



IRAQ: A DECADE OF ABUSES

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1. INTRODUCTION

Ten years after the US-led invasion that toppled the brutal dictatorship of Saddam Hussein, Iraq remains mired in human rights abuses. Thousands of Iraqis are detained without trial or serving prison sentences imposed after unfair trials, torture remains rife and continues to be committed with impunity, and the new Iraq is one of the world's leading executioners. The government hanged 129 prisoners in 2012, while hundreds more languished on death row. Yet, when he launched the campaign of "shock and awe" in March 2003, that swept away Saddam Hussein's regime within just four weeks, then US President George W Bush justified the military intervention partly on human rights grounds, pointing to the many grave crimes committed under the Iraqi leader.¹ The decade since, however, as this report shows, has brought only limited change although tens of thousands of Iraqis' lives have been lost, mostly during the political and sectarian violence that succeeded the armed conflict and continues to this day. As the record shows, in the years when they held sway, the US-dominated coalition of occupying forces created their own legacies of human rights abuse, for which there is yet to be full accountability, and failed to implement new standards that fundamentally challenged the mould of repression set under Saddam Hussein. Today, assuredly, many Iraqis enjoy greater rights and freedom than existed under the ousted dictator but the margin of improvement is far less than it should be, and the country remains wracked by political, religious and other divisions and serious abuses of human rights.

The violence of the past decade has devastated Iraq and its people. By early 2013, the Iraq Body Count organization had recorded more than 110,000 violent civilian deaths, including at least 14,800 deaths it said were caused by the US-led Coalition Forces² (renamed the Multinational Force at the official end of the occupation on 30 June 2004 and, subsequently, United States Forces – Iraq on 1 January 2010 after the departure of all non-US forces).³ Many civilians have also been killed or injured by Iraqi forces acting alone, in joint operations by Iraqi and coalition forces, or by members of private military and security companies hired to guard and protect foreign officials and other foreign nationals employed or engaged in Iraq.

The greatest number of deaths and injuries of civilians, however, has resulted from the actions of armed groups opposed to the presence of foreign troops and to the Iraqi governments that have held office since the Coalition Provisional Authority (CPA) handed power back to Iraqi control at the end of June 2004. Armed militias affiliated to political parties have also been responsible for many killings. Today, armed groups opposed to the government continue to mount suicide and other bomb attacks, often targeting busy venues and locations such as marketplaces where civilians are present, or religious pilgrims, as well as members of the police and security forces. Violence by armed groups and political militias has also encompassed abductions and hostage-taking, political assassinations and forced displacement of people from their homes or the areas in which they reside. The internal armed conflict intensified and became increasingly sectarian following a bomb attack that targeted and largely destroyed the holy Shi'a Al-Askari shrine in Samarra in February 2006. The sectarian violence this sparked caused hundreds of thousands of Iraqis to become

internally displaced within their own country and hundreds of thousands more to flee as refugees to neighbouring states, particularly Syria and Jordan.



People inspect the aftermath of a car bomb attack that killed several people in Baghdad's Shi'a neighbourhood of Sadr City in mid-August 2012, the end of Ramadhan. The incident occurred in the context of a wave of bombings and armed attacks that caused the deaths of more than 100 people throughout the country. ©AP Photo/Karim Kadim

Amid this context of armed conflict, intense political and sectarian rivalry and widespread lethal violence, tens of thousands of Iraqis have been rounded up by the authorities; many of them have been detained for months or years without charge or trial in conditions that facilitate, even invite, torture and other cruel, inhuman or degrading treatment or punishment (other ill-treatment). When prisoners have been brought before the courts, international fair trial standards also have been frequently and systematically violated. Many defendants have alleged that police or other interrogators tortured and coerced them to make self-incriminating statements while holding them incommunicado in pre-trial detention, and have repudiated such "confessions" at trial. Courts, however, have frequently accepted such "confessions" as evidence despite their repudiation by defendants, and used them as a basis to deliver guilty verdicts. Much of Iraqi justice still functions according to the principle that "the confession is the master of evidence", underscoring the pervasive nature of the "confession culture" that dominates the approach of the police and security forces to obtaining information as a basis for prosecuting suspects before the courts. In many cases, as this report details below, courts have convicted defendants of terrorism or other serious crimes on the basis of confessions that defendants say were coerced from them under torture when they were detained without access to lawyers or any contact with the world outside their place of incarceration. They have also sentenced many such defendants to death. Since the

death penalty was reinstated in August 2004, at least 447 prisoners have been executed⁴, including many after courts convicted them under the Anti-Terrorism Law of 2005.

Affiliates of al-Qa'ida and other armed groups continue to carry out and claim responsibility for violent attacks causing many civilian casualties.⁵ In many other cases of attacks on civilians, where no group has claimed responsibility, it has been difficult or impossible to identify the perpetrators. Often, consequently, such attacks have been attributed to specific armed groups because they appear to follow a particular pattern of abusive attacks, but without clear evidence. Suicide and other bombings intended to cause large numbers of civilian as well as other casualties have been some of the most devastating attacks. Many are believed to have been perpetrated by armed groups who oppose, and seek to undermine public confidence in, the present government and its security forces by creating conditions which make it appear that they are incapable of governing the country and protecting the public. Armed groups also continue to attack the institutions of the state and those who maintain them, particularly the police and security forces and members of the judiciary and other officials.

Amnesty International recognizes the continuing grave threat that anti-government armed groups continue to pose to public security and order and the rule of law in Iraq. The organization condemns unreservedly, as it has done many times, the gross human rights abuses and violations of international humanitarian law that armed groups continue to commit, and it urges them to immediately desist.⁶ As well, Amnesty International fully recognizes the Iraqi authorities' duty and responsibility to apprehend and bring to justice members of armed groups and all other perpetrators of serious human rights abuses. However, when doing so, the Iraqi authorities – including both the executive power and the judiciary – must comply at all times with Iraq's obligations under international human rights law and respect and protect the human rights of those they suspect or accuse of committing crimes. Iraq is a state party to the International Covenant on Civil and Political Rights (ICCPR) and other human rights instruments, including the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), which it ratified in 2011. These treaties all impose obligations that the Iraqi government is bound to uphold even when confronting the serious violence that persists today and taking action against those suspected or accused of committing even the most heinous of crimes.

Since late 2012, tens of thousands of people, mostly members of the Sunni community, have taken to the streets to express their discontent with the government of Prime Minister Nuri al-Maliki. They accuse the Prime Minister, a Shi'a Muslim, of leading a government that discriminates against Sunnis. The demonstrations, in Anbar, Mosul and Salah al-Din, provinces that comprise Iraq's Sunni heartland, have continued to be held almost daily and generally peak on Fridays. The demonstrators' main demands are for greater respect for due process, the enactment of an amnesty law and a review of the country's anti-terrorism law, and an end to violations of the rights of male and female prisoners and detainees. They were supported by many civil society organizations from other provinces, including Baghdad.⁷ However, the authorities blocked protesters' attempts to extend their demonstrations to Baghdad.

Violations of the rights of detainees, particularly the use of torture and other ill-treatment to extract confessions, are not merely a consequence of sectarian tensions and conflict,

however. They are more deeply entrenched and widespread. In many cases reported to Amnesty International, both the perpetrators and the victims of such abuses were members of the same confessional group – as, for example, when several prisoners under sentence of death at the Fort Suse Prison near Suleimaniya told Amnesty International in February 2013 that they were Shi'a Muslims who had been tortured and coerced to provide confessions in separate cases by fellow Shi'a Muslims within the security forces in southern Iraq. Similarly, detainees from the Sunni Muslim community have told Amnesty International that they were tortured or ill-treated by Sunni members of the security forces.

Serious abuses of detainees' rights also continue to be reported in the Kurdistan Region, comprising three provinces in the north-east of Iraq. The Kurdistan Region has enjoyed semi-autonomous status since the early 1990s and continues to be administered by a coalition of two Kurdish political parties that form the Kurdistan Regional Government (KRG). In recent years, the Kurdistan Region has experienced far less violence than the rest of Iraq and while serious human rights violations continue to be committed, their scale and intensity are far less than those in other parts of Iraq.

This report focuses on violations of the human rights of detainees and prisoners, including torture and other ill-treatment, committed by Iraqi security forces and US-led coalition forces in the 10 years since the overthrow of Saddam Hussein. It cites many individual cases, some very recent, in which detainees are alleged to have been tortured or otherwise ill-treated, coerced into providing confessions that they later repudiated, convicted of serious crimes in trials that failed to meet international fair trial standards, often on the basis of their contested confessions, and sentenced to death.

Prior to writing this report, Amnesty International submitted many of these cases to the government of Iraq in a memorandum of mid-December 2012. In that, Amnesty International sought the government's response to the torture and other ill-treatment allegations cited and asked what steps the Iraqi authorities have taken to conduct thorough investigations into these and similar allegations, as international law requires, and to ensure that those responsible for torture and other serious human rights violations are brought to justice. As well, Amnesty International questioned and called for an end to practices such as the parading of detainees before press conferences and TV broadcasting of their “confessions” before they stand trial or before delivery of the trial verdict. These practices, detailed below, fundamentally undermine the presumption of innocence and the right of fair trial of the detainees concerned. That some of these detainees were subsequently convicted of capital crimes, sentenced to death and executed adds a peculiarly egregious and abhorrent dimension to their use. Amnesty International requested that the government respond in sufficient time for its comments to be reflected in this report. By late February 2013, however, Amnesty International had received neither an acknowledgement nor any substantive response from the Baghdad authorities.

The information contained in this report is based on research that Amnesty International has conducted throughout the past decade drawing on an extensive range of official, public and confidential sources within Iraq and outside the country. These include face to face and telephone interviews with victims of human rights abuses and their families, and reviews of court and other documents. Information was gathered also during periodic field missions that Amnesty International has undertaken to the Kurdistan Region. In September 2012, Amnesty

International representatives visited Baghdad and met and had discussions with officials of the Ministry of Human Rights and the Supreme Judicial Council, as well as non-governmental sources, including victims of human rights abuses and their families, lawyers, human rights activists, journalists and others. In February 2013, Amnesty International visited two prisons at Erbil and a third, Fort Suse Prison, near Suleimaniya in the Kurdistan Region, and was able to speak without the presence of prison staff to inmates. Almost all prisoners held at Fort Suse Prison had been convicted by criminal courts in central and southern Iraq.

Many individuals who have spoken to Amnesty International about what they have seen or experienced in Iraq agreed to do so only on condition of anonymity due to concern for their own safety and of those close to them. Some said they had declined to file formal complaints with the Iraqi authorities after being subjected to torture or other ill-treatment because they fear that this would place them or their families in renewed jeopardy and expose them to the possibility of re-detention, further torture or other ill-treatment. Amnesty International recognizes and appreciates the debt it owes to such individuals as well as to Iraq's determined community of human rights activists, and it pays tribute to them and to all who continue to work for an end to human rights abuses in Iraq.

The last section of this report includes recommendations addressed to the government of Iraq, concerning measures that it should take urgently to halt the serious human rights violations detailed below – detention without trial, torture and other ill-treatment, unfair trials, and the death penalty – and in order to implement reforms to prevent their repetition.

Other recommendations are addressed to the governments whose military forces participated in the 2003 invasion of Iraq and subsequently formed part of the occupying force, principally the USA and the UK, regarding measures needed to ensure full accountability for violations of human rights and international humanitarian law allegedly committed in Iraq by members of their armed forces.

2. TORTURE AND OTHER ILL-TREATMENT OF DETAINEES

“I wished for my death, that I could kill myself, because no one over there would stop what was going on”, Torture survivor Hussein Mutar, detained at Abu Ghraib Prison in 2003.

Torture and other ill-treatment of detainees has been a persistent feature of the human rights landscape in Iraq over many decades, Saddam Hussein's regime used torture systematically as part of its armoury for crushing all dissent and opposition to his ruling Ba'ath party. His secret police tortured detainees to extract information and “confessions”, to punish and to terrorize, and devised or employed an appalling array of methods of torture secure in the knowledge that they were free to do so with impunity.

In 2001, Amnesty International reported ⁸ that detainees had been blindfolded, stripped and suspended by their wrists or hung in contorted stress positions for hours at a time; subjected to electric shocks to the genitals, ears, tongue and fingers; beaten on the soles of their feet (falaqa), whipped and beaten with canes, hosepipes and metal rods; burnt with cigarettes or had their hands pierced by electric drills or had their toe or finger nails ripped out. Some had been sexually abused by having objects such as broken bottles forced into their anus or by other means; some had been forced to watch as interrogators tortured their relatives or had been threatened that their wives or mothers would be brought in and raped in front of them.

Unsurprisingly, there was a high incidence of deaths in detention while many who survived the torture sustained permanent physical or psychological injury. Torture became the norm and had a brutalizing effect on Iraqi society, and it created a “confession culture” at the heart of the criminal justice system that still prevails today, long after the demise of Saddam Hussein, and has at its centre a resort to and reliance upon torture that is perhaps the ousted dictator's most enduring legacy.

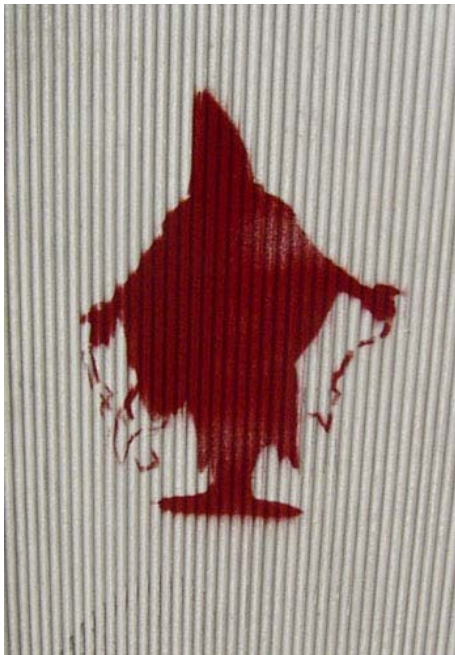
2.1 ABU GHRAIB AND THE PERIOD OF OCCUPATION, MARCH 2003-JUNE 2004

The first reports of abuse of detainees by US and other foreign troops emerged in the early days following the beginning of the occupation. By July 2003, Amnesty International had documented several cases of torture and other ill-treatment of detainees by Coalition Forces in Iraq⁹ and urged that they be promptly investigated and the outcome made public.

However, it took the broadcast on US television in late April 2004 of “trophy” and other photographs taken by US soldiers showing US guards torturing, humiliating and degrading Iraqi detainees at Abu Ghraib, a prison formerly notorious under Saddam Hussein, for the US administration to respond in a concerted way. In the photographs, groups of naked male detainees were shown being forced to adopt humiliating and sexually explicit positions, including by female US soldiers. One detainee, hooded and forced to stand on a box, had electric wires attached to his hands; others were seen cowering as US guards threatened

them with dogs. Other photographs showed US soldiers grinning and giving the thumbs up sign over the body of a deceased detainee.

The publication of the Abu Ghraib images caused an international scandal and led US Secretary of Defense Donald Rumsfeld to assure the US Congress that he would introduce “changes as needed to see that it doesn't happen again.”¹⁰ Ultimately, however, only a small number of mostly low ranking US military personnel were prosecuted for committing abuses against detainees at Abu Ghraib. (See section 6.2)



Graffiti stencil based on one of the photos taken by US soldiers in Abu Ghraib Prison showing a hooded detainee with electric wires attached to his hands. © Duncan

Former detainees who were interviewed by Amnesty International following their release from detention by US forces at Abu Ghraib described a regime of systematic abuse. They said guards had forced detainees to lie on the floor, often tightly handcuffed and hooded or blindfolded, and had repeatedly beaten them and subjected them to painful stress positions for long periods. Detainees had also been deprived of sleep, made to stand and remain still for hours at a time, and exposed to excessively loud music and bright lights to intimidate and disorient them. Women former detainees said they had been beaten, humiliated and threatened with rape, and held in prolonged solitary confinement.

In January 2005, a US military court martial in Texas heard the videotaped testimony of former Abu Ghraib detainee Hussein Mutar, whom US forces had tortured and abused when he was held at the prison in November 2003.¹¹ He identified himself as one of a number of naked male detainees pictured in a photograph taken by a US guard being forced to lie on top of one another in a heap. He said US guards had forced him to masturbate over fellow inmates, inducing in him a sense of shame and humiliation, adding: “I couldn't imagine it in the beginning that this could happen. But I wished for my death, that I could kill myself, because no one over there would stop what was going on”.¹²

British troops forming part of the Coalition Forces, who assumed control of Basra, Iraq's second city, and surrounding provinces, also quickly became involved in torturing and otherwise ill-treating detainees, subjecting them to hooding, repeated beatings, sleep deprivation and other brutal treatment in order to “soften them up” and make them compliant. In September 2003, British soldiers assaulted Baha Dawoud Salem al-Maliki (also known as Baha Mousa), 26, a hotel worker that they had detained, causing his death in custody. (See section 6.2)

2.2 THE END OF OCCUPATION TO THE DEPARTURE OF FOREIGN FORCES, JUNE 2004-DECEMBER 2011

Following the Abu Ghraib abuse revelations, the US authorities adopted new measures to improve safeguards against torture and other ill-treatment of detainees by their forces. However, incidents of detainee abuse by US troops continued to be reported virtually throughout the period of their operational presence in Iraq. In March 2005, for example, reports emerged that US troops had used stun guns to inflict electric shocks on detainees in their custody.¹³ One informant told Amnesty International that he had seen a US guard at Camp Bucca use a taser against two detainees, shocking one on an arm and the other on his stomach while they were being transported by vehicle.¹⁴

The publication of thousands of classified US army files by the organization Wikileaks in 2010 exposed other previously unreported incidents of detainee abuse by US and other coalition forces; the Bureau for Investigative Journalism which examined many of these files reported "the secret logs reveal that between 2005 and the end of 2009 at least 303 claims of alleged abuse by coalition forces in Iraq were reported to American forces"¹⁵, including 20 cases where allegations of abuse were reportedly consistent with medical examinations.

The exposed files included the record of one detainee's complaint that US soldiers who detained him in July 2006 secured his wrists, forced him to lie down then sat on his legs and chest, and beat and slapped him while also forcing a plastic pipe into his mouth and using it to hit him. He said one soldier also kicked him in his side and then they put a bag over his head. A medic who later examined the detainee found injuries consistent with his allegation of abuse.¹⁶

2.2.1 DETENTION AND TORTURE UNDER THE NEW IRAQI AUTHORITIES

The forces of the Interim Government of Prime Minister Ayad 'Allawi, to which the CPA handed power at the end of June 2004, were also soon accused of using torture and other ill-treatment. A Human Rights Watch investigation conducted between July and October 2004 found that 72 out of 90 detainees held as criminal suspects or suspected members of armed groups "alleged they had been tortured or ill-treated in detention."¹⁷

Torture and other ill-treatment of detainees became endemic, however, amid escalating political and sectarian violence and attacks by armed groups after the first elected government, headed initially by Ibrahim al-Ja'fari and, from May 2006, by the current prime minister, Nuri al-Maliki took up office, and a bomb attack in February 2006 that largely destroyed the Shi'a mosque in Samarra. Iraqi and coalition forces rounded up thousands of suspects in their efforts to identify those responsible for the campaign of suicide bombings and other attacks, while armed militias attached to some political parties abducted perceived opponents and rivals, often detaining and torturing them in unofficial prisons that they established or controlled, as the parties jockeyed for power.

2.2.2 THE ROLE OF COALITION FORCES

The US-led coalition forces were well aware of much of the torture and other ill-treatment of detainees by Iraqi security forces. Often, they turned a blind eye, as evident from the files exposed by Wikileaks, but on some occasions, they intervened to stop such abuses and bring them to light. On 13 November 2005, for example, US soldiers raided a secret prison of Iraq's Ministry of Interior located in Baghdad's al-Jadiriya district, where more than 170

detainees were being detained held in appalling conditions. Many of the detainees said they had been tortured or otherwise ill-treated. Weeks later, on 8 December 2005, US forces found 625 detainees at another detention facility of the Ministry of Interior in Baghdad, at least 13 of whom required urgent medical treatment, some apparently for injuries caused by torture or other ill-treatment. The Ministry's denial that any detainees had been seriously abused – an official of the Ministry of Interior was reported to have told the press that there had been “no mistreatment or torture...Only a few guys were slapped on their faces”¹⁸ - was contradicted by the assertion of the USA's ambassador to Iraq that “over 100” of the detainees found at al-Jadiriya and 26 found at the second prison had been abused.¹⁹

No steps are known to have been taken by the Iraqi authorities to investigate the use of these unacknowledged prisons by the Ministry of Interior or the torture and other ill-treatment of those detained in them, or to bring those responsible to justice.

According to the Bureau for Investigative Journalism, the classified US government files disclosed by Wikileaks showed that US forces recorded 1,365 reports of torture in detention facilities controlled by the Iraqi authorities that they received between May 2005 and December 2009.²⁰ In one, recorded in the US files on 19 October 2006, a detainee said he had been tortured during the previous day by being “beaten about the feet and legs with a blunt object, and punched in the face and head” by Iraqi security forces and that “electricity was used on his feet and genitals and he was also sodomized with a water bottle”²¹.

As reports of torture and other ill-treatment in Iraqi detention centres mushroomed, the US general in charge of detainee operations for the Multinational Force announced in December 2005 that coalition forces were suspending their handover of both prisons and detainees to the Iraqi authorities until those authorities “meet the standards we define and that we are using today.”²²

In practice, however, US and other coalition forces continued to collaborate closely with the Iraqi authorities, including by conducting joint raids on suspects' homes and arrest operations with Iraqi forces and by handing detainees into Iraqi custody irrespective of the risk of torture that they knew this entailed.

In December 2009, a joint force of US soldiers and Iraqi security officials carried out a night raid on a home in Mosul and detained four brothers, all Palestinian long term residents of Iraq aged from 21 to 29. They stormed into the house, seized and blindfolded the four brothers, secured their hands behind their backs and took them away without producing arrest or search warrants or saying what they were searching for. The brothers then disappeared for about four months until relatives learnt that they were being detained at a prison within Baghdad's Green Zone controlled by the Baghdad Brigade, a security force that reports to the office of Iraq's prime minister. All four brothers allege that they were tortured in detention and told that they should sign confessions admitting involvement in murder. Two of the brothers, Khalil and Mahmoud Younis Khalil Ibrahim, who did so were subsequently tried together with two other Mosul men, convicted and sentenced to life imprisonment by the Central Criminal Court in Baghdad in February 2012, although they are believed to have repudiated their confessions in court. The remaining two brothers, however, are reported to have refused to sign confessions. They were acquitted in a separate trial held in early 2012, although the authorities did not release them from prison until September 2012.

2.2.3 TRANSFER OF DETAINEES TO IRAQI CUSTODY

In late 2008, the US and Iraqi governments signed the Status of Forces Agreement (SOFA), which took effect on 1 January 2009. Under the accord, the two governments agreed that all US combat troops would withdraw from Iraq by the end of 2011 and that before that date US forces in Iraq would transfer control of all detainees in their custody who had not been released, and all detention facilities that they controlled, to the Iraq authorities. These prisons included Camp Cropper, near Baghdad International Airport, where a number of “high value” detainees associated with Saddam Hussein's regime were held; Camp Taji, north of Baghdad; and Camp Bucca, near Basra, in southern Iraq.

The SOFA failed to provide any safeguards for the US-held detainees who were to be transferred to Iraqi custody, many of whom had been held without charge or trial for several years by US forces. The agreement included no references to either state's obligations under international human rights law and international humanitarian law, although both are parties to key treaties such as the Fourth Geneva Convention, the International Covenant on Civil and Political Rights (ICCPR) and the UN Convention against Torture (UNCAT).²³ The only passing reference to rights contained in the SOFA is its 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.”

The absence of any reference in the SOFA to the human rights treaties to which the USA and Iraq are party does not release either state of any of their obligations under these treaties, including as regards handing over detainees and prisoners. Key among the relevant obligations is that provided in Article 3 of the UNCAT:

1. No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.
2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

Amnesty International has previously expressed its concern that the US forces' transfer of detainees to the Iraqi authorities under the SOFA agreement, given Iraq's poor record as far as the torture and other ill-treatment of detainees and that this was already evident at the time, violated this absolute prohibition.²⁴

US forces transferred the last group of Iraqis who remained in their custody in July 2011. They numbered about 200. They included alleged members of armed groups opposed to the Iraqi government and five former close associates of Saddam Hussein who had already been sentenced to death by an Iraqi court, the Supreme Iraqi Criminal Tribunal (SICT): two half brothers of the former president, a former defence minister and two military generals.²⁵

2.2.4 ENFORCED DISAPPEARANCE AND SECRET DETENTION

Many detainees held by Iraqi security forces have been subjected to enforced disappearance and kept in secret or unacknowledged prisons, where they were exposed to harsh conditions

and tortured or otherwise ill-treated. One notorious such secret prison, located at the former al-Muthanna airport in central Baghdad, was exposed in April 2010. More than 400 detainees were then being held there, mostly Sunni Muslims from the Mosul area who security forces had detained in late 2009 and brought to the al-Muthanna prison. The prison was reported to be directly controlled by the office of the Iraqi prime minister, Nuri al-Maliki. Most of the detainees held at the prison were reported to have been tortured or otherwise ill-treated. Around 95 of them were released soon after the prison's existence was exposed.

A former university staff member in Mosul, 55, told Amnesty International that members of Nineweh Operations, a police anti-terrorism unit, burst into his family home in Mosul on the night of 30 September 2009 and seized him and his 26-year-old son, Hussain. They took them to a stadium in Mosul beneath whose stands there was a secret detention facility where the father and son were crammed into a small room that already contained 67 other detainees. Police interrogators then took out five or six detainees at a time, beating and insulting them, before next day transferring them in military vehicles, blindfolded and with their wrists bound, to a prison in Baghdad's al-Mansour area controlled by Central Military Intelligence. He said the detainees were held there for 45 days, during which they were not permitted visits or to contact their families although delegates of the International Committee of the Red Cross were able to visit the prison and they were not generally ill-treated there.

He said he and the others were then they moved in three batches to the secret prison at al-Muthanna, which consisted of a long single storey building containing windowless rooms measuring approximately five by four metres, each of which was used to hold some 25 detainees. He was released on 13 April 2010, together with about 84 other detainees, one day after they had been transferred to al-Rusafa Prison. No charges were brought against him. Throughout the seven months of his detention, the authorities did not permit him to receive family visits or to have access to a lawyer.

The Iraqi government announced the closure of the exposed detention facility at the former al-Muthanna airport two weeks after its existence became public knowledge and said it had arrested three officers of the military unit that had run it,²⁶ while denying that it had been a secret prison. The Ministry of Human Rights said it had learned of the prison's existence a few weeks earlier and had sent investigators there, to whom detainees had complained about abuses and that they were denied contact with their families and access to legal assistance."

Amnesty International has repeatedly sought information from the Iraqi authorities about the outcome of their announced investigations into torture and other ill-treatment of detainees at al-Muthanna, most recently in a communication of 19 December 2012, and regarding any prosecutions of those responsible for perpetrating abuses against detainees there. To date, however, the authorities have failed to respond or provide any information. Amnesty International is unaware of anyone being held accountable for establishing and maintaining the secret prison or holding detainees in breach of Iraqi as well as international law or committing torture, other ill-treatment, enforced disappearance or other serious abuses.

