

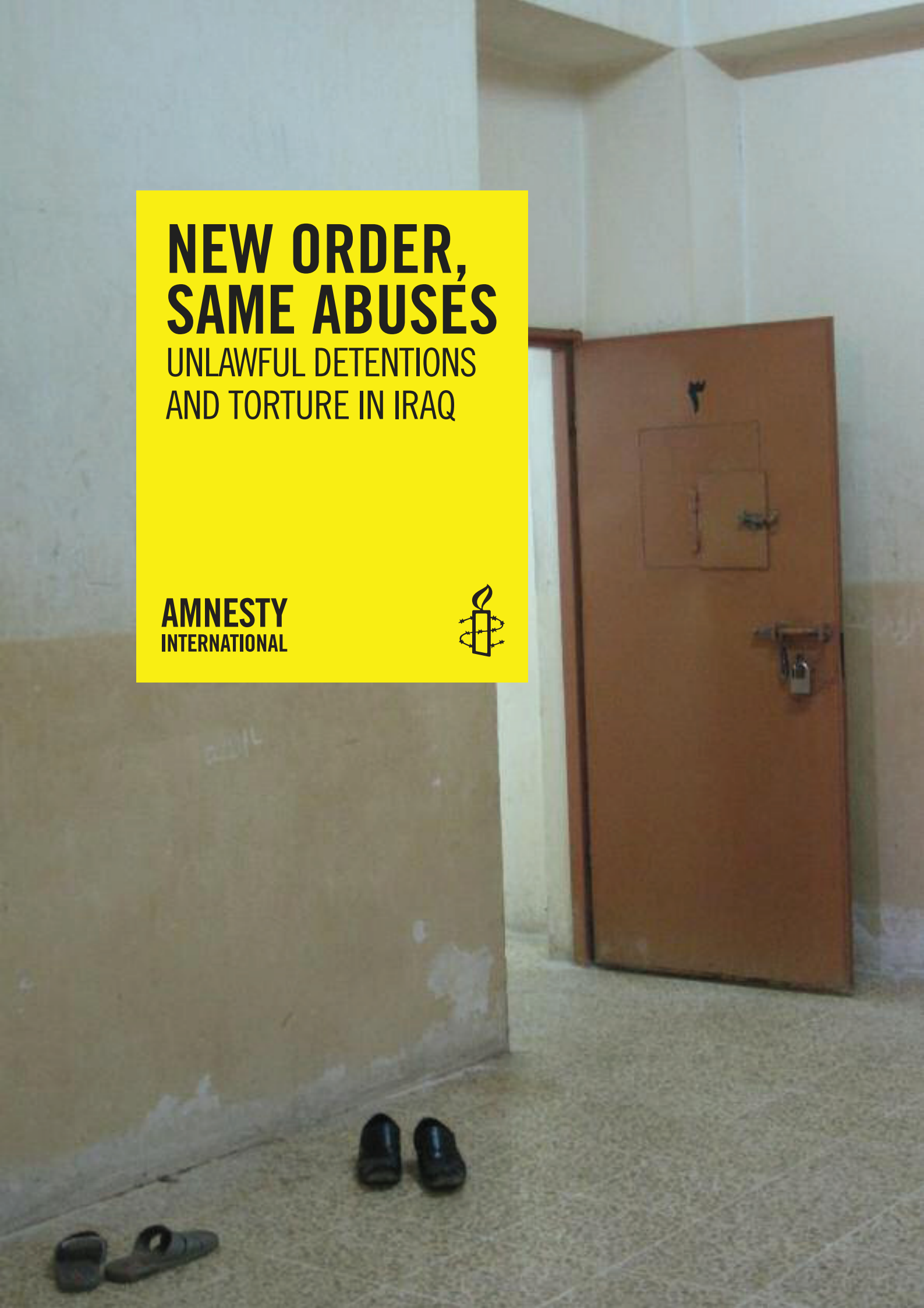
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NEW ORDER, SAME ABUSES

UNLAWFUL DETENTIONS
AND TORTURE IN IRAQ

AMNESTY
INTERNATIONAL



Amnesty International is a global movement of 2.8 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights. Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards. We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

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Cover photo: Inside a prison in the Kurdistan region of Iraq.

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Back cover photo: Detainee in a prison in the Kurdistan region of Iraq holding his International Committee of the Red Cross card. © Amnesty International

CONTENTS

1. Introduction	5
2. Background	9
Political context.....	9
Provisions for detainees under the SOFA	11
Iraq's current legal framework for detentions	13
Amnesty Law.....	14
International human rights standards.....	14
3. Patterns of arbitrary detention	16
Denied access to lawyers	17
Detained without warrant or evidence.....	18
4. Detained without charge or trial	20
Detention following forcible return	22
5. Long-term detentions in the Kurdistan region.....	24
6. Secret detentions and enforced disappearances	28
7. Torture and other ill-treatment.....	32
Deaths in custody	37
8. Impunity	41
9. Conclusions and recommendations	43
To the Iraqi authorities, including the KRG.....	43
To the US government.....	44
To all governments.....	45

Endnotes	46
APPENDIX 1	53
APPENDIX 2	55

1. INTRODUCTION

‘One of the major human rights challenges [in Iraq] remains the detention of thousands of persons without due process...’

Former UN Secretary General Kofi Annan¹

More than seven years after the US-led invasion of Iraq in March 2003, the human rights situation remains dire. Despite some security improvements in the last couple of years, violence rages on and scores of Iraqis are being killed every month as a result.²

Since 2003 armed groups opposed to the Iraqi government and the presence of US forces in the country have been responsible for gross human rights abuses amounting to war crimes and crimes against humanity. They have targeted civilians and attacked indiscriminately, killing thousands of civilians, mostly in suicide bomb attacks in busy public places. They have also kidnapped, tortured and killed thousands of others. US and Iraqi forces have also committed grave human rights violations. They have tortured or otherwise ill-treated many prisoners, some of whom have died as a result. They have killed civilians in raids on houses, at checkpoints and during armed clashes. They have destroyed the houses and other property of Iraqis.

The focus of this report is the unlawful detention, enforced disappearance and torture or other ill-treatment of thousands of people since 2003 by the US-led Multinational Force (MNF) in Iraq and the Iraqi authorities. Some have been held arbitrarily, without charge or trial, for seven years. Some remain held even though Iraqi courts or investigative judges have ordered their release for lack of evidence or adequate grounds to imprison them. Thousands are still in prison despite the 2008 Amnesty Law, which provides for the release of uncharged detainees after six or 12 months depending on the case.

Many of these detainees have been tortured or ill-treated in the initial period of their detention when they were held incommunicado. Most have had no access to legal representation and some have not had visits from relatives. In some cases, families spent months trying to find out where their detained relatives were held.

The vast majority of detainees are Sunni Arabs from central, western and north-western Iraq, held on suspicion of involvement in or supporting the Sunni armed groups that have led the fight against Iraqi government and US forces. However, many hundreds are Shi’a Muslims suspected of supporting the al-Mahdi Army – followers of the religious figure Muqtada al-Sadr

– who until recently engaged in armed activities against Iraqi and US forces, mainly in Baghdad and southern Iraq.

An estimated 30,000 untried detainees are currently being held by the Iraqi authorities, although the exact number is not known as the authorities do not disclose such information. Most are held in prisons and detention centres controlled by the ministries of justice, interior and defence in severely overcrowded facilities and otherwise poor detention conditions. As a result, many are reported to suffer from health problems, especially skin diseases.

Some detainees have been held in secret detention facilities and tortured. Recent revelations about a secret prison in Baghdad where detainees were tortured for several months have added to the sense of urgency that the Iraqi authorities must tackle the myriad human rights problems linked to their detention policies.

In the Kurdistan region of Iraq, in the north, which is run by the Kurdistan Regional Government (KRG) and where the security situation has generally been much better than in the rest of Iraq, similar abuses have been reported, albeit on a far smaller scale. Scores of people have been detained without charge or trial, some for up to 10 years. Some have been victims of enforced disappearance, and some have been tortured.

US forces, in preparation for their planned withdrawal from Iraq at the end of 2011, have since the beginning of 2009 been releasing detainees or transferring them to the custody of Iraqi authorities. They had held around 23,000 detainees in mid-2007, the majority without charge or trial. Most of these have now been released or transferred to Iraqi-run prisons. The US military in Iraq has also transferred control of prisons and detention centres to the Iraqi government. The last prison to be transferred from US to Iraqi control was Camp Cropper near Baghdad International Airport, which at the end of June 2010 held around 1,900 detainees. The transfer took place on 15 July 2010.

Amnesty International has frequently called on both the US and Iraqi authorities to release detainees held for long periods unless they are formally charged with a recognizably criminal offence and tried according to international standards of fair trial. The practice of arbitrary detention flouts both Iraqi legislation and international human rights law. Iraqi legislation provides for safeguards against arbitrary arrest and detention. According to the Criminal Procedure Code,³ criminal suspects must have their case reviewed by an examining magistrate within 24 hours of arrest.

Amnesty International is concerned about the fate of thousands of detainees who have already spent considerable time in prison without charge or trial and who may be at risk of torture and other ill-treatment in Iraqi custody. Some may well have already been tortured or otherwise ill-treated by US or Iraqi forces. Under international law, the USA is barred from transferring detainees to where they face torture or other serious human rights violations. The absolute prohibition on transferring detainees to a situation where they risk such abuses is part and parcel of the prohibition on torture and other ill-treatment itself. States' obligation not to torture or ill-treat detainees extends to the conditions to which detainees are released or transferred. A state cannot claim to be treating detainees humanely while knowingly handing them over to torturers, anymore than it can knowingly "release" detainees in a minefield and claim that their safety is no longer its responsibility.

This report is based on a wide range of research, including a fact-finding visit by Amnesty International delegates to the Kurdistan region of Iraq between 30 May and 10 June 2010. The delegates visited prisons under the control of the Asayish – the Kurdish security forces – in Erbil and Dohuk and talked to many detainees, as well as prison directors and senior Asayish officials. Some of the interviews with prisoners were held in private, while others were in the presence of guards. The delegates also spoke to many displaced Iraqis who had fled the violence, as well as human rights activists, women's groups, journalists and representatives of various UN bodies and non-governmental organizations, and raised individual cases and general concerns during a meeting with the Interior Minister.

Amnesty International did not visit other parts of Iraq because of the security situation. In relation to individual detainees held there, Amnesty International conducted many telephone interviews with former detainees and the relatives of people still in prison. It also monitored other sources of information, including the Iraqi media, government statements, reports of the Iraqi Human Rights Ministry and the International Committee of the Red Cross (ICRC), and publications of Iraqi organizations and others working on human rights-related issues inside Iraq.

Amnesty International is issuing this report at a crucial point for Iraq. At the time of writing, in mid-July 2010, US forces were finalizing the transfer of all but 200 detainees they held in Iraq to the custody of the Iraqi authorities amid widespread fears of relatives about what will happen to the detainees after transfer. It was also a period of growing fears by Iraqis linked to the March 2010 general elections which resulted in political uncertainty as protracted post-election negotiations between the main parties had yet to agree a new government. For the many thousands of detainees who have been stuck for months or years in poor detention conditions with no idea of how long they will be denied their liberty, the need for tough safeguards to protect them from torture and continuing arbitrary detention is of paramount importance.

The report ends by calling on the Iraqi authorities and the US government to take a range of steps to protect the rights of detainees in Iraq. These include:

- Ensure that all torture and other ill-treatment, enforced disappearances and other crimes involving human rights violations are ended immediately. Such crimes must be investigated promptly, independently, impartially and thoroughly, and all suspected perpetrators, including those with command responsibility, must be prosecuted in proceedings that meet international standards of fairness. Victims must be ensured reparations in accordance with international standards.
- Release all detainees held without charge unless they are to be charged with recognizably criminal offences and brought to trial promptly and in full accordance with international standards of fair trial and without the imposition of the death penalty.
- Ensure that detainees are not questioned without the presence of a lawyer and are given prompt access to legal counsel.
- Set up an effective judicial mechanism to enable all detainees to challenge the legal basis of their detention.

8 New order, same abuses
Unlawful detentions and torture in Iraq

- Ensure that all detainees are held only in officially recognized places of detention and that accurate information about their arrest and whereabouts is made immediately available to relatives, lawyers and others.

2. BACKGROUND

‘No one shall be subjected to arbitrary arrest or detention...’

Article 9 of the International Covenant on Civil and Political Rights

POLITICAL CONTEXT

On 19 March 2003, US-led forces invaded Iraq and within weeks had ended the brutal, 24-year rule of President Saddam Hussain. A Coalition Provisional Authority (CPA) was established as the interim authority in Iraq and on 1 May 2003 US diplomat Paul Bremer was appointed to head the CPA. On 23 May, CPA Order No. 2 disbanded the Iraqi army. UK military forces, who were part of the MNF, then assumed control of southern Iraq while US, and other foreign forces, took control of the rest of the country, except the semi autonomous Kurdistan region of Iraq. CPA Order No. 17, issued in June 2004, gave all US and other foreign forces and all foreign contractors operating in Iraq under the auspices of the MNF immunity from prosecution in Iraq for any offences they might commit there.

On 8 June 2004, UN Security Council Resolution 1546 declared that the occupation of Iraq would end on 30 June 2004, when the CPA would be replaced by an interim Iraqi government led by Ayad ‘Allawi but that the MNF would remain in Iraq until the end of 2005. Subsequently, the UN Security Council agreed annually to extend the presence of the MNF until the end of 2008.

On 30 January 2005 the first post-invasion parliamentary elections were held and a Shi’a coalition, the United Iraqi Alliance (UIA), obtained the majority and swept to power. Dr Ibrahim al-Ja’fari, who was the leader of the al-Da’wa Party, became the Prime Minister in March 2005. A new Iraqi Constitution was adopted by a majority following a referendum held on 15 October 2005. However, major players in the UIA, and others, including the US authorities, grew uneasy with the increasing failure of Ibrahim al-Ja’fari to deal with violence. On 22 May 2006 Nouri al-Maliki, who was deputy leader of al-Da’wa Party, replaced Ibrahim al-Ja’fari who stepped down following pressure from the UIA. In 2006, in the face of rising insurgency and attacks by armed groups, the US military authorities established a series of Awakening Councils (also known as Sons of Iraq), Sunni militia groups that were armed, trained and financed by the MNF to fight against al-Qa’ida in Iraq. These were reported to have had some success in combating al-Qa’ida but they were subsequently all dismantled, with some of their members being recruited into the Iraqi security forces. Others, however, remain jobless and some have been targeted for killing by armed groups because of their former involvement in the Awakening Councils.

There was a marked upsurge in violence and it took an increasingly sectarian form in 2006

and 2007 following a bomb attack on 22 February 2006 which partly destroyed the Shi'a Muslim al-'Askari shrine in Samarra. Thousands of people, both Sunni and Shi'a, were killed and thousands of others were forced to flee their homes by the sectarian attacks that raged throughout the rest of 2006 and 2007. Hundreds of thousands were internally displaced in Iraq, and hundreds of thousands more fled as refugees to neighbouring countries, in particular Syria and Jordan.

