditions, the replacement of guards who mistreated prisoners and cited overcrowding amongst their grievances. The incident required the intervention of the Iraqi army with support from USF-I helicopters to restore order and, according to a member of the parliamentary Human Rights Committee, two inmates died during the riot. The riot also caused the temporary evacuation of the prisoners as the facility had been rendered unusable.

68. UNAMI notes the efforts of the Ministry of Human Rights in investigating allegations of the ill-treatment and torture of detainees and prisoners and by forwarding information regarding abuses to the judiciary. The Ministry conducted 165 inspections of prisons and detention centres during 2009 and reported in November that it had referred 296 cases to the judiciary in 2009.<sup>36</sup> UNAMI is concerned about the large number of incidents of torture in prisons and places of

<sup>36</sup> U.N. General Assembly, Human Rights Council. *National report submitted in accordance with paragraph 15(A) of the annex in Human Rights Council Resolution 5/1, Iraq* (A/HRC/WG.6/7/IRQ/1) 19 January 2010, at para. 87.

detention. Information received from the Human Rights Committee indicates that torture is used in pre-trial detention centres for the extraction of confessions. A recently published report of the US Department of State<sup>37</sup> indicated that there were 493 documented cases of torture and ill-treatment of detainees under the control of the Government of Iraq: 326 at facilities run by the Ministry of the Interior; 152 cases under the Ministry of Defence; 14 cases under the MoLSA; and one case at the Ministry of Justice.

69. UNAMI notes the reduction in the number of detainees held by the Ministry of Defence, which does not possess the legal authority to detain persons. The reporting period saw a continued reduction in the number of persons deprived of their liberty by the Ministry of Defence from 1,356 in June to 695 at the end of 2009. UNAMI has consistently advocated for the Government of Iraq to bring all detention facilities under the authority of the Ministry of Justice.

#### *Detention under the Authority of the KRG*

70. The number of detainees in the custody of the KRG was 2,980 at the start of the reporting period and 2,689 at the end of December 2009. In comparison to the previous reporting period, the number of detainees has remained relatively constant from 2,671 at the beginning of the previous reporting period.

71. UNAMI remains concerned about abuse and ill-treatment of prisoners and detainees at prisons and places of detention in the Region of Kurdistan. UNAMI is also concerned about the status of alleged detainees and missing persons who may currently be in the custody of the KRG but who originally came from the governorates of Ninewa and Kirkuk and were taken into custody by either Peshmerga or Asayish forces from 2004 until the end of 2009. UNAMI has received several lists of persons thought to be detained by the KRG authorities totalling over 200 individuals from Ninewa and 15 from Kirkuk. Both governorates include areas that continue to experience administrative uncertainties regarding security and detainees as some territory is outside the area of the Kurdistan Region. Additionally, UNAMI has received the names of 300 Kurds from Kirkuk who remain missing. UNAMI welcomes the agreement of the KRG to establish a joint independent detainee committee with the relevant authorities of the Government of Iraq to clarify the status of these individuals in a transparent manner and establishing a mechanism for addressing future cases of missing or detained persons.

#### *Detention under the Authority of USF-I*

72. During the reporting period, the number of detainees in the custody of USF-I continued to decrease from the previous period as USF-I transferred detainees to Iraqi custody or released them under the terms of the Iraq-United States Bilateral Security Agreement. The total number of detainees in USF-I custody declined from 11,058 in

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<sup>37</sup> Bureau of Democracy, Human Rights and Labour, U.S. Department of State, *2009 Human Rights Report: Iraq*, March 11, 2010. Available online: <http://www.state.gov/g/drl/rls/hrrpt/2009/nea/136069.htm> at section 1(c), date accessed 14 March 2010.



June 2009 to 6,036 at the end of the reporting period for total decrease of 5,022. Of this number, USF-I released 4,138 detainees and transferred 884 detainees to the custody of the Government of Iraq. The original plan called for USF-I to transfer approximately 1,500 detainees per month to the Government. However, due to existing detention facility limitations documented during the reporting period (overcrowding, damage to the facility at Abu Ghraib) USF-I slowed its transfer process to approximately 500 persons per month as a result of the Iraqi administration not yet being prepared to receive large numbers of detainees each month.

73. On 17 September 2009, USF-I officially closed its Camp Bucca detention facility located south of Basra and transferred the remaining detainees to Camp Taji, northwest of Baghdad. Camp Taji was handed over to the Iraqis in 15 March 2010. The only remaining detention centre operated by USF-I is Camp Cropper near Baghdad airport, which is scheduled to be handed over to the Government of Iraq in July 2010 ending the detention capacity of USF-I.

<b>USF-I DETAINEE RELEASES AND TRANSFERS: JULY – DECEMBER 2009</b>						
<b>Status</b>	<b>July</b>	<b>August</b>	<b>Sept.</b>	<b>Oct.</b>	<b>Nov.</b>	<b>Dec.</b>
<b>Released</b>	755	752	904	770	517	314
<b>Transferred to Iraqis</b>	117	396	74	11	50	123

## **VI. HUMAN RIGHTS CAPACITY BUILDING ACTIVITIES**

74. During the reporting period UNAMI continued to work to build the capacity of both civil society organizations and the Government of Iraq on knowing and using United Nations mechanisms for human rights. UNAMI, with the support of UNOPS, provided key technical assistance to the Government of Iraq and to a consortium of NGOs to prepare their respective submissions to OHCHR as part of the Universal Periodic Review (UPR) process, which involves the appearance of the Government of Iraq before the Human Rights Council in February 2010.<sup>38</sup> From 2-5 August, UNAMI conducted training for twenty-five civil society organizations representing all geographical regions of Iraq which focused on the UPR mechanism, main principles, techniques and overall strategy for drafting the submission. At the end of August, the joint NGO UPR submission was adopted unanimously in a conference in Erbil and submitted to OHCHR on 1 September.

