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Beyond Abu Ghraib: detention and torture in Iraq

“I have lost a year and a half of my life”

43-year-old former security detainee and father of three daughters following his release in September 2005; he alleged that he was ill-treated while held in US detention in Iraq.

Introduction

Nearly three years after United States (US) and allied forces invaded Iraq and toppled the government of Saddam Hussain, the human rights situation in the country remains dire. The deployment of US-led forces in Iraq and the armed response that engendered has resulted in thousands of deaths of civilians and widespread abuses amid the ongoing conflict.

As Amnesty International has reported elsewhere¹, many of the abuses occurring today are committed by armed groups opposed to the US-led Multinational Force (MNF) and the Iraqi government that it underpins. Armed groups continue to wage an uncompromising war marked by their disregard for civilian lives and the basic rules of international humanitarian law. They commit suicide and other bomb attacks which either target civilians or while aimed at military objectives are disproportionate in terms of causing civilian casualties, and they abduct and hold victims hostage, threatening and often taking their lives. Amnesty International condemns these abuses, some of which are so egregious as to constitute crimes against humanity, in addition to war crimes, and continues to call on Iraq's armed groups to cease such activities and abide by basic requirements of international humanitarian law.

In this report, Amnesty International focuses on another part of the equation, specifically its concerns about human rights abuses for which the US-led MNF is directly responsible and those which are increasingly being committed by Iraqi security forces. The record of these forces, including US forces and their United Kingdom (UK) allies, is an unpalatable one. Despite the pre-war rhetoric and post-invasion justifications of US and UK political leaders, and their obligations under

¹ Amnesty International, *Iraq: In cold blood: abuses by armed groups*, 25 July 2005, AI Index: MDE 14/009/2005.

international law, from the outset the occupying forces attached insufficient weight to human rights considerations. This remains the position even if the violations by the MNF that are the subject of this report do not have the same graphic, shock quality as the images that emerged in April 2004 and February 2006 showing inmates being tortured and humiliated by US guards at Baghdad's Abu Ghraib prison and Iraqi youth being beaten by UK troops after they were apprehended during a riot. The same failure to ensure due process that prevailed then, however, and facilitated - perhaps even encouraged such abuses - is evidenced today by the continuing detentions without charge or trial of thousands of people in Iraq who are classified by the MNF as "security internees".

The MNF has established procedures which deprive detainees of human rights guaranteed in international human rights law and standards. In particular, the MNF denies detainees their right to challenge the lawfulness of their detention before a court. Some of the detainees have been held for over two years without any effective remedy or recourse; others have been released without explanation or apology or reparation after months in detention, victims of a system that is arbitrary and a recipe for abuse.

Many cases of torture and ill-treatment of detainees held in facilities controlled by the Iraqi authorities have been reported since the handover of power in June 2004. Among other methods, victims have been subjected to electric shocks or have been beaten with plastic cables. The picture that is emerging is one in which the Iraqi authorities are systematically violating the rights of detainees in breach of guarantees contained both in Iraqi legislation and in international law and standards - including the right not to be tortured and to be promptly brought before a judge.

Amnesty International is concerned that neither the MNF nor Iraqi authorities have established sufficient safeguards to protect detainees from torture or ill-treatment. It is particularly worrying that, despite reports of torture or ill-treatment by US and UK forces and the Iraqi authorities, for thousands of detainees access to the outside world continues to be restricted or delayed. Under conditions where monitoring of detention facilities by independent bodies is restricted - not least, due to the perilous security situation - measures which impose further limitations on the contact detainees may have with legal counsel or relatives increase the risk that they will be subject to torture or other forms of abuse.