In November 2008 Iraq's parliament approved the Status of Forces Agreement (SOFA), a security pact between the Iraqi and US governments which then took effect at midnight on 31 December 2008, the moment when the UN mandate providing for the presence of US troops in Iraq expired.⁴ Under the SOFA, it was agreed that US forces would pull back from urban areas by the end of June 2009 and withdraw totally from Iraq by the end of 2011. It was agreed too that the US forces would either release or transfer to Iraqi custody all detainees being held by US forces, and would hand over to Iraqi control those prisons controlled by US forces. These included Camp Cropper, near Baghdad International Airport; Camp Taji, north of Baghdad; and Camp Bucca, near Basra, in southern Iraq.

It was agreed under the SOFA also that private contractors employed by the US Department of Defense would lose their immunity from prosecution in Iraq, but the agreement made no reference to other contractors, such as private military and security contractors employed by the US State Department, some of whom have been accused of committing serious human rights abuses. The MNF was renamed the United States Forces – Iraq (USF-I) on 1 January 2010.

As provided for in the SOFA, on 1 January 2009 the Iraqi government took control of the Green Zone, the 10km² heavily fortified government/diplomatic area of central Baghdad that had been, up to then, under US military control. In June 2010, Iraqi security forces took control of the security checkpoints leading to the Green Zone.

On 7 March 2010 new national elections were held amid escalating violence; no clear winner emerged. At the time of writing, four months later, negotiations to form a new government were continuing and the incumbent Prime Minister, Nouri al-Maliki, remained in office although his State of Law Coalition (SLC) had been narrowly beaten in the March elections. These had seen Ayad Allawi's al-'Iraqiya List top the poll, winning 91 of the 325 seats, against the 89 seats won by the SLC. The Iraqi National Alliance (INA), formed by two Shi'a religious parties, the Islamic Supreme Council of Iraq and the followers of Muqtada al-Sadr, won 70 seats, while three Kurdish lists together won 57 seats. The election results reflected the sectarian and ethnic differences between and within the Shi'a and Sunni Muslim communities and the Kurds, and the entrenchment of those divisions in recent years. Ayad Allawi received the backing mostly of Sunni Muslims, who comprise some 15-20 per cent of the population, while Shi'a Muslims, who make up around 60 per cent, divided their support largely between the SLC and the INA, and Kurds voted for their own parties.

In February 2009 US President Barak Obama stated that US combat forces would leave Iraq by 31 August 2010, though other non-combat forces are due to remain after that date in order to train the Iraqi security forces and carry out joint actions where required. However, all US troops are due to be withdrawn from Iraq by the end of 2011.

The violence and turmoil of the past seven years have devastated Iraq and its people. Hundreds of thousands have been killed – at least 151,000 between 2003 and 2006 alone, it has been estimated⁵ – but the true figure is not known. Basic services have collapsed or are barely functioning, including health and education. Water and electricity supplies are at best intermittent – 70 per cent of Iraqis do not have access to drinkable water and 80 per cent have no access to effective sanitation. In June 2010 thousands of Iraqis demonstrated in Basra and other southern cities over power shortages. Officially, unemployment stands at 50 per cent, but in reality it is much higher. About four million people have fled abroad or are internally displaced. Despite the country's oil wealth, millions of Iraqis are struggling with deepening poverty and growing malnutrition, with women suffering particularly badly. Corruption is endemic. All this poses huge challenges for whatever government is formed.

PROVISIONS FOR DETAINEES UNDER THE SOFA

The November 2008 security agreement requires US forces to release or transfer to Iraqi custody all detainees in US-run prisons in Iraq. However, nowhere in the agreement is there any mention of the human rights obligations of either state. The most relevant section is Article 4(3), which states: "It is the duty of the United States Forces to respect the laws, customs, and traditions of Iraq and applicable international law."

In relation to detainees, Article 22(4) states:

"Upon entry into force of this agreement, the United States shall provide to the Government of Iraq available information on all detainees who are being held by them. Competent Iraqi authorities shall issue arrest warrants for persons who are wanted by them. The United States Forces shall act in full and effective coordination with the Government of Iraq to turn over custody of such wanted detainees to Iraqi authorities pursuant to a valid Iraqi arrest warrant and shall release all the remaining detainees in a safe and orderly manner, unless otherwise requested by the Government of Iraq and in accordance with Article 4 of this Agreement."

Article 22(1) provides:

"No detention or arrest may be carried out by the United States Forces (except with respect to detention or arrest of members of the United States Forces and of the civilian component) except through an Iraqi decision issued in accordance with Iraqi law and pursuant to Article 4."

Article 22(2) stipulates:

"In the event the United States Forces detain or arrest persons as authorized by this Agreement or Iraqi law, such persons must be handed over to competent Iraqi authorities within 24 hours from the time of their detention or arrest."

The agreement does not provide any safeguards for prisoners who are transferred to Iraqi custody although the US government cannot but be well aware that torture and other ill-treatment have been and remain common in prisons and detention centres controlled by the Iraqi government and its security forces.

Implementation of the agreement started on 1 January 2009. It requires the USF-I

progressively to release detainees or transfer them to Iraqi government custody following a review of all detainees' cases by an Iraqi committee – the Detainees' Affairs Committee (DAC)⁶ – which was set up in early 2009 under Article 22 of the security agreement.⁷ Headed by the deputy head of the Public Prosecution, the Committee's other members included representatives of the ministries of justice, human rights, labour and social affairs, interior and defence.

Detainees held by the US were questioned by Iraqi Interior Ministry and Intelligence officers, while they remained in US custody but without any access to legal representation, following which the DAC determined whether the detainee should be recommended for release or issued with an arrest warrant or detention order and transferred to Iraqi custody. The USF-I assumed responsibility for arranging detainees' releases in coordination with an Iraqi committee established in each governorate for this purpose. These committees are headed by the general director of the police for the governorate and include a representative of the Human Rights Ministry.

Detainees suspected of terrorism-related offences in breach of anti-terrorism legislation introduced in 2005 are issued with arrest warrants or detention orders by the DAC using Iraqi civilian law – the 1971 Criminal Procedure Code and amendments. They are then transferred to the custody of Iraqi security agencies, including the Counter Terrorism Unit, National Security, and Intelligence, for questioning following which they may be formally charged and brought to trial or released.

By 16 March 2010, according to the Iraqi Supreme Judicial Council, the DAC had issued 6,291 arrest warrants and 703 detention orders against detainees previously held by US forces.⁸

When the SOFA took effect in 1 January 2009, US forces were holding some 15,500 detainees, mostly without charge or trial and at three prisons, Camp Bucca, Camp Cropper and Camp Taji. By February 2010, just over one year later, the USF-I had released some 8,500 of these detainees though the US authorities had declined to release some detainees for whom release orders had been issued by the Iraqi authorities, either the DAC or judicial authorities.

Kadhun Ridha al-Sarraj, for example, continued to be detained by US forces for six months after an Iraqi court ordered his release on 8 April 2009 on the grounds that there was "insufficient evidence" to warrant his continuing detention. A 29-year-old Iraqi national, he had been arrested on 15 September 2008 at Erbil International Airport in the Kurdistan region of Iraq, apparently because equipment in his possession relating to a student science project was mistaken for bomb-making technology, and then handed over to US forces who detained him without charge or trial in Camp Cropper. He was eventually released without charge on 7 October 2009.

Camp Bucca was closed down on 17 September 2009, its inmates having been either released or transferred to Iraqi government custody or moved to the two remaining prisons then still controlled by the USF-I, Camp Cropper and Camp Taji. Camp Taji was then handed over to Iraqi government control on 30 March 2010 with the last remaining US prison, Camp Cropper, which was also passed to Iraqi government control on 15 July 2010.⁹ Those held at

Camp Cropper include former senior members of the Ba'ath party under Saddam Hussain or former senior security, intelligence and military officers in his government. Some of them have been tried and convicted, or are currently facing trial, before the Supreme Iraqi Criminal Tribunal (SICT) for alleged crimes, including serious human rights violations, committed under Saddam Hussain's government. The SICT has so far sentenced 11 men to death, four of whom, including Saddam Hussain, have been executed.¹⁰

At the request of the Iraqi government, the USF-I has agreed to continue to detain around 200 individuals who are considered to pose a high security risk, following the transfer of Camp Cropper to Iraqi control on 15 July 2010,¹¹ but their identities had not been disclosed at the time of writing, in early July. They are expected to include some senior former Ba'ath party officials as well as al-Qa'ida leaders, though other former senior Ba'ath party officials were transferred from US to Iraqi custody a few days in advance of the hand over of Camp Cropper. They included Tariq 'Aziz, former deputy prime minister and minister of foreign affairs under Saddam Hussain, who was sentenced to a 15 year prison term by the SICT in March 2009 but still faces trial before the SICT on other charges. Aged 74, he was reported to be in poor health after suffering a stroke in early 2010.

IRAQ'S CURRENT LEGAL FRAMEWORK FOR DETENTIONS

Since early 2009, detainees transferred to Iraqi custody have been questioned by Iraqi security and intelligence officers under provisions contained in the 1971 Criminal Procedure Code. The same provisions apply in relation to the arrest of ordinary criminal suspects. Some of these provisions provide safeguards for detainees. For example, Article 123 provides:

"The examining magistrate or investigator must question the accused within 24 hours of his attendance, after proving his identity and informing him of the offence of which he is accused. His statements on this should be recorded, with a statement of evidence in his favour. The accused should be questioned again if necessary to establish the truth."

Amendments to this Article were made through Memorandum Number 3 issued by the CPA in June 2004.¹² These amendments, which are still in force, provide:

"(b) Before questioning the accused the examining magistrate must inform the accused that:

- he or she has the right to remain silent and no adverse inference may be drawn from the accused's decision to exercise that right;
- he or she has the right to be represented by an attorney, and if he or she is not able to afford representation, the Court will provide an attorney at no expense to the accused;

(c) The examining magistrate or investigator must determine if the accused desires to be represented by an attorney before questioning the accused. If the accused desires an attorney the examining magistrate or investigator shall not question the accused until he or she has retained an attorney or an attorney has been appointed by the Court."

Those arrested in connection with serious crimes can be held for long periods. Article 109 of the Criminal Procedure Code has been used to detain people without trial for several years, including in the Kurdistan region of Iraq.¹³

The vast majority of detainees are suspected of terrorism-related offences, including supporting and funding armed groups, on the basis of the Anti-Terrorism Law adopted in November 2005. This contains an overly broad definition of terrorism – so broad, in fact, that it can be used to muzzle peaceful opposition to the government¹⁴ – and increased the number of capital offences prescribing the death penalty for those who provoke, plan, finance or support others to commit terrorist acts, as well as those who actually commit such acts.

AMNESTY LAW

As part of its reconciliation process and its strategy to reduce attacks by armed groups and build wider political support, the Iraqi government promulgated an amnesty law to provide for the release of some detainees and prisoners. This came into effect on 27 February 2008.¹⁵ Its Article 1 provides that anyone detained or serving a prison sentence, Iraqis or other nationals, can be pardoned and released by decision of one of the judicial committees established for this purpose by the Iraqi Supreme Judicial Council. Article 2 sets out the exceptions – prisoners sentenced to death under the Iraqi Penal Code; those serving prison sentences for acts of terrorism resulting in death or permanent disability; those sentenced for crimes against humanity as set out in Article 1 of Law No.10, which established the SICT; and those sentenced for premeditated murder, kidnapping, rape, homosexual acts, adultery, incest, forging official documents, counterfeiting, smuggling artefacts, and offences under the Iraqi Military Criminal Code.

Under Article 5 of the Amnesty Law, a judicial committee comprising four judges and a representative of the Public Prosecution, is to be appointed in each governorate to implement the Amnesty Law. The committees are to release any person who has been detained for more than six months without being brought before an investigative judge and any person detained for more than one year who has not been referred to a specialized court.¹⁶

The Amnesty Law, from the time that it took effect, has applied to all detainees and sentenced prisoners in Iraq irrespective of whether they are held in Iraqi or in US custody. Indeed, Article 6 of the law requires the Iraqi authorities to take all necessary steps to transfer Iraqis detained in US-controlled facilities to Iraqi prisons to implement the provisions of this law.

In practice, the Amnesty Law appears to have been widely ignored and to have had little effect or impact on prisoner numbers. Some detainees have been released but thousands of others have continued to be detained, including some who judicial committees have said should be released. The reasons are manifold – the outdated and bureaucratic nature of the judicial system, including the lack of a computerized data recording system; the reluctance of judicial officials, especially at the governorate level, to free detainees on release orders that they fear may be forged; and the difficulties faced by judicial and other officials in travelling around the country because of the dangerous security situation.

INTERNATIONAL HUMAN RIGHTS STANDARDS

Iraq has long been a state party to the International Covenant on Civil and Political Rights (ICCPR) and in 2008 the government of Prime Minister Nouri al-Maliki ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.¹⁷

Under the ICCPR, Iraq is obliged to respect the right of every individual who is detained for an alleged offence, whatever its nature, to be brought promptly before a judge or other independent and impartial judicial officer. Article 9 stipulates that:

“No one shall be subjected to arbitrary arrest or detention... Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.”

In addition, Principle 4 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles) provides that:

“Any form of detention or imprisonment and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to the effective control of, a judicial or other authority.”

The Body of Principles further stipulates that “a judicial or other authority” means:

“A judicial or other authority under the law whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence.”

Principle 11 provides that:

“A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority.”

The Human Rights Council has repeatedly urged all states, including in the context of counter-terrorism measures, to:

“Respect and promote the right of anyone who is arrested or detained on a criminal charge to be brought promptly before a judge or other officer authorized by law to exercise judicial power and to be entitled to trial within a reasonable time or to release.”¹⁸

It has also called on them to:

“Respect and promote the right of anyone who is deprived of his/her liberty by arrest or detention to be entitled to bring proceedings before a court, in order that the court may decide without delay on the lawfulness of his/her detention and order his/her release if the detention is not lawful, in accordance with their international obligations.”¹⁹

3. PATTERNS OF ARBITRARY DETENTION

‘We know that Nasrallah has done nothing wrong. Someone must have informed on him to get money from American forces...’

Sister of detainee Nasrallah Mohammad Ibrahim²⁰

Since the US-led invasion of Iraq in March 2003, tens of thousands of people have been detained without charge or trial by the MNF, subsequently the USF-1, and without any effective means to challenge their detention before an independent judicial body. The June 2004 Memorandum Number 3 (Revised) of the CPA established a complicated review process for detainees held by the MNF.²¹ However, the procedures set out in this memorandum and others that were developed in practice failed to satisfy the guarantees for the rights of detained persons provided under international law, including human rights treaties to which both the USA and Iraq are party, notably the ICCPR. Human rights violated in the process have included the right to have access to legal counsel and the right to challenge the lawfulness of the detention before an independent tribunal.²²

US forces arrested suspects independently and without reference to the Iraqi authorities or Iraqi national law from the time of the invasion in March 2003 until the beginning of January 2009, when the SOFA came into force. Then, from 1 January 2009, as described above, US forces were required to obtain an arrest warrant from the Iraqi authorities before making any arrest and to transfer any person they arrested to the custody of the Iraqi authorities within 24 hours. Meanwhile, since late 2003, the newly formed Iraqi police and security forces, recruited and trained primarily by US and UK forces, have made arrests and detained people both independently, on their own, and in joint operations with US forces.