Other secret detention prisons have included one controlled by the Baghdad Brigade, which reports to the prime minister's office, that existed, according to Human Rights Watch, "within a legitimate Justice Ministry detention facility at Camp Justice" in Baghdad. Human Rights Watch uncovered the existence of this prison, to which the authorities transferred

some 280 detainees from Camp Honour Prison in November 2010 and from which prison inspectors from the Ministry of Human Rights were reported to be barred.²⁷ Following the government's announced closure of Camp Honour, located within Baghdad's Green Zone, in March 2011,²⁸ the Los Angeles Times reported in July 2011 that the authorities were still holding scores of detainees there in secret.²⁹

Secret incommunicado detention is a form of enforced disappearance, which, having been recognized as a crime under international law since the judgment of the Nuremberg Tribunal in 1946³⁰ is prohibited under a rule of customary international law - that is, a rule so widely accepted internationally that it becomes binding on all nations irrespective of whether or not they are party to a relevant treaty. Iraq became party to the International Convention for the Protection of All Persons from Enforced Disappearance in November 2010.³¹

Under Article 17 of the Convention, "No one shall be held in secret detention", and Iraq must "Guarantee that any person deprived of liberty shall be held solely in officially recognized and supervised places of deprivation of liberty".

Concrete measures are urgently needed to eradicate the use of enforced disappearance in Iraq and to bring the law and particularly the practices of the security authorities into compliance with Iraq's obligations under both the customary international rule and the specific treaty to which Iraq became party in November 2010.

3. TORTURE AND OTHER ILL-TREATMENT OF DETAINEES SINCE THE DEPARTURE OF FOREIGN MILITARY FORCES, DECEMBER 2011

“After all the denial, the witnesses to my torture..., my medical report, the photos of my body showing the traces of ugly torture, the judge did not take it in.” Torture survivor, Ramadi, 2012

Throughout 2012, Amnesty International continued to receive new reports of torture and other ill-treatment of detainees from many and varied sources in Iraq, indicating the extent to which these serious violations remain both common and widespread. Those particularly at risk are detainees who are held incommunicado for interrogation, particularly when the detention facilities in which they are kept are ones controlled by either the Ministry of Interior or the Ministry of Defence. According to the UN Assistance Mission to Iraq (UNAMI) Human Rights Office and the Office of the UN High Commissioner for Human Rights (OHCHR), citing official Iraqi figures, some 37,000 people were detained in Iraq in mid-2012, of whom around 21,000 had been tried and convicted of offences by the courts.³²

The authorities have acknowledged that torture and other ill-treatment continue to occur³³ but they have generally suggested that they are no more than isolated occurrences, yet without undertaking the thorough, independent investigations that these violations warrant and which would expose their full extent. Instead, the authorities have tended to exhibit a degree of official myopia that appears calculated to avoid recognizing, and therefore having to address, a systemic problem of torture and other ill-treatment of detainees by the security forces, who are allowed to operate with impunity. The judiciary, through its propensity to accept confessions allegedly extracted under torture and admit them as evidence of defendants' guilt, also effectively aids, abets and helps to perpetuate this seriously abusive system.

Yet, even the Ministry of Human Rights has listed methods of torture that detainees reported they were subjected to by Iraqi security forces, recently citing electric shock torture applied to the genitals, partial suffocation by putting a bag over the detainee's head, threats of rape of detainees' wives or other relatives, and beatings with cable.³⁴

UNAMI has also reported the use of these and other methods.³⁵ Amnesty International has also done so.³⁶ Yet these violations continue, and the government appears to lack the political will to take the measures necessary to end torture, including by removing the security forces' power to hold detainees incommunicado and by ending the impunity that currently protects those who order and perpetrate torture.

3.1 POPULAR PROTESTS AGAINST TORTURE OF DETAINEES AND OTHER ABUSES OF DUE PROCESS

Since late 2012, tens of thousands of Iraqis, mostly members of the Sunni community, have participated in demonstrations to express their opposition to the government and continuing violations of the human rights of detainees.³⁷ Many of the protests have been peaceful but others have resulted in clashes between police and protestors, resulting in fatalities. On 25 January 2013, for example, troops were reported to have killed at least five protesters when protestors began throwing stones at them in Fallujah.³⁸

The demonstrations began in the second half of December in the pre-dominantly Sunni province of Anbar, following the arrest by security forces of several bodyguards of Finance Minister Rafi'e al-Issawi, a senior Sunni political leader. These new arrests followed others in December 2011 when dozens of bodyguards and others associated with the then Vice-President, Tariq al-Hashemi, another leading Sunni politician, were detained amid government allegations that he had organized death squads and ordered killings. He was charged under the Anti-Terrorism Law, Law 13 of 2005, and tried in his absence at several separate trials, convicted and sentenced to death.



Thousands of protesters in Ramadi, Anbar province, two months after demonstrations began, 22 February 2013. © Anas

The protests were also fuelled by reports of abuse of women detained in the custody of the security forces and by the failure of political negotiations in parliament to agree an amnesty law. The protesters key demands included the release of “innocent detainees” and an end to abuses of detainees, new legislative measures including reviews of the 2005 Anti-Terrorism

Law and of the Accountability and Justice Law of 2008 relating to Iraq's De-Baathification, and the passing of an amnesty law.³⁹ Several civil society organizations from other provinces, including Baghdad and Basra, expressed support for the protesters' key demands. During a visit to Ramadi on 11 February 2013, Hanaa Edwar, who heads the Iraqi Al Amal NGO, told protestors that 35 Baghdad-based civil society organizations for whom she spoke supported the protestors' efforts "to defend their legitimate rights" and to eliminate the "inequality and injustice done to large segments of the Iraqi people."⁴⁰

3.2 TORTURE AND OTHER ILL-TREATMENT: WOMEN DETAINEES

More than a thousand of the 37,000 inmates of Iraqi prisons and detention centres in mid-2012 were women. The Human Rights Committee of the Iraqi parliament reported in November 2012 that 1,130 women were then being held, 639 of whom had been convicted of offences.⁴¹

In October 2012, following a visit it had conducted to the Women's Prison⁴² in Baghdad's al-Resafa district in September, jointly with representatives of the Ministry of Human Rights, the Hammurabi Human Rights Organization (HHRO) reported allegations by women inmates that they had been subjected to torture, including electric shocks, beatings and sexual abuse, while being detained and under interrogation.⁴³ HHRO reported that some women prisoners were suffering from skin ailments and that the authorities were apparently unable to call on sufficient women police officers to manage transfers of female detainees.

More than three years before, members of the Human Rights Committee of parliament who visited the earlier women's prison that was then located in al-Kadhemiya told reporters in May 2009 that two women inmates they had seen had testified that they were repeatedly raped in detention after their arrest and before they were transferred to the prison.⁴⁴

Sabah Hassan Hussein, 41, a journalist, was reportedly arrested on 29 February 2012 when she went to the offices of the army's Fifth Brigade in Baghdad's Saydiya district to collect a car belonging to one of her relatives that the authorities had confiscated. She was detained and told that she was a suspect in a murder investigation. She was then transferred to the Directorate of Major Crimes (Mudiriyat al-Jara'im al-Kubra) in Tikrit, where she was held incommunicado, for about two months during which, she alleges, she was tortured. According to a member of her family interviewed by Amnesty International, she alleges that her interrogators burnt her with cigarettes, doused her with icy cold water and forced to undress in front of male police officers. The Journalistic Freedoms Observatory (JFO) reported on 26 November that she had identified the police officers responsible for her alleged torture and that their names had been submitted to the Ministry of Interior.⁴⁵

Sabah Hassan Hussein was returned to Baghdad from Tikrit in May 2012 and held at al-Sayid For detention centre she was acquitted by the Resafa Criminal Court at the first session of her trial on charges brought under the Anti-Terrorism Law on 23 January 2013. Another defendant charged with her, however, was convicted and sentenced to death. Despite her acquittal, Sabah Hassan Hussein remained in prison until 18 February 2013, when she was released and allowed to return to her family. She subsequently told Amnesty International that she filed a formal complaint with the authorities about her torture and other ill-treatment in detention. They were previously alerted to her torture allegations in November 2012; however, they are not known to have taken any steps to bring those responsible to justice.

Addressing the National Assembly on 20 November 2012, one of Iraq's female MPs, 'Atab Jasim Nasif al-Duri, questioned the security forces' practice of detaining the wives or other female relatives of wanted male suspects and obtained the Assembly's agreement for an investigation into the situation of women prisoners.⁴⁶ Eight days later, the head of the parliamentary Human Rights Committee presented an initial report which expressed concern that women detainees were liable to harassment and abuse when they in the custody of male only guards when they were being moved between detention facilities. The report also drew attention to a reported recent incident at al-Taji, north of Baghdad, where members of the Sixth Brigade of the Federal Police (al-Shurta al-Ittihadiya) had detained 10 women and two girls without arrest warrants in place of several men whom they were seeking to arrest. The police had then held the women and girls, who were named in the parliamentary committee's report, at a police detention facility for four days, where they were reportedly "tortured and pressured", before being transferred to al-Sayid For detention centre in Baghdad.⁴⁷ An investigation of the same incident by Human Rights Watch concluded that in November 2012 federal police had "invaded 11 homes" in al-Tajji and detained 41 people, including 29 children, overnight in their homes, and had taken "12 women and girls ages 11 to 60 to 6th Brigade headquarters and held them there for four days without charge. The sources said the police beat the women and tortured them with electric shocks and plastic bags placed over their heads until they began to suffocate."⁴⁸ The 12 women and girls were released.

The Ministry of Human Rights and members of the parliamentary Security and Defence Committee denied that the 12 women and girls from al-Taji had been abused in detention.⁴⁹ However, one member of the committee told the press that he had previously uncovered cases in which women had been "threatened with rape in prison" and that he knew of eight women who had been beaten and tortured with electric shocks in detention to force them to "confess".⁵⁰

On 12 December 2012, two MPs including one member of the parliamentary Human Rights Committee, were prevented from entering when they attempted to make an unannounced visit to the al-Sayid detention centre in Baghdad.⁵¹ They said afterwards that they would take legal action against the Minister of Justice, to which the Minister responded by threatening to prosecute them for seeking to gain entry to the prison without authorization.⁵² A spokesperson for the Supreme Judicial Council told the press that contrary to reports that many women had been raped in detention he knew of only one case, that of a "woman prisoner sentenced to death for killing her husband", although he knew of two other cases of women who had been sentenced to death despite allegations that they had been tortured. He did not name any of the women prisoners, however, nor did he provide any indication that those who allegedly tortured them had been held to account.⁵³

Women who are raped or otherwise sexually attacked in Iraq suffer in multiple ways, due to the attack itself and also to the social stigma that generally attaches to women whose bodily integrity has been so violated. Consequently, it is widely believed that many women who suffer rape or other sexual abuse decline to report the crime for fear of being stigmatized by family and friends, and treated by police as a sort of accessory to their own abuse. In this context, women detainees are in a particularly vulnerable position as any allegation of rape in incommunicado detention will be almost impossible to prove while interrogators who use the threat of rape have in it a powerful inducement to force "confessions." In this regard, Iraq's detention system affords inadequate protection against rape and other sexual torture of

female detainees and creates conditions in which such abuse, when committed, may be readily concealed.

3.3 TORTURE AND OTHER ILL-TREATMENT: VOICES OF SURVIVORS

Amid the climate of impunity that prevails in Iraq, many victims of torture fear that if they are identified publicly they will put themselves at risk of reprisals, including possibly renewed detention and torture. The feelings of humiliation that torture survivors often experience, particularly if they have been subjected to sexual attacks or other especially degrading ill-treatment, is another factor that militates against exposure and so helps ensure the anonymity of, and impunity for, the perpetrators, as the latter well know. Many former detainees who have spoken to Amnesty International about their torture by Iraqi security forces have done so on condition that their identities are not disclosed. Others, however, have agreed that their identities can be revealed even though they recognize that this may place them at additional risk; some of their cases, all of which relate to events in 2012 in the provinces of Anbar, Kerbela and Suleimaniya, are described below. They are typical of many others that have been reported to Amnesty International during the past 15 months.

3.3.1 RAMADI, ANBAR PROVINCE

Police arrested Nabhan 'Adel Hamdi and Shakir Mahmoud 'Anad at separate locations in Ramadi and Mu'ad Muhammad 'Abed, a teacher, outside the school where he worked in Fallujah, in late March, and arrested Amer Ahmad Kassar a few days later. They then held all four men incommunicado for several weeks at the Directorate of Counter-Crime (Mudiriyat Mukafaha al-Ijram) in Ramadi where they were reportedly tortured until they "confessed" to committing murder. A local TV station then broadcast film of them providing self-incriminating testimony to having committed capital crimes while they remained in detention and before the authorities brought them to trial.⁵⁴ When they appeared at trial, they told the Anbar Criminal Court that interrogators had tortured them and forced to "confess" to a crime that they had not committed, and evidence from a medical examination carried out on one of the four men many weeks after their alleged abuse found injuries that appeared consistent with his alleged torture. Their allegations of torture include being beaten with instruments on various parts of their bodies and being suspended by the wrists with the hands tied to the back. Images obtained by Amnesty International show bruising and other injuries on the bodies of two of the men. Despite this, no investigation into their alleged torture is known to have been conducted and the court convicted all four men under the Anti-Terrorism Law of 2005 and sentenced them to death on 3 December 2012.

One of the four managed to pass on a communication to Amnesty International in which he expressed his shock about the death sentence:

"After a short while I was transferred to Tasfirat Prison [in Ramadi] where I was examined and a medical report was issued. Then we were taken to a Criminal Court in Ramadi. After all the denial, the witnesses to my torture [...], my medical report, the photos of my body showing the traces of ugly torture, the judge did not take it in. Even the defence witnesses, who said that [I] was out of town and we were with him when the incident happened, were not taken into account by the court. The court only took into account the statement of the plaintiff because he has influence [...]. The judge sentenced me and the others with me to death, ignoring all the reports, the witnesses, the General Prosecution's statement and its request to release me."

3.3.2 KERBELA

One man, 28, from Kerbela told Amnesty International that in mid-February 2012 six security officials in plain clothes took him from his workplace in Kerbela without producing an arrest warrant, and took him to the Crime Unit at the Kerbela Police Directorate where he was blindfolded and told to confess without being informed what crime he was suspected of committing. He said his interrogators, tied his hands behind his back, securing them at the wrists, then connected a chain and pulled it up so that he was suspended without his feet touching the ground and his full weight was supported only by his wrists and arms. He said that while he was in this painful and vulnerable position, his interrogators whipped him with a cable on his back and legs, and at other times tortured him with electric shocks, beat him on the soles of his feet and threatened him with rape and that his family would be detained and abused until he eventually agreed under this extreme coercion to sign a statement confessing to murder. In mid-May 2012 he and others were sentenced to death by the Kerbela Criminal Court after being convicted of murder.

3.3.3 SULEIMANIYA, KURDISTAN REGION

Torture and other ill-treatment of detainees continue to be reported also from the semi-autonomous Kurdistan Region though on a much lesser scale than elsewhere in Iraq. Hussein Hama Ali Tawfiq, 39, told Amnesty International that he was summoned to the Directorate of General Security (Asayish Gishte) in Suleimaniya but immediately arrested when he arrived there on 27 March, 2012. He said he was blindfolded with a pishtuwin, a traditional Kurdish cloth, that his hands were shackled diagonally across his back, and that officers then insulted, punched and beat him on his back with a piece of wood while demanding that he implicate Suleimaniya's mayor and other local politicians in corruption. When he failed to do so, they again beat him, made him stand in the rain for half an hour and then reversed the position in which his hands were shackled across his back, at which point he lost consciousness. His interrogators threw cold water over him to revive him, then allowed him to recuperate for about two hours before subjecting him to a further sustained beating with a club on his knees, chest, back and calves while threatening to kill him if he refused to sign a statement incriminating the mayor and others. Even so, he continued to refuse and next day was taken before an investigating judge who first authorized his detention for another 24 hours and thereafter, in the following days, extended it for 14 days during which he had to endure further assaults that resulted in his losing consciousness and having two teeth knocked out.

His interrogators threatened him and his family and, he alleges, senior judiciary as well as security officials pressed him to sign a statement that his interrogators had prepared before eventually they decided instead to forge his signature onto it. He was again taken before an investigating judge on 1 April, five days after his arrest, when for the first time his lawyer was allowed to be present. At this, he rejected the incriminatory statement and pointed out injuries on his body that he told the judge had been caused by torture; however, he was returned to detention at the General Security Directorate and his torture continued. Three days later, members of the Human Rights Committee of the Kurdistan parliament visited the detention centre; their written report notes that they had seen the detainee Hussein Hama Ali Tawfiq and that he had been tortured. The lawyer engaged to represent Hussein Hama Ali Tawfiq requested that he be medically examined to document his torture injuries but, instead, the detainee was taken to hospital and treated. He was charged with bribery and remained in prison until the Suleimaniya Criminal Court acquitted him in November 2012.

In July 2012, while still in custody, he filed a formal complaint against the security officials he accuses of torturing him. The KRG authorities, however, appear to have taken no action in response to this complaint and in February 2013 the alleged torturers were believed to remain in their posts and on active duty.



Traces of beating on the body of a detainee, reportedly inflicted by officers at a detention centre in Ramadi in about April 2012.

© Private

3.4 DEATHS IN DETENTION

Deaths in custody apparently caused by torture or other ill-treatment have been a persistent phenomenon throughout the past 10 years, as they were formerly under Saddam Hussein. According to official records disclosed by the Ministry of Human Rights, there were 237 cases of death in custody for the three year period to the end of 2011, including 16 in which “suspicion of torture” was given as a possible cause of death and 14 cases in which no cause of death was indicated.⁵⁵ No official record is yet available for 2012 although a letter of the Ministry of Justice of 21 November 2012 to the parliamentary Human Rights Committee named 34 detainees who had died between the beginning of June and the end of September 2012 in Iraqi prisons under the ministry’s authority and attached eight autopsy reports that did not record any traces of external force on the bodies. However, deaths in custody allegedly due to torture have been reported at detention facilities under the control of the Ministries of Interior and Defence. On 28 January 2013, for example, the governor of Ninewa province told a press conference that a detainee had died the day before in unclear circumstances in the custody of the army in Mosul. The governor called for an independent

investigation to be conducted by the judiciary and expressed what the press described as his “lack of trust” in investigations carried out by the army.⁵⁶

Several cases of death in custody allegedly due to torture were reported by local TV stations and other media during 2012. In late July, al-Sharqiya TV reported the death in custody of Abdel Hassan Ibrahim Mutlak shortly after he was detained in Basra apparently in error for another person wanted for murder. His family were reported to have alleged that his death occurred after he was tortured while held at the Basra Crimes Directorate.⁵⁷

Samir Naji ‘Awda al-Bilawi, 38, a pharmacist and father of seven children, was detained with his teenage son, Mundhir, 13, when security forces stopped their vehicle at a checkpoint in early September 2012 in Ramadi. Days later, the authorities informed his family on 12 September that he had died in custody. Next day, his brother told al-Sharqiya TV that he had seen marks on the deceased’s body that appeared to have been caused by beatings. The TV station and other media published images showing these and what appeared to be other injuries on the dead man's head and hands.⁵⁸ Mundhir al-Bilawi told al-Sharqiya TV after his release that security forces had first taken him and his father to a Ramadi police station, where they were both assaulted, then to the Directorate of Counter-Crime in Ramadi. There, he said, they were tortured with electric shocks and he was induced by interrogators to implicate his father in terrorism, including in front of an investigating judge. Members of the family told Amnesty International that they had received anonymous threats after they lodged a formal complaint with the authorities. An autopsy conducted by the Forensic Medical Institute in Baghdad is reported to have found that the detainee's death was caused by torture, including electric shocks. In January 2013, lawyers representing the family said that a judicial request to disclose the identities of the officers responsible had been rebuffed by the Anbar province police authorities.

Yassin Ibrahim Ahmad al-Khafaji, a father of four children, died several days after he was detained in early September 2012 by soldiers who went to his home in al-Qayara, south of Mosul.⁵⁹ Members of his family told al-Sharqiya TV that they were called to the Forensic Medical Institute in Mosul where they found his body bearing marks apparently caused by torture. They photographed the body. Images shown by al-Sharqiya TV revealed bruising and open wounds on the back of the deceased,⁶⁰ whose father said he had seen traces of electric shocks and that his son had sustained a broken shoulder while in detention. Following these revelations, the governor of Ninewa province said that Yassin Ibrahim Ahmad al-Khafaji had died in Federal Police detention centre, called for an official investigation and urged that those responsible for his death be held to account.

Saddam Mikhlif Wahaib al-Batawi, a student, died in custody after security forces detained him and about a dozen other men, including two of his relatives, on 7 July 2012 in Baghdad. About eight days later al-Sharqiya TV reported that he had died as a result of torture at a detention centre of the Federal Police in the al-Kadhemiya district, and that evidence of torture had been found on his body.⁶¹ Women relatives of some of the men detained with him told the TV station that these other detainees said they had also been tortured and threatened by interrogators that they would be killed unless they “confessed” to involvement in planting explosives. The TV report said that the police officers who took Saddam Mikhlif Wahaib al-Batawi's body to al-Kadhemiya General Hospital initially claimed to have found his body in the street. An official investigation into the death was reported to have been initiated

but no outcome was known to Amnesty International by February 2013.

'Amer Sarbut Zaidan al-Batawi, 32, who had worked as a bodyguard at the office of Vice-President Tariq al-Hashemi, was one of dozens of people who were arrested amid allegations that al-Hashemi had been running death squads. Several, including other bodyguards, were shown on TV apparently confirming the government's allegations against al-Hashemi and confessing to their personal complicity in killings that he was said to have ordered. On 18 March 2012, the authorities returned the body of 'Amer Sarbut Zaidan al-Batawi to his family, telling them that he had died in detention, although his body is reported to have been marked in a manner suggesting that he had been tortured. Human Rights Watch reported that it had seen photographs taken by the family in which "a burn mark and wounds on various parts of his body" were visible.⁶² A spokesperson for the Supreme Judicial Council, however, was reported to have told reporters that the preliminary results of an autopsy pointed to "severe diarrhoea, low blood pressure and kidney failure" as the cause of death.⁶³

Al-Batawi's death became known three weeks after the Supreme Judicial Council had published a report on visits that its judicial investigating committee was said to have made to all 73 people detained in connection with the accusations against al-Hashemi; in this, it was said that none of them had complained of torture or other ill-treatment.⁶⁴

Despite the high incidence of deaths in custody, little information is publicly available about any steps taken by the Iraqi authorities to conduct full, thorough and independent investigations into these deaths. The reports of the Ministry of Human Rights on occasions refer to the opening of investigations but they do not provide information about their findings or any consequent action arising from them. Repeated attempts by Amnesty International to obtain factual information from the Ministry of Justice, the Supreme Judicial Council and other authorities have so far failed to elicit a response. In particular, Amnesty International has asked for information concerning any official investigations undertaken into specific individual cases of death in detention, where torture is alleged to have been either the cause or a possible contributory factor in causing the death, and for details of any prosecutions brought by the government, or disciplinary action taken, against those responsible for torture, including its authors and its perpetrators. Prior to writing this report, Amnesty International made a renewed effort to obtain such information by sending a lengthy memorandum and set of questions to the government in December 2012, requesting a response before the end of Jan 2013 in order that the government's information and comments could be reflected in this report. There has been no response from Baghdad.

4. LACK OF DUE PROCESS AND UNFAIR TRIALS

“The evidence is sufficient and compelling to convict the accused [including] based on his confession during the investigation period, which is relied upon because it was given closer to the date of the incident than his later statement during the trial period” Resafa Criminal Court, Baghdad, justifying the use of a “confession” allegedly obtained under torture in a verdict that imposed the death penalty, May 2010

Iraq's criminal justice system, which had virtually to be rebuilt after its wholesale politicization under Saddam Hussein, operates under especially difficult circumstances. Armed groups opposed to the government continue to attack and kill judges, lawyers and court officials and to mount suicide and other attacks on police and police recruits. Lawyers defending alleged members of armed groups charged with terrorist offences have also been murdered by unidentified assailants. The dimensions of the problem are evident from the statistics. The Supreme Judicial Council has recorded the names of 48 judges and prosecutors and 38 other judicial staff killed between 2003 and 2011;⁶⁵ the Iraqi Bar Association has listed the names of 103 lawyers who were killed between 2003 and 2008, mostly by unknown perpetrators.⁶⁶ The years since 2008 have seen many further attacks on and killings of lawyers. The number of police killed greatly exceeds even these totals: according to the Iraq Body Count organization, the number of police killed during between 2003 and 2011 exceeded 10,000, with at least a further 932 killed in 2012.⁶⁷ After the killing of one of their colleagues, judges in the Ninewa province briefly suspended work in protest in October 2012.⁶⁸

Lawyers who defend terror suspects continue to be intimidated, threatened and physically attacked. They frequently receive anonymous threats communicated by phone or text message and some have been targeted for murder.⁶⁹ One lawyer who has represented several defendants charged with terrorism told Amnesty International that one of his legs had to be amputated after he was the victim of a bomb planted underneath his car in June 2011 in Baghdad. More recently, gunmen killed Khayrallah Shati, a lawyer, and his son, a judicial investigator, together with six other members of their family in August 2012 in Baijii, a town in Salah al-Din province.⁷⁰

Given the magnitude of these challenges, it is unsurprising that the administration of justice in Iraq continues to suffer from major deficiencies, and no more so than in relation to the use of anti-terrorism legislation and the conduct of trials involving alleged terrorism or other security offences. Throughout the past 10 years, these have been marked by flagrant violations of human rights and the rule of law, with the authorities subjecting suspects to: arrest without warrant and prolonged detention without charge or trial, often incommunicado and in secret, unacknowledged places of detention, and without effective remedy; trials that have been grossly unfair and conducted before courts that based their guilty verdicts on contested confessions, even in capital cases; torture and other ill-treatment committed with impunity; and the death penalty and execution.



Plaques in memory of scores of judges and prosecutors who have been killed in attacks over the past decade in Iraq, fixed to the wall at the entrance of a judicial building, Baghdad, September 2012. © Amnesty International

The executive branch of government, through its actions, has continued to directly undermine key rights, such as the right to fair trial – for example, by allowing terrorism suspects' “confessions” to be broadcast on television even before those suspects come to trial. In some cases, senior government leaders have publicly pronounced individuals' “guilt” to capital charges either before they have been tried or before their trials have concluded.

Amnesty International has repeatedly drawn attention to these violations of detainees' rights, which UNAMI as well as Iraqi and other international human rights organizations have documented. Despite the overwhelming evidence of such violations, however, the Iraqi authorities have yet to take clear and effective measures to address them and to comply with their obligations under international human rights law. Ten years on, the human rights gains that should have been achieved following the fall of Saddam Hussein have largely failed to materialise and the prospects for reform still appear dim.

