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Iraq

The human rights situation in Iraq deteriorated significantly in 2005, with a continuing rise in the number of armed attacks by insurgent groups, including the deliberate targeting of civilians and violent attacks such as suicide bombings. The level of abductions of Iraqis, in many cases for ransom, has remained high, while those of foreign nationals has decreased – reflecting in part the departure of foreign personnel working with humanitarian agencies, media outlets and others as a result of deteriorating security conditions.

Counterinsurgency attacks by U.S.-led international and Iraqi forces further aggravated the human rights situation, resulting in the killing of civilians in violation of the laws of armed conflict. There was also continuing concern about the absence of basic precautions by the U.S. military to protect civilians, including at checkpoints, brought to the fore by the killing of an Italian intelligence officer in March 2005. The subsequent U.S. military investigation exonerated all U.S. military personnel involved in the shooting, but showed that the army had failed to implement lessons learned during two years of manning checkpoints.

Evidence of the torture and other mistreatment of detainees held in the custody of U.S. forces in 2003 and 2004 has continued to emerge in the wake of the Abu Ghraib revelations in April 2004. Some of the evidence is based on accounts by U.S. military personnel, who have described routine and severe beatings of detainees, including subjecting them to forced stress positions, sleep deprivation, extremes of hot and cold, denial of food and water, and the application of chemical substances to detainees' skin and eyes. The accounts show that abuses have resulted from civilian and military failures of leadership and confusion about interrogation standards and the application of the Geneva Conventions. They contradict claims by the Bush administration that detainee abuses by U.S. forces abroad have been infrequent, exceptional and unrelated to policy.

Efforts to boost economic reconstruction and the rebuilding of Iraq's devastated infrastructure continue to be hampered by general instability in the country and the level of violence caused by insurgency and counterinsurgency attacks. This is despite progress made in the political process, including the holding of general elections in January 2005, the convening of the Transitional National Assembly in March, the formation of the Iraqi Transitional Government in April and the holding of a referendum on a draft constitution in October.

The Governing Authority and the Political Process

Elections were held on January 30, 2005 for twenty government bodies, including a Transitional National Assembly. The U.N.-assisted elections took place amid conditions of extreme insecurity and political turmoil, limiting the ability of all eligible voters to participate. Following prolonged delays, the successor Transitional Government, headed by prime minister Ibrahim al-Ja'fari, was formed on April 28.

On October 15, a draft constitution was adopted by national referendum. According to official results, 63 per cent of eligible voters participated, with over 78 percent voting in favor. The drafting process was fraught with difficulties amid efforts to secure the participation of Sunni political groups that had boycotted the January elections and to achieve consensus on key issues including the role of religion and federalism. The constitution contained key fundamental principles and individual rights, but left many of them subject to implementing legislation. A mechanism was established for further review of the

constitution following parliamentary elections, scheduled for December 15, 2005.

Attacks against Civilians by Insurgent Groups

Insurgent groups perpetrated widespread attacks against civilians throughout 2005, claiming the lives of hundreds of Iraqis and other nationals. Among the groups responsible for these abuses are al-Qaeda in Iraq, Ansar al-Sunna and the Islamic Army in Iraq, which have all targeted civilians for abductions and executions. The first two groups have repeatedly boasted about massive car bombs and suicide bombs in mosques, markets, bus stations and other civilian areas.

These abuses took place in the context of the U.S.-led invasion of Iraq and the ensuing military occupation that resulted in tens of thousands of civilian deaths and sparked the emergence of insurgent groups. Chief among the justifications insurgent groups use is that the U.S. illegally invaded Iraq and killed thousands of Iraqi civilians since March 2003.

The victims of targeted assassination by insurgent groups include government officials, politicians, judges, journalists, humanitarian aid workers, doctors, professors and those deemed to be collaborating with the foreign forces in Iraq, including translators, cleaners and others who perform civilian jobs for the U.S.-led Multi-National Force in Iraq (MNF - I). Insurgents have directed suicide and car bomb attacks at Shi'a mosques, Christian churches and Kurdish political parties with the purpose of killing civilians. Claims that these communities are legitimate targets because they may support the foreign forces in Iraq have no basis in international law, which requires the protection of any civilian who is not actively participating in the hostilities.