Corruption has been a significant factor affecting the pattern and process of detentions, with some people apparently being detained by Iraqi security forces not because they were suspected of committing offences or to pose a threat to security but essentially to extort money from them and their families. Amnesty International is aware of a number of cases in which security officials have asked detainees’ families to give them money – in US dollars – in return for either releasing their detained relatives or providing information about their whereabouts in detention.

Dr 'Adnan al-Mahdawi, for example, the 54-year-old Dean of the Faculty of Education at the University of Diyala in Ba'quba, north of Baghdad, was forced to stop in November 2009 while he was driving in Ba'quba with his 27-year-old nephew. He was then detained by three armed men wearing civilian clothes, believed to be members of the Ministry of Interior's Counter-Terrorism Unit. They arrested him without giving any reason or producing an arrest warrant, but let his nephew go. They then took Dr al-Mahdawi to an unknown place and following this one of his relatives is reported to have been telephoned by an officer of the Counter Terrorism Unit who asked for a large amount of money to secure Dr al-Mahdawi's release.

The family, however, said they could not pay and Dr al-Mahdawi has continued to be held. It has since emerged that he was first held at a detention facility within Baghdad's Green Zone, then moved to al-Rusafa Prison, also in the capital but outside the Green Zone. He is reported to have been accused of involvement in the murder of one of his university colleagues on the basis of an allegation made by the murder victim's wife, but it appears that the charges may be politically motivated. Dr al-Mahdawi's trial began in early 2010 but by May his alleged accuser, the widow of the murdered man, had failed to appear in court to give evidence.



Dr 'Adnan al-Mahdawi © private

DENIED ACCESS TO LAWYERS

Despite the safeguards contained in Article 127 of Iraq's Criminal Procedure Code (as amended), in practice detainees generally have not been able to access legal

representation, according to numerous testimonies obtained by Amnesty International from former detainees and detainees' families, and detainees held in the Kurdistan region of Iraq who were interviewed in prison by Amnesty International in June 2010.

Several factors appear to underlie the denial of this right, including the reluctance of some lawyers to represent and defend people suspected or accused of terrorism or other serious crimes, and fears that this could expose the lawyers themselves to reprisal or other attacks – an unsurprising concern in a context where a number of lawyers and also judges have been abducted and/or killed and others have been told that they will be killed if they continue to defend certain clients. Yet, under Article 14(3)(d) of the ICCPR, every person has the right, in the determination of any criminal charges against them, to “legal assistance of his own

choosing". The Iraqi government has an obligation, despite the difficulties, to protect this right, including by ensuring that lawyers are able to represent their clients free from threats, intimidation or violence.

In most cases, however, detainees are denied access to legal representation because they are held in detention facilities where contact with the outside world is denied to them.

Pointing to this, and the dangers it entails, the Iraqi Human Rights Ministry 2009 annual report noted that many detainees were being held in detention centres under the control of the ministries of Defence and Interior where they were routinely interrogated by investigating officers without the presence of lawyers, increasing the likelihood that they would be tortured.²³ The report refers to a letter that the Iraqi Bar Association sent to the Human Rights Ministry on 7 July 2009 urging the Ministry to intervene with the Defence and Interior ministries and have them lift the obstacles faced by lawyers seeking access to detainees held in facilities controlled by the two ministries.²⁴

In some cases, even when lawyers are allowed to see their clients they are not permitted to have a private and confidential meeting.

DETAINED WITHOUT WARRANT OR EVIDENCE

Nasrallah Mohammad Ibrahim, a 41-year-old father of six who worked for an electricity company in al-Siniya, a town in Salaheddin governorate, north of Baghdad, was detained from his workplace on 5 January 2008 by US soldiers who produced no arrest order or warrant issued by a judicial authority. He was initially held at a US military base in al-Siniya for about a week and then transferred to Camp Bucca, far from his home in al-Siniya, with the result that his family could not afford to visit him for about 18 months. After two years at Camp Bucca he was transferred to Camp Taji where he was still being detained without charge or trial in early July 2010. His sister told Amnesty International of the difficulties his family has been facing during his detention:

"My brother has six children, three girls and three boys, they are not doing well in school. In fact one girl is not attending school. They need clothes but we don't have the money to buy them clothes. When we visited Nasrallah in Bucca, the journey from Salaheddin to Bucca cost us nearly US\$150, add to that expenses for accommodation and food in Basra. We only visited him three times when he was there because we couldn't afford it. Our mother is not well and Nasrallah's detention is not helping her."

Many other people have been arrested without judicial warrants, mostly at night during raids on houses, by US or Iraqi security forces, or both. This practice contravenes Article 92 of the Iraqi Criminal Procedures which states clearly that no one may be lawfully arrested without an arrest order issued by a judge or a court.

Many detainees are reported to have been picked up on the basis of information provided to the Iraqi security forces by secret informants, some of whom may have correctly identified members of armed groups or others responsible for attacks but others of whom may have named people as suspects in order to obtain payment. Both the Iraqi security forces and US forces have sought to identify those who belong to or support armed groups using networks of secret informers, including paid informers. Article 47(2) of the Criminal Procedure Code

gives informants the right to request secrecy in serious crimes.²⁵

As violence soared in the years following March 2003, the use of informants became widespread leading to accusations that many people had been detained solely on the basis of false information provided by secret informants. This prompted the Council of Representatives (Iraq's parliament) to amend Article 243 of the Penal Code in 2009 to double to 10 years the maximum prison term that can be imposed on anyone convicted of falsely accusing an innocent person of committing a crime.²⁶ In addition, in June 2009 the Iraqi Supreme Judicial Council issued a directive to all investigating judges urging both to ensure that any information provided by secret informants is reliable and that it should not be considered sufficient on its own, in the absence of supporting evidence, to form the basis for issuing an arrest warrant or detention order.²⁷

Youssef 'Ali Jalil, a 25-year-old student from al-Ghazalia in Baghdad, is married with one daughter. In the early hours of 21 November 2008, according to his family, a group of more than 10 US soldiers went to his house, searched it and arrested him without producing a search or arrest warrant. He was taken to Camp Cropper, where he was held for a week, and then transferred to Camp Bucca. He remained there, most of the time, until mid-2009 when he was taken back to Camp Cropper. In September 2009, the US military handed Youssef 'Ali Jalil over to the Iraqi authorities, who detained him in Rusafa Prison before transferring him to al-'Adala Prison in al-Kadhimiya, Baghdad. His family appointed a lawyer to represent him, who has been able to visit him four times, but no members of his family have visited Youssef 'Ali Jalil since US forces transferred him to the custody of the Iraqi authorities in September 2009 for fear of harassment by Iraqi security officials and prison guards.²⁸ Since his transfer to al-'Adala Prison, Youssef 'Ali Jalil has alleged that he has been beaten there by prison guards. In early July 2010 he was still being held without charge or trial.

4. DETAINED WITHOUT CHARGE OR TRIAL

Qusay 'Abdel-Razaq Zabib remains in Camp Taji without charge and despite being recommended for release

Amnesty International knows of many cases of people who have been detained without charge or trial in Iraq for very long periods, often several years, though the identities of many others have remained undisclosed. These cases illustrate a deep-seated and continuing pattern of serious abuse in which human rights violations have been, and are, justified in the name of security. Yet, as is also evident, the security situation in Iraq remains precarious, increasingly so amid the political vacuum that has developed since the March 2010 elections and resurgent attacks by armed groups targeting government installations and public places. The policy of locking people up on mere suspicion and denying them justice has contributed to, not alleviated, this situation and has increased sectarian divisions and insecurity. It has also established a pattern which has become entrenched and may prove very difficult to break in which the authorities' commitment to human rights appears hollow and offers all too little advance from the years of brutal dictatorship under Saddam Hussain. Urgent action is needed to reverse this continuing slide and there are real fears for the safety of detainees who, having been held for years without trial by US forces, have now been handed over to an Iraqi state that is rent with internal divisions and whose record in relation to the treatment of prisoners is nothing less than abysmal.

Yasser Ahmed Dalo Hussain al-Qaissi, a 41-year-old senior police officer from al-Sha'ab district of Baghdad, married with four children, was held without charge or trial for more than three years. On 27 February 2007, while walking to work in al-'Adhamiya district of Baghdad, he was arrested by US soldiers. He was in possession of his police firearm, but he was not in uniform and was not carrying any documents to prove his identity; it was then common for police officers not to carry such documents and to wear civilian clothes to avoid being identified and targeted by armed groups. He was not told why he was being arrested. He was taken to Camp Cropper and, soon after, transferred to Camp Bucca, where he was held until it was closed by the US military in September 2009. Yasser al-Qaissi was then transferred to Camp Taji until late April 2010, then moved to al-Rusafa Prison in Baghdad. He was released uncharged on 6 May 2010 after more than three years in detention without charge or trial.²⁹

'Amer Mezhem Khaz'al, a farmer aged around 30 from Ishaqi village in Salaheddin governorate, married with one daughter, has been detained without charge or trial since 2005. US and Iraqi forces are reported to have burst into his house at night and to have taken him away without producing an arrest warrant. He was first held at a US military post in Balad, where he was interrogated for about a week, then moved to another US base in Ba'quba for a few days before he was taken to Camp Bucca. His relatives were able to visit him there once every two or three months until Camp Bucca was closed and he was transferred to Camp Taji, which US forces handed over to Iraqi government control in March 2010. He was still believed to be held there in June 2010. He does not have a lawyer and the health of his mother, a widow, is reported to have deteriorated because of her anxiety over his continuing detention.³⁰

Qusay 'Abdel-Razaq Zabib, a 36-year-old police officer in 'Uwaynat village near Tikrit, married with two children, was arrested on 17 July 2008 by US soldiers after he was summoned to attend a meeting at the police station where he worked. He was taken to a US military post in Tikrit and held there for 21 days, then transferred first to Camp Cropper for three weeks and then Camp Bucca, where he was held for 11 months. He was then moved to Camp Taji for a month, then back to Camp Cropper for six months, then to Camp Taji once more, apparently because he was suspected of collaborating with armed groups. On 3 March 2010, a few weeks before the Iraqi government assumed control of Camp Taji, the US military recommended that he be released but in early July he was still detained there, without charge or trial, and now in the custody of the Iraqi authorities. His family are able to visit him but two years after his arrest it remains unclear how long he will continue to be detained in the absence of any charges brought against him.³¹

Nabil Fiza' Sabbar, aged around 27 and married with three children, worked with his father in al-Siniya, a town in Salaheddin governorate. He was arrested by US soldiers on or around 9 October 2008 at his father's shop in al-Siniya. The soldiers took him to a US military base in Tikrit, where he was held for a few days. He was then transferred to Camp Cropper for about two months before being moved to Camp Bucca, where he was held for about a year. He was then moved to Camp Taji. The US military determined in early 2010 that he should be released but he was still detained without charge or trial at the prison, now in Iraqi hands, in early July 2010. He does not have a lawyer to represent him and his family were able to visit him for the first time only after he was moved to Camp Taji, due to the dangers they would have faced in making a road journey to Camp Bucca, near Basra.³²

Some detainees are alleged to have been abducted by armed groups fighting against the government and the US presence in Iraq, who apparently wished to forcibly recruit them, and then to have been detained by US forces and later the Iraqi authorities after US forces raided the bases used by the armed groups holding them.

'Abd Jassem Mohammad Ahmed al-Gartani, for example, a 38-year-old civil servant from al-Khalidya, married with one child, is reported to have been abducted on 21 July 2006 by armed men believed to be members of al-Qa'ida in Iraq, after previously receiving threats that he must join them or risk being killed. They took him to al-Thar Thar, where they controlled several houses, but these were attacked by US troops in October 2006, who took prisoner seven men, including 'Abd Jassem Mohammad Ahmed al-Gartani and other abductees. For a time, his family were unable to find out what had happened to him. Then they learnt that he

was at Camp Bucca, being held in a tent designated for non-Iraqi nationals – apparently because he had no identification with him when he was abducted and was mistaken by US forces for a foreign Arab national. After Camp Bucca was closed in September 2009 his family was told that he had been moved to the Iraqi-run al-Ma'qal Prison in Basra but the latest information is that he is being held in Camp Cropper. No charges are known to have been brought against him.

Mostafa Sabah Mahmoud Ahmad al-Qaissi, a 24-year-old student from al-Sha'ab district in Baghdad, was returning by taxi from Syria on 29 March 2007 after visiting an aunt. He was reportedly abducted in the village of al-Saqlawiya, near Falluja, by armed men believed to be members of al-Qa'ida in Iraq – the armed men are reported to have seized several young men travelling in taxis but to have allowed women, children and elderly people to continue their journeys. Mostafa al-Qaissi and others were taken to al-Thar Thar, an al-Qa'ida stronghold. Four days later US troops attacked the area, killing some of those there and taking prisoner others, including Mostafa al-Qaissi and other abductees. He he was taken to Camp Bucca, then moved to Camp Cropper. In early July 2010 he was believed to be still detained there without charge or trial.

In other cases, detainees have been transferred between US military and Kurdish security forces. **'Abdullah Zuhair Ibrahim al-'Ani**, for example, a 28-year-old married medical student with one child, was taken by US troops from his apartment in Tikrit's al-Dor neighbourhood on 10 July 2008. For the next nine months or so, his family did not know his whereabouts or what had happened to him. In April 2009, his mother was told by a former detainee that he had been held together with 'Abdullah al-'Ani' at al-Salam Camp, a detention facility run by the Patriotic Union of Kurdistan in the Kurdistan region of Iraq, a few miles south of Sulaimaniya. It appeared that 'Abdullah al-'Ani had been held by US forces in Tikrit for a few days and then handed over to the KRG, which administers three semi-autonomous predominantly Kurdish provinces in the north of Iraq. The reasons for this remain unclear and his family have not been able to visit him there. In all, there were said to be some 200 detainees held at al-Salam Camp. The Iraqi Interior Ministry has confirmed in writing to 'Abdullah al-'Ani's family that he is still detained following his arrest by US forces on 10 July 2008, but the USF-1 has yet to respond to Amnesty International's request for clarification as to the reason for his transfer to the Kurdish authorities security forces and his current legal status and whereabouts.

In some cases, the laws and practices used against suspected members of armed groups have also been used against outspoken critics, including members of the Sunni community who have criticized what they see as Shi'a domination of the government. For example, on 14 March 2010 **'Omar Ahmad Yousef**, a lecturer at Mosul University, was arrested from his home by Iraqi security forces, reportedly without an arrest warrant, and briefly detained. His arrest prompted protest demonstrations by students at Mosul University held on 15 March, calling for his release and the release of a number of students who had also been detained.³³

DETENTION FOLLOWING FORCIBLE RETURN

Four Iraqi nationals who had been held at the US detention facility at Guantánamo Bay, Cuba, were immediately detained by Iraqi security authorities when they returned to Iraq on 17 January 2009. The four men - **Hassan 'Abdul-Hadi 'Abdul-Said**, **'Abbas 'Abdel-Rumi 'Alawi al-Naely**, **Arkan Mohammad Fadhil al-Karim** and **'Ali 'Abdu-Motalib 'Uwayd Hassan al-**

Ta'i, had all been detained at Guantánamo for several years having previously been arrested in different places either by US forces or others from whom they were handed over to US forces.