Adding to these problems, the criminal justice system has become riddled with corruption. In dozens of cases reported to Amnesty International, security officials have demanded money from detainees' families to release them or to reveal where they are being detained. UNAMI has reported receiving similar complaints.⁷¹

4.1 ARRESTS WITHOUT WARRANT AND DETENTION IN BREACH OF JUDICIAL RELEASE ORDERS

Iraqi security forces continue to arrest suspects without producing a judicial warrant and

without informing the arrested person of the suspicions against them in breach of both Iraqi law and international law, such as Article 9 of the ICCPR, which prohibit arbitrary deprivation of liberty.⁷² Article 92 of the Iraqi Criminal Procedure Code requires that a person may be arrested only on the basis of a judicial warrant, other than in exceptional circumstances,⁷³ and must be informed of the reason for arrest and of any charges against them.

Ahmad Saleh Ahmad al-Shami, 53, a Libyan national and human rights activist, was arrested by National Intelligence Service, NIS, (Jihaz al-Mukhabarat al-Wataniya) officials at Baghdad International Airport on the afternoon of 18 October 2012. They did not produce an arrest warrant and it was several days before his family in Libya learnt of his arrest. Al-Shami, who heads the Global Foundation for Human Rights [Libya], a Libyan human rights organization established in 2011,⁷⁴ told Amnesty International after his release that the NIS took him to a room at the airport saying they wished to speak to him but showed him no arrest warrant or other official document and did not explain why they were detaining him. They then handcuffed and blindfolded him and took him in a car that, he could see, despite his blindfold, had blacked out windows and whose driver and other occupants were masked, to the NIS's detention facility at Baghdad's former al-Muthanna airport. He said they began interrogating him in the early hours of the third day after his arrest: "They usually interrogate and torture people at night, because they can be sure that no inspectors will come at that time," he told Amnesty International. He said his interrogators beat him and subjected him to electric shocks, and then questioned and abused him again two nights later while accusing him of helping fund terrorism in Iraq, which he denies. He believes the NIS detained and tortured him because of his work on behalf of Libyans imprisoned in Iraq who have been convicted on terrorism-related charges. Al-Shami had attended the summit meeting of the League of Arab States in Baghdad in March 2012 as a member of the Libyan government delegation, and in that capacity had participated in negotiations with Iraqi officials to secure the early release of several imprisoned Libyans and their repatriation to Libya. He had stayed on for a time in Baghdad after the summit meeting to continue with this and had met many Iraqi officials and visited several prisons prior to his arrest and detention.

Al-Shami was taken before an investigating judge at Baghdad's Central Criminal Court on 5 November 2012 who ordered his release but the NIS officials holding him failed to comply with the judge's order and returned Al-Shami to the al-Muthanna prison. They then did the same again when he was next taken before the same investigating judge on 22 November, when the judge asked why he had not been released and made a new order for his release. He was finally released only after his third appearance before the same investigating judge on 10 December at which Foreign Ministry officials were present, apparently to ensure that the NIS should this time implement the release order. Al-Shami then returned to Libya.

4.2 PROLONGED DETENTION WITHOUT TRIAL

Many detainees continue to be held in prolonged detention without trial; most are held for weeks or months but some have been held for years. In January 2013, for example, relatives – of a man aged 50 who had been working as a security guard told Amnesty International that he was arrested on suspicion of terrorism in June 2010 in Diyala province but had yet to be tried or released. In another case, UNAMI reported receiving information in March 2012 from a detainee held in Kirkuk who said he had been held in custody for four and a half years on terrorism charges without being brought to trial.⁷⁵

The Criminal Procedure Code prescribes the conditions that must be met in order to extend pre-trial detention. These include judicial review of the detention at regular intervals, generally every 15 days. Article 109 of the Code, however, provides that the pre-trial detention of a person accused of an offence punishable by death “may be extended for as long as necessary for the investigation to proceed or until the examining judge or criminal court issues a decision on the case on the completion of the preliminary or judicial investigation or trial”. Any pre-trial detention beyond six months is permissible only if the relevant court grants an “appropriate extension.”

Walid Yunis Ahmad was detained without charge or trial for 10 years by the authorities in Iraq's Kurdistan Region following his arrest in February 2000. The authorities first subjected him to enforced disappearance for three years before his family obtained confirmation of his detention and was able to discover his whereabouts. During his enforced disappearance he was tortured and kept in solitary confinement while moving him from one prison to another. After the KRG authorities were challenged about his detention by Amnesty International and others, they eventually charged him in March 2010 under Kurdistan's anti-terrorism law, although that law was not enacted until he had already been in detention for several years. They based the charges on information said to have been provided to an investigating judge by "secret informants" whose identities have never been revealed. They accused Walid Yunus Ahmed of committing terrorist offences while he was being held in detention without trial by the KRG authorities and since the enactment of the Kurdistan anti-terrorism law. Despite the unusual and seemingly implausible nature of the evidence, a court convicted him on 17 March 2011 and sentenced him to five years in prison. In doing so, the trial court acknowledged that he had been unlawfully detained from the time of his arrest until he was charged on 4 February 2010 but provided no remedy; on the contrary, the court ruled that his five year prison term should be considered to have begun on the date that he was charged and that, consequently, he should remain in prison until 2015. No other prisoner in Iraq is known to have spent so long in pre-trial detention, most of it unlawful detention, yet none of the officials responsible for this gross breach of human rights have been held to account by the KRG authorities. Amnesty International believes that the human rights of Walid Yunis Ahmed have been seriously violated for political reasons by the KRG authorities and continues to urge them to release him and afford him all appropriate reparation for the violation of his rights over more than 12 years.⁷⁶

Detainees held by the Baghdad government have also been held without trial for prolonged periods stretching into years. In June 2012, UNAMI reported that detainees at al-Taji Prison had begun a strike to protest against abuses and delays in judicial procedures, noting that many of the prisoners alleged that they had been held “as long as five years without being informed of their trial date, contrary to guarantees under Iraqi law and international standards.”⁷⁷

On 14 January 2013, following weeks of protests including by detainees' relatives against their lengthy imprisonment and other abuses, Deputy Prime Minister Hussein al-Shahristani announced that the authorities had released 335 detainees in the preceding week and was reported to have apologized to those whose release had been delayed. Speaking in his capacity as head of a committee that the government had appointed to address the protestors' grievances, he said that his committee had requested the deployment of more police investigators to speed up the processing of detainees' cases.⁷⁸ He reportedly

acknowledged that the authorities had continued to keep some untried detainees in detention despite court orders for their release and had also continued to hold other prisoners in detention after they had completed serving prison sentences imposed on them by the courts.⁷⁹

4.3 INCOMMUNICADO DETENTION

Iraq's security authorities commonly hold uncharged detainees incommunicado following their arrest and throughout the initial period of interrogation, which frequently extends for days, weeks or even months. Detainees are totally cut off from the outside world; they have no access to legal advice or to their families and they have no knowledge of how long such conditions will persist. In effect, they are entirely under the control of their interrogators and held in conditions that are widely known to facilitate, even invite, torture and other ill-treatment. Moreover, the security authorities have regularly used secret facilities that are not open to independent inspection or official regulation to hold detainees.

International law on these issues is clear. The UN General Assembly has stated that "prolonged incommunicado detention or detention in secret places can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment"⁸⁰

The Human Rights Committee has stated that provisions should be made that do not permit the use of incommunicado detention;⁸¹ and the Committee against Torture has consistently called for incommunicado detention to be eliminated.⁸² The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, recognizing that "torture is most frequently practised during incommunicado detention," has also called for incommunicado detention to be made illegal.⁸³

In 2001, referring to allegations of torture by Israeli security forces, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment stated:

"The Special Rapporteur accepts that not all allegations [of torture] will be well founded. Nevertheless, as long as the Government continues to detain persons incommunicado for exorbitant periods, itself a practice constituting cruel, inhuman or degrading treatment (as repeatedly confirmed by the [UN Human Rights] Commission), the burden will be on the Government to prove that the allegations are untrue. This is a burden that it will not generally be able to discharge convincingly."⁸⁴ (emphasis added)

4.3.1 DENIAL OF ACCESS TO LAWYERS

Detainees held as terrorism suspects are frequently held incommunicado and denied access to their lawyer and family, particularly when they are held for interrogation at detention facilities controlled by the Ministries of Interior and Defence. This has been acknowledged by the Ministry of Human Rights; in a majority of the cases that ministry officials monitored in 2011, detainees' lawyers were not present at the initial interrogation stage held at the security forces' detention facilities. According to the ministry, interrogators believed that the right of detainees to have legal counsel present during their interrogation applied only to interrogations conducted before an investigating judge.⁸⁵

Lawyers who represent terrorism suspects have told Amnesty International that they no longer

take the trouble to seek access to their clients during the initial interrogation phase because they know the detaining authorities will not permit it. Moreover, seeking to do so, it would appear, can sometimes result in action being taken against the lawyers themselves. For example, in February 2012, the Ninewa branch of the Iraqi Bar Association informed UNAMI that five lawyers had been detained by the security forces because they had “attempted to represent individuals detained by the military.”⁸⁶

Security forces arrested ‘Adel Hamdi Shihab, the father of Nabhan ‘Adel Hamdi (see section 3.3.1), and his two brothers, Shamil Hamdi Shihab and ‘Amer Hamdi Shihab, in early morning raids on their homes in Ramadi on 5 December 2012. They took the three brothers, all of who are aged in their late 40s or early 50s, to the Directorate of Counter-Crime and detained them incommunicado. On 9 December, they were taken before an investigating judge. They were then returned to detention. ‘Adel Hamdi Shihab was released without charge on 13 December but his two brothers, who are alleged to have been tortured during their interrogation, were moved to Tasfirat Prison in Ramadi from where they too were released uncharged at the end of December. None of the three men had access to their relatives during their detention.

Detaining authorities who prevent detainees accessing legal counsel are breaching both Iraq's constitution and Criminal Procedure Code. The former, adopted in 2005, states in Article 19 (4): "The right to a defence shall be sacred and guaranteed in all phases of investigation and trial." Article 123 of the Criminal Procedure Code, as amended, entitles an arrested person to be represented by a legal counsel when being questioned during the pre-trial period, and to have a court-appointed legal counsel free of charge if they cannot afford to pay for legal counsel of their own choosing. Detaining authorities must also inform detainees of these rights before questioning them.

4.3.2 DENIAL OF ACCESS TO FAMILY

Detainees continue to be held at “undisclosed places of detention” not known to their relatives and where their relatives have no access to them.⁸⁷ This may continue for weeks or even months, as many relatives of detainees have complained to Amnesty International.

Following her arrest on 1 January 2012 at her parents' home, the family of Rasha Nameer Jaafer al-Hussain, an employee at the office of Vice-President al-Hashemi, had no information as to her whereabouts for some four months, although the officials who took her away said she would be returned to her parents' home within two hours. In May 2012, the Ministry of Human Rights told Amnesty International that its staff had seen al-Hussain on 25 March at a Federal Police detention centre and had found her in “good and healthy condition”⁸⁸ but her family were still did not know where she was being held at the time of that visit. She was still detained in early 2013.

4.3.3 INCOMMUNICADO DETENTION IN THE KURDISTAN REGION

Detainees are also held incommunicado in the Kurdistan Region but on a much lesser scale than in other parts of Iraq.

Sheikhal Ibrahim Ahmad, a major [Ra’ed] employed at the Suleimaniya Police Directorate, is reported to have been summoned to a meeting with a senior security, or Asayish, official on 6 March 2012 and instructed to give a false statement implicating the mayor of Suleimaniya

and others in corruption. When he refused, he was taken to the General Security Directorate and detained incommunicado and in solitary confinement for 29 days. He was shown no arrest warrant and he was unable to inform his family of his detention. Following his release, he told Amnesty International that his interrogators repeatedly offered to release him if he would provide the statement they required but then lost patience and tortured him. They shackled his arms diagonally behind his back and punched and beat him while he was blindfolded. They threatened to take him “to the mountains and kill” him and struck him so hard that his eardrum burst and he lost consciousness. He asked to see a doctor because he was bleeding from his ear, but this was denied and he received no medical care. During further interrogation, he says he was electroshocked on his legs and stomach with a taser, beaten with a wooden club and made to stand in the rain for hours with his hands shackled behind his back. He finally agreed to sign a statement but he continued to be held in solitary confinement until he was taken for a medical examination on 4 April. He was allowed to see his family for the first time only on 5 April, 31 days after his arrest. He was charged together with Hussein Hama Tawfiq Ali (see section 3.3.3). A court acquitted both men in November 2012 and called for an independent investigation into their interrogators. As of February 2013, however, no investigation is known to have been initiated by the KRG authorities and those responsible for torturing the detainees have not been brought to justice. The police major received no compensation or apology for his detention and torture; instead, he was stripped of his privileges as a police major, and transferred to another department.



Sheikhal Ibrahim Ahmad, a Kurdish police officer who was arrested in March 2012 and reported that he was subjected to torture and other ill-treatment at the General Security (Asayish Gishtî) in Suleimaniya. He was acquitted and released in November 2012. © Amnesty International

4.4 LEGAL SAFEGUARDS AGAINST TORTURE AND OTHER ILL-TREATMENT

Under international law and standards, all reasonable allegations of enforced disappearance, 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.

Iraq has long been a state party to the ICCPR,⁸⁹ which prohibits torture absolutely (Article 7). Iraq became a state party to the Convention on Enforced Disappearances in 2010 and to the UNCAT in 2011.

Torture is also prohibited by Iraq's Constitution (Article 37, 1, c) and under Iraqi law, notably Article 127 of the Criminal Procedure Code: although not fully consistent with the definition of torture contained in the UNCAT, this states that it is not permissible "to use any illegal means to influence the accused to secure his statement. Mistreatment, threatening to harm, inducement, threats, menace, psychological influence, and the use of narcotics, intoxicants and drugs are all considered illegal means."

Further, the Penal Code, in its Article 333, provides that "any employee or public servant who tortures, or orders the torture of an accused, witness, or expert in order to compel that person to confess to committing a crime, to give a statement or information, to hide certain matters, or to give a specific opinion will be punished by imprisonment or detention. The use of force or threats is considered to be torture".

Under Article 2(3) of the ICCPR, states parties undertake, among other things, to ensure an "effective remedy" for persons whose Covenant rights have been violated. The Human Rights Committee, in its authoritative General Comment on Article 2, has referred to a "general obligation to investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies" and added that "failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant."⁹⁰ The Committee also stated that where such investigations "reveal violations of certain Covenant rights, States Parties must ensure that those responsible are brought to justice. As with failure to investigate, failure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the Covenant." It added that the obligations to investigate and prosecute "arise notably in respect of those violations recognized as criminal under either domestic or international law, such... as torture and summary and arbitrary killing."⁹¹

Article 12 of the UNCAT provides: Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

Article 12 of the Convention on Enforced Disappearance imposes a similar duty for cases of enforced disappearance.

Principle 34 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,⁹² requires that: Whenever the death or disappearance of a detained or imprisoned person occurs during his detention or imprisonment, an inquiry into the cause of death or disappearance shall be held by a judicial or other authority, either on its own motion or at the instance of a member of the family of such a person or any person

who has knowledge of the case... The findings of such inquiry or a report thereon shall be made available upon request, unless doing so would jeopardize an ongoing criminal investigation.

4.5 COERCED “CONFESSIONS”

Article 9 of the ICCPR obliges the Iraq authorities to respect the right of all individuals detained for an alleged offence, whatever its nature, to be brought promptly before a judge or other independent and impartial judicial officer. Article 9 states: “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.”

Iraqi legislation establishes a clear time limit within which an arrested person should be brought before a judicial body. Article 123 of the Criminal Procedure Code says detainees must be brought before an investigating judge within 24 hours of their arrest. In practice, this limit is frequently exceeded and some detainees may be held for weeks without being seen by an investigating judge. Under the law, it is the investigating judge or investigators acting under his supervision who should conduct the initial investigation (Articles 51-57 of the Criminal Procedure Code) into the alleged offence and it is the investigating judge who is responsible for gathering evidence, interviewing witnesses and suspects (Articles 58-68 of the Criminal Procedure Code), and determining whether an arrested detainee should be released or referred for trial.⁹³

In practice, many detainees – particularly those accused of capital crimes - make their first “confession” while under interrogation at police stations or detention centres controlled by the Ministries of Interior and Defence, not in the presence of investigating judges. Many detainees and trial defendants have alleged that they made such confessions under torture; some allege that their confession statements or statements implicating others in serious crimes had already been prepared by interrogators before they were made to sign.

The Ministry of Human Rights has gone some way towards acknowledging this reality, observing that detainees are “subjected in some instances to torture and ill-treatment in order to coerce them to confess or to obtain information.”⁹⁴ Once they have “confessed” in this way, detainees are generally taken under guard to appear before an investigating judge, often under threat of further torture or other ill-treatment if they refuse to confirm their confession or complain of mistreatment. In some cases, detainees are reported to have been threatened or assaulted by their guards in the presence of the investigating judge to force them to confess. Investigating judges are supposed to ensure that any incriminatory statements have been freely given, without coercion or duress, yet cases continue to be reported where they appear to have preferred to “look the other way” and accept self-incriminating statements from detainees without question despite their allegations or other evidence of abuse. This, when it occurs, may have profoundly damaging consequences for the detainee. For example, the Central Criminal Court in Baghdad [case number 1479 of 2012, Branch 2] ruled on 3 December 2012 that it would accept as evidence a confession made in pre-trial detention by a defendant although that defendant “denied any relation with the accusation brought against him and stated that his previous confession in front of the investigating judge was not true as it had been obtained by pressure and coercion that he was subjected to by the investigator”. The court said it found the confession acceptable because

it was “elaborate and detailed” [mufassal wa daqiq], then convicted the defendant under the Anti-Terrorism Law and sentenced him to life imprisonment. As experienced Iraqi criminal lawyers have attested to Amnesty International, courts place great weight on “confessions” recorded by investigating judges and tend to accept them even though defendants withdraw and repudiate them at trial. One defence lawyer active in terrorism cases also pointed to a weakness in the appeal system when he commented in a newspaper interview that judges who sit in the Court of Cassation and review trial judgments have good intentions “but they remain captives of the testimonies given by the accused under torture during the investigation.”⁹⁵

4.6 TELEVISED “CONFESSIONS”

The presumption of innocence constitutes a basic principle of fair trial standards and is guaranteed in the Iraqi Constitution (Article 19) and in international law (ICCPR, Article 14[2]). This principle has been repeatedly violated in Iraq, even in capital cases, by the practice of broadcasting self-incriminating testimonies of pre-trial detainees on television, apparently in breach of Iraqi law. Article 235 of the Penal Code prohibits the publication of any matter likely to “influence a judge or magistrate entrusted with the judgment on cases brought before a legal authority”.

Since 2005, hundreds of pre-trial detainees in Iraq have been presented on TV channels, often in groups, with some or all of them “confessing” to serious crimes, including some which, it later transpired, had never been committed.⁹⁶

In mid-2005, following criticism by the UN, the Iraqi Bar Association and other national and international organizations, the authorities declared that they would cease broadcasting televised pre-trial “confessions,” but they have since resumed this abusive practice. They continue to do so although UNAMI has declared that the “public airing of evidence before or during trial proceedings violates due process and fair trial standards, in particular prejudicing the presumption of innocence.”⁹⁷

Amnesty International raised this matter during meetings with the Supreme Judicial Council, the Ministry of Human Rights and other government officials in Baghdad in September 2012. The officials' response was to say that they too opposed the practice but that the media were responsible. This was disingenuous, however, as it is clear that no broadcasting of “confessions” of currently held detainees, or media interviews with such detainees, as have been conducted by several international and other media, could take place without the authorization and direct cooperation of the detaining authorities, whether the Ministry of Interior or others.

Indeed, officials of the Ministry of Interior continue to organize press conferences in which detainees accused of serious crimes are presented to the media in order to confess to committing even capital crimes in a manner that appears intended to imply that their self-incriminatory statements are being freely given. At such events, the authorities have also provided pre-recorded statements of detainees who are present in which the detainees are shown confessing to serious crimes or implicating others in such crimes. The authorities have also supplied media broadcasters with video footage of interrogations of pre-trial detainees and the Ministry of Interior continues to upload footage of many “confessions” of detainees, generally before the opening of a trial or the delivery of the trial verdict, onto the internet via

YouTube.⁹⁸ Edited footage of confessing pre-trial detainees shown “confessing” on the ministry’s Youtube channel frequently refers to them as “criminals” rather than “suspects.”⁹⁹

Most confessions of pre-trial detainees broadcast on Iraqi TV in 2012 that Amnesty International has reviewed were supplied to the media by the Ministry of Interior or police reporting to it, as pre-recorded material, “live” confessions given at press conferences or published confessions delivered via the internet. Researching the internet, Amnesty International came across video footage from 2012 that showed more than 60 pre-trial detainees being presented on TV channels that broadcast domestically within Iraq and others that broadcast to Iraq from abroad, such as al-Horra TV and al-Fayha TV. The detainees were said to have belonged to three separate armed groups and were accused of committing serious crimes under the Anti-Terrorism Law. At least one named suspect from each group was shown providing testimony that incriminated him and others. Most of the detainees were readily identifiable as their faces were shown.

Officials of the Ministry of Interior presented 21 pre-trial detainees at a press conference on 3 January 2012, describing them as members of an armed group named al-Haraka al-Naqshabandi. The alleged leader of the group, Abd al-Khaliq Abdel-Sitar al-Samara’i, said that he and other group members had carried out numerous violent attacks, including some targeting Shi’a civilians; his testimony was broadcast by Al-Horra TV.¹⁰⁰

Other television stations carried broadly similar broadcasts later in 2012. On 8 April 2012, al-Fayha TV and al-Afaq TV showed 25 pre-trial detainees accused of belonging to Ansar al-Islam,¹⁰¹ another armed group, including its alleged leader’s confession, broadcast on al-Afaq TV, that the group had carried out numerous armed attacks; the Ministry of Interior uploaded his “confession” and one by another detainees onto the internet via YouTube.¹⁰² On 27 May 2012, officials of the Ministry of Interior officials paraded at least 16 pre-trial detainees at a press conference, accusing them of belonging to an armed group linked to al-Qa’ida. Al-Masar TV broadcast a confession by one of the detainees that they had carried out many armed attacks and killed civilians,¹⁰³ as did several other TV stations, and also showed a pre-recorded interview with a detained member of Baghdad’s Provincial Council who confessed to violent crimes. At the press conference, however, the councillor, Laith Mustafa al-Dulaimi, suddenly stood up and shouted to the camera that he and the other detainees had been abused in detention.¹⁰⁴

On or about 12 June 2012, al-Fayha TV broadcast an interview in which ‘Omar ‘Adnan Hamza Qaraghuli confessed that he belonged to the Islamic State of Iraq, an armed group, and had participated in attacks on civilians¹⁰⁵ and a planned suicide bomb attack near the Iraqi parliament - apparently, a reference to an incident in November 2011. Behind him, the logo of the Intelligence Agency of the Federal Police (Istikhbarat Qiyada Quwa al-Shurta al-Ittihadiya) was visible, indicating where he was held at the time of the pre-recorded interview. About two weeks later, the Supreme Judicial Council announced that the Central Criminal Court had sentenced three men to death in connection with the November 2011 attack near the parliament, but did not disclose their names.¹⁰⁶

4.6.1. TELEVISED “CONFESSIONS” AND THE AL-HASHEMI CASE

In December 2011, Iraqi TV stations broadcast testimonies of at least three detained former bodyguards of the office of Vice President Tareq al-Hashemi in which they accused him of

ordering them to murder government and security officials and others. At least two of them later testified against al-Hashemi in court; the testimony of at least one of them was accepted as evidence by the Central Criminal Court when it convicted al-Hashemi on 9 September 2012 [case number 372 of 2012, First Branch] of involvement in killings and sentenced him to death. His son-in-law, Ahmad Qahtan, was sentenced to death in the same trial. Although both have so far evaded arrest, al-Hashemi and his son-in-law have since been convicted under the Anti-Terrorism Law in at least three further trials by the Central Criminal Court and sentenced to death in absentia [Verdict of 1 November 2012 in case number 1675 of 2012, Third Branch; verdict of 4 November 2012 in case number 1430 of 2012, First Branch; verdict of 2 December 2012 in case number 1638, First Branch]. Some of those detained in connection with the government's allegations against al-Hashemi are alleged to have been tortured in detention; one former bodyguard is alleged to have died in detention as a result of torture. (See section 3.4.)

Several of those arrested in connection with the allegations against al-Hashemi, including two detainees whose confessions were broadcast on television in December 2011, have also been sentenced to death. The two were among six defendants convicted by the Central Criminal Court under the Anti-Terrorism Law and sentenced to death on 6 November 2012 [case number 1334 of 2012, First Branch]. Others were sentenced by the Central Criminal Court on 9 September 2012 [case number 783 of 2012, Third Branch], 30 September 2012 [case number 1672 of 2012, Third Branch], 30 September 2012 [case number 1674 of 2012, Third Branch], 9 December 2012 [case number 373 of 2012, First Branch], 10 December 2012 [case number 1926 of 2012, First Branch], and 16 December 2012 [case number 1639 of 2012, First Branch]

The TV broadcasting of self-incriminating testimony by detainees before they actually stand trial or before the verdict in their trial is delivered appears intended by the authorities to serve several purposes: to stigmatize the individuals concerned and intensify pressure on the courts to return guilty verdicts against them, to convince or reassure the public that the authorities are making effective efforts to combat attacks and killings by armed groups and other violent crime. Sometimes, possibly, such broadcasts may be intended to denigrate particular individuals out of a political motivation. Such pre-trial exposure, however, fundamentally undermines the presumption of innocence and the right of the individuals accused to receive a fair trial; there are equally concerns that such testimonies have been admitted as evidence against others. In this regard, UNAMI has commented: "the interrogation of witnesses in such circumstances without the presence of legal counsel casts doubt on the credibility of the testimony and the legality of the process".¹⁰⁷

4.6.2 "CONFESSIONS" IN TELEVISED INTERVIEWS

In recent years, several Iraqi and non-Iraqi TV stations, including CNN and al-'Arabiya, have broadcast interviews with suspects facing charges under the Anti-Terrorism Law. Al-Fayha TV, for example, has featured a programme entitled "Space of freedom" (Fida' al-hurriya), in which a presenter is shown interviewing detainees suspected or accused of crimes under the Anti-Terrorism Law. For example, in September 2012 the programme carried an interview with Muhammad Salman Yussif 'Abdallah, who stated that he was the Basra leader of the Islamic State of Iraq and that he had participated in violent attacks on civilians and others. He had not been convicted of these crimes at the time the interview was conducted but he told his interviewer that he expected to be sentenced to death and executed.¹⁰⁸ A logo visible

behind the interviewee as he spoke suggested that he was being interviewed while in the custody of the Directorate of Counter-Crime (Mudiriya Mukafah Ijram) in Basra.

During the interview, Muhammad Salman Yussif ‘Abdallah named several other people whom he said were connected to his armed group and accused journalists working for two television stations, al-Arabiya TV and al-Sharqiya TV, of maintaining contacts with the Islamic State of Iraq.