Amnesty International is calling on the Iraqi, US and UK authorities, who both operate detention facilities where persons detained by the MNF are held, to take

urgent, concrete steps to ensure that the fundamental human rights of all detainees in Iraq are respected. In particular, these authorities must urgently put in place adequate safeguards to protect detainees from torture or ill-treatment. This includes ensuring that all allegations of such abuse are subject to prompt, thorough and independent investigation and that any military, security or other officials found to have used, ordered or authorized torture are brought to justice. It includes too ensuring that detainees are able effectively to challenge their detention before a court; the right to do so constitutes a fundamental safeguard against arbitrary detention and torture and ill-treatment, and is one of the non-derogable rights which states are bound to uphold in all circumstances, even in time of war or national emergency.²

Torture and ill-treatment goes on

Karim R³, a 47-year old imam and preacher (khatib), was detained and tortured by US forces in 2003 and then by Iraqi forces in 2005. On each occasion, he was subsequently released uncharged. He told Amnesty International that he was first detained in October 2003 by US forces in Baghdad, where he lives and is head of a charity. He was insulted, blindfolded, beaten and subjected to electric shocks from a stun gun (taser) by US troops at a detention facility in the Kadhimiya district of Baghdad. After seven days of detention, he was released without charges.

Karim R was again detained in May 2005 for 16 days – this time by forces of the Iraqi Interior Ministry at a detention facility they operated in Baghdad. During this detention, he was blindfolded and then beaten and subjected to electric shocks while being hung up in a manner designed to cause him excruciating pain. He told Amnesty International:

“They tied my hands to the back with a cable. There was an instrument with a chain which was attached to the ceiling. When they switched it on the chain pulled me up to the ceiling. Because the hands are tied to the back this is even more painful (...) Afterwards they threw water over me and they used electric shocks. They connected the current to my legs and also to other parts of my body. (...) The first time they subjected me to electric shocks I fainted for 40 seconds or one minute. It felt like falling from a building. I had a headache and was not able to walk. The interrogator said: You better confess to terrorist activities, in order to save your life. I responded that I was not involved in these activities and that I had a heart condition. (...) Later they forced me to

² Human Rights Committee, General Comment 29: States of Emergency, UN Doc. CCPR/C/21/Rev.1/Add.11, paras 7 and 16.

³ At the person’s request the name is not published in this report.

confess on camera. They asked questions claiming that I was a terrorist but they did not even give me the chance to reply. They just stated that I was a terrorist. (...).”

Torture and ill-treatment in Iraqi detention facilities

In the weeks leading up to Iraq’s parliamentary elections, held on 15 December 2005, new evidence emerged to indicate that the Iraqi Interior Ministry was holding many detainees in different facilities under its control and subjecting them to torture and ill-treatment. On 13 November 2005, US military forces raided one detention facility controlled by the Interior Ministry in the al-Jadiriya district of Baghdad, where they reportedly found more than 170 detainees being held in appalling conditions, many of whom alleged that they had been tortured. On 8 December 2005, Iraqi authorities and US forces inspected another detention facility in Baghdad, also controlled by the Interior Ministry. At least 13 of the 625 detainees found there required medical treatment, including several reportedly as a result of torture or ill-treatment. The Iraqi Ministry of Interior denied that any detainees had been tortured or abused.⁴ However, the US ambassador to Iraq, Zalmay Khalilzad, stated that “over 100” detainees found at the detention facility in al-Jadiriya and 26 detainees at the other detention location had been abused.⁵

According to media reports, in both cases detainees alleged that they had been subjected to electric shocks and had their nails pulled out.⁶ An Iraqi Human Rights Ministry official subsequently told Amnesty International that the Iraqi authorities had conducted medical examinations but that these had not confirmed the allegations. However, the official stated that several detainees had injuries caused by beating with plastic cables. Further, the official confirmed that abuses committed at other detention facilities under the control of Iraqi authorities over the past year included incidents of detainees having been subjected to electric shocks.⁷

Months earlier, Human Rights Watch had drawn attention to increasing reports of torture and ill-treatment of detainees by Iraqi government forces in a report

⁴ An official of the Iraqi Interior Ministry was quoted saying that there had been “no mistreatment or torture. ...Only a few guys were slapped on their faces” (New York Times, Kirk Semple, *Iraqi Ministry Denies Captives Were Abused*, 13 December 2005).

⁵ New York Times, John F. Burns, *To Halt Abuses, U.S. Will Inspect Jails Run by Iraq*, 14 December 2005.

⁶ BBC, Caroline Hawley, *Iraqi detainees tell of torture*, 24 November 2005, http://news.bbc.co.uk/1/hi/world/middle_east/4465194.stm; Washington Post, Ellen Knickmeyer, *Abuse Cited In 2nd Jail Operated by Iraqi Ministry*, 12 December 2005.