Following their return to Iraq, a senior Interior Ministry official first denied any knowledge of their forcible return but then the Minister of Justice confirmed it and announced that all four Iraqis were being interrogated by security officials.³⁴ An investigative judge issued arrest warrants against them and on 19 February 2009, a special committee composed by the Ministry of Human Rights to deal with their cases visited them in a detention centre run by the Counter-Terrorism Unit in Baghdad. The four were apparently expected to benefit from the 2008 Amnesty Law but their release orders have still to be ratified by the prime minister's office and they continue to be detained. In April 2009 the government informed Amnesty International that the special committee had made four recommendations, including that the four detainees be allowed to appoint lawyers and be permitted access to medical care and contact with their families.³⁵ As of July 2010 the four people are said to be still detained without trial in the same detention facility.

Other long-term detainees include people who were arrested after they were forcibly returned to Iraq by the governments of neighbouring states.³⁶ Businessman **Ziya Kassem Khammam al-Hussain**, for example, was forcibly returned to Iraq from Saudi Arabia in early 2009,³⁷ since when he has been detained ever since without charge or trial. A resident of Kuwait, he was arrested at his home on 15 January 2007 and held for about two weeks by Kuwaiti security officials who, he alleges, tortured him. In early February 2007 he was handed over to Saudi Arabian security officials and flown to Riyadh, where he was detained without charge or trial for two years, reportedly in solitary confinement and permitted only one family visit, in September 2008. His family learnt that he had been forcibly returned to Iraq only when his sister travelled from Kuwait to Riyadh to see him in January 2009. It emerged later that he had asked the Saudi Arabian authorities not to return him to Iraq, where he feared he would be subject to further human rights violations, but allow him the opportunity to seek asylum in a third country. His forcible return may have been carried out as part of a security protocol between Iraq and its neighbours, including Saudi Arabia, which appears to lack any safeguards for the right to protection from torture and persecution.³⁸ Ziya Kassem Khammam al-Hussain remains held in Camp Cropper without charge or trial.

5. LONG-TERM DETENTIONS IN THE KURDISTAN REGION

Walid Yunis Ahmad has been detained without charge or trial for more than 10 years

Scores of people have been detained without charge or trial in the Kurdistan region of Iraq, some for years. Some have been tortured or otherwise ill-treated, and some have been victims of enforced disappearance, as the authorities refused for years to provide their families with information on their fate or whereabouts.

Until early 2008 the KRG held hundreds of detainees without charge or trial on suspicion of belonging to or sympathizing with Islamist groups, in particular Ansar al-Islam.³⁹ By September 2008 the majority of these had been “pardoned” and released. However, scores have remained in detention in prisons controlled by the Asayish, the KRG’s main security agency, in the three Kurdish governorates administered by the KRG – Erbil, Sulaimaniya and Dohuk.

Many of those detained in recent years were arrested because of their suspected membership of or support for banned organizations such as Ansar al-Islam as well as legal political parties, including the Kurdistan Islamic Movement and the Islamic Group.⁴⁰ Some were active members of these organizations at the time of their arrest; others had reportedly ceased their involvement, some a long time before their arrest. Still others were detained, weeks or even months after they had surrendered to the Patriotic Union of Kurdistan (PUK)’s Peshmerga armed forces, in 2003 following armed clashes.

Families of a number of long-term detainees have been campaigning for their release. In mid-2009 they staged sit-ins outside the Kurdistan parliament building in Erbil. They also marched towards the KRG Presidency in Salaheddin, but were prevented by the security forces from getting near the building.

A number of the detainees who were interviewed by Amnesty International delegates who visited the Kurdistan Region in June 2010 said that they were from Mosul, outside the KRG, and had been detained by the Asayish or Peshmerga either in Mosul or nearby villages located in areas bordering the KRG which are disputed between the KRG and Iraq’s federal government in Baghdad. Some of the detainees said they had been detained by US forces

and then handed over to the KRG.⁴¹

Amnesty International was told by the directors of the Asayish in Erbil and Dohuk that many of the detainees being held without trial have been arrested before the enactment of the KRG's anti-terrorism law in 2006⁴² and that they could not be prosecuted under this law for alleged involvement with Islamist armed groups as this would mean applying the law retroactively. Nor, they said, could such detainees be charged under the Iraqi Penal Code because it does not contain specific provisions criminalizing terrorism. In fact, however, the Penal Code sets out a range of criminal offences relating to the internal and external security of the state that could potentially be used if the KRG authorities wished genuinely to bring the detainees before the courts and allow them the opportunity to obtain their release.⁴³ In any case, the reasons cited by the directors of the Asayish, which the KRG's then prime minister acknowledged to Amnesty International in 2009 is itself not fully accountable under the law, do not justify arbitrary detention, which is prohibited under international human rights law.

Possibly the longest serving detainee in Iraq is **Walid Yunis Ahmad**. A Turkomen born in 1958, married and a father of three children, he has been detained without charge or trial for more than 10 years. He was arrested by men in civilian clothes, believed to be Asayish officials, in an Erbil street on 6 February 2000. He disappeared. His relatives began looking for him and sought information from the authorities but they denied any knowledge about him. It was only some three years later that his family learnt for certain that he had been detained and discovered his whereabouts, when they were notified by the ICRC that he was being held at the Erbil headquarters of the Asayish, where they were then able to visit him.



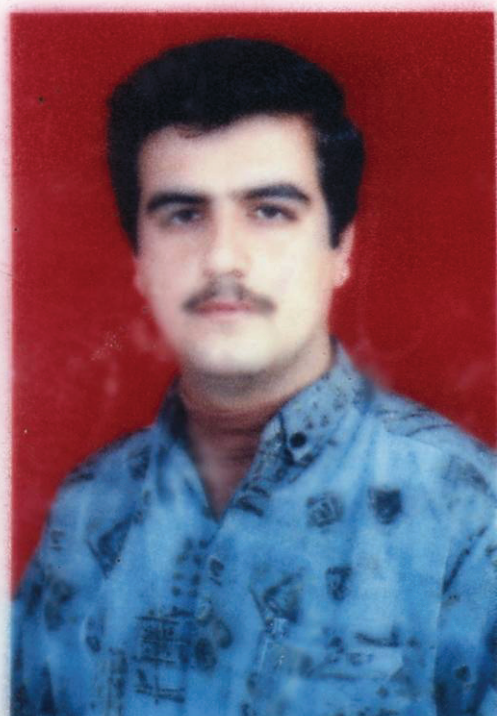
Walid Yunis Ahmad © private

Walid Yunis Ahmad, who worked for a local radio and TV station linked to the Islamic Movement in Kurdistan, is alleged to have been tortured following his arrest. He was

transferred to Shaqlawa Prison, then 'Aqra Prison and eventually back to Erbil Asayish Prison, where he was held in solitary confinement. When his family visited him on 23 November 2008 they found him in poor health following a 45-day hunger strike in protest against his continuing detention. He was moved to the Asayish Gishti⁴⁴ Prison in mid-2009. At the end of March 2010 he was questioned twice by an investigator at the Asayish Gishti building in Erbil and told that he was being accused of trying to revive Ansar al-Islam from prison and that he is considered a danger to the security of the Kurdistan region of Iraq. On 1 April 2010, Walid Yunis Ahmed was transferred to the Dohuk Asayish Prison and subsequently questioned about his past activities with a legal Islamist political party, the Kurdistan Islamic Union. Amnesty International has on several occasions raised the case of Walid Yunis Ahmad with the Kurdish authorities.⁴⁵ The Director of the Asayish in Erbil told Amnesty International delegates that Walid Yunis Ahmad was "too dangerous to be freed" but gave no details.

Hiwa 'Abdel-Rahman Rassoul, a 32-year-old married father of three from Soran in Erbil governorate, has been held without charge or trial since July 2005. A former member of the Islamic Movement in Iraqi Kurdistan (IMIK), he travelled to Iran in 2001. On his return to the Kurdistan region of Iraq three months later, he was reportedly arrested by the Asayish in the area of the KRG controlled by the PUK. His family were not informed of his arrest and had no news of him or his whereabouts for about 15 months. They then heard that he was being detained at Abu Ghraib Prison in Baghdad – the Asayish had handed him over to US forces. He was released uncharged from Abu Ghraib in May 2005 but on 8 July 2005 he was re-arrested in Mosul by Iraqi police and again disappeared, this time for three months. The family then received a letter from him through the ICRC in which he told them that he was being detained at the Asayish Prison in Erbil. He remains there, held without charge or trial.

Hassan 'Abdullah Sa'eed, aged about 35 and married with two children, and his brother, Qassem 'Abdullah Sa'eed, a 36-year-old casual worker, were arrested on 2 June 2003. Both had been members of Ansar al-Islam but decided to leave the group and then returned to Erbil, their home town, and told the Asayish there of their break from Ansar al-Islam. Initially, Asayish officials were welcoming and, after asking them some questions, allowed them to leave but asked them to return the following day. When they did so, they were arrested, held for several days in Erbil's Asayish Prison and then transferred to Shaqlawa Prison, where their family could visit them. Seven months later they were transferred to 'Aqra Prison but then they were separated and Hassan Sa'eed's whereabouts were unknown to his family for three years. They were unable to obtain any information about him



Hiwa 'Abdel-Rahman Rassoul © private

from the Asayish but were eventually informed by the ICRC that Hassan was at the Erbil Asayish Prison and that they could visit him. When they did so, they learnt that he had been held in a secret detention facility controlled by the Parastin – the intelligence arm of the Kurdistan Democratic Party (KDP) – in Salaheddin for the missing three years.⁴⁶ In July 2010 he was still in Erbil's Asayish Prison held without charge or trial and his health was reported to be deteriorating. He had no lawyer to represent him. His brother, Qassem Sa'eed, was released uncharged on 5 June 2008, just over five years after his arrest.

'Abdel-Salam Hassan Kanabi, aged about 33, married with five children, was arrested on 24 July 2005 from his workplace in a car showroom in the Baghdad district of al-'Amiriya. His family looked for him in Baghdad hospitals in case he had been injured somehow but could not find him. It was 14 months after his disappearance that they received the first information about him – a letter that he had sent to them through the ICRC. In this, he said he was being held in Erbil's Asayish Prison. He is reported to have been tortured; according to his family, marks caused by torture were still visible on his arms and legs when they first visited him.

Aso Jalal Khidr, aged about 31 and married, was arrested on 28 July 2005 in Baghdad as he was driving to work. He failed to stop at a checkpoint and was shot and injured. His family did not know about the incident or his subsequent detention until 20 months later, when they received a letter from him through the ICRC saying that he was being held at the Asayish Prison in Erbil. The Asayish had taken him to Erbil three days after the shooting, and for about two and a half years he was held in solitary confinement. He had also been taken to hospital in Erbil to have bullets removed from his body.

Nawzat Karim Isma'il, aged 35, married with three children, worked as an assistant nurse in a medical centre in Erbil. He was arrested on 3 January 2004 by men believed to be members of the Parastin. For about three years his family did not know where he was held. Then, they found out that he was in a secret detention facility controlled by the Parastin in Salaheddin, just outside Erbil. He was then transferred the Erbil Asayish Prison, where he is still held without charge or trial. He is reported to be ill. In 2008 he had a stroke and spent three days in hospital. His mother died in early December 2009; the family attribute her death partly to her concern over his continued detention.

6. SECRET DETENTIONS AND ENFORCED DISAPPEARANCES

‘We were taken to a place inside the old Muthanna Airport’

Karim

Many detainees disappeared after arrest, some of whom were held in secret detention centres. One of the harshest, a secret facility at the old Muthanna airport in central Baghdad, was exposed in April 2010. More than 400 detainees were being held there. The majority were Sunni Arabs detained in Mosul in late 2009 and transferred to the Muthanna facility, reportedly controlled by the office of Prime Minister Nouri al-Maliki. Most had been tortured. About 95 detainees were released in April 2010, some of whom described to Amnesty International their ordeal.

Karim,⁴⁷ a 55-year-old former university staff member in Mosul, married with five children, said that about 10 Iraqi security officials, all from Nineweh Operations, a police anti-terrorism unit, burst into his house in Mosul during the night of 30 September 2009 and seized him and his 26-year-old son, Hussain:⁴⁸

“They took the two of us to a stadium of the army in Mosul where underneath one of the stands was a secret detention facility: it was a small room and they put us in there. All in all we were 69 detainees in that room. Five or six detainees were interrogated at a time and we beaten up and were insulted. After that they took us in military vehicles, blindfolded and hands tied. We left in the morning and then arrived in Baghdad late in the afternoon. We arrived to the prison of the Central Military Intelligence, opposite al-Zawra’a Garden in al-Mansour. We were told that this was a temporary location and that interrogation would not take place there. In the end we stayed in this prison for 45 days, visits not allowed and we were not allowed to contact our families. Our treatment there was OK and we were visited by the ICRC.

“Then they started transferring us by batches to another prison. I was in the third and final batch. We were taken to a place inside the old Muthanna Airport. It was a long building with only one floor. They put us in small rooms; 25 detainees per room. The rooms did not have windows. The rooms were 5 x 4 metres...”

Karim was released on 13 April 2010, together with about 84 other detainees, one day after they had been transferred to al-Rusafa Prison. Throughout the time he spent in detention he did not have access to family visits or to a lawyer.

Following the exposure of the Muthanna secret prison, the Iraqi government announced on 23 April that it had closed it down and arrested three officers of the military unit who had run it.⁴⁹ The government denied that it was a secret prison. The Human Rights Ministry said that it had sent investigators to the facility after it “found out about it a few weeks ago and that the detainees there complained they were abused and not allowed to contact their families or seek legal assistance.”⁵⁰

In its 2009 report the Human Rights Ministry said it had been able to inspect most prisons and detention facilities, even those under the control of the Ministries of Defence and Interior. However, former detainees who had been held in the secret detention facility in the old Muthanna airport told Amnesty International that by the time that Human Rights Ministry officials gained access to the prison it was too late for many detainees, who had already been tortured and had signed “confessions.”

In its report the Human Rights Ministry repeated its previous calls to the government to ensure that all detention facilities controlled by the Ministries of the Interior and Defence should be handed over to the Ministry of Justice, as stipulated in CPA Memorandum Number 2, which remains in force⁵¹ but this had still not occurred by July 2010.

Since 2007, the ICRC has also been permitted access to certain prisons controlled by the Iraqi government. Since 2008 ICRC delegates have conducted visits to 25,000 detainees held in 35 places of detention run by the Iraqi Ministries of Justice, Defence and Interior,⁵² though security conditions have prevented ICRC visits to detention facilities operated by the Iraqi government in governorates such as Mosul, Salaheddin and Diyala.⁵³ Such access to prisons by the ICRC and the Ministry of Human Rights is greatly to be welcomed, as it may go some way towards reducing the scale and scope of abuse, but for some families it has added to their despair, as these prison visits have not resulted in their obtaining any news of relatives who they believe were detained but have since disappeared.