4.6.3 CONFLICTING “CONFESSIONS”

Some “confessions” of detainees that have been shown on Iraqi TV programmes have contained significant inconsistencies, raising further questions as to their provenance and how freely they were given. Following the so-called Bloody Wednesday suicide bomb attacks near the Finance and Foreign Affairs Ministries on 19 August 2009, which killed more than 100 people, the “confessions” of various alleged perpetrators were broadcast. In one, shown by al-Iraqiya TV on 23 August 2009, detainee Wissam Ali Kadhim Ibrahim was seen to confess to membership of a Ba’thist group that he said perpetrated the attack.¹⁰⁹ Several months later, CNN broadcast an interview with Manaf ‘Abdulrahim ‘Abdulhamid ‘Issa al-Rawi, said to have been detained in March 2010, in which he said he was one of al-Qa’ida’s leaders in Iraq and had supervised the Bloody Wednesday bomb attacks.¹¹⁰ Neither interviewee suggested there was collaboration between the two armed groups in launching the attacks. The CNN interviewee, Manaf ‘Abdulrahim ‘Abdulhamid ‘Issa al-Rawi, was sentenced to death in March 2011, together with five other men, after the Central Criminal Court convicted them of carrying out an armed raid on a goldsmith’s shop in Baghdad’s al-Mashtal district in November 2009 and killing the shop’s two owners. He is still to face trial on other charges. The Iraqi authorities have not responded to Amnesty International’s requests for information about the current legal status and whereabouts of the detainee interviewed by al-Iraqiya, Wissam Ali Kadhim Ibrahim.

4.7 COURTS’ RELIANCE ON CONTESTED “CONFESSIONS”

Both the scale and frequency of cases in which defendants standing trial before the courts repudiate confessions they made in pre-trial detention, alleging that they were coerced under torture, and the courts’ general readiness to accept such repudiated confessions as evidence of guilt, raise very worrying questions about the quality and functioning of Iraq’s criminal justice system and its commitment to upholding the right to fair trial. Amnesty International has repeatedly expressed concern that Iraq’s courts are accepting contested confessions without taking adequate steps to ensure that they were freely given, not coerced, and about the fairness of trials, particularly in terrorism-related cases where the death penalty may be imposed. UNAMI, likewise, has expressed “particular concerns about the fairness of trials of persons accused of terrorist crimes and the reliance of courts on confessions obtained under duress and with unreliable forensic evidence.”¹¹¹

In this connection, Iraq is failing to meet its obligations under the United Nations Convention Against Torture and Other Cruel, Inhuman Or Degrading Treatment Or Punishment (UNCAT), to which Iraq is a state party, Article 15 of which provides: “Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.”

Article 7 of the ICCPR prohibits torture and other cruel, inhuman or degrading treatment or punishment in more general terms. However, the Human Rights Committee, charged with overseeing the implementation of the ICCPR, stated unequivocally, in its authoritative General Comment on the right to equality before courts and tribunals and to a fair trial:

“... as article 7 is also non-derogable in its entirety, no statements or confessions or, in principle, other evidence obtained in violation of this provision may be invoked as evidence in any proceedings... including during a state of emergency, except if a statement or confession obtained in violation of article 7 is used as evidence that torture or other treatment prohibited by this provision occurred”.¹¹²

Iraqi law prohibits the use of torture or other methods of coercion to obtain a “confession”: Article 218 of the Criminal Procedure Code declares “An admission [i.e. confession by a defendant] must not be given as result of moral or physical coercion”.

However, Iraqi law also provides that it is the trial court that decides whether a pre-trial confession is admitted as incriminating evidence, even if it has been subsequently repudiated by the defendant, as set out in Article 217 of the Criminal Procedure Code: “The court has absolute authority in evaluating the accused’s admission [i.e. confession] and acting upon it whether it was given in front of the court, in front of the investigative judge, during other court hearing of the same case or in another case, even if he subsequently changes it.”

Defendants who allege that they were coerced to falsely confess to a crime while in pre-trial detention face almost insuperable obstacles in proving it. Medical examinations, if carried out at all, usually are undertaken months or more later, when most physical evidence of torture is likely to have disappeared; even when injuries consistent with defendants’ allegations of torture have been identified in such examinations, the injuries often cannot be conclusively attributed to torture while the courts tend to give greater weight to the denials of security force interrogators than the unsupported allegations of defendants accused of serious crimes. As detainees undergoing interrogation are usually held incommunicado, the only witnesses to their torture or other ill-treatment, other than the perpetrators, are likely to be other detainees held in much the same conditions who may still be detained when the defendant goes to trial or, if released, may fear to give evidence on his behalf for fear that this will result in their re-arrest. Many defendants have been convicted of terrorism and other serious crimes wholly or largely on the basis of pre-trial confessions that they repudiated when they got to trial.

UN human rights bodies and experts have consistently criticised states where torture or other ill-treatment are inflicted in order to obtain “confessions” and where courts do not diligently and consistently reject their admissibility.¹¹³

The UN Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment has stated that: “Where allegations of torture or other forms of ill treatment are raised by a defendant during trial, the burden of proof should shift to the prosecution to prove beyond reasonable doubt that the confession was not obtained by unlawful means, including torture and similar ill-treatment.”¹¹⁴

The risk of police reverting to torture and other ill-treatment to extract “confessions” is particularly great where confessions are sufficient to obtain a conviction in court. For this reason, the Committee against Torture (CAT), the UN expert body charged with overseeing the implementation of the UNCAT, has consistently criticised such situations, for instance where “the current investigation system in the State party relies on confessions as a common form of evidence for prosecution, thus creating conditions that may facilitate the use of torture and ill treatment of suspects”.¹¹⁵ CAT has repeatedly recommended that states parties “should review cases of convictions based solely on confessions,”¹¹⁶ and “take the measures necessary to ensure that criminal convictions require evidence other than the confession of the detainee.”¹¹⁷ CAT has also welcomed “the fact that law enforcement personnel do not rely on confession statements unless other independent evidence has been obtained”.¹¹⁸

The UN Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment has similarly commented that “At the heart of” widespread torture “lies a system where the presumption of innocence is illusory [and] primacy is placed on obtaining confessions.”¹¹⁹ He emphasised that, among other things “a criminal justice system which relies heavily on obtaining confessions for instituting prosecutions, makes the risk of torture and ill-treatment very real.”¹²⁰ He has recommended that “Prompt and impartial investigations should be conducted whenever there is a reason to believe that an act of torture occurred, especially in cases where the sole evidence presented is a confession.”¹²¹

It should be noted that while for courts to admit confessions as evidence is not per se a violation of fair trial rights, no confession or other statement by a defendant obtained by torture or other ill-treatment may ever be admitted as evidence against him or her.

Under international human rights law, “confessions” and other statements obtained by torture must never be admitted to court as self-incriminating evidence. Human rights bodies and experts have consistently encouraged states to steer away from relying solely on confessions as this encourages obtaining them through torture.

4.7.1 CONVICTION ON THE BASIS ON A CONTESTED “CONFESSION”

Amnesty International has examined numerous verdicts by Iraqi criminal courts where a withdrawn confession constituted a/or the crucial piece of evidence for a conviction, including in the following case.

Mahmoud Muhammad Kamal Ahmad, a Palestinian born in Iraq, was sentenced to life imprisonment by the Resafa Criminal Court in December 2009 after it convicted him of crimes under the Anti-Terrorism Law [case number 1464 of 2009, Second Branch]. According to the verdict, the authorities found him in possession of a pistol and recording discs when they stopped him at a checkpoint in March 2007 and arrested him. He subsequently confessed during interrogation, and then before an investigating judge with a lawyer present, to membership of an armed group called Tanthim al-Tawhid wa al-Jihad fi Bilad al-Rafidain and planting explosives. At trial, however, he retracted his pre-trial confession alleging that it had been obtained under torture. The report of a medical examination conducted by the Forensic Medical Institute after he had been detained for more than a year lent some credence to his allegations; it noted that he had scars on his face and body that had been caused more than six months earlier.

The court verdict notes that the defendant retracted his pre-trial confessions but fails to make any reference to his torture allegations or the medical findings.

Instead, the court found the evidence sufficient and convincing because the initial but retracted confession accorded closely with the Ministry of Interior record of explosions in Baghdad in March, April and October 2006. Yet, Mahmoud Muhammad Kamal Ahmad was reportedly held as a detainee at Bucca Prison continuously from 25 January 2005 until 25 June 2006, which would make it impossible for him to have been involved in planting explosives in March and April 2006. Apparently the only evidence presented at court for his alleged membership of an armed group and participation in planting explosives were the confessions that he had retracted. Subsequently, the public prosecutor objected to the court's verdict on the grounds that the evidence was neither sufficient nor convincing, and called for the defendant's release. The Court of Cassation, however, confirmed the court's judgement and the sentence of life imprisonment.

4.7.2 CONTESTED "CONFESSIONS" RESULTING IN DEATH SENTENCES

Many defendants have been sentenced to death after courts accepted their pre-trial confessions as evidence of their guilt despite defendants' allegations at trial that those confessions were obtained from them under torture.

Amnesty International examined the court judgements of 17 trials which resulted in the imposition of death sentences on 48 men between 2006 and 2012 who are currently on death row. The trials were held before criminal courts in Baghdad, Anbar, Diyala and Dohuk. Forty-two of the defendants were convicted of serious crimes under the Anti-Terrorism Law, three were convicted of murder and four were convicted of carrying out abductions. All 48, according to their lawyers, relatives or others, told their trial courts that they had been tortured in pre-trial detention and coerced either to confess or to sign documents they were not permitted to read but which they assumed to be incriminatory. The judgments reveal that in the cases of virtually all 48 defendants, the trial courts admitted their contested confessions as evidence of the defendants' guilt while noting with respect to several defendants that they had accused the detaining authorities of torturing them to force them to make the confessions that, in court, they repudiated.

4.7.2.1 Questionable rationales for admitting contested "confessions" as evidence

The reasons that some criminal courts have advanced for accepting repudiated confessions and admitting them as evidence of a defendant's guilt have appeared, on occasions, to be particularly questionable. For example, the Resafa Criminal Court (case number 3119 of 2010, First Branch) ruled that a pre-trial confession that Ahmad 'Amr 'Abd al-Qader Muhammad retracted was reliable, despite medical and other evidence of his torture, because it was made at a date much closer to the time of the crime than his testimony before the court,¹²² as if this were something that the defendant could affect.

Ahmad 'Amr 'Abd al-Qadir Muhammad was arrested on 21 July 2006 in al-Zayouna district, Baghdad, following which he was held incommunicado for more than a year. He is alleged to have been tortured and coerced into confessing to membership of an armed group and planning to plant explosives. When his mother and neighbours were allowed to see him for the first time in detention in August 2007, when he was being held at a detention centre in

the Baladiyat district of Baghdad, they were shocked by his condition and what appeared to be clear evidence of his having been tortured - he had visible injuries, including burn scars, that appeared to have been caused by torture. A medical examination carried out by the Forensic Medical Institute about one year later, on 20 August 2008, found "external light brown large scars ranging between 2x20 cm and 2x10 cm on his left arm, two ankles and legs [...] that were older than six months". The security forces alleged that Ahmad 'Amr 'Abd al-Qadir Muhammad was attempting to plant explosives on the day of his arrest; according to his family, however, he had hired a taxi to collect food from a restaurant for his engagement celebration and ran away, fearing abduction, when the vehicle was stopped by armed members of the security forces wearing plain clothes and there was an exchange of fire between the security forces and the taxi driver in which he and a police officer died. Ahmad 'Amr 'Abd al-Qadir Muhammad was arrested nearby after he ran from the scene. Defence lawyers contend that eyewitnesses to the incident, including police officers, have given conflicting testimonies.

In 2006, the year the incident had occurred, there was a surge in sectarian violence in which thousands of people were subject to violent attacks, including bomb explosions and other killings and abductions. Palestinian refugees were among those particularly targeted by some armed militia groups because they were seen as having enjoyed preferential treatment under the former Ba'ath regime of Saddam Hussein. Among the few thousand Palestinians who remained in Iraq, scores were killed and many feared for their lives.¹²³ According to 'Amr 'Abd al-Qadir Muhammad when the taxi was stopped by security officers wearing plain clothes it seemed that the driver panicked fearing abduction or worse by an armed militia group, sparking the exchange of fire.

In the pre-trial confession that he withdrew Ahmad 'Amr 'Abd al-Qadir Muhammad also admitted to involvement in causing several bomb explosions in Baghdad; however, no other evidence linking him to these incidents was presented to the court.

Ahmad 'Amr 'Abd al-Qadir Muhammad's death sentence has been upheld by the Court of Cassation and he is currently held at the death row section of Camp Justice in Baghdad.

4.7.2.2 Acceptance of contested "confessions" despite evidence of torture

In some cases, courts have accepted pre-trial confessions that defendants alleged were obtained under torture despite medical evidence which apparently supports those allegations. In August 2010, for example, the Anbar Criminal Court [case number 525 of 2010, First Branch] sentenced 11 men to death under the Anti-Terrorism Law after convicting them of participating in a fatal bomb attack in Hit. The court noted: "the confessions of the defendants are sufficient and clear and detailed and supported by other evidence such as the inspection of the scene and the death reports of the victims and the medical reports of the injured," although the only evidence linking the 11 men to the bombing were the confessions that they repudiated in court. The court also failed to give weight to the findings of medical examinations of 10 of the 11 carried out at a Ramadi hospital in May 2010, four months after they were arrested and detained incommunicado at the Directorate of Counter-Terrorism in Ramadi. This reported that all 10 "showed inability to move their shoulders," a finding consistent with their allegations that the torture methods used against them included their being suspended by their arms in such a way that their shoulders had to support their full

body weight. At their trial, according to one defendant's sister who attended it, her brother and others among the accused pointed out marks on their bodies that they said had been caused by electric shock and other forms of torture to which they had been subjected by interrogators to force them to make self-incriminating statements. The medical examinations also revealed long scars on the backs of six of the defendants and other injuries. Despite this, the court sentenced all 11 to death and their convictions and sentences were subsequently confirmed by the Court of Cassation.

4.7.2.3 Acceptance of contested “confessions” that lack medical evidence of torture

In other cases, courts have accepted pre-trial confessions that defendants withdrew at trial because their allegations of torture were not supported by medical evidence, although it is hard to believe that judges do not know how difficult it is for pre-trial detainees to obtain medical examinations at all, let alone in the immediate aftermath of their interrogation when any physical evidence of torture is likely to be visible and capable of clear identification and documentation. Independent medical examinations conducted at such times would indicate reasonably conclusively whether a detainee's allegations of torture are fabricated or well-founded, and so assist the courts in determining whether statements taken from the detainee during his interrogation should be considered reliable and admitted as evidence at trial. However, medical examinations of detainees are rarely, if ever, conducted at such times, and those that are conducted normally take place weeks or months after the alleged torture occurred, when most physical injuries will have healed; consequently, while such examinations may reveal injuries that are consistent with torture generally they cannot be conclusively attributed to torture. In practice, such inconclusive medical findings may actually work against the defendant's interest, leading the court to consider him an author of self-serving allegations that he is unable to substantiate and thus an unreliable witness.

In August 2010, the Anbar Criminal Court [case number 117 of 2010, Second Branch] sentenced a man to death after convicting him under the Anti-Terrorism Law and rejecting his withdrawal of his pre-trial confession and allegations of torture. The court noted “his claim that he was tortured was not made evident in any medical report.” And said it considered the withdrawn confession credible and admissible as evidence because it included details of the crimes of which he was accused. According to his lawyer, the contested confession was the only incriminating evidence presented to the trial court.

A few months earlier, the Diyala Criminal Court sentenced a man to death when it convicted him under the Anti-Terrorism Law after rejecting his withdrawal of his pre-trial detention confession. A medical examination carried out in April 2010, six months after he was arrested, was not considered relevant by the court because the injuries it found – scars and discolouration on the detainee's back – was dated as being caused between three to five months earlier and so to have been sustained after the date on which he was said to have confessed while held in pre-trial detention.

4.8. USE OF SECRET INFORMANTS

On 20 June 2012 Ramze Shihab Ahmad, 70, a dual Iraqi-UK national, was sentenced to 15 years of imprisonment by the Resafa Criminal Court [case number 1901 of 2012, First Branch] after it convicted him under the Anti-Terrorism Law. He had already been held for over two years. Arrested in December 2009 at Mosul, he was held at the secret al-Muthanna

detention prison, where he said interrogators tortured him with electric shocks, partially suffocated him with a plastic bag, suspended him by his ankles, and threatened to rape his wife until he agreed to sign a statement admitting to links with al-Qa'ida in Iraq. Prior to his conviction, he had been tried and acquitted of charges under the Anti-Terrorism Law on eight previous occasions. The court that eventually convicted him based its guilty verdict on three pieces of oral testimony that it accepted as evidence against him – the pre-trial confession that he had repudiated, the allegedly coerced testimony of a co-defendant in a previous trial, and information from a secret informant.



Ramze Shihab Ahmed, a dual British-Iraqi citizen, received an unfair trial and was sentenced in June 2012 in Baghdad to 15 years' imprisonment. © Private

In 2009, Article 243 of the Penal Code was amended to increase the penalty for falsely accusing an innocent person due to the problems that had arisen from the use of secret informants. At the same time, the Supreme Judicial Council issued a directive urging investigating judges to satisfy themselves as to the reliability of information provided by secret informants and not to consider it sufficient, in the absence of other evidence, to issue arrest warrants or detention orders. Despite this, Ramze Shihab Ahmad's conviction was based on no more than two contested confessions and information provided by a secret informant.

Earlier, in May 2012, the Resafa Criminal Court imposed life imprisonment sentences on Ramze Shihab Ahmad's son, Omar Ramze Shihab, and another accused after convicting them under the Anti-Terrorism Law [case 760 of 10 May 2012, First Branch]. 'Omar Ramze Shihab had been arrested in September 2009 in Mosul. Later, he was described as the leader of a group that had killed several Christians and detonated a bomb in a village, when

he was presented at a press conference convened by the Ministry of Defence on 18 January 2010. At this, officials played the video-recorded pre-trial confessions of Omar Ramze Shihab and eight other men,¹²⁴ The Resafa Criminal Court judgement notes that both men at trial retracted their earlier confessions to participating in bomb attacks in 2009 that killed civilians but makes no mention of the men's torture allegations.

5. DEATH PENALTY

“I did not recognise him at first because of all the torture marks. I could not control myself that day. I could not stop crying... He did not understand and said that I was always so strong. I could not bear it. I asked what it was [pointing to his shoulder] and he told me it was a burn... I wished they sentenced me to death instead of him.” Mother of a death row prisoner from Baghdad who alleges that her son was coerced to “confess”, February 2013.

Iraq, today, is one of the world's leading executioners as the government continues to battle against a high level of violence by armed groups. Since the death penalty was reinstated in August 2004, at least 447 people have been executed. Hundreds of prisoners are currently held on death row.¹²⁵

Many, probably the majority, of those sentenced to death have been convicted of violent crimes under the Anti-Terrorism Law of 2005, including politically-motivated and sectarian bomb and other attacks that have killed and injured numerous civilians. Many, however, were sentenced, and in some cases executed, after trials that, due to their unfairness, undermined rather than upheld justice.

The death penalty has a long history in Iraq. It was used extensively under Saddam Hussein as a tool of political repression. For a brief period only, from the time of his overthrow in March/April 2003 until the US-led Coalition Provisional Authority handed power back to an Iraqi interim government, its use was suspended, although steps were already underway to bring Saddam Hussein and his associates to justice for crimes committed under their rule. By the time that a special court, the Supreme Iraqi Criminal Tribunal (SICT), was established to try them, Iraq's interim government had already restored the death penalty and the SICT (see below) was empowered to impose it.

Amnesty International opposes the death penalty in all circumstances as a violation of two fundamental human rights articulated in the Universal Declaration of Human Rights, the right to life (Article 3) and the right not to be tortured or subjected to any other cruel, inhuman or degrading treatment or punishment (Article 5) Amnesty International considers the death penalty a violation of the right to life and the ultimate form of cruel, inhuman and degrading punishment. Its irrevocability, combined with its capacity to be inflicted on the innocent due to the fallibility to which all criminal justice systems are subject, makes it an especially egregious punishment, while assertions of its crime deterrent effect are not borne out by scientific research and examination.

In Iraq, as this report shows, the death penalty has been increasingly used in recent years in circumstances that give added grounds for concern, as UNAMI pointed out in May 2012, when it expressed “serious reservations about the integrity of the criminal justice system in Iraq, including abuses of due process, convictions based on forced confessions, a weak judiciary, corruption and trial proceedings that fall short of international standards [...] Any miscarriage of involving capital punishment cannot be undone.”¹²⁶

UNAMI, the UN High Commissioner for Human Rights and the UN Special Rapporteur on

extrajudicial, summary or arbitrary executions have made repeated calls for the establishment of a moratorium on the death penalty in Iraq.

5.1 THE LEGAL FRAMEWORK

The Penal Code in force since 1969 prescribes the death penalty for a wide range of offences, including: premeditated murder; all crimes compromising the internal security of the state; attacks on means of transportation resulting in fatalities; attempting to overthrow the government by violent means; and damaging public property.

The Iraqi interim government that reinstated the death penalty following its temporary suspension by the CPA in June 2003, also extended its application, issuing Decree Number 3 of 2004 to institute the death penalty as a penalty for certain crimes, such as carrying out abductions not resulting in death.

Additional capital crimes were created by the Statute of the Supreme Iraqi Criminal Tribunal (SICT) [Law 10 of 2005] and the Anti-Terrorism law of 2005 [Law 13 of 2005]. The former made genocide, crimes against humanity, war crimes, and membership of and supporting armed groups punishable by death; the latter adopted a broad definition of terrorism punishable by death.

The Iraqi Military Code of 2007, and the Iraqi Internal Security forces' Penal Code, enacted in February 2008, prescribe death as a penalty for certain crimes when committed by members of the military, police and other security forces. These include transmitting official secrets, plans and instructions to an armed group; directly or indirectly transmitting Iraqi state secrets to foreign states; and deliberately sabotaging and damaging means of communication, transportation, weapons or explosives.

Persons convicted of a criminal offence, including those sentenced to death, are entitled under Iraqi law to appeal their conviction and sentence before the Court of Cassation within 30 days of the verdict against them - except in cases of prisoners sentenced by the SICT, which has its own appeals chamber. (Article 25 of the statute establishing the SICT provides: "the convicted person or the prosecutor may contest the verdicts and decisions by appealing in cassation to the Appeals Chamber" of the SICT)

Even when no appeal is filed, Iraqi law requires that all death sentences, once imposed, are reviewed by another judicial body; normally, they are referred automatically for review by the Court of Cassation (except in cases before the SICT). However, the Court of Cassation may reach its decision on a paper-based review of the court verdict and dossiers; it is not required to conduct a re-examination of the evidence, although it is entitled to do so if it determines that this is required. [Article 258 of the Criminal Procedure Code]

Once a death sentence has been confirmed by the Court of Cassation, Article 286 of the Criminal Procedure Code requires that it is then sent to the President who to decide whether it should be ratified and the offender executed, commuted to a lesser sentence, or pardoned.

Jalal Talabani, who became Iraq's President following the overthrow of Saddam Hussein, has long been known as an opponent of the death penalty, and is reported to have declined to ratify death sentences referred to him as President. However, his personal objections have

been of limited significance as such cases have simply been delegated to one of his Vice Presidents to decide whether execution warrants should be issued.

5.2. CALLS FOR REVIEW OF THE ANTI-TERRORISM LAW

Although full details are not available, most death sentences in recent years are believed to have been imposed under the Anti-Terror Law. Out of 33 prisoners on death row at Ramadi's Tasfirat Prison in August 2012, for example, 27 had been convicted of crimes under the Anti-Terrorism Law, mostly its Article 4, covering acts such as provoking, planning, financing, committing or supporting others to commit terrorism.¹²⁷

In recent weeks, government critics mostly from the Sunni community have called for the Anti-Terrorism Law to be amended, including by the abolition of its Article 4. Such protests appear to have been motivated partly by concern that the law is being used to send innocent people to their deaths and that an amnesty law, if enacted, would exclude those convicted under the Anti-Terrorism Law, as Prime Minister Nuri al-Maliki has said is his intention.

5.3 WOMEN ON DEATH ROW

Men comprise the great majority of prisoners sentenced to death and executed in Iraq but at least 14 women have been executed since executions resumed. The authorities have reported carrying out 129 executions in 2012, including five executions of women.

The number of women currently on death row is unknown to Amnesty International. In October 2012, the HHRO reported that at least 18 women were on death row there when they visited the Women's Prison in Baghdad.¹²⁸

Some women prisoners have been on death row for several years, including Wassan Talib, who was sentenced to death in August 2006 after the Central Criminal Court convicted her of murdering members of the security forces, and Samar Sa'ad 'Abdullah, sentenced in August 2005 after she was convicted of murdering several relatives despite her allegations that she was forced to confess under torture in pre-trial detention.

5.4. JUVENILE OFFENDERS

The Penal Code excludes children and young people under 20 from the death penalty [Article 79 of the Iraqi Penal Code stipulates: "No person between the ages of 18 and 20 at the time of committing an offence can be sentenced to death. In such a case, he will receive life imprisonment instead of the death sentence"]. The maximum punishment for a child offender aged above 7 and under 15 is five years' confinement in a correctional institution (Article 72); for a juvenile offender aged above 15 and under 18 it is 15 years' confinement in a correctional institution (Article 73(1)); and for young people between 18 and 20 years of age at the time of the crime it is life imprisonment (Article 79).

Article 6(5) of the ICCPR and Article 37(a) of the Convention on the Rights of the Child, both ratified by Iraq, prohibit the use of the death penalty against children – persons under 18.¹²⁹

Despite this, at least one child offender is reported to have been sentenced to death in Iraq. According to Human Rights Watch, Yemeni national Saleh Moussa Ahmad al-Baidany was sentenced to death in July 2011 in Iraq after being convicted of a crime committed when he

was 16 years old. He is said to have been detained by US forces in Iraq in 2009 and later handed over to the Iraqi authorities. His father, who had spoken to him by phone, said his son had told him he was tortured and coerced to sign a confession while blindfolded and held at a detention facility in Baghdad.¹³⁰

5.5 DEATH SENTENCES FOR NON-LETHAL CRIMES

The UN Human Rights Committee has specifically referred to "abductions not resulting in death" as offences which cannot be characterized as the "most serious crimes" under Article 6(2) of the International Covenant on Civil and Political Rights (ICCPR) because they did not result in deaths, and that the imposition of the death penalty for such an offence therefore violates that article.¹³¹ In 2012, the UN Special Rapporteur on extrajudicial and arbitrary executions noted, similarly, that only crimes involving intentional killing meet the threshold of "most serious crimes" and so may be considered as capital offences.¹³²

The Iraqi Penal Code (Articles 421- 424) and the Anti-Terrorism Law (Article 2 and 4) provide for the death penalty for those convicted of abductions not resulting in death.

Safa Falih Hassan Latif, 33, was arrested on 9 April 2005 in Baghdad and, he says, detained and tortured at the Resafa Crimes Directorate until he confessed to participating in the armed abduction of a person who survived. He said he was beaten with a cable and the butt of a pistol by interrogators. However, the Central Criminal Court of Iraq convicted him and three other men of committing the abduction and sentenced them to death on the basis of Article 421 and 422. Their death sentences were reportedly upheld by the Court of Cassation in May 2007. In early 2013, the three men were on death row at the Maximum Security Prison (al-Himaya al-Quswa) at Camp Justice in the al-Kadhemiya district of Baghdad.