75. UNAMI also assisted the inter-ministerial committee from the Government of Iraq responsible for drafting the national report by facilitating a study tour to Bahrain from September 27 to 1 October. This initiative was supported by UNOPS and hosted by the Ministry of Foreign Affairs of Bahrain. The committee travelled to Bahrain to hold discussions with their Bahraini counterparts about their experiences in the

<sup>38</sup> The Government of Iraq appeared before the Human Rights Council on 16 February. Further information will be provided in the next UNAMI Human Rights Report.

preparation of the national report, presentation of the report before the UPR Working Group, appearance before the Human Rights Council, and actions taken and implemented in Bahrain resulting from the UPR review process. The national report was submitted in November.<sup>39</sup>

76. In the context of the UPR process, the Government of Iraq also made advance voluntary pledges to ratify or accede to additional international human rights conventions and to review its current reservations to previously ratified human rights covenants and conventions; to provide regular reports to United Nations human rights treaty bodies, to cooperate with special procedures of the United Nations Human Rights Council; to bring domestic legislation into line with international human rights standards; and to establish an independent national human rights institution.

77. A training workshop provided to 23 Iraqi civil society organizations on essential skills for effective human rights reporting took place in Erbil from 21-25 November. The activity was conducted as a follow up to the UPR submission, with the objective of supporting civil society organizations working in the field of human rights to strengthen their capacity to monitor, report and disseminate information on the human rights situation in Iraq.

78. UNAMI continued to monitor the implementation of the “Exhumations of the Remains of Kuwaiti Prisoners of War,” a project aimed at supporting the capacity of the Ministry of Human Rights to carry out exhumations. Fifteen participants from the Ministry of Human Rights and seven from the Medico-Legal Institute were trained by the International Commission for Missing Persons in Baghdad, from 2 August to 2 September. The training focused on topics such as forensic archaeology and anthropology, database management, excavation and examination practices, the analysis of mortal remains, etc. Most of the equipment necessary to conduct exhumations and suitable for working in the extreme climate conditions of Iraq has been purchased. As part of this project, work was conducted on a mass grave in Topzawa, ten kilometres west of the city of Kirkuk under the leadership of the Iraqi Ministry of Human Rights and the KRG Ministry for Martyrs and Anfal Affairs.

79. UNAMI worked on several projects aimed at improving the lives of Iraqi children which have been funded by the Iraqi Trust Fund. UNAMI, working with UNICEF and UNFPA commenced implementation of the project “Strengthening Protection and Justice for Children and Young People in Iraq”. This project is designed to provide strategic direction to the juvenile justice system in Iraq and to build the capacities of key duty bearers. Additionally, periodic monitoring on the juvenile justice system, particularly the situation of children held in pre-trial detention and children sentenced to imprisonment, will channel information to the project. Moreover, UNAMI is an implementing partner together with ESCWA and UNESCO in the project “Building civil values and life skills for adolescents through Education in Iraq”. UNAMI, in coordination with the implementing partners, will ensure compliance of the substantive materials with international human rights standards and

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<sup>39</sup> See footnote 36, above. For all other public documents related to the appearance of the Government of Iraq before the Human Rights Council, see <http://www.ohchr.org/EN/HRBodies/UPR/IQSession7.aspx>.

will provide technical assistance on the training packages to be used in the design of the capacity building modules.

80. UNAMI continues to support initiatives which work to protect women's right to be free from violence in Iraq. Under the chairmanship of the State Minister of Women Affairs, Dr. Kheloud Al-Maajoun, a conference was held in Istanbul from 1 to 3 November. The objective of the conference was to officially launch the project entitled "Combating violence against women in Iraq" which is aimed at facilitating the development of national partnerships to combat violence against women and strengthening the institutional capacity of MoWA and other key ministries, as well as civil society organisations, to address the needs of survivors within protection and care programmes. This project is being implemented by UNFPA, WHO, UNIFEM, UNHCR and UNAMI. Representatives from both the Iraqi and KRG Ministries of Women Affairs, Health, Education, Interior, Planning, Human Rights, Labour and Social Affairs, Municipal Affairs, and Justice, NGOs from across Iraq, international NGOs, UNFPA, UNIFEM and UNHCR participated in this event. An annual multi-sector programme work plan was developed and endorsed and terms of reference for the formation of a central steering committee were also discussed and adopted during the conference.

81. During the reporting period, in an effort to improve the lives of the Iraqi women the United Nations worked in partnership with the Government of Iraq to initiate the Common Country Appeal/United Nations Development Assistance Framework (UNDAF) process with the goals of identifying the key development priorities that would guide both the Government's Five Year National Development Plan and the UNDAF for 2011-2014. As part of its support to the Government, the United Nations conducted a series of consultations aimed at promoting a human rights based approach, gender and conflict sensitive analysis, and the achievement of the Millennium Development Goals and the Millennium Declaration. The results of these principles are reflected throughout the draft UNDAF, which will be officially endorsed by the government in the first half of 2010, as well as specifically within the framework of Priorities 1 and 5. Priority 1 focuses upon improved governance, including protection of human rights, while Priority 5 addresses the need for investment in human capital and the empowerment of women, youth and children. The actual programming of the UNDAF will be determined later in 2010, in close consultation with all stakeholders.

END OF REPORT