In a recent report, UN human rights experts emphasized that secret detention was irreconcilable with international human rights and humanitarian law, and violates “the right to liberty, the right to a fair trial, freedom from enforced disappearances and freedom from torture and other ill-treatment”.⁵⁴ They said: “It amounts to a manifold human rights violation that cannot be justified under any circumstances, including during states of emergency.”⁵⁵ They also stated: “Every instance of secret detention also amounts to a case of enforced disappearance”.⁵⁶

Other detainees disappeared for the first few months after they were detained because the authorities did not inform their families or disclose where they were being held. Some remain missing years after they were detained. **Anmar Kamal Kafi al-Alussi**, a 42-year-old car salesman and married father of two children from Haditha in western Iraq, was detained on 24 March 2005 outside his house in Baghdad’s al-Adhamiya district, where he and his family then lived. Armed men in plain clothes forced him into a car and drove away. The family found out that he had been taken to al-Kadhimiya prison (5th section) only because they had a friend from Haditha who was an officer there. The family sought the help of the US military but when US soldiers went to look for Anmar al-Alussi in al-Kadhimiya, the prison authorities hid him from them. According to the family, they were contacted by an officer at the prison who said that he could arrange for Anmar al-Alussi to be released if the family



Anmar Kamal Kafi
al-Alussi © private

would pay him 1 million US dollars, subsequently halving this demand when they said they could not afford that amount, and then reducing it still further. Through personal contacts, Anmar al-Alussi's family then approached Sa'dun al-Dulaymi, Iraq's former Minister of Defence, with the result that Anmar al-Alussi was transferred to a detention facility controlled by the Ministry of Defence in al-Adhamiya. The family then complained to the Minister of Defence about an officer in the Ministry who they considered responsible for their relative's arrest and subsequent transfer to al-Adhamiya, which led to an internal investigation and, apparently, the arrest of the officer in question, though he was later released. Anmar al-Alussi, meanwhile, was transferred to al-Jadiriya detention centre and was believed to be still there when US forces entered it in November 2005 following reports of torture (see Chapter 8) and removed all the detainees. Since then, Anmar al-Alussi's family have had no contact with or any word of him and his fate and whereabouts remain question.

There have also been regular reports of disappearances in the Kurdistan region of Iraq. Several people arrested in Kirkuk, parts of which are effectively controlled by the KRG's security forces, have disappeared. For example, **Ahmad 'Izz-Eddine Hamid** and **'Ali Jamal-Eddine Ahmad**, both aged 30 and workers in a market near the Khalil Agha building, were detained on 14 March 2005 while visiting a private house in Kirkuk's al-Wasat district. They were detained by men in plain clothes believed to be members of the Asayish. Their current whereabouts remain unknown, but both have reportedly been seen since 2005 by former detainees at various KRG-controlled detention centres in or near Sulaimaniya.

Mohammad Ahmed Jeddi al-Jenabi, a 47-year-old Iraqi Arab from Kirkuk and a former army officer, was arrested without an arrest warrant by US and Iraqi forces in the early hours of 15 February 2005 at his home in al-Wasat district in Kirkuk. As of June 2010, more than three years later, his family still did not know anything about his fate or whereabouts.



Rezgar Latif Sharif © private

At least 25 people, all former members of Ansar al-Islam, disappeared after their arrests in 2003 and 2004. They had turned themselves over to the PUK following an amnesty announced by the PUK's leader Jalal Talabani, now President of Iraq. For a few months they led a normal life in Sulaimaniya but were then arrested by the Asayish. Until August 2004, their families could visit them in the Gishti Asayish building in Sulaimaniya, but the families were then told that the detainees were no longer being held there. The families have contacted the ICRC, local authorities, members of parliament and others, but the whereabouts of the detainees remain unknown. Among them are **Luqman Salah Hamad Salim**, aged 30, who was arrested from his home in the district of Kani Kurda in Sulaimaniya, on 19 April 2004; **Rezgar Latif Sharif**, aged 37, arrested on 2 February 2003 at a checkpoint in the outskirts of Sulaimaniya; and **'Othman Salih Qader**, a 33-year-old teacher who was arrested on 14 September 2003 from his home in Sulaimaniya.

The practice of enforced disappearance is not new in the Kurdistan region of Iraq. During the civil war between the PUK and KDP in the 1990s, scores of people disappeared and the fate of many is still unknown.

Enforced disappearance is a serious violation of international human rights law. It is defined in Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance as:

“...the arrest, detention, abduction, or any other form of deprivation of liberty by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.”⁵⁷

In addition, enforced disappearances themselves constitute ill-treatment or torture because of the considerable suffering experienced by people detained without contact with the outside world, and without knowing when or even if they will ever be freed or allowed to see their families again.⁵⁸ Causing suffering to relatives of the disappeared – an inevitable and at times deliberate outcome of enforced disappearance – is also a human rights violation, and has been endured by countless Iraqi families over the years.⁵⁹

7. TORTURE AND OTHER ILL-TREATMENT

‘We were tortured in the same manner: suspension from bed upside-down, suffocation by putting plastic bags on our heads, beatings, use of electric shocks...’

An Iraqi torture survivor

Rape or the threat of rape. Beating with cables and hosepipes. Prolonged suspension by the limbs. Electric shocks to sensitive parts of the body. Breaking of limbs. Removal of toenails with pliers. Asphyxiation using a plastic bag over the head. Piercing the body with drills. Being forced to sit on sharp objects such as broken bottles. These are just some of the torture methods used against men, women and children by Iraqi security forces that have been described to Amnesty International in recent years. At particular risk of such abuses are detainees suspected of links with armed groups and also government critics. The Iraqi Human Rights Ministry documented 574 allegations of torture during 2009, including 326 against Ministry of Interior officers, 152 against Ministry of Defence officers and 56 against Peshmerga⁶⁰ but this almost certainly represents no more than the tip of a very large iceberg.

Torture and other ill-treatment usually take place following arrest when detainees are held incommunicado in police stations and detention facilities controlled by the ministries of interior and defence. During this initial period of detention, which can last up to several months, detainees usually have no access to lawyers and in many cases their families do not know where they are – conditions known commonly to facilitate – even invite – torture and other ill-treatment.

Torture is often used to make detainees confess. Sometimes confessions or statements have already been prepared by the interrogators, and detainees are tortured, blindfolded and made to sign the incriminating statements. These confessions are often used against them in court if they are charged and tried.

The Iraqi criminal justice system relies heavily on confessions as evidence of guilt.⁶¹ Many people have been convicted by the Central Criminal Court of Iraq (CCCI), including hundreds of people subsequently sentenced to death, on the basis of confessions extracted allegedly as a result of torture.⁶²

In practice, interrogations are mainly carried out by police and intelligence officers from the various security agencies, including the Criminal Investigation Directorate (CID), the Directorate of Counter-Terrorism and the Counter-Terrorism Unit, instead of investigating judges as stipulated in the law. This has increased the incidence of torture and other ill-treatment, and led the Human Rights Ministry to urge the government to ensure that all investigations are carried out by investigating judges.⁶³

One of the detention facilities from which there have been many reports of torture and ill-treatment is situated in the Green Zone and shared by the Counter-Terrorism Unit and Brigade 56, formerly the Baghdad Brigade that is under the authority of the Ministry of Defence and is responsible for the protection of the Green Zone. Detainees in these facilities are said to be denied visits by lawyers and family members. On 12 December 2009 a parliamentary committee, established to look into the treatment of detainees, visited this facility. It reported that some detainees in the custody of the Counter-Terrorism Unit told them that they had been tortured by interrogators to force them to confess. Most detainees stated that their families had not been informed about their whereabouts since their arrest. Some detainees were disabled, others suffered from various illnesses, and a few were elderly. Some still had marks of torture on their bodies. Most detainees complained that they had been arrested solely on the basis of false information provided by secret informants, and that they remained held even though the informants had failed to give evidence to investigating judges.

A dozen people associated with former member of parliament Mohammad al-Daini were arrested in February 2009 and held in the custody of the Counter-Terrorism Unit in the Green Zone, according to reports.⁶⁴ They comprised seven of his nephews and other relatives – **Riyad Ibrahim Jassem al-Daini, ‘Omar Obrahim Jassem al-Daini, Ala’ Khayr Allah al-Maliki, ‘Abbas Kazem Khamis, Rahman Ahmed Kareem, Wissam Ibrahim Jassem al-Daini, Farhakad Jamal Taha Yassine** – and five other associates – **‘Ali ‘Adel Taha Yassine, Shaker al-Bayati, Haytham Khaled Barbooty, Mahmoud Maksoud and Mohammad Hussain Ghabban**. All 12 were held incommunicado and without charge or trial. Their families were not told where they were being detained until months later. The UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, subsequently reported that all those detained in connection with Mohammad al-Daini were:

“... severely ill-treated, including by beating with cables, suspension from the ceiling with either the feet or hands upwards for up to two days, or electro-shocks. Some had black bags put over their heads and were suffocated for several minutes until the bodies became blue several times in a row. Also, some had plastic sticks introduced in the anus. They were also threatened with the rape of members of their families. They were forced to sign and fingerprint pre-prepared confessions, which were collected on 24 February 2009. As a result of the ill-treatment, several of them had visible injuries on several parts of their bodies. Many have lost considerable weight. Mr Riyad Ibrahim Jassem [al-Daini] suffers from liver failure as a result of the torture sustained.”⁶⁵

The Special Rapporteur added that he was in a position to name those allegedly responsible for torturing these detainees, but no action is known to have been taken against them by the Iraqi authorities. Despite their ordeal, all 12 detainees were believed to be still detained without charge or trial in early July 2010.

A Palestinian man living in Mosul told Amnesty International that four of his sons, **Ahmad Younis Khalil Ibrahim**, aged 29, **Mohammad**, aged 27, **Khalil**, aged 24, and **Mahmoud**, aged 21, were arrested in Mosul on 19 December 2009.⁶⁶ At around 1am, Iraqi security officials, together with US forces, stormed the family house, blindfolded the four, tied their hands behind their backs and took them away. They also searched the house. The security officials did not produce an arrest or search warrant, nor did they tell the family what they were looking for. For months the family did not know where the four men were held, and visited several police stations and security buildings in Mosul without success. In early May 2010 they learned that Mohammad Ibrahim and Mahmoud Ibrahim had just been transferred to al-Rusafa Prison in Baghdad from a detention facility controlled by the Baghdad Brigade in the Green Zone where they had been held since their arrest, as had Khalil Ibrahim some time earlier. All three were said to have been tortured and forced to sign confessions stating that they had been involved in murdering four people in Mosul. As of mid-July 2010, the fourth brother, Ahmed Ibrahim, was said to be still held at the Baghdad Brigade's detention facility.

Some of the 95 detainees released in April 2010 from the secret detention facility at the old Muthanna airport in central Baghdad described to Amnesty International the torture they had suffered there. **Karim** (see Chapter 6) said:

"Every day the guards took about 10 detainees for interrogation. All the detainees were tortured in the same way. They put plastic bags on our heads, they used electric shocks on different parts on our bodies, especially our private parts. We were also suspended from our feet: they use very tall metal beds and they insert our feet through the metal wires that make the bottom of the bed; they would leave us suspended for hours..."

"... the most horrible method is asphyxiation by plastic bag. You don't last for more than 5 or 10 seconds and you start running out of breath. Then you are basically forced to say I will confess and sign anything you want me to sign. The guards called the method 'oxygen'."

Ahmad,⁶⁷ a 50-year-old builder and father of four, was arrested in the early hours of 3 October 2009 at his house in Mosul. He told Amnesty International that six soldiers from a special force from Baghdad smashed the outside door of the house and stormed inside.⁶⁸ The six wore military uniforms and all were armed. They did not show Ahmad any arrest or search warrant, and gave no reason for the arrest. They blindfolded him and his son Mounir,⁶⁹ a 20-year-old college student, tied their hands behind the back and took them away. They were taken to a military camp in Mosul, where they stayed for a day, and then to Baghdad. There they were held in a detention facility for 10 days and then transferred again, this time to the secret prison at the old Muthanna airport, where they were tortured. Ahmad told Amnesty International:

"We were tortured in the same manner: suspension from bed upside-down, suffocation by putting plastic bags on our heads, beatings, use of electric shocks on various parts of the body. The suspension is for about 30 minutes, depending on the person if he can last. I was tortured three times. They used electric shocks on me twice. I was beaten several times. After that I confessed. I confessed to things I never knew what they were."

Many of those transferred to al-Rusafa Prison and who remain there are said to have signed incriminating statements under torture. **Ramze Shihab Ahmed**, a 68-year-old dual Iraqi-UK

national married with four children, travelled to Iraq on 9 November 2009 from the UK where he has been living as a refugee. He hoped to secure the release of his son 'Omar who had been arrested, together with about 380 people from Mosul, at the beginning of September 2009. Ramze Shihab Ahmed was arrested in a relative's house on 7 December 2009. None of his family knew where he was being held until 25 March 2010, when he managed to call second wife, Rabiha al-Qassab, from prison. He told her that he was in a prison in the old Muthanna airport and that she should alert the British authorities. The phone line then went dead. Rabiha al-Qassab contacted the appropriate authorities in the UK who alerted the UK Embassy in Baghdad. UK officials have been able to see Ramze Shihab Ahmed once since his transfer on about 13 April 2010 to al-Rusafa Prison.

Once in al-Rusafa, Ramze Shihab Ahmed described to his family the torture he had endured in the secret prison. Methods included suffocation with a plastic bag on his head, suspension by his feet, electric shocks to sensitive parts of his body, and threats that his wife living in Mosul would be brought to the prison and raped in front of him. As a result of the torture, he signed a statement confessing that he had links with al-Qa'ida in Iraq. His son 'Omar was also repeatedly tortured and was said to have signed a confession after his interrogators threatened that he would be forced to rape his father.



Ramze Shihab Ahmed © private

On 18 January 2010, the Iraqi Ministry of Defence organized a press conference, broadcast on television, and played video-recorded confessions by nine people arrested in Mosul, including 'Omar, who was portrayed as their leader. He was shown confessing to the killing of several Christians in Mosul and the detonation of a bomb in a village near Mosul.⁷⁰ According to the family, 'Omar's face showed signs of bruising and marks of beating. Both Ramze

Shihab Ahmed and 'Omar have been denied family visits, including after they were transferred to al-Rusafa Prison.

Torture and other ill-treatment have been common and widespread in prisons and detention facilities throughout Iraq for many years. For example, in May 2009, following a visit to the women's prison in al-Kadhimiya, Baghdad, a delegation from the Iraqi parliament's Human Rights Committee told Iraqi and international media reporters that two female prisoners testified that they had been raped repeatedly after their arrest and before they were transferred to the prison.⁷¹

In mid-June 2009, a member of the Iraqi parliament reported that more than 21 male detainees, including 11 held in al-Rusafa Prison and 10 in al-Diwaniya Prison in southern Iraq, had been sexually assaulted by members of the security forces. Detainees in both prisons went on hunger strike to protest against torture and other ill-treatment. A senior Interior Ministry official admitted that there had been "violations and excesses against the detainees held in the Ministry's prisons".⁷²

A human rights body affiliated to al-Diwaniya governorate accused Iraqi security forces of torturing detainees during interrogation in order to extract confessions. Ministry of Interior investigators reportedly identified bruising on 10 of the 170 prisoners in al-Diwaniya Prison, which they said may have been caused by torture or other ill-treatment. A disturbing video, reportedly taken by one of the guards and posted on the internet, shows a prisoner on the floor with his hands tied behind his back being whipped. He was also given electric shocks. After several shocks the prisoner stops reacting. The guards are heard saying: "he is done", "urinate on his head" and "shall we try to wake him up with more electricity?"