5.6 OTHER ARAB NATIONALS ON DEATH ROW

Iraq's death row prisoners include a number of nationals of other predominantly Arab states who have been sentenced under the Anti-Terrorism Law. Without relatives present in Iraq to pursue their interests, and dependent on court-appointed lawyers who usually cease action on their behalf once they are convicted, foreign nationals face particular challenges in mounting successful appeals or petitions for clemency.

Those known to Amnesty International include a Sudanese national whose family, which resides outside Iraq, learnt of his case only after he had been sentenced to death under the Anti-Terrorism Law (case number 2511 of 2005 of the Central Criminal Court). In December 2012, he was held on death row at the Maximum Security Prison (al-Himaya al-Quswa) at Camp Justice in Baghdad.

Two Libyan nationals, 'Adel al-Sha'lani, sentenced to death on terrorism charges in 2007, and 'Adel 'Omar al-Zawi, sentenced to death on similar charges in 2006, were also held on death row at the Maximum Security Prison (al-Himaya al-Quswa) at Camp Justice in Baghdad in early 2013.

Media reports suggest that at least two Saudi Arabian nationals are under sentence of death in Iraq.¹³³ One, Abdullah 'Azzam Saleh Musfer al-Qahtani, was convicted by the Central Criminal Court on terrorism charges together with five Iraqi defendants in March 2011. They were convicted of conducting an armed raid on a goldsmith's shop in Baghdad in 2009,

during which two persons died. In its verdict, the court admitted the defendants' "confessions" as evidence, despite their allegations of torture and coercion in pre-trial detention. Prior to his conviction, in breach of his and his co-defendants' right to fair trial, al-Fayha TV broadcast an interview with Abdullah 'Azzam Saleh Musfer al-Qahtani in which he confessed to affiliation with an armed group and committing other crimes.¹³⁴ His defence lawyers contend that Abdullah 'Azzam Saleh Musfer al-Qahtani was already being detained at the time of the fatal armed raid on the goldsmith's shop.¹³⁵

5.7 DEATH SENTENCES IMPOSED BY THE SUPREME IRAQI CRIMINAL TRIBUNAL

The SICT was established specifically to try Saddam Hussein and officials from the former Baath administration accused of committing war crimes, genocide and crimes against humanity. It was given a restricted mandate to address only crimes committed during the Saddam Hussein regime. By early 2013, it had sentenced at least 14 people to death, some more than once, including the former dictator who was hanged in December 2006. At least five other senior or close associates of Saddam Hussein have been executed while others, including former Foreign Minister and Deputy Prime Minister Tariq Aziz, remain on death row and at risk of execution.

The statute establishing the SICT says that its sentences must be enforced in accordance with Iraqi law but denies the President or any other body authority to "grant a pardon or mitigate the punishment" issued by the SICT, which must be executed within 30 days after the sentence or decision reached finality. [Article 27 (2) of Law 10 of 2005 of the Supreme Iraqi Criminal Tribunal] Article 286 of the Criminal Procedure Code provides that death sentences must be ratified by the Presidential Council.

From the outset, trials before the SICT were beset with challenges – several lawyers involved in cases before it were attacked and killed and the court was subject to political interference to the extent that its independence and credibility were called into question.

5.8 DEATH PENALTY IN THE KURDISTAN REGION OF IRAQ

The Kurdistan Region uses Iraqi laws and also has separate laws that apply only within the area administered by the KRG. The latter include the Anti-Terrorism law, Law 3 of 2006, which prescribes the death penalty for kidnapping, membership of a terrorist organization, espionage, aiding presumed terrorists to leave or enter the country, and other crimes. However, the death penalty is used on a much lesser scale than in the rest of Iraq. In January 2013, scores of prisoners were reported to be under sentence of death for a variety of crimes. The last execution by the KRG was carried out in 2008.

5.9 CASE EXAMPLES: PRISONERS SENTENCED TO DEATH AFTER WITHDRAWING PRE-TRIAL "CONFESSIONS"

The preceding pages of this report include a number of examples of the use – or misuse – of confessions by Iraq's criminal courts. Here, below, the cases of 90 prisoners currently under sentence of death in Iraq are listed and briefly described. In all of these cases, according to prisoners' relatives, lawyers, human rights activists and other sources, they were forced to make "confessions" under torture or other coercion while held in pre-trial detention, and in most cases it was reported that such confessions were used as evidence. Amnesty International has reviewed the court verdicts relating to 48 of these death row prisoners. In

virtually all of their cases, trial courts admitted their pre-trial confessions as evidence; with regard to 25 of the prisoners, the courts referred explicitly to their having withdrawn these confessions at trial. By February 2013, the Court of Cassation was reported to have confirmed the death sentences of at least 75 of the prisoners. In some of the cases listed, prisoners' names have been withheld at the request of their family.



Mother of death row prisoner Ahmad 'Amer 'Abd al-Qader holding his picture, February 2013, Iraq. © Amnesty International

5.9.1 DEATH SENTENCES BY THE CENTRAL CRIMINAL COURT, BAGHDAD

- Verdict of 15 August 2005, Central Criminal Court, Baghdad

One woman, Samar Sa'ad 'Abdullah, was sentenced to death on 15 August 2005 for murder. At her trial, she alleged that after her arrest police in Hay al-Khadhra, Baghdad, had beaten her with a cable, beaten the soles of her feet (falaqa) and subjected her to electric shocks to make her "confess". Her death sentence was confirmed by the Court of Cassation on 26 February 2007.

- Verdict of end June 2006, Central Criminal Court

One man, a former army colonel under the previous regime, was sentenced to death at the end of June 2006 after he was convicted for of being one of the leaders of an armed group and attacking Iraqi soldiers. US forces arrested him at his house in Baghdad in September 2004, allegedly beating him and members of his family. After a week in US custody, he was handed over to the Iraqi authorities. At his trial, he denied the charges and told the court he had been tortured in detention and forced to sign a statement incriminating himself. The

Court of Cassation confirmed his death sentence on 27 April 2011.

- Case number 1856 of 2006, Central Criminal Court, Baghdad, First Branch

Safa Falih Hassan Latif, 33, was arrested on 9 April 2005 in Baghdad. He was taken to the Resafa Crime Directorate (Mudiriyat Jaraim), where, he alleged, he was tortured during interrogation and coerced into confessing that he had participated in carrying out the armed abduction of an individual who survived. He said he was beaten with a cable and the butt of a pistol by interrogators. On 8 October 2006 the Central Criminal Court convicted him and three other men of carrying out the abduction and sentenced them to death on the basis of Articles 421 and 422 of the Penal Code. The Court of Cassation is reported to have confirmed his death sentence and those of two of the other defendants in May 2007. In early 2013, Safa Falih Hassan Latif and these two co-defendants were on death row at the Maximum Security Prison (al-Himaya al-Quswa) at Camp Justice in the al-Kadhemiya district of Baghdad.

- Case number 606 of 2006, Central Criminal Court, Baghdad

One man was sentenced to death on 19 December 2006 after he was convicted of murder under Article 406 of the Penal code. He was detained in January 2005, reportedly by members of an armed militia group who held him for several days at an unacknowledged detention centre where they tortured him and coerced him to make a confession. He withdrew this confession at his trial but the court convicted him and imposed the death penalty. The Court of Cassation is reported to have confirmed his death sentence. He is held on death row at the Maximum Security Prison (al-Himaya al-Quswa) at Camp Justice in Baghdad.

- Case number 9 of 2006, Central Criminal Court, Baghdad

One man, 35, was sentenced to death on 17 January 2007 after he was convicted of murder under Article 406 of the Penal code. He was arrested in August 2005 at a police checkpoint in Mosul, then taken to the Police Directorate in Mosul and detained incommunicado. He alleged that he was held for several months and tortured and coerced to confess to murder. In court, he withdrew his pre-trial confession but the court convicted him and sentenced him to death. The Court of Cassation is reported to have confirmed his death sentence. He is held on death row at the Maximum Security Prison (al-Himaya al-Quswa) at Camp Justice in Baghdad.

- Case number 1174 of 2008, Central Criminal Court, Baghdad, Third Branch

Yassin Taha Yassin, 30, and his uncle, 'Ali Yassin Taha, 43, were sentenced to death by the Resafa Branch of the Central Criminal Court on 25 February 2009 after the court convicted them under the Anti-Terrorism Law. They were found guilty of participating in the armed kidnapping of three women in Baghdad who the security forces subsequently rescued and freed alive. The two men were arrested in August 2007. At their trial, they withdrew their pre-trial confessions and alleged that these had been extracted from them under torture. The Court of Cassation has confirmed their death sentences in April 2010. 'Ali Yassin Taha was executed in November 2011.

- Case number 891 of 2009, Central Criminal Court, Baghdad, Second Branch

Abdeljabar Abdallah Ahmad 'Alwan was sentenced to death on 4 May 2009 after the court convicted him of abduction and murder under Article 406 (1,a) of the Iraqi Penal Code. He alleged that he was tortured at three separate detention facilities in al-Sayida, Baghdad, following his arrest in December 2008, including by being beaten with cables and subjected to electric shocks. He said he was forced to confess by interrogators and to sign papers whose contents he was not permitted to read. In court, he withdrew his pre-trial confession but the court decided to admit it as evidence, according to the judgment because it was consistent with testimony provided by a son of the murder victim (who, however, was reportedly not able to identify his father's killer), was detailed and had been given in the presence of a court appointed lawyer. The Court of Cassation has reportedly confirmed the death sentence in 2010.

- Verdict of 27 January 2010, Central Criminal Court, Baghdad

One man, 27, was sentenced to death on 27 January 2010 after he was convicted on terrorism charges and in connection with the killing of one of his friends. He was arrested in November 2008 at his home in Baghdad and detained incommunicado for several weeks during which, he alleged, he was beaten and given electric shocks at the Crimes Directorate in al-Kadhemiya district until he confessed to murder. The Court of Cassation has reportedly confirmed the death sentence.

- Case number 1323 of 2010, Central Criminal Court, Baghdad, Second Branch

Ahmad Nuri Badawi 'Abbas, 28, was sentenced to death on 29 December 2010 after he was convicted under the Anti-Terrorism Law. He stated he was tortured by interrogators of a Counter-Terrorism Unit (Jihaz Mukafaha al-Irhab) in a detention facility in the Green Zone, Baghdad, where he was held incommunicado following his arrest in April 2009. He said they beat him with cable and subjected him to electric shock torture until he agreed to make a confession. He withdrew this confession at his trial but the court pronounced him guilty and sentenced him to death. The Court of Cassation has reportedly confirmed his death sentence.

- Verdict of 26 November 2011, Central Criminal Court, Baghdad

Three men related by marriage were sentenced to death on 26 November 2011 after they were convicted under the Anti-Terrorism Law. They said they were arrested and held for three days in Mosul then transferred to a secret detention prison in Baghdad's Green Zone, where they were held for about eight months and tortured and forced to make false confessions. The Court of Cassation reportedly rejected the verdict, however, and returned the case to the Central Criminal Court, where it is currently pending.

- Case number 390 of 2011, Central Criminal Court, Baghdad, Second Branch

Six men – Saudi Arabian national 'Abdullah 'Azzam Saleh Musfer al-Qahtani, and five Iraqis: Mohammad Nuri Matar Yassin, Ibrahim 'Abdulqader 'Ali 'Antik, Safa Ahmad 'Abul'aziz 'Abdullah, Manaf 'Abdulrahim 'Abdulhamid 'Issa al-Rawi and Mohammad Jaber Tawfiq 'Obaid - were sentenced to death on 16 March 2011 after the Central Criminal Court

convicted them under the Anti-Terrorism Law. In its judgment, the court noted that the defendants had withdrawn the confessions they had made while in pre-trial detention but said it was not convinced that these confessions, which it admitted as evidence against the six defendants, had been obtained through coercion. All six death sentences have reportedly been confirmed by the Court of Cassation.¹³⁶

- Case number 2236 of 2012, Central Criminal Court, Baghdad, Third Branch

One man was sentenced to death on 11 November 2012 after the Central Criminal Court convicted him under the Anti-Terrorism Law. At his trial, he repudiated a confession given in pre-trial detention and alleged that he had been coerced under torture to provide it while he was held incommunicado following his arrest in July 2010. He said he had been beaten and subjected to electric shocks by interrogators at Camp Honour, Baghdad. The Court of Cassation has yet to pronounce on his death sentence.

- Case number 2082 of 2012, Central Criminal Court, Baghdad, Third Branch

One man was sentenced to death on 11 November 2012 after he was convicted under the Anti-Terrorism Law. In court, he withdrew a confession that he had made in pre-trial detention following his arrest by US and Iraqi forces in October 2008 and alleged that it had been extracted through coercion and torture. The court, nevertheless, admitted the pre-trial confession as evidence against him and pronounced him guilty as charged. The Court of Cassation has yet to consider his death sentence.

- Verdict of 22 November 2012, Central Criminal Court, Baghdad

One man was sentenced to death on 22 November 2012 after he was convicted under the Anti-Terrorism Law despite his allegation that he was tortured and forced to confess by interrogators who detained him incommunicado at a secret detention facility at the former al-Muthanna Airport following his arrest in November 2010. The Court of Cassation has yet to review his death sentence.

- Verdict of 21 January 2013, Central Criminal Court, Baghdad

Two men were sentenced to death on 21 January 2013 after they were convicted under the Anti-Terrorism Law. One had been arrested in November 2009 by the Baghdad Brigade and detained at Camp Honour in Baghdad's Green Zone where, he alleged, they tortured him until he agreed to confess to committing terrorist crimes. The Court of Cassation has yet to review the death sentences imposed on the two men.

- Case number 2236 of 2012, Central Criminal Court, Baghdad, Third Branch

One man was sentenced to death on 11 November 2012 after the Central Criminal Court convicted him of crimes under the Anti-Terrorism Law. In court, he repudiated a confession that he had made in pre-trial detention and alleged that he was coerced to make it under torture while he was held incommunicado following his arrest in July 2010. He said he had been beaten and subjected to electric shocks by interrogators at Camp Honour, Baghdad. The Court of Cassation has yet to review his death sentence.

5.9.2 DEATH SENTENCES BY THE RESAFA CRIMINAL COURT, BAGHDAD

- Case number 1641 of 2009, Resafa Criminal Court, Second Branch

Eleven men¹³⁷ were sentenced to death by the Resafa Criminal Court in Baghdad on 14 January 2010 after they were convicted under the Anti-Terrorism Law in connection with the so-called Bloody Wednesday bomb attacks of August 2009. More than 100 people were killed in the bomb explosions; more than a thousand others were wounded. Many of the casualties were civilians. All 11 accused, according to the court judgment, confessed to membership of al-Qa'ida and to having participated in carrying out the fatal attacks while they were held in pre-trial detention, but at trial withdrew those confessions and alleged that they had been coerced by torture and threats. Some of the 11, the court also noted, also alleged that they had tried previously to repudiate their confessions when they were taken before an investigating judge, with the result that they had been returned to their interrogators and subjected to further torture until they consented to repeat their confessions before the investigating judge and defence lawyers appointed to represent them by the court. Despite this, the trial court admitted the contested confessions as evidence and used it to convict the defendants. The Court of Cassation has confirmed the death sentences of the 11. In August 2012, however, defence lawyers filed a request for a re-trial and submitted affidavits from defendants in other trials who alleged that they too were tortured by interrogators and forced to falsely incriminate others in the Bloody Wednesday bomb attacks. The request is still pending.

- Case number 3119 of 2010, Resafa Criminal Court, First Branch

Ahmad 'Amr 'Abd al-Qadir Muhammad, 30, a Palestinian born in and resident of Iraq, was sentenced to death on 17 May 2011 after he was convicted under the Anti-Terrorism Law. In its judgment, the court noted that at trial he retracted a confession that he had made in pre-trial detention and alleged that it had been coerced and obtained under torture. He submitted a report of a medical examination in support of his allegations. However, the court decided to admit his retracted confession as evidence of his guilt and noted that it considered it reliable because it had been given at a date much closer to the date of the crime than his testimony at trial. The Court of Cassation has reportedly confirmed his death sentence.¹³⁸

- Case number 967 of 2011, Resafa Criminal Court, Second Branch

A police officer, 31, from Kirkuk, was sentenced to death by the Resafa Criminal Court in Baghdad on 2 May 2011 after he was convicted of abduction and murder under the Anti-Terrorism Law. He told the court that the interrogators who held him incommunicado for four weeks at a Baghdad detention facility following his arrest in April 2010 in Diyala had tortured him until he agreed to make a false confession. According to his mother, he told her that interrogators subjected him to electric shocks, beat him and suspended by his arms for long periods. The Court of Cassation is reported to have confirmed his death sentence.

- Case number 397 of 2012, Resafa Criminal Court, Baghdad, First Branch

One man was sentenced to death on 11 October 2012 after the Resafa Criminal Court convicted him of crimes under the Anti-Terrorism Law. At trial, he withdrew al confession he

had made in pre-trial detention and told the court that he had been coerced to confess under torture while he was held incommunicado at the Counter-Terrorism Unit in Baghdad following his arrest on 9 October 2008. The Court of Cassation has yet to review his death sentence.

5.9.3 DEATH SENTENCES BY THE DHI QAR CRIMINAL COURT, NASSERIYA

- Verdict of 26 February 2009, Dhi Qar Criminal Court, Nasseriya

At least 24 men were sentenced to death sentences on 26 February 2009 after the court convicted them of possessing firearms, belonging to an armed group and committing killings.¹³⁹ They had been among dozens of people who the security forces arrested in al-Nassiriya, al-'Amara and Basra in early 2008 after violent clashes in which 16 people were reportedly killed. They are allegedly members of a Shi'a sect, Ansar al-Mahdi. Following their arrest, the 24 men were reportedly held incommunicado in a variety of unacknowledged places of detention. They were reportedly tortured to coerce them into making confessions by being beaten on the soles of the feet, suspended by handcuffs fixed to their wrists and subjected to electric shocks. The court admitted their pre-trial confessions and returned a guilty verdict. The Court of Cassation reportedly confirmed their death sentences in June 2011.¹⁴⁰

5.9.4 DEATH SENTENCES BY THE ANBAR CRIMINAL COURT

- Case number 169 of 2009, Anbar Criminal Court,

One man was sentenced to death on 22 February 2011 after he was convicted for charges under the Anti Terrorism Law. He was arrested more than two years earlier, in October 2008. At trial, as the court judgment acknowledged, he withdrew a confession that he had made in pre-trial detention and alleged that it had been extracted under torture. He was convicted, nonetheless. It is not known whether the Court of Cassation has yet reviewed the case.

- Verdict of 26 October 2010, Anbar Criminal Court

One man, 35, was sentenced to death on 26 October 2009 after he was convicted on terrorism-related charges. He was originally arrested in 2006 by US forces, who detained him for two years before issuing him with a release order in November 2008; however, he was then immediately arrested by Iraqi security forces who, he alleged, tortured him until he confessed to committing terrorist crimes. It is not known whether the Court of Cassation has yet reviewed the case.

- Case number 419 of 2010, Anbar Criminal Court

One man was sentenced to death on 1 October 2012 after he was convicted under the Anti-Terrorism Law. He alleged that he was tortured while detained incommunicado at the Police Directorate of Anbar in Ramadi for several months after he was arrested by US forces in October 2007 and handed over to the Iraqi authorities. His case is still awaiting review by the Court of Cassation.

- Case number 525 of 2010, Anbar Criminal Court, First Branch

The Anbar Criminal Court sentenced 11 men¹⁴¹ to death on 8 August 2010 after it convicted

them under the Anti- Terrorism Law. [] At trial, several of the defendants alleged that interrogators had tortured them while they were detained incommunicado at the directorates of Counter-Terrorism in Haditha and Hit. They said they were beaten, subjected to electric shocks and suspended by their arms until they agreed to confess. Some of the defendants also showed the court marks on their bodies that they said were caused by torture and submitted evidence from medical examinations in support of their allegations. The court, however, admitted their pre-trial confessions as evidence against them and returned guilty verdicts against the accused. Their death sentences were confirmed by the Court of Cassation in 2011.

- Case number 117 of 2010, Anbar Criminal Court, Second Branch

One man was sentenced to death by the Anbar Criminal Court on 23 August 2010 after it convicted him under the Anti- Terrorism Law despite his allegation that his pre-trial confession to murder was coerced and obtained under torture. The Court of Cassation is reported to have confirmed his death sentence.

- Verdict of end 11 July 2011, Anbar Criminal Court

One man, 38, was sentenced to death at on 11 July 2011 after he was convicted of murder. He was reportedly arrested on 1 July 2003 by Iraqi police and US troops in a street in the Abu Ghraib area because he was suspected of murdering a man in Baghdad in mid- May 2003. He was detained without trial for more than six years. He reported that in February 2010 he was subjected to torture and other ill-treatment and coerced to make a confession by being blindfolded, stripped to his underwear and suspended from a pole while in a contorted position with his wrists tightly bound. While he was in this position, interrogators beat him on the soles of his feet and doused his head and body with cold water. He said interrogators also hit him on his neck with a sharp object and threatened to kill him if he refused to confess. A 10cm long wound on the right side of his neck appeared to support his torture allegations. He stated that his coerced confession was the key evidence for the court to find him guilty and impose the death sentence. The Court of Cassation is yet to review the case.

- Case number 699 of 2012, Anbar Criminal Court

Nabhan 'Adel Hamid, Mu'ad Muhammad 'Abed, 'Amer Ahmad Kassar and Shaker Mahmoud 'Anad were sentenced to death on 3 December 2012 after they were convicted under the Anti-Terrorism Law.¹⁴² At trial, they told the court that they had been tortured and forced to make confessions while they were held incommunicado for several weeks at the Directorate of Counter-Crime in Ramadi following their arrests in late March/early April 2012. These confessions had already been broadcast by local television stations in advance of their trial. In support of their torture allegations, they submitted testimony from other detainees and the report of a medical examination of one of the defendants that had identified injuries that appeared consistent with his allegation of torture. No independent investigation into their torture allegations is known to have been held. The Court of Cassation has yet to review their case.

5.9.5 DEATH SENTENCES BY THE DIYALA CRIMINAL COURT

- Case number 109 of 2010, Diyala Criminal Court

One man, 35, was sentenced to death on 12 May 2010 by the Diyala Criminal Court after it convicted him under the Anti-Terrorism Law. He told the court that he was tortured and forced to confess while held in detention incommunicado following his arrest in November 2009. A medical report appeared to support this but the court dismissed his retraction of his confession, convicted him and imposed the death penalty. His death sentence was subsequently confirmed by the Court of Cassation.

5.9.6 DEATH SENTENCES BY THE KERBELA CRIMINAL COURT

- Verdict of 15 May 2012, Kerbela Criminal Court

Five men were sentenced to death on 15 May 2012 after the court convicted them under the Penal Code of the abduction and murder of a child. One of the men told Amnesty International that after their arrest in February 2012 he and his fellow defendants were tortured or in one case threatened in order to coerce them to confess under interrogation while detained by the police in Kerbela. The Court of Cassation has yet to review his death sentence.

5.9.7 DEATH SENTENCE BY THE NAJAF CRIMINAL COURT

- Verdict of 20 June 2012, Najaf Criminal Court

One man, 43, was sentenced to death on 20 June 2012 after he was convicted of the murder of a neighbour of his who was reported to have been shot by a third person who was a minor. He was arrested together with another member of his family in early January 2012 and taken to a police station in Kufa where, according to his allegation, he was tortured by being suspended over a pole, with his wrists tied to his knees, which interrogators hoisted up. While in this position, they beat him on the soles of his feet with cable. He said the torture was repeated a number of times in the mornings and evenings and that he was also kept blindfolded and shackled for part of the time, with his hands secured behind the back. He said he was forced to add his thumbprint as his signature to a confession that he was not able to read. The Court of Cassation is yet to review the case.

5.9.8 DEATH SENTENCES IMPOSED BY THE DOHUK CRIMINAL COURT, KURDISTAN REGION

- Case number 386 of 2006, Dohuk Criminal Court, Third Branch

One man was sentenced to death by the Dohuk Criminal Court on 3 October 2007 after it convicted him under the Anti-Terrorism Law of the Kurdistan Region of Iraq (Law 3 of 2006). In court, he withdrew a confession that he had made in pre-trial detention. He alleged that it had been coerced from him under torture by security force interrogators after Kurdish forces in Tel Afar, Ninewa province, arrested him on 19 January 2007. The court admitted his pre-trial confession as evidence against him, however, and found him guilty. The Court of Cassation has confirmed his death sentence. In early 2013, he was held on death row at Zarqa Prison in Dohuk province.

6. ACCOUNTABILITY FOR ABUSES

“The investigating judge wrote to the police directorate in order to obtain the names of those officers who were responsible for torturing the detainee to death, but the police just refused to cooperate.” Iraqi lawyer, Anbar province, January 2013

Ten years after the US-led invasion that brought an end to one era of severe repression and human rights abuse in Iraq, impunity for human rights abuses remains a persistent phenomenon. From virtually the earliest days after the invasion, the foreign occupying forces began committing serious violations of the human rights of Iraqis, as the Abu Ghraib revelations and the beating to death of Baha Mousa by British troops in Basra made clear. The questions and controversy that these cases¹⁴³aroused led to some improvements but the occupying forces continued to commit serious abuses, including torture and other ill-treatment of detainees throughout much of the time that they remained present in Iraq. While they did so, the security forces of the new Iraqi authorities also quickly earned a reputation for brutality and taking the law into their own hands, and committing torture and other abuses with impunity, particularly as violent attacks by armed groups opposed to the government intensified. Today, the situation remains acute amid continuing conflict and instability and the political, social and religious divisions that continue to dominate relations between the Sunni and Shi'a communities, in particular.

6.1. ACCOUNTABILITY FOR ABUSES BY IRAQI FORCES

The allegations of torture cited here, including those found in official court documents, are consistent with those that Amnesty International has received from many other and varied sources in recent years. These include former detainees, detainees' families, lawyers, human rights activists and others, as well as official reports and findings of UNAMI and other UN bodies. Taken together, they show that torture and other ill-treatment of detainees has been, and remains, an entrenched feature of the criminal justice landscape in Iraq. The frequency and consistency with which detainees have alleged that they were tortured while held in a particular form of custody – incommunicado detention at locations, often at unacknowledged places of detention where only their interrogators had access to them – points either to the existence of a regime of systematic torture or a conspiracy to impugn the Iraqi security forces that encompasses individuals from across so wide a religious, political, social and geographic spectrum in Iraq as to defy credibility. If there were such a conspiracy, however, the question arises why the Iraqi authorities have been so passive in the face of the many torture allegations that have been made by detainees and have failed to institute clear safeguards against torture – for example, by prohibiting incommunicado detention, allowing unannounced independent inspection of all places of detention, and instituting independent medical examinations of detainees following arrest and following interrogation. Instead, they have failed to ensure that all allegations of torture and other abuse of detainees, and deaths in detention, are investigated promptly, thoroughly and independently, as international law and standards binding upon them require, and they have failed to bring to justice those responsible for torture.

On occasions, usually following adverse media reports of detainee abuses, the government has announced official investigations but failed to provide detailed information about them

or, later, to disclose their outcome, if any, once the media spotlight has passed on. For example, Amnesty International has repeatedly sought information from the Iraqi authorities about the outcome of investigations they had announced into allegations that detainees were tortured and otherwise ill-treated at an unacknowledged facility at the former al-Muthanna airport, whose existence was exposed in April 2010. In its most recent communication to the government sent on 19 December 2012, Amnesty International again asked for details of any investigations into torture that the authorities have carried out, and their outcome, including whether any members of the security forces or other officials have been prosecuted and convicted for torturing detainees. By late February 2013, the government had made no response.