Torture and Killings by Iraqi forces

The torture and ill-treatment of detainees in Iraqi custody remains a serious concern, with the level of reported incidents rising. The vast majority of allegations concern forces of the Iraqi Ministry of Interior, as well as members of the Iraqi armed forces under Ministry of Defense authority. Detainees in pre-trial detention on security-related offenses, in particular, are subjected to various forms of torture or ill-treatment, including routine beatings, sleep deprivation, electric shocks to sensitive parts of the body, prolonged suspension from the wrists with the hands tied behind the back, deprivation of food and water for prolonged periods, and severely overcrowded cells. Former detainees held by Ministry of Interior forces in connection with alleged terrorist offenses linked to insurgent activity report other forms of torture, including having weights attached to their testicles, or having a string tied tightly round their penis and then being forced to drink large amounts of water.

Iraqi government officials have publicly committed to investigating the abuse of detainees and to holding criminally responsible those found guilty of the torture of detainees and the killing of civilians. At this writing, neither the Ministry of Interior nor the Ministry of Defense had established an effective mechanism for the monitoring of abuses by law enforcement personnel or the armed forces, nor set up a system for bringing those accused of such offenses to justice. In addition to assistance provided by MNF-I personnel, other training programs through the European Union and NATO to train personnel from the Iraqi police, armed forces, the judiciary and penitentiary personnel were ongoing during 2005, but with little focus on issues related to monitoring and accountability.

Accountability for Past Crimes

The Statute of the Iraqi Special Tribunal, established in December 2003 to try members of the former Iraqi government for genocide, crimes against humanity and war crimes, was amended and adopted by Iraq's Transitional National Assembly in October 2005, one week before the first trial was scheduled to begin on October 19. The Assembly renamed the tribunal the "Supreme Iraqi Criminal Tribunal" (SICT).

Serious doubts remain about the capacity of the Tribunal, as constituted, to conduct fair trials that meet international human rights standards for the prosecution of the crimes in its Statute. Reliance on Iraqi criminal law, which does not adequately ensure protection of the rights of accused, could further undermine the legitimacy of the Tribunal. There remain inadequate protections against self-incrimination, an inappropriate standard of proof, and inadequate procedural and substantive measures to ensure an adequate defense, including the right to confront and examine witnesses. Defense counsel for some of the accused claim that their ability to mount an effective defense has been hampered by lack of adequate access to the accused and to the court's evidence against them. Additionally, prejudicial comments by senior public officials, the politicization of control of the Tribunal and the susceptibility of judges to dismissal seriously undermine the court's appearance of independence and impartiality. After the opening of the first SICT trial on October 19, two defense counsel were assassinated, highlighting the grave risks faced by all who participate in the trials. The defense counsel killings intensify concerns about the accused's right to a competent and effective defense.

As of October 2005, the MNF retained physical custody of over 90 "high value detainees", most of whom remained held at Camp Cropper near Baghdad International Airport, and include members of the former Iraqi government awaiting trial before the Iraqi Criminal Tribunal. U.S. forces began granting these detainees family visits starting in July 2005, in some cases more than two years after arresting them. It is unclear how many continue to be held without access to defense counsel.

Key International Actors

As of July 2005, the United States retained approximately 140,000 military personnel deployed in Iraq as part of the United Nations Security Council-authorized MNF-I. The mandate of the MNF-I, under Security Council resolution 1546, adopted in June 2004, was scheduled for review in December 2005. The United Kingdom remains the key military and political partner to the United States in the MNF-I, retaining approximately 8,300 troops in Iraq, deployed primarily in the south-eastern governorates. Other countries with a military presence in Iraq include Poland, Italy, Ukraine, Denmark, Romania and Japan, totaling some 12,700 troops.

In a report to the U.S. Secretary-General in September 2005, the United Nations Assistance Mission in Iraq (UNAMI) said the human rights situation in Iraq continued to give rise to serious concern. The report cited "ongoing insurgent attacks and acts of terrorism, including kidnapping and torture", as well as "continuing concern about military operations conducted by the Multinational Force in the north and north-west of Iraq, resulting in civilian deaths, injury and displacement from excessive or apparently indiscriminate use of force."

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