During a visit to Dohuk Asayish Prison in June 2010, detainees told Amnesty International delegates that they were tortured following their arrest in Mosul before they were transferred to the Kurdistan region. **'Ata'-Allah Ahmad Da'bul al-Shammeri**, for example, aged 39 and married with six children, was arrested on 19 April 2008 at his house in the Rabi'a district of Mosul. His arrest was in connection with a car bomb attack that targeted a Peshmerga convoy five days earlier that had killed 12 Peshmergas. He was held for five days in a military base in Rabi'a controlled by an Iraqi army unit, made up predominantly of Peshmerga from the KRG.



'Ata'-Allah Ahmad Da'bul al-Shammeri © private

He told Amnesty International that his torture included being suspended from a ventilator, beaten repeatedly with a cable, and given electric shocks to different parts of his body. He said that he told his interrogators that he would confess to anything and sign even a blank sheet of paper. He then signed a statement. He told Amnesty International that he was innocent and that he

believed he had been arrested because his house is near to where the car bomb incident took place. His trial started at the end of June 2010. International law prohibits the use of statements obtained by torture in any proceedings, except against a person accused of torture as evidence that the statement was made.⁷³

Amnesty International has published several reports documenting the widespread use of torture in Iraq and raised its concerns in written communications to the Iraqi authorities.⁷⁴ It has also submitted detailed recommendations to the Iraqi government. However, the authorities have failed to take decisive action, ignoring in the process safeguards in Iraq's own legislation. Article 37(c) of the Constitution clearly states:

"All forms of psychological and physical torture and inhumane treatment are prohibited. Any confession made under force, threat, or torture shall not be relied on, and the victim shall have the right to seek compensation for material and moral damages incurred in accordance with the law."

Further, Article 127 of the Criminal Procedure Code stipulates that a detainee must not be tortured, ill-treated, threatened or pressurized to force him to make a confession.⁷⁵

Under the ICCPR, freedom from torture and other ill-treatment must be protected even "in time of emergency which threatens the life of the nation."⁷⁶ This absolute prohibition is mirrored in the Geneva Conventions, which dictate that even during war, the direst of national emergencies, torture and



Marks of torture on 'Ata'-Allah Ahmad Da'bul al-Shammeri's foot © private

other ill-treatment must never be perpetrated.⁷⁷ Torture and other ill-treatment are also war crimes and crimes against humanity under the Rome Statute of the International Criminal Court (ICC).⁷⁸

DEATHS IN CUSTODY

Several detainees are known to have died in custody, apparently as a result of torture or other ill-treatment by interrogators and prison guards. In some cases, the circumstances surrounding deaths in custody remain unknown. Earlier in 2010, two detainees died in US custody at Camp Cropper, one on 27 March and the other on 12 April. Press releases issued by the USF-I said that autopsies were being conducted to determine the exact cause of death, but did not identify the two detainees. Amnesty International wrote to the US military in Iraq urging an independent investigation into the causes and circumstances of the deaths, but at the time of writing had not received a response.

Riyadh Mohammad Saleh al-'Uqaibi, aged 54, from al-'Arij village near Mosul and married with children, died in custody in February 2010, reportedly as a result of torture. A former member of the Iraqi Special Forces, he was arrested in late September 2009 and held in a detention facility in the Green Zone in Baghdad. He was then transferred to the secret detention facility in the old Muthanna airport. During interrogation, he is said to have been beaten so hard on the chest that his ribs were broken and his liver damaged. He died on 12 or 13 February as a result of internal bleeding. His body was handed over weeks later to the family with a death certificate stating that the cause of death was heart failure.

Kata' Mattar Khalawi, aged 54 and with no known political affiliation, was arrested around 25 May 2007 in connection with a kidnapping incident. He died in custody reportedly at the hands of members of the Criminal Investigation Directorate (CID) in the city of Samawa on 5 June 2007. His body was delivered to the morgue at Samawa's general hospital during the morning of 6 June by CID members, who told hospital staff that Kata' Mattar Khalawi had died as a result of a heart attack. However, members of a local human rights organization who visited the morgue soon after said that his body bore marks of injuries, including burn marks on his legs, suggesting that he had been tortured. On 9 June, the human rights activists visited al-Islah Prison in Samawa and interviewed a number of detainees, some of whom had been in CID custody between 3 and 7 June. These detainees told the activists that they had seen Kata' Mattar Khalawi being taken for interrogation on the night of 5 June and that he was not brought back to his prison cell afterwards. They said that in previous days he had been taken for interrogation several times before being returned to his cell with a blanket around his naked body and with injuries suggesting that he had been tortured. The same detainees testified that the use of torture in the CID building was regular and included suspension by the limbs followed by severe beatings as well as the use of electric shocks, especially to the genitals.

'Adnan 'Awad al-Jumaili died in the custody of Iraqi army in May 2007, reportedly as a result of torture. He and two other men were apprehended by Iraqi security forces on 17 May 2007 at the farm of a friend of 'Adnan 'Awad al-Jumaili near Falluja. They were reportedly suspected of involvement in armed attacks and were taken to an Iraqi military facility near Abu Ghraib, west of Baghdad, for interrogation. Four days later, on 21 May, a US military officer visiting the detention facility photographed 'Adnan 'Awad al-Jumaili and noted that he had "no visible physical injuries". Eight days later, another US military officer who saw him at the same place noted that he had bruising to his back and arms.

Two doctors examined him and found no broken bones or internal injury. On 30 May 2007, 'Adnan 'Awad al-Jumaili was reportedly found dead. Three Iraqi physicians who carried out an autopsy the next day found that he had extensive bruising to his body; internal bleeding in the brain, neck and abdomen; and tearing in the lungs.

The Ministry of Defence reportedly ordered an investigation, which concluded that an officer in charge of interrogating 'Adnan 'Awad al-Jumaili was the principal suspect of causing his death. Two guards stated that 'Adnan 'Awad al-Jumaili was in good physical condition on or about 27 May when he was taken to be interrogated, but that two hours later he emerged badly bruised and had to be carried, and was struck on the head with a fire extinguisher by a guard when he tried to stand up. The officer responsible for interrogating 'Adnan 'Awad al-Jumaili is reported to have alleged in a written statement on 9 September 2007 that 'Adnan

'Awad al-Jumaili's injuries were caused at the time of his arrest when he had tried to escape. This was contradicted by two people arrested at the same time and by two Iraqi soldiers who carried out the arrests. All stated that 'Adnan 'Awad al-Jumaili did not try to escape and suffered no injuries at the time of his arrest. On 2 October 2007 an investigative judge issued an arrest warrant against the suspected officer, who fled but was apprehended on 8 June 2008. He was held for three months until the same investigative judge ordered his release, apparently for lack of evidence.



Marks of torture on 'Adnan 'Awad al-Jumaili's body © private

'Adnan 'Awad al-Jumaili's body was not returned to his family and is said to have been taken to the city of Najaf for burial. Amnesty International has photographs of 'Adnan 'Awad al-Jumaili apparently taken on 29 May 2007, the day before his death, which show clearly that he had extensive bruising on his back. Photographs of 'Adnan 'Awad al-Jumaili's body, taken on the day of his death and also in the organization's possession, show that he had even more pronounced bruising on his back and marks around his wrists. At the time of writing, no one had been held to account for his death.



Marks of torture on 'Adnan 'Awad al-Jumaili's body © private

Some of the most recent deaths in custody happened on 12 May 2010, when seven detainees died while being transferred within Baghdad from Camp Taji to al-Rusafa Prison. Iraqi government officials stated that the cause of death was asphyxiation. The seven were among a group of nearly 100 detainees squeezed into two vans without any windows and which normally only carry about 20 people each. When one of the vans arrived in Baghdad, guards found that 22 detainees had collapsed. They were taken to hospital, but seven died. The government announced that an investigation had been set up. On 15 May the Human Rights Minister was reported as stating that those responsible for the deaths must be brought to justice.⁷⁹

Under international law and standards, all reasonable allegations of unlawful killings, torture and death in custody must be investigated. This obligation reflects both the duty of states to ensure reparations to victims of human rights violations, including the disclosure of the truth, and their general duty to protect human rights, including by holding perpetrators of violations to account and taking steps to ensure that such violations are not repeated.

8. IMPUNITY

The Iraqi authorities have on numerous occasions announced investigations into incidents of torture, deaths in custody and killings of civilians, especially by the Iraqi security forces. However, the outcomes of such investigations have never been made public. This has raised concerns that such investigations may not have been carried out, or that they were conducted or partly conducted but the findings were ignored. In all cases, those responsible for abuses have not been brought to justice. The failure to deal seriously and effectively with torture and other human rights violations by the Iraqi security forces has created a culture of impunity.

On 13 November 2005, US forces raided an Iraqi detention facility in al-Jadiriya district of Baghdad where 168 detainees, including juveniles, were found in appalling conditions. According to the UN Assistance Mission for Iraq (UNAMI), 101 of the 168 detainees had been physically abused and had wounds resulting from electric shocks, beatings and stabbings. Detainees reported that several fellow inmates had died or were killed in detention.⁸⁰ The Iraqi government at the time announced that it had ordered an investigation. Almost five years on, the findings of this investigation, if any was conducted, have yet to be made public and, as far as Amnesty International is aware, no one has been prosecuted in connection with the abuses.

The government also announced in June 2009 that it had set up an investigation into allegations of torture in two prisons, one in al-Diwaniya and the other in al-'Amara. An Interior Ministry official announced at the time that "there have been cases of torture against 10 prisoners accused of terrorism... They were not innocent, but that does not mean interrogators can torture them."⁸¹ As of May 2010, the outcome of the investigation is not known.

Also in June 2009, the government announced an investigation into the assassination of Harith al-'Obaidi, deputy chairman of the parliamentary Human Rights Committee. He was shot dead on 12 June 2009 by a young man while delivering a sermon in a Baghdad mosque. The killer then shot dead an aide and three bodyguards and fled before killing himself by falling on his own hand grenade.⁸² A day earlier, Harith al-'Obaidi had reportedly called on parliament to summon officials from the ministries of defence and interior to answer allegations of torture, including rape, in Iraqi prisons. The Iraqi government announced a few days later that its security forces had arrested an al-Qa'ida member suspected in connection with the killing. At the time of writing, the outcome of the investigation into the assassination was not known.

In July 2009 the government stated that it had set up an investigation into the killing of six Iranian refugees, members of the People's Mojahedeen Organization of Iran (PMOI),⁸³ in Camp Ashraf in Diyala governorate after the camp had been raided by Iraqi security forces provoking an international outcry. As of July 2010 it is not known to Amnesty International whether the investigation had been conducted. If it was conducted the findings have not been made public.

In the case of Kata' Mattar Khalawi, who died in the custody of the CID (see Chapter 6),

Amnesty International wrote on 22 June 2007 to the Iraqi Minister of Justice calling for an urgent, full and impartial investigation into the circumstances surrounding his death. On 22 February 2008, the Iraqi Interior Ministry informed Amnesty International that the medical autopsy report found that Kata' Mattar Khalawi "suffered from suffocation with a severe external hit on the head which resulted in internal bleeding and led to his death". It added that the Ministry had set up a commission to investigate the circumstances of the death and to bring to justice anybody responsible. On 5 September 2008 the Interior Ministry informed Amnesty International, via a letter sent through the London Embassy, that the commission had concluded its investigation and found that a lieutenant, a captain and a deputy sergeant, as well as three police officers had been found negligent and referred to "the investigation unit at the General Directorate for Internal Affairs in the Governorate of Baghdad to ensure the safety of the investigation". The letter added that "an arrest warrant has been implemented" against one of the accused, a lieutenant from the Directorate of Information and National Investigation at the Directorate of Police in the Governorate of al-Muthanna. The letter concluded that "Samawa Investigation Judge has decided to refer the case to the Committee of Consideration for Amnesty No. 19 of 2008." The letter did not give any further details about the investigation. On 23 September 2008, Amnesty International wrote to the Interior Minister seeking further clarification about the investigation and to uncover whether disciplinary or other sanctions had been taken against the police officers and other people identified as having acted negligently. Amnesty International also requested clarification regarding the decision of the Samawa investigative judge to refer the case to a committee under the Amnesty Law, and the outcome. To date no response has been received.

In some cases, it appears, prison guards and low-ranking security officers have been suspended and even arrested in relation to abuses committed, but then immediately granted an amnesty and released. This also applies to civil servants, teachers and others found guilty of corruption.⁸⁴

The record of little or no action in response to human rights violations continues to fuel the culture of impunity enjoyed for so long by security forces in Iraq. Urgent and meaningful steps need to be taken to ensure that Iraq can move towards a new era in which abuses of people's fundamental rights are not tolerated.

9. CONCLUSIONS AND RECOMMENDATIONS

The human rights situation in Iraq remains extremely serious. Amnesty International recognizes that the government faces deadly attacks by armed groups who are intent on causing maximum civilian casualties. It also recognizes that it is the government's duty to protect its population. However, the government can only do this while respecting its obligations under international human rights law and upholding the rule of law.

Even in the context of ongoing violence, there is no justification for keeping thousands of people in prisons and detention facilities without charge or trial, let alone keeping them like this for years. Many of the detainees have suffered torture and other ill-treatment by Iraqi security forces, and remain at risk of such abuses. Because of government complicity, tolerance or inaction in relation to such abuses, a culture of impunity prevails.

US forces, by transferring individuals to Iraqi detention facilities where they are clearly at risk of torture and other ill-treatment, may be complicit in these abuses and have breached their international obligations towards the prisoners.

To counter the impunity and to help protect human rights in Iraq, Amnesty International makes the following recommendations:

TO THE IRAQI AUTHORITIES, INCLUDING THE KRG

- Ensure that all torture and other ill-treatment, enforced disappearances and other crimes involving human rights violations are ended immediately. Such crimes must be investigated promptly, independently, impartially and thoroughly, and all suspected perpetrators, including those with command responsibility, must be prosecuted in proceedings that meet international standards of fairness. Victims must be ensured reparations in accordance with international standards.
- Release all detainees held without charge unless they are to be charged with recognizably criminal offences and brought to trial promptly and in full accordance with international standards of fair trial and without the imposition of the death penalty.
- Ensure that anyone arrested is promptly brought before a judge or other officer authorized by law to exercise judicial power to decide without delay on the lawfulness of the detention and order release if the detention is not lawful.
- Ensure that detainees are not questioned without the presence of a lawyer and are given prompt access to legal counsel.
- Ensure that detainees are allowed visits by members of their families promptly after arrest.