One case that previously elicited a response from the government concerned Kata' Mattar Khalawi, 54, whose death in detention in June 2007 was caused by "a severe external hit on his head" according to an autopsy report. Eight months later, the Ministry of Interior told Amnesty International that it had appointed a commission to investigate his death. Seven months later, the ministry said six security officers had been found negligent, one of whom had been arrested, but that an investigating judge had referred the case for consideration under the Amnesty Law, Law 19 of 2008. The ministry did not respond to Amnesty International's further requests for information and it remains unclear whether anyone was prosecuted for causing or contributing to the death of Khalawi.

The Amnesty Law, which took effect on 27 February 2008, confers immunity against prosecution for members of the security forces. The law was promulgated as part of the government's reconciliation process and its strategy to reduce attacks by armed groups and build wider political support, by releasing some categories of detainees and sentenced prisoners. Its Article 1 provides that anyone detained or serving a prison sentence, whether Iraqis or other nationals, may be pardoned and released by decision of one of the judicial committees established by the Iraqi Supreme Judicial Council to review individual cases. Those excluded from the amnesty are defined in Article 2 of the law – these are prisoners who have been 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.

In its report for 2010, the Ministry of Human Rights pointed to the Amnesty Law as the main cause of the closure of official investigations into torture complaints. According to the ministry, "the majority of police, army and security officers who were accused of torturing prisoners or detainees during the years 2005, 2006 and 2007 were released on the basis of Amnesty Law in 2008 [Law number 19 of 2008] with the exception of those cases where torture had caused death," but it did not provide any numbers or other details of the "released" police and other officials nor indicate whether they had been allowed to return to their former positions or to others where they would have custody of detainees.¹⁴⁴ Nor did the ministry's report state how many officials had been excluded from the Amnesty Law because they were accused of causing detainees' deaths or provide any details of such cases.

The ministry's other annual reports have been similarly vague and sparse on detail concerning

actions taken by the authorities in response to torture allegations. In 2011, according to its official report, the Ministry of Human Rights recorded 52 cases of death in custody, including three where there was “suspicion of torture,” and 161 cases in which torture allegations had been made.¹⁴⁵ The ministry provided no further details of these cases, however. The report said three cases involving torture allegations had been concluded and that two others had advanced to the point where suspected officers had been summoned for questioning. Other investigations, the ministry said, were ongoing, but again without providing any details. The report said also that the Interior and Defence Ministries had formed investigative councils (*majalis al-tahqiq*) to investigate torture allegations, but without providing any details of these councils' operations.¹⁴⁶

Amnesty International has made many efforts to ascertain what steps the authorities have taken to investigate torture allegations by seeking information not only from the responsible authorities but also former detainees themselves and their families, lawyers who represent them, human rights activists and others. The picture that emerges is one in which it appears that very few allegations are investigated by the authorities and that, in general, they fail systematically to comply with their obligations under international law to ensure that allegations of torture and other ill-treatment are made the subject of “prompt and impartial investigations wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction”. This is what the UNCAT clearly requires and which its Article 12 imposes as a duty on the state even in the absence of a formal complaint by any person.

6.2 ACCOUNTABILITY FOR ABUSES BY US FORCES

“In recent days there has been a good deal of discussion about who bears responsibility for the terrible activities that took place at Abu Ghraib. These events occurred on my watch. As Secretary of Defense, I am accountable for them and I take full responsibility...[P]art of what we believe in, is making sure that when wrongdoings or scandal do occur, that they're not covered up, but they're exposed, they're investigated, and the guilty are brought to justice. Mr Chairman, I know you join me today in saying to the world, judge us by our actions, watch how Americans, watch how a democracy deals with the wrongdoing.” US Secretary of Defense Donald Rumsfeld, Senate Armed Services Committee Hearing, 7 May 2004

President George W. Bush justified the US-led invasion of Iraq in 2003, at least in part, by its pursuit of what it termed its “war on terror”, launched in response to the attacks of 11 September 2001.¹⁴⁷ Key elements of this “war” that the US had already developed in Afghanistan and elsewhere - secret detention, secret detainee transfers, enforced disappearance, torture and other cruel, inhuman or degrading treatment of detainees – then became a feature of the US military presence in Iraq.

On 28 April 2004, however, the broadcast by CBS News of leaked photos of US soldiers torturing and humiliating Iraqi detainees at Baghdad's Abu Ghraib prison between September and December 2003 created a domestic and international scandal that put the Bush administration on the defensive about its interrogation and detention policies.¹⁴⁸ Policy reviews, investigations, and courts martial for some mostly low-ranking soldiers eventually ensued but US forces in Iraq continued to commit serious violations of human rights and international humanitarian law, including torture and unlawful killings, in the years that followed. Despite further courts martial and the findings of authoritative congressional investigations, the USA remains in serious breach of its international obligations on truth,

accountability and remedy in the “war on terror”, including in relation to Iraq.

In the wake of the Abu Ghraib abuse revelations, Amnesty International urged the US government to establish a full, independent commission of inquiry into US detention and interrogation policies and practices in Iraq and elsewhere in order to ensure accountability, but successive US administrations have declined to take this step. When the Abu Ghraib revelations came to light, the Bush administration portrayed them as the actions of “a few bad apples”, rogue soldiers breaching orders and discipline, rather than part of a wider, more systematic policy of violating detainees' rights, and the authorities have continued to contend that US national law and institutions are adequate to the task of ensuring accountability and effective remedies for those whose rights have been violated.¹⁴⁹

Both these contentions, however, are misleading. They first ignored the extent to which US military forces committed serious violations of human rights and international humanitarian law in Iraq as an instrument of official policy. The second appears myopically complacent in face of a continuing failure by the US authorities to hold to account the senior US political and military leaders and others who devised, authorised or ordered abusive and unlawful practices deployed by US forces in pursuing the “war on terror” around the world, including in Iraq.

To date, such senior officials have escaped investigation or prosecution by US authorities even when they have themselves disclosed information about their own or others' alleged culpability, as former President Bush did when he confirmed in his published memoirs that he had authorized the Central Intelligence Agency (CIA)'s use of secret detention outside the USA and “enhanced interrogation techniques”, such as “water-boarding”, a form of torture.¹⁵⁰ Both the CIA and the US military employed secret detention in Iraq and secretly transferred so-called “high-value” and other detainees out of and through Iraq. Nor did the US authorities institute a criminal investigation after Secretary of Defense Donald Rumsfeld revealed in 2004 that he and CIA Director George Tenet had collaborated in 2003 in sanctioning a secret detention in Iraq – one of many so-called “ghost” detainees held there, a victim of enforced disappearance.

In 2008, the US Senate Armed Services Committee (SASC) concluded that Defense Secretary Rumsfeld's authorization of “counter-resistance” techniques for use at Guantánamo – including stress positions, isolation, forced nudity, 20-hour interrogations (per se incorporating sleep deprivation), exploitation of detainee phobias, sensory deprivation and hooding – was not only “a direct cause of detainee abuse” at Guantánamo, but also a factor in the subsequent use of “abusive techniques” by US personnel in Iraq, including at Abu Ghraib.¹⁵¹ The SASC noted how the senior US army officer responsible for detainees held at Guantánamo was sent to Iraq six months after US-led forces invaded Iraq to advise on detention and interrogation techniques to be used by US forces there. Six of his Guantánamo staff were then sent to Abu Ghraib Prison to assist in implementing his recommendations and the commander of US forces in Iraq issued an interrogation policy authorising the use of dogs to threaten detainees as well as the use of stress positions, sleep deprivation, light control and exposure to loud music, although this was subsequently revised.

Well before the Abu Ghraib detainee abuse scandal broke, the International Committee of the Red Cross (ICRC) had sounded the alarm confidentially with senior level US military

authorities about reports of torture and other ill-treatment of detainees by US forces in Iraq. In May 2003, the ICRC forwarded “over 200 allegations of ill-treatment of prisoners of war during capture and interrogation” and in July 2003 it detailed “approximately 50 allegations of ill-treatment in the military intelligence section of Camp Cropper at Baghdad International Airport”. Then, in February 2004, it expressed concern that some detainees in US custody were being made “to earn” their right to humane treatment and that ICRC delegates had witnessed US guards subjecting detainees to conditions in which they were kept “completely naked in totally empty concrete cells and in total darkness”. However, once the scandal broke those held to account for the serious human rights violations committed against detainees at Abu Ghraib and elsewhere were not those holding senior positions within the US military or the civil authorities but a small group of low-ranking soldiers whom Defense Secretary Rumsfeld would later describe as “disturbed individuals.”¹⁵²

The Abu Ghraib revelations and the public scrutiny they triggered led the USA to make improvements in their treatment of many detainees but US forces continued nevertheless to commit torture and to subject detainees to other forms of ill-treatment.

Many detainees died in US custody in Iraq, and again there has been less than full accountability. By early 2006, according to an analysis by Human Rights First, there had been at least 86 deaths in US custody in Iraq, some of which resulted from torture or other ill-treatment, but that accountability had been limited due to investigative failures or shortcomings because of commanders' interference in investigations. Those court-martialled were mostly low-ranking soldiers and they generally received lenient sentences if convicted.

Non-military officials, including CIA personnel, have rarely if ever been held liable for torture or other serious violations committed in Iraq, despite their use of torture and other detention and interrogation methods that amounted to cruel, inhuman or degrading treatment. Some detainees were held in secret – known as “ghost detainees” – and were victims of enforced disappearance. One, Manadel al-Jamadi, who died in CIA custody in Abu Ghraib Prison on 4 November 2003, had been taken from his home by US Navy Seals who “repeatedly kicked, punched and struck” him with weapons, according to an official investigation. He was later hooded and made to kneel with his trousers around his ankles while he was without underwear, and was doused with water while a CIA officer interrogated him. He was then taken to Abu Ghraib Prison still naked from the waist down, with his legs shackled and his head covered with a plastic sack and his wrists so tightly bound behind his back with plastic flexi-cuffs that a guard reportedly had “trouble cutting them off”. He died under interrogation; in one of the photos of abuse at Abu Ghraib US guards can be seen smiling and giving the “thumbs up” sign over his dead body. An autopsy concluded that his death was caused by “blunt force injuries of the torso complicated by compromised respiration,”¹⁵³ and that he was a victim of homicide. However, no one has been found criminally responsible for the killing of Manadel al-Jamadi. Eight Navy Seals and a sailor were given administrative punishments for assaulting him and other detainees, and the only person brought to trial by court-martial, a lieutenant accused of hitting him and of failing to restrain the men in his unit, was acquitted.

In 2011, the US Attorney General announced that a preliminary review of certain interrogations of detainees by the CIA had been completed and had concluded that only two cases involving deaths in custody warranted a full criminal investigation. One was the case of

Manadel al-Jamadi. On 30 August 2012, however, the Attorney General said that no CIA officers would face criminal charges in either case because “the admissible evidence would not be sufficient to obtain and sustain a conviction beyond a reasonable doubt.”¹⁵⁴

6.2.1 BLOCKING REMEDY

Some Iraqis have sought to take legal action in the US courts to obtain remedy for the torture and other violations of their human rights they allege they were subjected to while in US custody in Iraq, but they have faced systemic obstacles.¹⁵⁵

In 2007, a US federal court judge dismissed lawsuits brought by former detainees against former Defense Secretary Rumsfeld and senior military commanders despite what the judge described as their “horrifying” torture allegations with the argument that the court had no role to inquire “into the propriety of specific interrogation techniques and detention practices employed by the military when prosecuting wars” and that it was for the US Congress to determine whether foreign nationals injured while detained by US forces outside the US should be eligible for damages.¹⁵⁶ In June 2011, the US Court of Appeals affirmed his ruling.¹⁵⁷

Some Iraqis have brought lawsuits against private US companies who supplied the US military with interrogators and interpreters in Iraq. One case was brought by four Iraqis who alleged that they were tortured with electric shocks, beatings, sensory deprivation, mock execution and other methods while detained at Abu Ghraib in 2003-2004. Another was brought by 72 Iraqis who alleged that they had been beaten, sexually assaulted and subjected to mock execution, among other methods, between 2003 and 2008. Initially, they were allowed to progress but later the first case was blocked by the US Court of Appeals for the Fourth Circuit¹⁵⁸ and the second was resolved through an out of court settlement involving a payment of US\$5.28 million to the former detainees.

In the later years of the US military presence in Iraq, US authorities mounted a number of investigations into allegations of serious human rights violations by US troops, some of which resulted in courts martial. One notable case concerned the rape and murder of a 14 year old girl and the murder of her family by five US soldiers at Al-Mahmudiyah in 2006. In May 2009, one former soldier convicted of the crime received a sentence of life imprisonment without parole from a civilian court; three serving soldiers who were court martialled and convicted of the same crime received sentences of up to 100 years in prison but will become eligible for parole after 10 years.

6.3 ACCOUNTABILITY FOR ABUSES BY UK FORCES

British armed forces were responsible for unlawful killings, torture and other ill-treatment of detainees, and other such violations of international human rights and international humanitarian law during their six year presence in Iraq, from March 2003 to May 2009, when they were largely based in and around the southern city of Basra.¹⁵⁹ To date, however, only one low-ranking soldier is known to have been convicted by the UK authorities for inhuman treatment of detainees.¹⁶⁰ However, the UK government still faces hundreds of legal claims by Iraqis who allege that they were subject to abuses by British troops and has reportedly paid out millions of pounds to settle claims made by Iraqi complainants, although often without admitting liability.

Amnesty International has not been able to independently examine and verify the many claims of torture, other ill-treatment and unlawful killing that Iraqis have made against the British military but considers them to be sufficiently numerous and credible to warrant the establishment of a single, independent, public inquiry by the UK government. Such an inquiry should be tasked to investigate the alleged violations, assess the degree to which they were systemic, apportion responsibility at all levels and ensure accountability, including through criminal prosecutions. It should allow for meaningful victim participation and recommend measures, including reparations, to prevent future repetition of such violations.

Up to now, however, the UK authorities have pursued a more piecemeal approach to securing accountability for human rights violations by British forces in Iraq in response to allegations made by individual victims, their families and legal representatives who have sought to obtain remedy through action before the courts, requests made under the Freedom of Information Act by NGOs and campaigners, and other means.¹⁶¹

6.3.1 AL-SKEINI

Throughout the period that British armed forces were present in Iraq, the UK government sought to contend that they were not bound by the UK's obligations under the European Convention on Human Rights (the Convention) as they were operating outside the UK's ordinary territory. This was accepted by UK courts but rejected in July 2011 by the Grand Chamber of the European Court of Human Rights. In a landmark judgment (*Al-Skeini and Others v the United Kingdom*), that Court ruled that as an occupying power the UK had exercised public powers in Iraq and so was bound by the Convention. It ruled also that the failure of the UK authorities to conduct independent and effective investigations into five of the six killings of civilians by UK soldiers in Iraq in 2003 and 2004¹⁶² that were the focus of the case amounted to a breach of the Convention's article 2 (right to life). The case was brought by relatives of six Iraqi civilians: four, including one woman, who had been shot dead by British troops; one, a boy of 15, had drowned after troops allegedly beat him and forced him into a river;¹⁶³ and the other, Baha Mousa, had died after torture while detained by British troops. In his case, the European Court ruled that the UK authorities were no longer in breach of their Convention obligation because they had established an inquiry into Baha Mousa's death in detention between the lodging of the *Al-Skeini* case and the Court's delivery of its judgment.

6.3.2 BAHA MOUSA

Baha Mousa, 26, a hotel worker, died on 15 September 2003 the day after British troops in Basra detained and tortured him and a number of other Iraqis. They tortured and otherwise ill-treated him over 36 hours; a post-mortem examination revealed 93 separate injuries on his body and concluded that he had died from asphyxiation.

Three and a half years later, the UK authorities court-martialled seven British soldiers, including a colonel and a major, in connection with his death. One entered a guilty plea to a charge of inhuman treatment of detainees, a war crime, and was sentenced to 12 months' imprisonment. His six co-defendants were acquitted. The court martial proceedings confirmed that Baha Mousa had sustained multiple injuries due to ill-treatment by British soldiers at the time of his arrest and during his subsequent detention. The Judge Advocate hearing the case observed that many individuals had been responsible for inflicting "unlawful violence" on Baha Mousa but had escaped identification and could not be "charged with any

offence simply because there is no evidence against them as a result of a more or less obvious closing of ranks".¹⁶⁴

The UK Ministry of Defence paid compensation to Baha Mousa's family and the other men in 2008 following the acceptance of liability.

Following litigation in the UK courts, in May 2008 the UK government agreed to hold a public inquiry into Baha Mousa's death under the Inquiries Act of 2005. Headed by a retired Court of Appeal judge, this sat from July 2009 to October 2010 and issued its final report on 8 September 2011.¹⁶⁵ It concluded that Baha Mousa's death arose from both his vulnerability due to lack of food, water, heat, rhabdomyolysis, renal failure, exertion, exhaustion and multiple injuries, and the violent assault and dangerous restraint techniques to which he was subjected by British soldiers. The Inquiry also found that nine other Iraqis detained with Baha Mousa had been subjected to human rights violations by British soldiers who could not be identified. The soldiers had beaten, kicked, punched and verbally abused the Iraqi detainees, hooded them for long periods of time, held them in stress positions, and deprived them of food and water while holding them in unsanitary conditions in extreme heat.

The public inquiry report named 19 individuals who it found were responsible for the violations of the Iraqi detainees' rights and criticised both the "lack of moral courage to report abuse" of others who must have been aware of what had occurred and senior military officers whose command failures had allowed the torture and other ill-treatment of detainees to go unchecked.

The inquiry report also pointed to a "corporate" and "systemic failure" of the Ministry of Defence to provide British armed forces with clear and consistent guidelines on the proper treatment of detainees, as a result of which interrogation techniques banned by the UK government in 1972, such as hooding of detainees, had been used by British soldiers in Iraq.

The report made 73 separate recommendations, including that a system of independent inspection of places of detention should be developed and that each military unit should appoint a detention review officer, 72 of which the Ministry of Defence accepted, rejecting only the recommendation to impose a blanket ban on the 'harsh' technique of shouting in the face of the detainee during 'tactical questioning'.¹⁶⁶

The day after publication of the public inquiry report, it was widely reported that the British Army had suspended an unspecified number of soldiers believed to have been involved in the events leading to Baha Mousa's death and the torture and other ill-treatment of the other detainees, pending consideration of whether to prosecute them,¹⁶⁷ but more than a year later Amnesty International is not aware of any subsequent decisions having been announced with regard to prosecutions. Separately, in December 2012, a disciplinary body of the General Medical Council ruled that an army doctor who had attended Baha Mousa and his co-detainees had been "repeatedly dishonest" and should be removed from the UK's medical register.¹⁶⁸ Under international law, the UK is obliged to ensure that those responsible for these and other violations are brought to justice.¹⁶⁹

6.3.3. AL-SWEADY

Following protracted judicial review litigation brought by or on behalf of victims of torture, other ill-treatment and unlawful killing, the UK government announced on 25 November 2009 that a separate public inquiry under the Inquiries Act of 2005 would be held into the killing of Khuder al-Sweady and allegations of torture and other ill-treatment of five other Iraqi men by British troops during the so-called Battle of Danny Boy near Majar al Kabir in 2004.¹⁷⁰ By then, the High Court had expressed concern about the failures of the Ministry of Defence to disclose material relating to permissible limits of the techniques of tactical questioning and its failure to comply with procedures for putting Ministerial Public Interest Immunity Certificates and Schedules before the Court, and so misleading the Court.¹⁷¹

Chaired by a retired High Court judge, the Al-Sweady Inquiry's terms of reference are: "To investigate and report on the allegations made by the claimants in the Al-Sweady judicial review proceedings against British soldiers of (1) unlawful killing at Camp Abu Naji on 14 and 15 May 2004, and (2) the ill-treatment of five Iraqi nationals detained at Camp Abu Naji and subsequently at the divisional temporary detention facility at Shaibah Logistics Base between 14 May and 23 September 2004, taking account of the investigations which have already taken place, and to make recommendations."¹⁷² The inquiry was formally established in December 2009 and held a preliminary hearing in March 2010 prior to undertaking extensive fact-finding. Following an announcement by its chairman in December 2012, the inquiry began oral hearings in March 2013. In July 2012, it was reported that lawyers for the victims in the Al-Sweady case still believed that the Ministry of Defence was withholding relevant evidence, notably due to the complete absence of witness statements from any military interrogators.¹⁷³

6.3.4 ALI ZAKI MOUSA AND THE IRAQ HISTORIC ALLEGATIONS TEAM

A group of over 120 Iraqi nationals, known by the name of the lead claimant Ali Zaki Mousa, began legal proceedings in the English courts seeking a single public inquiry into allegations that they were tortured or otherwise ill-treated by UK armed forces in detention facilities in Iraq between April 2003 and December 2008 in order to discharge the UK's obligation under Article 3 of the European Convention on Human Rights to establish a prompt, thorough, independent and effective investigation into the allegations. The claimants' lawyers argued that the pattern of abuse, involving sensory deprivation, debility, and sexual and religious/cultural humiliation techniques alleged by many of their clients, gave rise to an allegation of systemic abuse, rather than isolated incidents, requiring investigation.¹⁷⁴

In March 2010, the UK government opted to create the Iraq Historic Allegations Team (IHAT) rather than a public inquiry to investigate alleged criminal wrongdoing arising from abuse of Iraqi nationals by British military forces while making clear that this should not be seen as "an admission of fault" but rather a means "to deal with these unproven allegations once and for all."¹⁷⁵ The government said in November 2010 that the IHAT, "led by a retired senior civilian policeman and consist[ing] of military and ex-civilian police detectives" had begun and should complete its work within two years,¹⁷⁶ although two and a half years later it remains unclear when IHAT's work will be completed.¹⁷⁷

The IHAT is designed in principle to work in coordination with a separate panel (the Iraq Historic Allegations Panel, or IHAP) which is tasked with examining material from IHAT investigations. Both the IHAT and IHAP report to the Provost Marshal, the most senior officer

in the Royal Military Police (RMP) and had, initially, staff drawn from the RMP and civilians, primarily ex-police officers).

In December 2010, the High Court rejected an application by the then 141 Iraqi claimants to require the Ministry of Defence to establish a public inquiry into the allegations immediately, opting instead to endorse the government's "wait and see" approach – that is, assessing the need to establish an inquiry after the conclusion of the IHAT's work and the work of the other public inquiries.¹⁷⁸

The claimants appealed to the Court of Appeal that the IHAT was not a sufficiently independent mechanism, as it included RMP personnel who had been involved in operations in Iraq. On 22 November 2011, the Court of Appeal allowed the appeal finding the "practical independence of IHAT [to be], at least as a matter of reasonable perception, substantially compromised."¹⁷⁹ As a result of finding the IHAT to be insufficiently independent to satisfy the UK's obligation to investigate under the European Convention on Human Rights, the Court of Appeal ruled that the "wait and see" approach was no longer tenable.

Rather than ordering a wide-ranging public inquiry, the Ministry of Defence announced in March 2012 that it would reconfigure the composition and staffing of the IHAT to address the issue of 'practical independence'. Nick Harvey, the Minister for the Armed Forces, said that the RMP would be replaced by the Royal Navy Police within the IHAT by 1 April 2012, and announced that additional teams would be established within the IHAT to follow up on the Baha Mousa Inquiry and the Al-Skeini judgment.¹⁸⁰ In October 2012, press reports said that a "whistleblower" within IHAT had alleged that RMP personnel had remained in place within IHAT long after the April restructuring date announced by the Minister.¹⁸¹

In January 2013 the High Court heard a further judicial review application brought on behalf of now many hundred Iraqi claimants, seeking a single public inquiry into their torture and other ill-treatment, challenging the independence of the reconfigured IHAT and arguing that an inquiry needed to be established immediately. The Court's judgment is awaited.

7. 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 often appear intent on causing maximum civilian casualties. It also recognizes that it is the government's duty to protect its population. However, when seeking to do this the government must comply at all times with its obligations under international human rights law if it is to uphold the rule of law.

Even in the context of continuing political violence, there is no justification for serious and widespread abuse of detainees, as has become the norm in Iraq. Many detainees have been subjected to torture and other ill-treatment by Iraqi security forces; others remain at serious risk of such abuses. Many detainees have been tortured and coerced to confess to serious crimes, including capital offences, usually while they were detained incommunicado and denied access to lawyers or the world outside their place of detention. Many such confessions have subsequently been admitted as evidence by the criminal courts and used to return guilty verdicts, often without taking any or adequate steps to ensure that they were freely given despite the allegations of defendants that they were coerced under torture or other ill-treatment. Some prisoners have gone to the gallows after such unfair trials; while many others currently await that fate on death row. Because of government complicity, tolerance or inaction in relation to such abuses, a culture of impunity prevails.

During their presence in Iraq, Coalition Forces subjected detainees to torture and other ill-treatment and were also complicit in serious violations of human rights committed by Iraqi security forces. Many detainees were transferred by Coalition forces from their custody to that of the Iraqi authorities in the knowledge that this would place such detainees at grave risk of torture or other abuses. Amnesty International fears that this dire situation will continue to prevail and may even worsen unless the Iraqi authorities, in particular, take clear and concrete steps to eradicate torture and other ill-treatment and bring an end to the other injustices that flow from these serious abuses. It makes the following recommendations:

To the Iraqi authorities, including the Kurdistan Regional Government:

STOP TORTURE AND OTHER ILL-TREATMENT

- Instruct all members of the police and security forces that it is a crime to subject any individual to enforced disappearance or to torture or otherwise ill-treat detainees or other people in custody, and that any police, security or other officials who order, perpetrate, acquiesce or tolerate such crimes will be held fully accountable and will be liable to prosecution and possible imprisonment as well as dismissal from office.
- Establish mechanisms to ensure that all allegations of enforced disappearance, torture or other ill-treatment are investigated promptly, thoroughly, transparently and independently, and empower those carrying out such investigations to question officials under oath and to have access to all places, including places of detention, and official records that they

consider relevant to their investigation.

- Ensure that all detainees are taken immediately after arrest only to officially recognized places of detention, where they are registered on arrival and whenever they are taken from and returned to the place of detention, and make it a requirement that the authorities responsible and accountable for their detention and its conditions are separate from the authorities responsible for their interrogation and for laying any criminal charges against them.
- Prohibit the use of incommunicado detention and guarantee, in both law and practice, detainees' right of prompt access to legal counsel of their own choosing and to prompt and regular contact with, including visits from, their families.
- Institute concrete safeguards for women detainees, including by ensuring that women officers are present during arrest, transfer and interrogation of women detainees; and ensure that supervision is carried out by appropriately trained female staff in all detention facilities where women detainees and prisoners are held
- Ensure that an independent body composed of suitably qualified individuals undertakes regular, unannounced and unrestricted visits of inspection to all places of detention or imprisonment, to make recommendations and to report their findings to parliament and publicly at annual or more frequent intervals.
- Require that authorities who are directly responsible for the custody and care of detainees or prisoners ensure that any detainee or other person in their custody who alleges torture or other ill-treatment is given prompt access to examination by an independent forensic medical doctor.
- Ensure that conditions of detention conform to international standards for the treatment of prisoners and detainees. The authorities responsible for detention should be separate from those in charge of interrogation.
- Ensure that all persons who have been subjected to enforced disappearance, torture or other ill-treatment and their families are promptly afforded all appropriate reparation by the state including restitution, fair and adequate financial compensation and any necessary medical care and rehabilitation.