- Ensure that all detainees are informed at the time of arrest of the reason for their arrest and detention, and promptly informed of any charges against them.
- Ensure that all detainees are held only in officially recognized places of detention and that accurate information about their arrest and whereabouts is made immediately available to relatives, lawyers and others.
- Ensure that all detainees are immediately informed of their rights. These include the right to lodge complaints about their treatment and the right to have a lawyer present during questioning.
- Set up an effective judicial mechanism to enable all detainees to challenge the legal basis of their detention.
- Ensure that conditions of detention conform to international standards for the treatment of prisoners. The authorities responsible for detention should be separate from those in charge of interrogation. There should be regular, independent, unannounced and unrestricted visits of inspection to all places of detention by an independent and professional body.
- Publicly condemn the practices of torture and other ill-treatment and enforced disappearances, and declare unequivocally that such abuses will not be tolerated.
- Ensure that any detainee alleging that they have been tortured or otherwise ill-treated is promptly examined by a medical doctor.
- Ensure that victims of torture and other ill-treatment, enforced disappearance and arbitrary detention and their families obtain prompt reparation from the state including restitution, fair and adequate financial compensation and appropriate medical care and rehabilitation.
- Ensure that all safeguards against torture and other ill-treatment contained in the UN Convention against Torture are reflected in Iraqi legislation and implemented in practice.
- Ratify the Optional Protocol of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and set up without delay a national preventive mechanism in accordance with the provisions of that Protocol.
- Ratify the Rome Statute of the International Criminal Court.
- Ratify the second Additional Protocol to the Geneva Conventions, which governs non-international armed conflicts.

TO THE US GOVERNMENT

- Ensure that no one at risk of torture and other ill-treatment or other grave human rights violations is transferred to Iraqi custody.
- Ensure that those sentenced to death will not be transferred to the Iraqi authorities.

- Ensure that all detainees who have already been transferred to Iraqi custody are not tortured or otherwise ill-treated; that allegations of torture are investigated; and that victims are provided with reparations.
- Ensure that detainees have regular access to legal counsel and that their places of detention are inspected by the Iraqi Human Rights Ministry and the ICRC.

TO ALL GOVERNMENTS

- Never directly or indirectly return Iraqis to Iraq if they are at risk of torture or other ill-treatment.

ENDNOTES

¹ UN Doc. S/2005/373, UN Security Council, Report of the Secretary-General pursuant to paragraph 30 of resolution 1546 (2004), 7 June 2005, para. 72, cited in Amnesty International's report *Beyond Abu Ghraib: detention and torture in Iraq* (Index: MDE 14/001/2006), March 2006.

² This applied in the weeks running up to the 7 March 2010 parliamentary elections, when numerous suicide bomb and other attacks were carried out, and in the weeks that followed when there was a political vacuum.

³ Article 123 of Law No. 3 of 1971 – the Criminal Procedure Code.

⁴ Agreement Between the United States of America and the Republic of Iraq On the Withdrawal of United States Forces from Iraq and the Organization of Their Activities during Their Temporary Presence in Iraq, 17 November 2008. Available on: http://www.usf-iraq.com/images/CGs_Messages/security_agreement.pdf, accessed on 20 July 2010. Article 12(1) of the agreement provides that Iraq has the primary right to exercise jurisdiction over members of the US forces and their civilian component for any "grave premeditated felonies" that they commit, when such crimes are committed outside agreed facilities and outside "duty status". However, the nature of these felonies and the procedures to be followed are not clarified, and it is the US authorities who will determine when their soldiers or employees were acting under "duty status".

⁵ This estimate is by the World Health Organization (WHO) and the Iraqi health Ministry which conducted a survey of 10,860 households in 2007. For more information see the Guardian Newspaper of 19 March 2008 at <http://www.guardian.co.uk/world/2008/mar/19/iraq/print> accessed on 20 July 2010.

⁶ Lajnat shu'un al-muhtajazeen.

⁷ Republic of Iraq, Ministry of Human Rights, Department of Monitoring Prisons and Detention Centres, *Annual report on prison conditions and detention centres in Iraq for the year 2009*, p8. See <http://www.humanrights.gov.iq/PERSONAL/2%20ok.pdf> accessed on 20 July 2010.

⁸ The Iraqi Supreme Judicial Council, 17 March 2010. See <http://www.iraqja.iq/ifm.php?recordID=115> accessed on 20 July 2010.

⁹ Camp Cropper was renamed al-Karkh Prison by the Iraqi Ministry of Justice following the transfer.

¹⁰ Amnesty International is aware of the gravity of the human right violations committed during Saddam Hussein's rule. However, the organization opposes the death penalty in all circumstances, considering it to be a violation of the right to life and the ultimate cruel, inhuman and degrading punishment.

¹¹ *USA Today*, 15 March 2010. See <http://www.usatoday.com/cleanprint/?1278068854583> accessed on 20 July 2010.

¹² Coalition Provisional Authority Memorandum Number 3 (Revised), Criminal Procedures. CPA/MEM/27 June 2004/03. See http://www.cpa-iraq.org/regulations/20040627_CPAMEMO_3_Criminal_Procedures_Rev_.pdf accessed on 20 July 2010.

¹³ Article 109(a) provides: *"If the person arrested is accused of an offence punishable by a period of imprisonment exceeding 3 years or by imprisonment of up to life imprisonment, the judge may order that he be held for periods of no more than 15 days each or order his release on a pledge with or without bail from a guarantor, and that he attend when requested if the judge rules that release of the accused will not lead to his escape and will not prejudice the investigation."*

Paragraph (b) adds: *"If the person is accused of an offence punishable by death the period stipulated in sub-paragraph A may be extended for as long as necessary for the investigation to proceed until the examining magistrate or criminal court issues a decision on the case on completion of the preliminary or judicial investigation or the trial."*

Paragraph (c) states: *"The total period of detention should not exceed one quarter of the maximum permissible sentence for the offence with which the arrested person is charged and should not, in any case, exceed 6 months. If it is necessary to increase the period of detention to more than 6 months, the judge must submit the case to the criminal court to seek permission for an appropriate extension, which must not itself exceed one quarter of maximum permissible sentence, or he should order his release, with or without bail, under the terms of sub-paragraph B."*

Article 109 was slightly amended by CPA Order No. 31 on 10 September 2003. Section 6 of the Order states: *"Notwithstanding the bail provisions contained in Paragraph 109 of the Criminal Proceedings Law No. 23 of 1971 the reviewing judge may order a person suspected of committing an offence punishable by life imprisonment to be held without bail until trial."* See http://www.iraqcoalition.org/regulations/20030921_CPAORD31.pdf accessed on 20 July 2010.

¹⁴ The Anti-Terrorism Law defines "terrorism" as: *"any criminal act carried out by an individual or an organized group targeting an individual, a group of individuals, national or private institutions and causing damage to private or public properties with the aim of affecting the safety or security situation or national unity, or to terrorise and scare people or spread disturbance in order to achieve terrorist aims."*

¹⁵ For details of the law, see Appendix 1 – p55.

¹⁶ Article 3(b).

¹⁷ Iraqi Council of Representatives (Parliament) issued a law in 2008 ratifying the Convention. The Official Gazette published the law in June 2009. However, as of June 2010 the Iraqi government had not deposited the registration of the ratification at the secretariat of the UN.

¹⁸ Human Rights Council, Resolution 6/4 on Arbitrary Detention, 28 September 2007, para5(c).

¹⁹ Articles 9, 10 and 11 of the Universal Declaration of Human Rights set out the rights not to be subjected to arbitrary arrest or detention, to receive a fair trial and to be presumed innocent until proved guilty "according to law in a public trial" with "all the guarantees necessary" for defence. These rights are further elaborated in Articles 9 and 14 of the ICCPR.

²⁰ Phone interview by Amnesty International with a family member, April 2010.

²¹ Section 6, MNF, Security Internee Process, of the Memorandum states among other things:

- 1) *Any person who is detained by a national contingent of the MNF for imperative reasons of security in accordance with the mandate set out in UNSCR 1546 (hereinafter "security internee") shall, if he is held for a period longer than 72 hours, be entitled to have a review of the decision to intern him.*

- 2) *The review must take place with the least possible delay and in any case must be held no later than 7 days after the date of induction into an internment facility.*
- 3) *Further reviews of the continued detention of any security internee shall be conducted on a regular basis but in any case not later than six months from the date of induction into an internment facility.*

See http://www.cpa-iraq.org/regulations/20040627_CPAMEMO_3_Criminal_Procedures_Rev_.pdf accessed on 20 July 2010.

²² For a detailed analysis of these procedures see Amnesty International's report *Beyond Abu Ghraib: detention and torture in Iraq* (Index: MDE 14/001/2006), March 2006.

²³ The Iraqi Human Rights Ministry, 2009 Annual Report, p80.

²⁴ The Iraqi Human Rights Ministry, 2009 Annual Report, p81.

²⁵ Article 47(2) of the Criminal Procedure Code states: "*If the complaint is about offences against the internal or external security of the state, crimes of economic sabotage and other crimes punishable by death, life imprisonment or temporary imprisonment and the informant asks to remain anonymous, and not to be a witness, the judge has to register this with the notification in a special record prepared for this purpose, and conduct the investigation according to the rules, considering the information included in the notification without mentioning the informant's identity in the investigative paper.*"

²⁶ Law (No. 15) for 2009 Amending the Penal Code No. (111) of 1969. See <http://www.parliament.iq/dirrasd/law/2009/15.pdf> accessed on 20 July 2010. The amended version states that: "*Any person who falsely notifies a legal or administrative authority of an offence that he knows not to have occurred, who maliciously notifies any of those authorities that someone committed an offence while being aware that these information are false, who concocts material evidence to prove that someone committed an offence contrary to the truth or who is instrumental in bringing legal proceedings against another person while being aware of that person's innocence and anyone who notifies the competent authorities of certain matters regarding an offence while being aware that they are false shall be punishable by the maximum penalty imposed on the crime which the informant has accused that person of committing if the informant's false notification was proven but the penalty must not exceed 10 years.*"

²⁷ The Iraqi Ministry of Human Rights, 2009 Annual Report, p35.

²⁸ Phone interview by Amnesty International with a family member, April 2010 .

²⁹ Phone interviews by Amnesty International with a family member, April and July 2010.

³⁰ Phone Interview by Amnesty International with a family member, April 2010.

³¹ Phone interview by Amnesty International with a family member, April 2010.

³² Phone interview by Amnesty International with a family member, April 2010.

³³ Aswat al-'Iraq, 15 March 2010. See <http://ar.awwataliraq.info/wp-content/themes/aswat/print.php?p=210029> accessed on 20 July 2010.

³⁴ Agence France Presse, 17 February 2009.

³⁵ The letter from the government was received on 14 April 2009 and the recommendations were:

"1- informing detainees' next of kin, through the telephone numbers and addresses given, about the place of their detention and also ensuring that written letters by them reach their next of kin and vice

versa. 2- The detainees are seen by a psychiatrist and provided with the required medical treatment. 3- Permission to assign a defence lawyer to defend them and to be allowed to meet them. 4- Speeding up of their papers being brought to the relevant courts to finalize their cases.”

³⁶ Under international law, and as part of the absolute prohibition on torture and other ill-treatment, states must never expel, return or extradite a person to a country where they risk torture or other ill-treatment – the principle of *non-refoulement*. This is a rule of customary international law applicable to all states.

³⁷ The case of Ziya Kassem Khammam al-Hussain is highlighted in Amnesty International's report *Saudi Arabia: Assaulting human rights in the name of counter-terrorism* (Index: MDE 23/009/2009), p48.

³⁸ This security co-operation protocol was agreed between Saudi Arabia, Iraq, Iran, Kuwait, Bahrain, Syria, Turkey, Jordan and Egypt on 18 September 2006 in Jeddah. The Iraqi and Saudi Arabian governments were supposed to have a bilateral agreement to exchange prisoners and detainees, but as of June 2010 the two parties had not finalized such an agreement.

³⁹ Ansar al-Islam is an armed group, formerly based mainly around Halabja. It has been fighting against the Kurdish authorities in the Kurdistan region, and against the Iraqi government and US forces outside the Kurdistan region. It has carried out numerous armed and suicide attacks and committed gross human rights abuses, including kidnapping, torture and killing of civilians, as well as killing members of security forces after capture.

⁴⁰ Al-Jama'a al-Islamiya. This is a recognized political opposition party and has had members in both the Kurdistan Parliament and the Iraqi Council of Representatives (parliament) in Baghdad. Despite this, dozens of its members have been targeted for arrest and detention. Most have now been released following a steady rapprochement between the leadership of al-Jama'a al-Islamiya and both the KDP and PUK.

⁴¹ Iraqi Arab politicians from Mosul have been urging the KRG to transfer these detainees to Mosul to face trial there since they are said to have committed criminal activities in or around Mosul. Both parties are said to be close to reaching an agreement.

⁴² Law No. 23 of 2006, Combating Terrorism in the Kurdistan Region of Iraq.

⁴³ On 27 September 2003, the then Kurdistan National Assembly issued Law No. 21 amending Article 156 of the Iraqi Penal Code. The amended Article provides that anyone undermining the security and stability of the Kurdistan region can face up to life imprisonment. See <http://www.perleman.org/files/articles/170208074807.pdf> accessed on 20 July 2010.

⁴⁴ In Kurdish *Asayish* means security or security directorate. *Asayish Gishtî* means general security directorate.

⁴⁵ Amnesty International highlighted the case of Walid Yunis Ahmed in a letter sent on 9 December 2008 to the then former Prime Minister of the KRG, Nechriwan Barzani. This case was also described in Amnesty International's report *Hope and Fear: Human rights in the Kurdistan region of Iraq* (Index: MDE 14/006/2009), April 2009.

⁴⁶ The head of Parastin is Masrur Barzani, son of the KRG President Mas'ud Barzani.

⁴⁷ Name changed to protect the identity of the victim.

⁴⁸ Phone interview, April 2010.

⁴⁹ Reuters, 23 April 2010.

⁵⁰ Reuters, 23 April 2010.

⁵¹ Section 1 of the Memorandum states in paragraph 1 that "This Memorandum prescribes standards to be applied in the Iraqi prison system, under the authority of the Ministry of Justice." Coalition Provisional Authority Memorandum Number 2, Management of Detention and Prison facilities. See http://www.iraqcoalition.org/regulations/20030608_CPAMEMO_2_Management_of_Detention_and_Prison_Facilities.pdf accessed on 20 July 2010.

⁵² ICRC, Iraq: helping detainees and their families, 28-06-2010. See <http://www.icrc.org/Web/eng/siteeng0.nsf/htmlall/iraq-interview-280610?OpenDcu> accessed on 20 July 2010.

⁵³ Ibid

⁵⁴ Human Rights Council, *Joint Study on Global Practices in relation to Secret Detention in the Context of Countering Terrorism*, UN Doc. A/HRC/13/42, 19 February 2010, paras 18-35.

⁵⁵ Human Rights Council, *Joint Study on Global Practices in relation to Secret Detention in the Context of Countering Terrorism*, UN Doc. A/HRC/13/42, 19 February 2010, para 17.

⁵⁶ Human Rights Council, *Joint Study on Global Practices in relation to Secret Detention in the Context of Countering Terrorism*, UN Doc. A/HRC/13/42, 19 February 2010, para 28.

⁵⁷ International Convention for the Protection of All Persons from Enforced Disappearance, adopted by UN General Assembly Res. 61/177, 20 December 2006, Art. 2. This Convention is not yet in force, but the definition contains generally agreed elements as used in previous documents and jurisprudence. The widespread or systematic use of enforced disappearance constitutes a crime against humanity, as defined in applicable international law (in Article 5).

⁵⁸ See for instance Human Rights Committee, *El-Megreisi v. Libyan Arab Jamahiriya*, Communication No. 440/1990, UN Doc. CCPR/C/50/D/440/1990 (1994); Rafael *Mojica v. Dominican Republic*, Communication No. 449/1991, UN Doc. CCPR/C/51/D/449/1991 (1994).

⁵⁹ See for instance the Human Rights Committee in *El-Megreisi*, as above.

⁶⁰ Iraqi Ministry of Human Rights, 2009 Annual Report, p84.

⁶¹ DNA fingerprinting evidence is still new in Iraq. A Baghdad police forensics laboratory used to gather and catalogue evidence on armed groups was struck by a suicide bomber on 26 January 2010. The attack left 18 people killed and scores injured. *The Long War Journal*, "Suicide attack at Baghdad police forensics lab kills 18", 26 January 2010. See http://www.longwarjournal.org/archives/2010/01/suicide_attack_at_ba.php accessed on 20 July 2010.

⁶² The CCCI, established by the CPA in June 2003, is the main criminal court, with jurisdiction over crimes relating to terrorism, sectarian violence, organized crime and government corruption. The CCCI, which sits in Baghdad and other governorates, has handed down hundreds of death sentences. Trial proceedings before the court fall far short of international standards for fair trial.

⁶³ Iraqi Ministry of Human Rights, 2009 Annual Report, p81.

⁶⁴ Mohammad al-Daini is a Sunni politician accused of involvement in a 2007 suicide attack on the Iraqi parliament and a number of other attacks. He refuted these allegations. On 25 February 2009, after the plane he was on was ordered to return to Iraq, he was reported to have disappeared. Months later he was reported to have been arrested in Malaysia, where he is still held.

⁶⁵ Human Right Council, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, Addendum: Communications to and from Governments, UN Doc.A/HRC/13/37/Add.1, 18 February 2010, para. 19. See http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-37-Add1_EFS.pdf accessed on 20 July 2010.

⁶⁶ Phone interview from London, May 2010.

⁶⁷ Name changed to protect the identity of the victim.

⁶⁸ Phone interview from London, April 2010.

⁶⁹ Name withheld to protect identity of the victim.

⁷⁰ *Al-Sharq al-Awsat* newspaper, London, 19 January 2010.

⁷¹ Al-Sharqiya satellite television, 11 May 2009.

⁷² *Al-Hayat* newspaper, 17 June 2009.

⁷³ See for instance Human Rights Committee, General Comment 20, Article 7 (Forty-fourth session, 1992), UN Doc. HRI/GEN/1/Rev.1 at 30, para 12.

⁷⁴ See for example, *Beyond Abu Ghraib: detention and torture in Iraq* (Index: MDE 14/001/2006), March 2006; *Carnage and despair: Iraq five years on* (Index: MDE 14/001/2008), March 2008; *Hope and Fear: Human rights in the Kurdistan region of Iraq* (Index: MDE 14/006/2009), April 2009.

⁷⁵ Article 127 states: “*The use of any illegal method to influence the accused and extract a confession is not permitted. Mistreatment, threats, injury, enticement, promises, psychological influence or use of drugs or intoxicants are considered illegal methods.*”

⁷⁶ Article 4.1.

⁷⁷ See for instance Article 17, 1949 Geneva Convention III relative to the Treatment of Prisoners of War; 1949 Geneva Convention IV relative to the Protection of Civilian Persons in Time of War, Adopted on 12 August 1949, entered into force 21 October 1950, Art 31. See also Articles 5, 27, 32 and 37.

⁷⁸ ICC Statue, Articles 7(1)(f) (torture) and 7(1)(k) (other inhumane acts – both as crimes against humanity), Article 8(1)(ii) (“Torture or inhuman treatment” as war crimes).

⁷⁹ Al-Sumaria News, 15 May 2010. See <http://www.alsumarianews.com/ar/2/6673/news-details-iraq%20security%20news.htm1> accessed on 20 July 2010.

⁸⁰ UNAMI, Human Rights Report, 1 July -31 August 2006, p17. See <http://www.uniraq.org/documents/HR%20Report%20July%20August%202006%20EN.pdf> accessed on 20 July 2010.

⁸¹ Agence France Presse, 7 June 2009.

⁸² *The New York Times*, “Sunni Lawmaker assassinated in Iraq”, 12 June 2009. See

<http://www.nytimes.com/2009/06/13/world/middleeast/13iraq.html> accessed on 20 July 2010.

⁸³ The PMOI is an Iranian opposition group and it has about 3400 members who have been living in Camp Ashraf since 1986. The camp had been under US military control from 2003 until June 2009. The Iraqi government has on numerous occasions made it clear that it wanted the group to leave Iraq.

⁸⁴ On 18 May 2010 the head of the Iraqi Commission of Integrity, Rahim al-'Akili, stated that more than 3,000 people accused of corruption were amnestied under the Amnesty Law 19 of 2008. See http://www.radiosawa.com/article_print.aspx?id=2266308 accessed on 20 July 2010.

APPENDIX 1

Law no 19 of 2008, Amnesty law

Article 1: All Iraqis sentenced and all those resident in Iraq who have been sentenced are fully pardoned from the remaining periods in their sentences, and should be freed by a decision from the committee which will be set up in accordance with article 5 of this law.

Article 2: Exemptions from article 1 of this law are as follows:

First: Those sentenced to death under the penal law of Iraq, law no 111 for 1969

Second: Those sentenced for the following crimes:

- a) the crimes set out in subsection 2 of article 1 of the law of the Supreme Iraqi Criminal Tribunal, law number 10 for 2005
- b) terrorism charges where killing or permanent maiming resulted
- c) crimes of premeditated murder
- d) crimes of wrongful (unintentional) murder (manslaughter) where the affected individuals have not given up their personal rights
- e) crimes of kidnapping of people
- f) crimes of theft where there are aggravating factors
- g) crimes of Embezzlement of state funds and intentionally sabotaging it
- h) crimes of rape and sodomy
- i) crimes of zina (sexual intercourse) with a close relative that can not be married to
- j) crimes of forgery of Iraqi and foreign currency and crimes of forgery of official documents
- k) crimes relating to drugs
- l) crimes of smuggling of antiquities
- m) crimes set out in the law for military penal law, law no 19 for 2007

Article 3

A: All the legal proceedings taken against the suspects in the crimes except for the crimes listed in section 2 of article 2 of this law, regardless of whether the cases are under interrogation or in the court must be completely stopped, and those held be released by a decision of the committee formed under article 5 of this law

B: The committee formed under article 5 of this law to release all those detained if have been detained for more than 6 months and have not been brought before an investigation judge or been detained for more than a year and not been referred to the relevant court

Article 4

If any of those pardoned under this law commits a crime listed in Article 2 of this law within 5 years of the date of pardon, he will serve the sentence that he was pardoned from and the criminal procedure will continue against him if he had been pardoned at the investigation and trial stages.

Article 5

First: One or more committees will be formed on the decision of the Head of the Supreme Judicial Council in every appeal area headed by judge, and three judges as members to take charge of executing the provisions of this law, the general prosecution will be represented in the committee by one of its members, called the Head of the General Prosecution.

Second: Those who come under the provisions of articles 1 and 3 of this law or their relatives may submit a request to determine if they are covered by the pardon to the committees formed under article 5 of this law, and the committees are obliged to look into the application/request.

Third: The committee formed under subsection A of this article will check the dossiers/files of those who come under this law and makes its decision on the basis of the law. Its decision is subject to appeal to the Appeal Court in the area as a court of cassation.

Article 6

The Iraqi government will take the necessary steps to transfer the detainees held in prisons under the control of the Multi-National Force to Iraqi prisons to implement the provisions of this law.

Article 7

This law will apply to crimes committed before/prior to the law coming into force

Article 8

The Supreme Judicial Council may bring provisions facilitate the implementation of this law

Article 9

This law to be published in the official gazette and will come into force from the date of its publication

The preamble for the law

This law is brought to enable Iraqis and those resident in Iraqi who have committed crimes to return and be part of community life, and to promote forgiveness and reform those who may have slipped by pardoning them, releasing them or suspending proceedings against them where the crimes are covered by this law, and Iraqis build their country.

APPENDIX 2

Amnesty International's 12-Point Programme for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by Agents of the State.

Torture and other cruel, inhuman or degrading treatment or punishment (other ill-treatment) are violations of human rights, condemned by the international community as an offence to human dignity and prohibited in all circumstances under international law. Yet they happen daily and across the globe. Immediate steps are needed to confront these abuses wherever they occur and to eradicate them. Amnesty International calls on all governments to implement the following 12-point programme and invites concerned individuals and organizations to ensure that they do so. Amnesty International believes that the implementation of these measures is a positive indication of a government's commitment to end torture and other ill-treatment and to work for their eradication worldwide.

1. Condemn torture and other ill-treatment

The highest authorities of every country should demonstrate their total opposition to torture and other ill-treatment. They should condemn these practices unreservedly whenever they occur. They should make clear to all members of the police, military and other security forces that torture and other ill-treatment will never be tolerated.

2. Ensure access to prisoners

Torture and other ill-treatment often take place while prisoners are held incommunicado – unable to contact people outside who could help them or find out what is happening to them.

The practice of incommunicado detention should be ended. Governments should ensure that all prisoners are brought before an independent judicial authority without delay after being taken into custody. Prisoners should have access to relatives, lawyers and doctors without delay and regularly thereafter.

3. No secret detention

In some countries torture and other ill-treatment take place in secret locations, often after the victims are made to “disappear”. Governments should ensure that prisoners are held only in officially recognized places of detention and that accurate information about their arrest and whereabouts is made available immediately to relatives, lawyers, the courts, and others with a legitimate interest, such as the International Committee of the Red Cross (ICRC). Effective judicial remedies should be available at all times to enable relatives and lawyers to find out immediately where a prisoner is held and under what authority, and to ensure the prisoner's safety.

4. Provide safeguards during detention and interrogation

All prisoners should be immediately informed of their rights. These include the right to lodge complaints about their treatment and to have a judge rule without delay on the lawfulness of their detention. Judges should investigate any evidence of torture or other ill-treatment and order release if the detention is unlawful. A lawyer should be present during interrogations. Governments should ensure that conditions of detention conform to international standards for the treatment of prisoners and take into account the needs of members of particularly vulnerable groups. The authorities responsible for detention should be separate from those in charge of interrogation. There should be regular, independent, unannounced and unrestricted visits of inspection to all places of detention.

5. Prohibit torture and other ill-treatment in law

Governments should adopt laws for the prohibition and prevention of torture and other ill-treatment incorporating the main elements of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) and other relevant international standards. All judicial and administrative corporal punishments should be abolished. The prohibition of torture and other ill-treatment and the essential safeguards for their prevention must not be suspended under any circumstances, including states of war or other public emergency.

6. Investigate

All complaints and reports of torture or other ill-treatment should be promptly, impartially and effectively investigated by a body independent of the alleged perpetrators. The scope, methods and findings of such investigations should be made public. Officials suspected of committing torture or other ill-treatment should be suspended from active duty during the investigation. Complainants, witnesses and others at risk should be protected from intimidation and reprisals.

7. Prosecute

Those responsible for torture or other ill-treatment should be brought to justice. This principle applies wherever those suspected of these crimes happen to be, whatever their nationality or position, regardless of where the crime was committed and the nationality of the victims, and no matter how much time has elapsed since the commission of the crime. Governments should exercise universal jurisdiction over those suspected of these crimes, extradite them, or surrender them to an international criminal court, and cooperate in such criminal proceedings. Trials should be fair. An order from a superior officer should never be accepted as a justification for torture or ill-treatment.

8. No use of statements extracted under torture or other ill-treatment

Governments should ensure that statements and other evidence obtained through torture or other ill-treatment may not be invoked in any proceedings, except against a person accused of torture or other ill-treatment.

9. Provide effective training

It should be made clear during the training of all officials involved in the custody, interrogation or medical care of prisoners that torture and other ill-treatment are criminal acts. Officials should be instructed that they have the right and duty to refuse to obey any order to torture or carry out other ill-treatment.

10. Provide reparation

Victims of torture or other ill-treatment and their dependants should be entitled to obtain prompt reparation from the state including restitution, fair and adequate financial compensation and appropriate medical care and rehabilitation.

11. Ratify international treaties

All governments should ratify without reservations international treaties containing safeguards against torture and other ill-treatment, including the International Covenant on Civil and Political Rights and its first Optional Protocol; and the UN Convention against Torture, with declarations providing for individual and inter-state complaints, and its Optional Protocol. Governments should comply with the recommendations of international bodies and experts on the prevention of torture and other ill-treatment.

12. Exercise international responsibility

Governments should use all available channels to intercede with the governments of countries where torture or other ill-treatment are reported. They should ensure that transfers of training and equipment for military, security or police use do not facilitate torture or other ill-treatment. Governments must not forcibly return or transfer a person to a country where he or she would be at risk of torture or other ill-treatment.

This 12-point programme sets out measures to prevent the torture and other ill-treatment of people who are in governmental custody or otherwise in the hands of agents of the state. It was first adopted by Amnesty International in 1984, revised in October 2000 and again in April 2005. Amnesty International holds governments to their international obligations to prevent and punish torture and other ill-treatment, whether committed by agents of the state or by other individuals. Amnesty International also opposes torture and other ill-treatment by armed political groups.



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AND DIGNITY FOR ALL AND SEEKS TO
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TO BUILD A BETTER WORLD

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NEW ORDER, SAME ABUSES

UNLAWFUL DETENTIONS AND TORTURE IN IRAQ

Tens of thousands of people have been detained in Iraq since the US-led invasion toppled President Saddam Hussain in March 2003. Thousands were detained by US-led forces; thousands more have been detained by Iraqi security forces in their efforts to contain an ongoing insurgency, sectarian violence and attacks by armed groups. The response to such opposition and violence, however, has been grossly abusive. Some detainees disappeared for months; others remain missing. Many have been tortured, including in secret detention. Most have never been charged, let alone tried. Some remain locked up even though courts have ordered their release.

In mid-July 2010, as US forces transferred all but 200 of the detainees they still held to Iraqi custody, at least 30,000 detainees were being held without charge in Iraq. Many were at risk of torture or other ill-treatment.

This report is being issued at a crucial time in Iraq. National elections in March 2010 failed to produce an outright winner, emphasizing the deepening divisions between Iraq's mix of religious and ethnic groups. The political vacuum has been marked by further attacks by armed groups and mounting fears about the future. Meanwhile, Iraq's people, despite the oil wealth beneath their feet, face a daily struggle to survive in the face of power and water shortages, unemployment, lawlessness and poverty.

Urgent action is needed to ensure that the many detainees whose rights have been so flagrantly abused are either released immediately or charged with recognizably criminal offences and given fair trials. Action is also urgently needed to ensure that the long-standing culture of impunity for human rights violations is ended so that Iraqis can look forward to a safer future.

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