Amend Iraq's laws to bring them into full compliance with the UN Convention against Torture, the Convention on Enforced Disappearance and other relevant international human rights law and standards, and are implemented in practice.

- Set an early deadline for Iraq to ratify the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and even prior to ratification take steps to bring official policy, procedure and practices in Iraq into conformity with the obligations contained in the Optional Protocol.

GUARANTEE DUE PROCESS AND THE RIGHT OF FAIR TRIAL IN PRACTICE AS WELL AS IN LAW

- Release all detainees unless they are charged with a recognizably criminal offence and

brought to trial within a reasonable time and in full accordance with international standards of fair trial, and without recourse to the death penalty.

- Instruct the police and security forces that all arrests must be carried out in strict conformity with the law, including on the basis of judicial arrest warrants where these are legally required, and that any failure on their part to comply with these requirements will result in their being held criminally liable and possibly imprisoned and/or dismissed.
- Implement in all cases the requirement that an arrested person be brought promptly before a judge, or other officer authorized by law to exercise judicial power, in order to determine the lawfulness of their detention and its duration, and to order the detainee's release if the detention is unlawful.
- Observe in practice the detainee's right to have a lawyer who represents him present on each occasion when he is questioned and for the duration of the questioning.
- Take steps to ensure that all detainees are informed at the time of arrest of the reason for their arrest and detention, and are informed promptly of any charges against them and of their right to access legal counsel of their own choosing.
- Immediately inform all detainees of their rights, including their right to lodge complaints and their rights of access to legal counsel and contact with their families.
- Instruct the police and other security forces that it is illegal to employ methods of coercion, including threats, to induce detainees to make statements incriminating themselves or others in the commission of crimes, and that those who breach the law in this way will be held criminally liable and may face prosecution and imprisonment and possible dismissal.
- Prohibit television broadcasts or other publication of detainees' real or alleged confessions in advance of or during their trials or the publication of other information which undermines the presumption of innocence and the right of all accused persons to receive a fair trial within a reasonable time.
- Invite the Chief Justice of Iraq to formally remind all members of the judiciary that trial courts must not admit as evidence any alleged confessions or other incriminatory information or statements made in pre-trial custody without first assuring themselves that such information was given freely and without coercion; any such statements or other information that fails this test must be rejected by the courts.
- Establish an independent body composed of suitably qualified legal and other experts to review all cases in which defendants were convicted solely or partially on the basis of pre-trial confessions that they withdrew at trial and alleged were coerced or obtained through torture or other ill-treatment, and to make recommendations regarding release or re-trial in all cases where it is determined that courts failed objectively to satisfy themselves that such confessions were freely given and not coerced.

CEASE EXECUTIONS AND STOP USING THE DEATH PENALTY

- Immediately impose a moratorium on all executions, in accordance with repeated calls

by the UN General Assembly

- Immediately remove the death penalty from legislation for all but the most serious crimes, as stipulated in Article 6(2) ICCPR, and understood to be limited to crimes involving intentional killing, and, pending abolition, respect all international standards applying to the use of the death penalty
- Pending full abolition, respect all international standards applying to the use of the death penalty, including the duty to ensure that trials carrying the death penalty must comply with the most rigorous internationally recognized standards for fair trial
- Take steps to eliminate the death penalty from Iraqi legislation
- Commute all current death sentences to terms of imprisonment

To the governments who contributed to Coalition Forces in Iraq

- Take concrete steps to ensure that all allegations of enforced disappearance, torture or other ill-treatment or other serious violations of human rights by national forces that formed part of the Coalition Forces in Iraq are investigated promptly, thoroughly, transparently and independently, and that any personnel found responsible for such abuses are held fully accountable, including through criminal prosecution wherever appropriate. All victims of such violations of human rights should be afforded all appropriate reparation.
- Make clear to the Iraq government that crimes such as enforced disappearance and torture are not acceptable and should not be tolerated, and urge the government to take urgent, concrete measures such as those detailed above to ensure that these crimes are eradicated and that those who commit them are held fully accountable, including through criminal prosecution.
- Urge the Iraq government to institute an immediate, indefinite moratorium on executions and to take rapid and progressive steps to abolish the death penalty for all crimes.
- The UK government must establish a single, independent, public inquiry to investigate allegations of torture, other ill-treatment and unlawful killing during the period UK armed forces were present in Iraq. Any such inquiry must, among other things, be able to assess independently the degree to which these violations were systemic; apportion responsibility at all levels; and recommend measures to prevent repetition of such violations.

ANNEX IRAQ: OVERVIEW 2003- 2013

Following the invasion of Iraq by US-led Coalition Forces, a Coalition Provisional Authority (CPA) was established as the interim authority in Iraq. On 1 May 2003 US diplomat Paul Bremer was appointed to head the CPA. On 23 May 2003 CPA Order No. 2 disbanded the Iraqi army. UK military forces 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 comprising three provinces in the north-east 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 Coalition Forces until the end of 2008.

On 30 January 2005 the first post-invasion parliamentary elections were held in Iraq. A Shi'a coalition, the United Iraqi Alliance (UIA), won a majority and assumed power. Ibrahim al-Ja'fari, leader of al-Da'wa Party, was appointed prime minister in March 2005 but replaced by Nuri al-Maliki on 22 May, 2006. A new Constitution was adopted following a referendum held on 15 October 2005. Amid rising insurgency, violence and attacks by armed groups, the US military authorities established a series of Awakening Councils in 2006. Also known as Sons of Iraq, these were Sunni militia groups that Coalition Forces armed, trained and financed to fight against al-Qa'ida in Iraq.

Violence intensified further and took on an increasingly sectarian character following a bomb attack in February 2006 which largely destroyed the al-'Askari shrine in Samarra, a Shi'a holy place. Thousands of Sunni and Shi'a Muslims were killed in the ensuing violence, most of them civilians, and thousands of other civilians were forced to flee from their homes by sectarian attacks that continued throughout 2006 and 2007. Hundreds of thousands of people were internally displaced within Iraq while hundreds of thousands of others fled as refugees to Syria, Jordan and other countries.

In November 2008 Iraq's parliament approved the Status of Forces Agreement (SOFA), a security pact between the governments of Iraq and the USA. This agreement took effect at midnight on 31 December 2008, precisely as the UN mandate providing for the presence of US troops in Iraq expired.¹⁸²

Under the SOFA, the two governments agreed that US combat forces would pull back from urban areas by the end of June 2009 and withdraw totally from Iraq by the end of 2011, that US forces would either release or transfer to Iraqi custody all the detainees that they held, and that they would transfer the prisons they controlled - including Camp Cropper, near

Baghdad International Airport; Camp Taji, north of Baghdad; and Camp Bucca, near Basra – to the Iraqi authorities.

The SOFA provided also that private contractors employed by the US Department of Defense would lose their immunity from prosecution in Iraq once the agreement took effect. It made no reference, however, to other contractors, such as private military and security contractors employed by the US State Department, some of whom had been accused of committing serious human rights abuses.

New national elections were held on 7 March 2010 against a backdrop of continuing attacks by armed groups and other violence. No clear winner emerged and for eight months following the election there was political impasse as parties negotiated to establish a new government. Nuri al-Maliki remained in office through this period and at its end continued in his role of prime minister as the head of a new administration. He also assumed responsibility for the Defence ministerial portfolio in the Iraqi cabinet. All US combat troops withdrew from Iraq before the end of 2011; US non-combat troops remain, however, to train Iraqi security forces.

A new political crisis arose in December 2011 when the government accused Vice President Tareq al-Hashemi of organizing death squads and responsibility for political killings. He evaded arrest but many of his employees or other associates were arrested. Al-Hashemi was subsequently tried in his absence several times, on an array of charges, and given several death sentences. Some of his associates who had been arrested were also tried and sentenced to death.

ENDNOTES

¹ See, for example, pages 11 to 17 of 'A decade of defiance and deception: Saddam Hussein's defiance of the United Nations', 12 September 2002, available at http://australianpolitics.com/downloads/usa/02-09-12_iraq-decade.pdf

² See www.iraqbodycount.org

³ In this report the term "coalition forces" is used to refer to all foreign troops based in Iraq from March 2003 until the end of December 2011.

⁴ For the years 2004-2011, see (Iraqi) Ministry of Human Rights, *al-Taqrir al-sanawi li-awda' al-sujun wa marakiz al-ihitjaz li-'am 2011*, published in 2012, pages 40; for the year 2012: Web site of the Ministry of Justice, www.moj.gov.iq

⁵ For example, in early January 2013 the Islamic State of Iraq reportedly claimed responsibility for several attacks targeting pilgrims of the Shia festival of Arbaeen, in which more than 20 people returning from Kerbela were killed at the end of December 2012. See AFP, Al-Qaeda claims Iraq New Year's Eve attacks, 7 January 2013. See also for lethal attacks targeting Shia neighbourhoods in mid-February 2013, Reuters, Iraq's al Qaeda wing claims Baghdad blasts, 18 February 2013.

⁶ Amnesty International has repeatedly condemned killings of civilians and other grave abuses by armed groups in Iraq. In a report published in 2005, Amnesty International concluded "Many of these killings by armed groups ...constitute war crimes or crimes against humanity." *Iraq, In cold blood, abuses by armed groups*, Amnesty International, July 2005.

⁷ See, for example, Iraqi Civil Society Solidarity Initiative, [Baghdadi Organizations Visit the Sit-in in Ramadi and Support Their Demands](http://www.iraqicivilsociety.org/archives/1136), 12 February 2013, <http://www.iraqicivilsociety.org/archives/1136>.

⁸ Amnesty International, *Iraq: Systematic torture of political prisoners, August 2001*, MDE 14/008/2001.

⁹ Amnesty International, *Iraq: Memorandum on concerns relating to law and order*, July 2003, MDE 14/157/2003.

¹⁰ Testimony as Prepared by Secretary of Defense Donald H. Rumsfeld, The Senate and House Armed Services Committees, 7 May 2004, <http://www.defense.gov/speeches/speech.aspx?speechid=118>.

¹¹ BBC, *Abu Ghraib inmates recall torture*, 12 January 2005, <http://news.bbc.co.uk/2/hi/americas/4165627.stm>.

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¹³ LA Times, *More Tumult Besets Guard Unit in Iraq*, 15 October 2005, <http://articles.latimes.com/2005/oct/15/local/me-guard15>

¹⁴ Amnesty International, *Iraq: Beyond Abu Ghraib*, March 2006, MDE 14/001/2006, p 29

¹⁵ Bureau for Investigative Journalism, *Allegations of prisoner abuse by US troops after Abu Ghraib*, 23 October 2010, <http://www.iraqwarlogs.com/2010/10/23/secret-files-reveal-allegations-of-prisoner-abuse-by-american-troops->

[after-abu-ghrai/](#)

¹⁶ <http://www.iraqwarlogs.com/PDF/13/2.pdf>

¹⁷ Human Rights Watch, *The New Iraq? Torture and ill-treatment of detainees in Iraqi custody*, 24 January 2005.

¹⁸ New York Times, Kirk Semple, *Iraqi Ministry Denies Captives Were Abused*, 13 December 2005.

¹⁹ New York Times, John F. Burns, *To Halt Abuses, U.S. Will Inspect Jails Run by Iraq*, 14 December 2005.

²⁰ Bureau for Investigative Journalism, *US troops ordered not to investigate Iraqi torture*, 22 October 2010, <http://www.iraqwarlogs.com/2010/10/22/us-troops-ordered-not-to-investigate-iraqi-torture/>.

²¹ <http://www.iraqwarlogs.com/PDF/14/5.pdf>

²² New York Times, Eric Schmitt and Thom Shanker, *U.S., Citing Abuse in Iraqi Prisons, Holds Detainees*, 25 December 2005.

²³ Iraq became party to the ICCPR in 1971 and to the ICESCR in 1971, and ratified the UN Convention on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 2011.

²⁴ Amnesty International, *New order, same abuses*, September 2010, MDE 14/006/2010

²⁵ See, for example, <http://www.saudigazette.com.sa/index.cfm>

²⁶ Reuters, *Iraq closes secret prison, arrests three officers*, 23 April 2010

²⁷ Human Rights Watch, *Iraq: Secret Jail Uncovered in Baghdad*, 1 February 2011.

²⁸ Human Rights Watch, *Closing Torture Prison Won't End Abuse*, 31 March 2011

²⁹ Los Angeles Times, Ned Parker, *Elite units under an office of Maliki's linked to secret jail where detainees face torture, Iraq officials say*, 14 July 2011

³⁰ Field Marshal Wilhelm Keitel was convicted by the Nuremberg Tribunal for his role in implementing Adolf Hitler's Nacht und Nebel Erlass (Night and Fog Decree) issued on 7 December 1941 requiring that persons "“endangering German security' who were not to be immediately executed" were to be made to "vanish without a trace into the unknown in Germany". See Judgment of the International Military Tribunal for the Trial of German Major War Criminals, Nuremberg, 30 September and 1 October 1946 (Nuremberg Judgment), Cmd. 6964, Misc. No. 12 (London: H.M.S.O. 1946), p. 88.

³¹ Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance defines 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.

³² UNAMI Human Rights Office/Office of the High Commissioner for Human Rights (OHCHR), *Report on Human Rights in Iraq: January to June 2012*, October 2012, page 4 [hereafter: UNAMI Report on Human Rights in Iraq].

³³ The Iraqi Ministry of Human Right's Annual Report on the Situation of Prisons and Detention Centres

for the Year 2011 (*al-Taqrir al-sanawi li-awda' al-sujun wa marakiz al-ihitjaz li-'am 2011*) notes that it received 161 cases of torture allegations in 2011 and a further 306 cases which had occurred in previous years (page 85). Previously, in its Annual Report on the Situation of Prisons and Detention Centres for the Year 2010 the Ministry of Human Rights noted that it recorded 266 cases of torture in 2010 and the same year recorded a further 387 cases that were alleged to have occurred in previous years (page 111).

³⁴ Iraqi Human Rights Ministry, *al-Taqrir al-sanawi li-awda' al-sujun wa marakiz al-ihitjaz li-'am 2011*, published in 2012, page 81.

³⁵ UNAMI: *Report on Human Rights in Iraq: 2011*, May 2012, page 16.

³⁶ Amnesty International, *Amnesty International Annual Report 2012*, Iraq, POL 10/001/2012.

³⁷ Earlier protests to express solidarity with detainees and call for improved conditions in detention – including a “Day of the Prisoners” on 19 March 2011 – were held at the time of the Arab uprisings in Tunisia, Egypt and other states in early 2011. See Amnesty International, *Days of Rage*, 12 April 2011, MDE 14/013/2011

³⁸ Amnesty International, *Investigation needed as troops shoot anti-government protesters*, 25 January 2013.

³⁹ Shafaq News, [Number of Anbar demonstrators injured by Mutlag's bodyguard's fire, 30 January 2013; Al-Madapress, Kobler min al-Najaf: Ba'd mutalib al-muthahirin ghair mashru'a wa nutalib bi-'adm rafa' sha'arat qasiya, 13 January 2013.](#)

⁴⁰ Iraqi Civil Society Solidarity Initiative, *Baghdadi Organizations Visit the Sit-in in Ramadi and Support Their Demands*, 12 February 2013, <http://www.iraqicivilsociety.org/archives/1136>

⁴¹ Iraqi National Assembly, *Record of 34th session, 28 November 2012*, http://parliament.iq/Iraqi_Council_of_Representatives.php?name=articles_ajsdyawgwdjasdba46s7a98das6dasda7das4da6sd8asdsawewqegw465e4qweg4wq6e4qw8eqwe4qw6eqwe4sadj&file=showdetails&id=8512

⁴² This prison is administered under the control of the Ministry of Justice. At the time of the visit more than 400 women were reportedly held there.

⁴³ See Hammurabi Human Rights Organization (HHRO), *Report of visiting women' prison in Baghdad*, 10 October 2012, http://www.hhro.org/hhro/reports_en.php?lang=en&art_id=592; Amnesty International follow-up conversations with members of HHRO.

⁴⁴ Amnesty International, *New order, same abuses*, September 2010, MDE 14/006/2010

⁴⁵ Journalistic Freedoms Observatory, *al-Maliki mutalib bi-tadakhul li-itlaq sarah sahafiya iraqiya ta'arradat li-l-ta'adhib*, 26 November 2012 <http://www.ifoiraq.org/newsdetails.aspx?back=1&id=908&page=2>

⁴⁶ Iraqi National Assembly, *Record of 33rd session*, 20 November 2012, http://parliament.iq/Iraqi_Council_of_Representatives.php?name=articles_ajsdyawgwdjasdba46s7a98das6dasda7das4da6sd8asdsawewqegw465e4qweg4wq6e4qw8eqwe4qw6eqwe4sadj&file=showdetails&id=8448

⁴⁷ Initial Findings of the Human Rights Committee were discussed at the Iraqi National Assembly, *Record of 34th session*, 28 November 2012, http://parliament.iq/Iraqi_Council_of_Representatives.php?name=articles_ajsdyawgwdjasdba46s7a98das6dasda7das4da6sd8asdsawewqegw465e4qweg4wq6e4qw8eqwe4qw6eqwe4sadj&file=showdetails&id=8448

[s6dasda7das4da6sd8asdsawewqeqw465e4qweq4wq6e4qw8eqwe4qw6eqwe4sadki&file=showdetails&sid=8512](#)

⁴⁸ Human Rights Watch, *Iraq: A Broken Justice System, Ten Years after Invasion, Opponents Punished, Trial Rights Ignored*. 31 January 2013.

⁴⁹ Al-Sharq al-Awsat, *Wizara huquq al-insan al-'iraqiya tanfa wujud intihakak bi-haqq al-sajinat*, 4 December 2012; Iraq al-Yom, *Nafa 'adu al-lajna al-'amn wa al-difa'a* [...], 3 December 2012.

⁵⁰ Al-Sharq al-Awsat, *Wizara huquq al-insan al-'iraqiya tanfa wujud intihakak bi-haqq al-sajinat*, 4 December 2012.

⁵¹ Shafaq News, 12 December 2012, *Na'bain bi-kutla al-sadr yutaliban bi-i'tiqal wazir al-'adil* [...]

⁵² Ministry of Justice, *Istankarat 'ala al-tahajum 'ala huras wa idarat al-sijn*, 16 December 2012, <http://www.moj.gov.iq/view.258/>

⁵³ al-Hayat, *Ta'adhib al-sajinat al-'iraqiyat*, 10 January 2013.

⁵⁴ Amnesty International, *Iraqi men detained incommunicado*, 3 May 2012.

⁵⁵ The Iraqi Ministry of Human Rights' Annual Report on the Situation of Prisons and Detention Centres for the Year 2011 recorded 52 cases of death in custody in 2011 and 100 cases of death in custody in 2010; in three of the 2011 deaths and nine of the 2010 deaths, the ministry reported that "suspicion of torture" was recorded under the cause of death (Ministry of Human Rights, *al-Taqrir al-sanawi li-awda' al-sujun wa marakiz al-ihitjaz li-'am 2011*, published in 2012, page 48). The Ministry of Human Rights' Annual Report on the Situation of Prisons and Detention Centres for the Year 2010 noted that some 85 deaths in custody were recorded in 2009, including four in which cases "suspicion of torture" was recorded under the cause of death (Ministry of Human Rights, *al-Taqrir al-sanawi li-awda' al-sujun wa marakiz al-ihitjaz li-'am 2010*, published in 2011, page 67). The ministry's reports have listed several other categories for cause of death, including where no cause of death had been specified under which a total of 14 cases were recorded during the years 2009-2011.

⁵⁶ al-Madapress, 29 January 2013, *al-Mosul tafatih baghdad l-tashrih jetha* [...]

⁵⁷ al-Sharqiya TV, *Wafa mu'taqil taht ta'adhib fi mudiriyat jara'im al-basra*, 31 July 2012, <http://www.alsharqiya.com/?p=14661>.

⁵⁸ <http://www.youtube.com/watch?v=vTyABNctsOM>

⁵⁹ al-Sharq al-Awsat, *I'tiqal al-mi'at min dun mudhakhirat qada'iya*, 26 September 2012

⁶⁰ <http://www.youtube.com/watch?v=peHewSuyQs&feature=relmfu>

⁶¹ Copy of the al-Sharqiya TV report in possession of Amnesty International

⁶² Human Rights Watch, *Iraq: Investigate Death of VP's Bodyguard in Custody*, 23 March 2012.

⁶³ Reuters, *Iraq's judiciary denies Hashemi bodyguard tortured*, 22 March 2012.

⁶⁴ Supreme Judicial Council, *Bayan hawal wafa athnein min afraad himaya al-hashemi*, 11 April 2012, <http://www.iraqja.iq/view.1393/>

⁶⁵ <http://www.iraqja.iq/shheedq.php>

⁶⁶ <http://iraqilawyers.net/index.php?do=cat&category=6>

⁶⁷ For the period 2003- 2011 see <http://www.iraqbodycount.org/analysis/numbers/2011/>; for 2012 see <http://www.iraqbodycount.org/analysis/numbers/2012/> According to AFP, official figures released for 2012 were significantly lower than those reported by the Iraqi Body Count, stating that 440 police officers died in 2012.

⁶⁸ Aswat al-Iraq, *Judges suspend work in protest in Ninewa*, 10 October 2012

⁶⁹ Reuters, *Iraq's lawyers risk death to take on sectarian cases*, 13 August 2012

⁷⁰ AFP, *Iraq attacks on Shiites and lawyers kill 21*, 8 August 2012

⁷¹ UNAMI, *Report on Human Rights in Iraq: January to June 2012*, October 2012, page 5.

⁷² See for example Article 9 of the ICCPR

⁷³ These exceptional circumstances are defined in Articles 102 and 103 of the Criminal Procedure Code and refer to situations where a person commits an offence in front of witnesses, has escaped after being legally arrested or has been sentenced in his absence, is carrying arms, or is clearly intoxicated or confused.

⁷⁴ Alkarama, *Iraq: Detention of envoy facilitating the repatriation of Libyan prisoners*, 7 November 2012.

⁷⁵ UNAMI, *Report on Human Rights in Iraq: January to June 2012*, October 2012, page 5

⁷⁶ Amnesty International, *Iraqi man jailed for five years on spurious terror charges*, 17 March 2011.

⁷⁷ UNAMI, *Report on Human Rights in Iraq: January to June 2012*, October 2012, page 7.

⁷⁸ al-Madapress, *al-Shahristani: Itlaqna 335 mu'taqilan [...]*, 14 January 2013.

⁷⁹ BBC, *Iraqi officials apologise for prison system 'injustice'*, 16 January 2013.

⁸⁰ UN General Assembly resolution 62/148, 17 December 2007, para. 15; UN General Assembly resolution 63/166, 12 December 2008, para. 20.] ; the UN Human Rights Committee has stated that provisions should be made against the use of incommunicado Detention [Human Rights Committee, General Comment 20, Article 7 [Forty-fourth session, 1992], Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.1 at 30 [1994], para. 11.] and the UN Committee against Torture has consistently called for its elimination [See for instance Report of the Committee against Torture, UN Doc. A/52/44 (1997), paras. 121(d)(re Georgia); 146 (re Ukraine); UN Doc. 44(A/55/44) (2000), para. 61(b) (re Peru); UN Doc. A/58/44 (2003), para. 42(h) (re Egypt); UN Doc. A/59/44 (2004), para. 146(d) (re Yemen).

⁸¹ Human Rights Committee, General Comment 20, Article 7 (Forty-fourth session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.1 at 30 (1994), para. 11.

⁸² See for instance Report of the Committee against Torture, UN Doc. A/58/44 (2003), para. 42(h) (re Egypt); UN Doc. A/59/44 (2004), para. 146(d) (re Yemen); UN Doc. A/65/44 (2009-10), para. 52(19)(d) (re El Salvador), *Ibid.*, para. 55(12) (re Spain); UN Doc. A/67/44 (2010-11), paras. 61(15)(a) (re Turkmenistan).

⁸³ UN Doc. E/CN.4/2002/76, 27 December 2001, Annex 1.

⁸⁴ Report of the UN Special Rapporteur on Torture, UN Doc. E/CN.4/2001/66, 25 January 2001, para. 665.

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- ⁸⁵ Ministry of Human Rights, *al-Taqrir al-sanawi li-awda' al-sujun wa marakiz al-ihitjaz li-'am 2011*, published in 2012, page 61.
- ⁸⁶ UNAMI, *Report on Human Rights in Iraq: January to June 2012*, October 2012, page 5.
- ⁸⁷ UNAMI, *Report on Human Rights in Iraq: January to June 2012*, October 2012, page 5.
- ⁸⁸ Letter sent by the Iraqi Embassy in the Netherlands in response to an Urgent Action by Amnesty International to its office in Amsterdam, The Hague on 9 May 2012.
- ⁸⁹ Iraq ratified the ICCPR on 25 January 1971.
- ⁹⁰ Human Rights Committee, General Comment No. 31 on Article 2 of the Covenant: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/74/CRP.4/Rev.6, 21 April 2004, para. 15.
- ⁹¹ *Ibid.*, para. 18.
- ⁹² Adopted by General Assembly resolution 43/173 of 9 December 1988.
- ⁹³ Articles 130 and 131 of the Criminal Procedure Code.
- ⁹⁴ Ministry of Human Rights, *al-Taqrir al-sanawi li-awda' al-sujun wa marakiz al-ihitjaz li-'am 2011*, published in 2012, page 80.
- ⁹⁵ al-Shahid al-Mustaqil, *I'dam al-abra' karitha muraw'a*, 16 December 2012, <http://www.alshahid-almustakil.net/ShowNews.php?id=1269>
- ⁹⁶ Amnesty International, *April 2007, Unjust and unfair: the death penalty in Iraq*, MDE 14/014/2007, page 24.
- ⁹⁷ UNAMI, *Report on Human Rights in Iraq: January to June 2012*, October 2012, page 9.
- ⁹⁸ www.youtube.com/user/moiiraqi?feature=watch
- ⁹⁹ See for example, the link to a video uploaded by the Ministry of Interior in early 2013, <http://www.youtube.com/watch?v=sB1eip5WfVY>
- ¹⁰⁰ See <http://www.youtube.com/watch?v=-wvMXVbSDAo&feature=related>
- ¹⁰¹ See <http://www.youtube.com/watch?v=znD3UfH0hWs&feature=related> ; http://www.youtube.com/watch?v=RXiUZMHV8_A&feature=related
- ¹⁰² See <http://www.youtube.com/watch?v=0IPsdBTdS6Y&feature=related>
- ¹⁰³ See <http://www.youtube.com/watch?v=lf74SKe40gY&feature=related>
- ¹⁰⁴ See <http://www.youtube.com/watch?feature=endscreen&v=CLKgOqM7mzc&NR=1>
- ¹⁰⁵ See <http://www.youtube.com/watch?v=BBsL6J-AY-0&list=UUF5hi5kAOpNVjBLd0zKlz0w&index=17&feature=plcp>
- ¹⁰⁶ Supreme Judicial Council, *al-Jinayat: al-i'dam li-munafadhi tafjir majlis al-nuwab*, 28 June 2012, <http://www.iraqia.iq/view.1504/>
- ¹⁰⁷ UNAMI, *Report on Human Rights in Iraq: January to June 2012*, October 2012, page 10.
- ¹⁰⁸ See http://www.youtube.com/watch?v=fHwLm4Z_FWE&list=UUF5hi5kAOpNVjBLd0zKlz0w&index=1&feature=plcp

¹⁰⁹ <http://www.youtube.com/watch?v=Dy9kRUaiyCw&feature=related>

¹¹⁰ CNN, *Al Qaeda commander: How I planned Iraq attacks*, 20 May 2010.

¹¹¹ UNAMI, *Report on Human Rights in Iraq: 2011*, May 2012, page 13.

¹¹² Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, UN Doc. CCPR/C/GC/32, 23 August 2007, para. 6

¹¹³ See for instance the Committee against Torture's concluding observations on the periodic reports of state parties, Report of the Committee against torture UN Doc. A/65/44 (2009-10), paras. 50(18), (25) (re Azerbaijan); *ibid.*, paras. 53(9), (21) (re Rep. of Moldova); Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc. A/61/259, 14 August 2006, paras. 44-65.

¹¹⁴ Report of the UN Special Rapporteur on Torture, UN Doc. E/CN.4/2003/68, 17 December 2002, para. 26(k).

¹¹⁵ Report of the Committee against torture, UN Doc. A/63/44 (2007-8) (Indonesia), para. 42(14).

¹¹⁶ Report of the Committee against torture UN Doc. A/63/44 (2007-8), para. 37(20) (re Uzbekistan).

¹¹⁷ Report of the Committee against torture, UN Doc. A/63/44 (2007-8), para. 42(14) (re Indonesia).

¹¹⁸ Report of the Committee against torture, UN Doc. A/63/44 (2007-8) para. 45(14) (re Zambia).

¹¹⁹ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak: Mission to Jordan, UN Doc. A/HRC/4/33/Add.3, 5 January 2007, para. 63.

¹²⁰ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak: Mission to Jordan, UN Doc. A/HRC/4/33/Add.3, 5 January 2007, para. 55(e).

¹²¹ Report of the Committee against Torture, UN Doc. A/67/44 (2011-12), para. 52(18) (re Belarus).

¹²² The verdict states: Wa bi-dhalik al-adilla kafiya wa muqni'a li-tajrim al-muttaham wa dhalika li-i'tirafih fi marhala al-tahqiq wa hiya ma'amul 'alaiha kaunha al-aqrab ila tarikh al-hadith min al-ifada al-lahiqa fi marhala al-muhakama.

¹²³ Amnesty International, *Iraq: Human rights abuses against Palestinian refugees, October 2007*, MDE 14/030/2007

¹²⁴ al-Sharq al-Awsat newspaper, 19 January 2010.

¹²⁵ According to the Ministry of Human Rights, Iraqi courts issued 2,742 death sentences between August 2004 and 30 June 2011; 967 prisoners had had their death sentences confirmed by the Court of Cassation and 414 of whom had had their death sentences ratified by the Presidency by the latter date. Ministry of Human Rights, *al-Taqrir al-sanawi li-awda' al-sujun wa marakiz al-ihitjaz li-'am 2011*, published in 2012, pages 43-44.

¹²⁶ UNAMI, *Report on Human Rights in Iraq: 2011*, May 2012, page 20.

¹²⁷ Article 2 of the Iraqi Anti-Terror Law [Law 13 of 2005] provides a broad, somewhat vague definition of terrorism as "any criminal act carried out by an individual or an organized group, targeting an individual, a group of individuals, groups, public or private organizations, and causing damage to private or public

property with the aim of undermining security and stability or national unity, or instilling fear, terror and panic in people or creating chaos in order to achieve terrorist goals."

¹²⁸ Hammurabi Human Rights Organization, *Report of visiting women's prison in Baghdad*, 10 October 2012, http://www.hhro.org/hhro/reports_en.php?lang=en&art_id=592.

¹²⁹ Iraq acceded to the CRC on 15 June 1994.

¹³⁰ Human Rights Watch, *Iraq: Halt Execution of Yemeni Juvenile*, 8 December 2012

¹³¹ Concluding observations of the Human Rights Committee: Guatemala, UN document CCPR/CO/72/GTM, 27 August 2001, para. 17.8

¹³² Report of the SR on extrajudicial, summary or arbitrary executions, UN document A/67/275, 9 August 2012, para. 35

¹³³ Saudi Gazette, *Iraq offers full cooperation to lawyers of Saudi prisoners*, 25 January 2013.

¹³⁴ <http://www.alfayhaa.tv/english/SPACE-OF-FREEDOM/51790.html>

¹³⁵ See also Amnesty International, *Six men at risk of execution*, 7 September 2012, MDE 14/013/2012.

¹³⁶ Amnesty International, *Six men at risk of execution*, 7 September 2012, MDE 14/013/2012.

¹³⁷ Names as follows: Mustafa Muhammad Abbas Farhan, Ishaq Muhammad Abbas Farhan, Saddam Hussein Abbas Farhan, Misar 'Ali Salman Nasir, Ali 'Abd al-Sada Sakran Ziyad, Salim 'Abd al-Jassim Muhammad Mustaf, Kilan Kamil 'Ali Sharqi, 'Assim Mazin Hussein Hamid, Firas 'Abdallah Fathi 'Abd al-Rahman, 'Abd Al-Qadir Naji Hussein and Hamid Hudair Thuweini Mahdi.

¹³⁸ Amnesty International, *Iraqi born Palestinian at risk of execution*, 5 October 2012, MDE 14/014/2012.

¹³⁹ AFP, *Iraq court condemns 28 Shiite cultists to death*, 26 February 2009

¹⁴⁰ Amnesty International, *Two dozen facing execution after unfair trial*, 20 July 2011, MDE 14/039/2011. The 24 men include Ghanim Arsheij Jassim, Hussain Arsheij Jassim, Mohammad Sharif Marzuk, his two brothers Hussain Sharif Marzuk and Hassan Sharif Marzuk, as well as Ahmad Hashem Jaber and Sabah Nouri Dagher.

¹⁴¹ Names as follows: 'Awus Ibrahim Muhammad, Bara' Ibrahim Muhammad, Muhammad Liwa 'Othman, Saadun Naji Kamil, Samer Tahsin 'Abd al-Halim, Haydar Mu'yad, Ahmad Thabit, Ra'id Makhlif, Taysir Jassim, Qahtan 'Adnan Jassim and Khalid Yassin Khalaf.

¹⁴² Amnesty International, *Death sentences after coerced confessions*, 12 December 2012, MDE 14/017/2012

¹⁴³ Among other allegations against the contingents of the MNF, Danish troops have been accused of handing over detainees to the Iraqi authorities in the knowledge that this would place them at risk of torture or other ill-treatment. In April 2012, the Danish government established a commission of inquiry into these allegations, the outcome of which is still awaited. In October, it emerged that Danish troops had possessed video footage of detainee mistreatment by Iraqi soldiers. In December, it was reported that 11 Iraqis had been unable to proceed with planned legal action against the Danish government because they had been denied legal aid and required to pay a deposit of 40,000 kroner each, an amount that they could not afford, as security before the case could go forward.

¹⁴⁴ Ministry of Human Rights, 2011, *al-Taqrir al-sanawi li-awda' al-sujun wa marakiz al-ihitjaz li-'am 2010*, published on 2011, page 112.

¹⁴⁵ Ministry of Human Rights, *al-Taqrir al-sanawi li-awda' al-sujun wa marakiz al-ihitjaz li-'am 2011*, published in 2012, pages 48 and 85.

¹⁴⁶ Ministry of Human Rights, *al-Taqrir al-sanawi li-awda' al-sujun wa marakiz al-ihitjaz li-'am 2011*, published in 2012, page 88

¹⁴⁷ For example, in response to a reporter's comment that the war in Iraq was "a war that the United States planned and that it went into", the Pentagon's spokesperson said that the comment "reflects an understandable but unfortunate misunderstanding on your part of what the war in Iraq is, which is part of the global war on terror. And that is not a war that we started. It is a war that was begun when we were attacked on 9/11." Lawrence Di Rita, Principal Deputy Assistant Secretary of Defense for Public Affairs, Department of Defense News Briefing, 8 December 2004, <http://www.defense.gov/transcripts/transcript.aspx?transcriptid=1978>. See also, for example, President Bush: Remarks to military personnel at Fort Hood, Texas, 12 April 2005 ("The terrorists have made Iraq a central front in the war on terror"). Congress passed the Authorization for Use of Military Force Against Iraq Resolution in 2002. The administration took the view that such congressional authorization was "legally unnecessary" on the grounds that "As Chief Executive and Commander in Chief of the Armed Forces of the United States, the President possesses ample authority under the Constitution to direct the use of military force in defense of the national security of the United States". This Department of Justice opinion also held that the broad Authorization for Use of Military Force (AUMF), passed by Congress on 14 September 2001, could also authorize military action against Iraq if the President decided that "Iraq provided assistance to the perpetrators of the September 11 attacks". Re: Authorization for Use of Military Force Against Iraq Resolution of 2002. Memorandum for Daniel J. Bryant, Assistant Attorney General, Office of Legislative Affairs, From John Yoo, Deputy Assistant Attorney General, Office of Legal Counsel, US Department of Justice, 21 October 2002.

¹⁴⁸ In March 2009, a US federal judge in Virginia recalled the CBS television broadcast five years earlier of photographs taken at Abu Ghraib prison: "The broadcast showed sickening photographic evidence of US soldiers abusing and humiliating Iraqi detainees at Abu Ghraib. It showed photographs of naked detainees stacked in a pyramid; a photograph of two naked and hooded detainees, positioned as though one was performing oral sex on the other; and a photograph of a naked male detainee with a female US soldier pointing to his genitalia and giving a thumbs-up sign. Another photograph showed a hooded detainee standing on a narrow box with electrical wires attached to his hands. A final photograph showed a dead detainee who had been badly beaten. US soldiers were in several of the photographs, laughing, posing, and gesturing". *Al Shimari v. CACI*, Memorandum order, US District Court for the Eastern District of Virginia, 18 March 2009.

¹⁴⁹ See, for example, Remarks by the President on National Security at the National Archives, Washington, DC, USA, 21 May 2009, <http://www.whitehouse.gov/the-press-office/remarks-president-national-security-5-21-09>

¹⁵⁰ See USA: Bringing George W. Bush to justice: International obligations of states to which former US President George W. Bush may travel, 30 November 2011, <http://www.amnesty.org/en/library/info/AMR51/097/2011/en>

¹⁵¹ Inquiry into the treatment of detainees in US custody. Report of the Committee on Armed Services, United States Senate, 20 November 2008. pages 207-216.

¹⁵² Donald Rumsfeld, *Known and Unknown: A Memoir*. Sentinel (2013), page 551.

¹⁵³ Final autopsy report, at http://www.thetorturedatabase.org/files/foia_subsite/pdfs/DODDOACID009482.pdf

¹⁵⁴ Statement of Attorney General Eric Holder on closure of investigation into the interrogation of certain detainees, US Department of Justice, Office of Public Affairs, 30 August 2012, <http://www.justice.gov/opa/pr/2012/August/12-ag-1067.html>

¹⁵⁵ See, generally, USA: Chronicle of immunity foretold: Time for change on counter-terrorism violations after another year of blocking truth, remedy and accountability, 17 January 2013, <http://www.amnesty.org/en/library/info/AMR51/003/2013/en>

¹⁵⁶ *Ali et al v. Rumsfeld et al*, Consolidated amended complaint for declaratory relief and damages, US District Court for the District of Columbia, 5 January 2006.

¹⁵⁷ *Ali et al v. Rumsfeld et al*, US Court of Appeals for the DC Circuit, 21 June 2011.

¹⁵⁸ *Al-Shimari et al v. CACI International et al*, US Court of Appeals for the Fourth Circuit, 21 September 2011.

¹⁵⁹ The UK was recognized as an occupying power in Iraq from May 2003 until June 2004, but UK combat troops remained in the country with the agreement of the new Iraqi authorities until May 2009.

¹⁶⁰ At least four other members of the UK armed forces were court-martialed and convicted of offences in connection with the so-called Breadbasket incident of May 2003 involving mistreatment and photographs of Iraqi looters. See: <http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.GBR.5.doc>

¹⁶¹ The need for a comprehensive assessment of human rights violations set out in this document is distinct from the task taken up by the Iraq Inquiry, chaired by Sir John Chilcot, announced in June 2009 by former UK Prime Minister Gordon Brown, and established in July 2009. The Iraq Inquiry's terms of reference are extremely broad, and are more centrally focused on UK foreign policy vis-à-vis Iraq and the decision to enter the conflict in 2001 rather than issues arising from human rights obligations: "It will consider the period from the summer of 2001 to the end of July 2009, embracing the run-up to the conflict in Iraq, the military action and its aftermath. We will therefore be considering the UK's involvement in Iraq, including the way decisions were made and actions taken, to establish, as accurately as possible, what happened and to identify the lessons that can be learned. Those lessons will help ensure that, if we face similar situations in future, the government of the day is best equipped to respond to those situations in the most effective manner in the best interests of the country" (<http://www.iraquinquiry.org.uk/about.aspx>). The Iraq Inquiry concluded its public hearings in February 2011, and was expected to have published its report by July 2012, although that date has now been postponed. The running costs of the Iraq Inquiry as of April 2012 were £6.13 million. The clearest summary of the issues addressed by the report are set out in an annex to a letter from the Inquiry's Chair to the UK Prime Minister on 13 July 2012 (<http://www.iraquinquiry.org.uk/media/54266/2012-07-13%20chilcot%20cameron.pdf>).

¹⁶² For further detail on the Al-Skeini case, see: *UK: European Court criticizes UK for violating human rights in Iraq*, AI Index: EUR 45/009/2011, <http://www.amnesty.org/en/library/info/EUR45/009/2011>. See also: *Law Lords hear key case on detention without charge or trial by UK forces in Iraq*, AI Index: EUR 45/017/2007, 26 October 2007, <http://www.amnesty.org/en/library/info/EUR45/017/2007/en>; *United Kingdom: Amnesty International's reaction to Law Lords' judgment in the Al-Skeini & Other case*, AI Index: EUR 45/008/2007, 13 June 2007, <http://www.amnesty.org/en/library/info/EUR45/008/2007/en>; *UK: Eleven organisations intervene before House of Lords in case considering the role of UK military in torture and*

killings of Iraqi civilians, AI Index: EUR 45/007/2007, 16 April 2007, <http://www.amnesty.org/en/library/info/EUR45/007/2007/en>. The issue of whether or not rights guaranteed by the European Convention applied to territory where a signatory to the convention was an occupying power and was exercising public powers, has not solely been confined to the allegations of torture, ill-treatment and unlawful killing by UK forces; it has also included internment and transfers of detainees to a situation in which they risked facing the death penalty and execution. Notably, in another judgement (*Al-Jedda v the United Kingdom*) issued on the same day as *Al-Skeini*, the European Court of Human Rights found that the prolonged internment of the applicant, Hilal Abdul-Razzaq Ali Al-Jedda, for more than three years in a detention centre in Basra, Iraq, run by UK forces, violated his right to liberty and security (Article 5) under the European Convention. Hilal Al-Jedda, was arrested by US soldiers in Iraq, apparently acting on information provided by British Intelligence services, on 10 October 2004. He was taken to Sha'aibah Divisional Temporary Detention facility in Basra city, a detention centre run by British forces, and held there, without charge or trial until his release on 30 December 2007 over three years later. This type of detention, sometimes called "internment", is prohibited by the European Convention on Human Rights (save for where a state has made a valid derogation, which the UK did not seek to do in relation to detentions in Iraq). The UK had claimed that Hilal Al-Jedda was not entitled to the protection of the European Convention on Human Rights at all. It argued that the United Nations alone was legally responsible for the detention, since, it argued, UK forces were acting as part of the Multi-National Force (MNF) in Iraq, under a specific mandate from the UN Security Council. The UK also argued that, even if it was legally responsible for the detention, the relevant UN Security Council resolutions authorized internment and this would override any contrary obligations the UK had under the ECHR. The European Court rejected the UK's arguments, finding that the UK was indeed legally responsible for the internment by its forces of Hilal Al-Jedda, and that nothing in the UN mandate disentitled him to the protections of the ECHR. The Court therefore found his internment to violate Article 5 of the European Convention. In an earlier case, in March 2010, the European Court of Human Rights found that the UK had violated Article 3 of the European Convention on Human Rights in the case of Al-Saadoon and Mufdhi. Faisal Attiyah Nassar Al-Saadoon and Khalaf Hussain Mufdhi, two Iraqi nationals, were arrested and detained in 2003 in Iraq in UK-run detention facilities; and subsequently transferred in December 2008 to Iraqi custody despite substantial grounds for believing that they would risk facing the death penalty and execution, and notwithstanding interim measures from the European Court of Human Rights indicating that the UK government should not transfer them to the Iraqi authorities until further notice from the Court.

¹⁶³ They were named: Hazim Jum'aa Gatteh Al-Skeini, 23; Muhammad Abdul Ridha Salim, 45; Hannan Mahaibas Sadde Shmailawi, 33; Waleed Sayay Muzban, 43; and Ahmed Jabbar Kareem Ali, 15.

¹⁶⁴ *R v Payne* Sentencing Hearing Transcript, 30 April 2007, <http://www.publications.parliament.uk/pa/ld200607/ldwa/070327wa1.pdf>.

¹⁶⁵ For further information, see *United Kingdom: Justice must follow as Baha Mousa Inquiry makes damning findings against UK armed forces*, AI Index: EUR 45/016/2011, 9 September 2011, <http://www.amnesty.org/en/library/info/EUR45/016/2011/en>

¹⁶⁶ MOD Announcement, *Publication of the Baha Mousa Inquiry Report*, 8 September 2011, <https://www.gov.uk/government/news/publication-of-the-baha-mousa-inquiry-report>; Liam Fox, "There can be no excuses for Baha Mousa's death," *The Guardian*, 8 September 2011, <http://www.guardian.co.uk/commentisfree/2011/sep/08/baha-mousa-death-sir-william-gage>; and Sam Marsden and John Fahey, "Liam Fox rejects key inquiry finding," *The Independent*, 8 September 2011,

<http://www.independent.co.uk/news/uk/home-news/liam-fox-rejects-key-inquiry-finding-2351154.html>.

¹⁶⁷ See, for example, Richard Norton-Taylor and Owen Bowcott, "Army suspends Baha Mousa soldiers as more prosecutions are considered," *The Guardian*, 9 September 2011, <http://www.guardian.co.uk/world/2011/sep/08/army-suspends-baha-mousa-soldiers>.

¹⁶⁸ Fitness to Practice Panel of the Medical Practitioners Tribunal Service, Case Ref 4509417, 21 December 2012, <http://www.mpts-uk.org/static/documents/content/Keilloh.pdf>. Local media reports indicated that Derek Keilloh has chosen not to appeal the decision. See Joe Willis, "Family of struck-off Northallerton GP Derek Keilloh launch fresh campaign", *The Northern Echo*, 24 January 2013.

¹⁶⁹ UN Human Rights Committee, General Comment No. 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant, 26 May 2004, UN Doc. CCPR/C/21/Rev.1/Add.13, para 18; Article 7, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1465 UNTS 85, ratified by the UK on 8 December 1988; UN Office of the High Commissioner for Human Rights, Istanbul Protocol (Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) 2004, UN Doc. HR/P/PT/8/Rev.1, para 121.

¹⁷⁰ Hansard, 25 November 2009, Column 82WS, <http://www.publications.parliament.uk/pa/cm200910/cmhansrd/cm091125/wmstext/91125m0001.htm>.

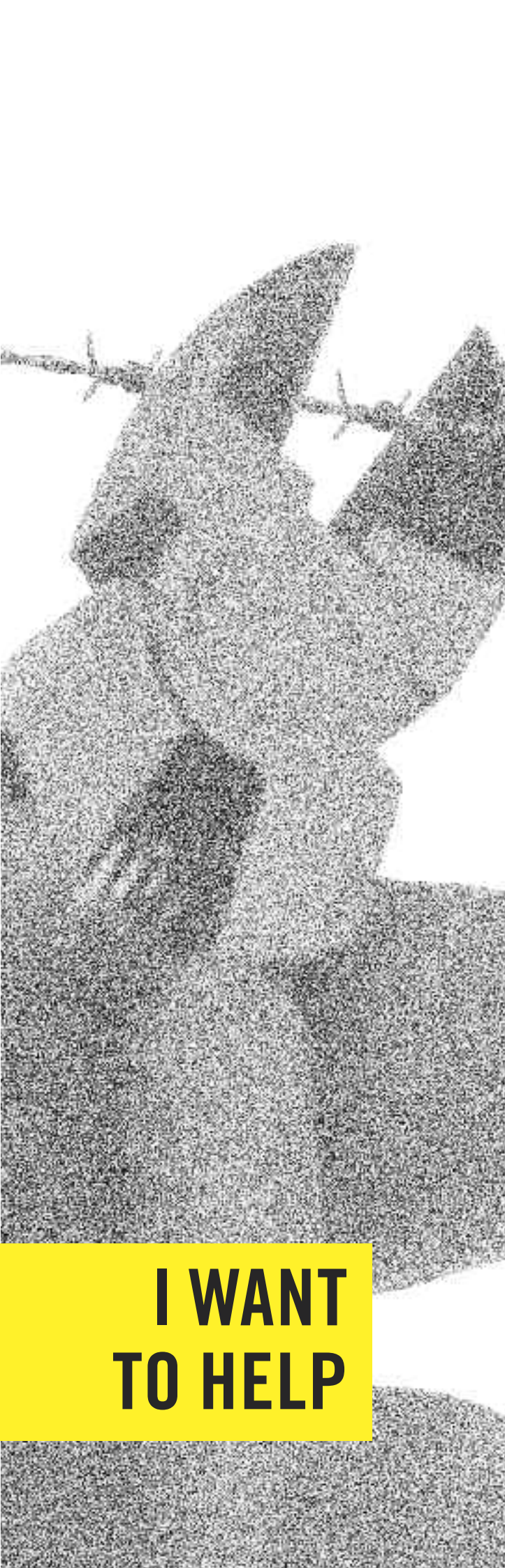
¹⁷¹ For a wider discussion of the obstacles to accountability and remedy arising from non-disclosure in UK courts for reasons of national security, see *Left in the dark: The use of secret evidence in the United Kingdom*, AI Index: EUR 45/014/2012, 15 October 2012, <http://www.amnesty.org/en/library/info/EUR45/014/2012/en>.

¹⁷² Further details about the Al-Sweady Inquiry and key documents can be accessed via the Inquiry's website: <http://www.alsweadyinquiry.org/>.

¹⁷³ Richard Norton-Taylor, "MoD accused of withholding evidence of 'shocking' treatment of Iraqi civilians", *The Guardian*, 19 July 2012, <http://www.guardian.co.uk/uk/2012/jul/19/mod-accused-evidence-iraqi-civilians>

¹⁷⁴ The allegations, as summarized by the High Court, include: "(1) techniques on sensory deprivation (including hooding, sight deprivation by the wearing of blackened goggles or other means, forced silence, sound deprivation by the use of ear muffs and prolonged solitary confinement); (2) techniques on debility (including food or water deprivation, sleep deprivation, stress techniques such as prolonged kneeling, forced exertion such as forced running, temperature manipulation such as detention in unbearably hot locations or dousing with cold water and sensory bombardment or use of noise); (3) other excessive techniques (including forced nakedness or exposure of genitals, threats or rape/violence, running/dragging in a zigzag, prolonged and direct shouting, other 'harshing' techniques, restrictions on access to toilets and prolonged cuffing); (4) sexual acts (including forced watching/listening of pornographic videos, sexual intercourse or other sexual acts between soldiers in front of detainees, masturbation by soldiers in front of detainees, attempted sexual seduction of detainees, and no privacy on toilet or in shower); (5) religious/cultural humiliation (including urinating on detainees, not allowing detainees to pray, and taunting at prayer or other interferences); (6) other abuse (including mock executions, beatings with weapons or fists or feet, punching, slapping, kicking, spitting and dragging along the ground). Mousa, R (on the application of) v Secretary of State for Defence & Anor [2010] EWHC 3304 (Admin) (21 December 2010) <http://www.bailii.org/ew/cases/EWHC/Admin/2010/3304.html>, para 11.

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- ¹⁷⁵ Hansard, Written Ministerial Statement, 1 March 2010, Column 94WS, <http://www.publications.parliament.uk/pa/cm200910/cmhansrd/cm100301/wmstext/100301m0001.htm#1003011000093>.
- ¹⁷⁶ MOD Announcement, "Iraq Historical Allegations Team starts work", 1 November 2010, <https://www.gov.uk/government/news/iraq-historic-allegations-team-starts-work>.
- ¹⁷⁷ Amnesty International wrote in December 2012 to the IHAT seeking a meeting to discuss its work. To date, the organization has not received any response.
- ¹⁷⁸ Mousa, R (on the application of) v Secretary of State for Defence & Anor [2010] EWHC 3304 (Admin) (21 December 2010) <http://www.bailii.org/ew/cases/EWHC/Admin/2010/3304.html>, paras 114 and 134.
- ¹⁷⁹ Mousa, R (on the application of) v Secretary of State for Defence & Anor [2011] EWCA Civ 1334 (22 November 2011), <http://www.bailii.org/ew/cases/EWCA/Civ/2011/1334.html>, para 38.
- ¹⁸⁰ Minister of State for the Armed Forces (Nick Harvey MP), Iraq Historical Allegations Team, 26 March 2012, http://www.parliament.uk/documents/commons-vote-office/March_2012/26-03-12/4-Defence-Iraq-Historic-Allegations-Team.pdf.
- ¹⁸¹ Ian Cobain, "Iraq abuse inquiry little more than a whitewash, says official," *The Guardian*, 11 October 2012, <http://www.guardian.co.uk/uk/2012/oct/11/iraq-abuse-inquiry-whitewash-claim>, and Ian Cobain, "Inquiry into British abuse of Iraqi prisoners faces fresh allegations," *The Guardian*, 12 October 2012, <http://www.guardian.co.uk/uk/2012/oct/12/inquiry-british-abuse-iraqi-prisoners>
- ¹⁸² 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".



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IRAQ: A DECADE OF ABUSES

Ten years after the US-led invasion that overthrew President Saddam Hussein, Iraq remains mired in human rights abuses. Armed groups opposed to the government continue to kill and maim large numbers of civilians in suicide and other bomb attacks. In response, the authorities have engaged in widespread detentions, torture, unfair trials and executions. Today, thousands of Iraqis remain detained without trial or are serving prison sentences imposed after they were convicted solely or largely on the basis of “confessions” allegedly made under torture. Many others are on death row, waiting to join the more than 400 prisoners who have gone to the gallows since the authorities recommenced executions in 2005.

Iraq’s security forces continue to evade accountability for torture and other serious violations of human rights, much as the US and British military forces enjoyed impunity for the wrongs they committed while they occupied Iraq following the 2003 invasion.

This report describes some of the worst human rights abuses in Iraq today and calls for urgent state action to address them and ensure full accountability.

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