⁷ Phone conversations on 4 and 5 February 2006.

published in January 2005. The report was based on interviews which Human Rights Watch had conducted with 90 detainees and former detainees between July and October 2004, 72 of whom disclosed that they had been tortured or ill-treated while in detention. Some had been held as criminal suspects but others had been detained apparently because of their political activities or alleged affiliation with armed groups.⁸ Yet, despite the Human Rights Watch findings, little or no action appears to have been taken by either the Iraqi government or the MNF in the months following to address this pattern abuse, and to safeguard detainees from torture or ill-treatment.

Unsurprisingly, in view of this failure to crack down on the torturers and end the cycle of abuse, several detainees are reported to have died in 2005 while being held in the custody of the Iraqi authorities; in several cases, the bodies of the victims reportedly bore injuries consistent with their having been tortured. On 12 February 2005 three men, who were reportedly members of the Badr Organization,⁹ a Shi'a militia, died in custody after being arrested by Iraqi police at a police checkpoint in the Zafaraniya district of Baghdad. The bodies of 39-year-old **Majbal 'Adnan Latif al-Alawi**, his 35-year-old brother **'Ali 'Adnan Latif al-Alawi**, and 30-year-old **'Aidi Mahassin Lifteh** were found three days later, bearing marks of torture. Autopsy reports found "that all three had bruises on their faces, arms, backs, and legs, apparently from being struck with a stick or long object".¹⁰

After having been detained by a special police force of the Interior Ministry, the Wolf Brigade¹¹, a 46-year-old housewife from Mosul, **Khalida Zakiya**, was shown in February 2005 on the Iraqi TV channel *al-'Iraqiya* alleging that she had supported an armed group. However, she later withdrew this confession and alleged

⁸ Human Rights Watch, *The New Iraq? Torture and ill-treatment of detainees in Iraqi custody*, January 2005, Vol. 17 No. 1 (D).

⁹ The Badr Brigade, a Shi'a militia founded in the 1980s in Iran by Mohammed Baqer al-Hakim to fight Saddam Hussain's government in Iraq, announced disarmament and renamed itself into Badr Organization for Reconstruction and Development in 2003. It is affiliated to the Supreme Council of the Islamic Revolution in Iraq (SCIRI) which is part of the Shia dominated United Alliance of Iraq (UAI). Under the Iraqi Transitional Government which was formed in April 2005, Bayan Jabr Solagh, a senior official of SCIRI became Minister of Interior.

¹⁰ Boston Globe, Anne Barnard, *Deaths spur calls to overhaul Iraqi police*, 31 March 2005.

¹¹ The Wolf Brigade, founded in October 2004, was given two months training by US military trainers before being deployed in security operations against armed groups (Knight Ridder, Hannah Allam, *Wolf Brigade the most loved and feared of Iraqi security forces*, 21 May 2005). The Wolf Brigade has reportedly resorted large-scale to secret detentions, torture and ill-treatment.

that she had been coerced into making it. She was reportedly whipped with a cable by members of the Wolf Brigade and threatened with sexual abuse.¹²

In May 2005 four Palestinians who were long term residents of Iraq - , **Faraj ‘Abdullah Mulhim**, aged about 41, **‘Adnan ‘Abdullah Mulhim**, aged about 31, **Amir ‘Abdullah Mulhim**, aged about 26, and **Mas’ud Nur al-Din al-Mahdi**, aged about 33 – were tortured and ill-treated after they were detained by members of the Wolf Brigade who took them from their homes in Baghdad. All four were seized on the night of 12 May 2005, when Wolf Brigade forces stormed homes in the Baladiyat Palestinian Building within Baladiyat Camp in Baghdad. They were arrested as suspects in a bomb attack that had been carried out earlier that day in Baghdad’s al-Jadida district although they denied any involvement. Members of the Wolf Brigade were said to have beaten the four men with rifle butts when they arrested them.

On 14 May 2005, the four men were shown on the Iraqi TV channel *al-Iraqiyya* admitting responsibility for the al-Jadida bomb attack but all showed visible signs of having been assaulted. Relatives who saw the programme told Amnesty International that the four men had injuries to their faces which led them to suspect that they had been subjected to torture or ill-treatment in order to force them to make confessions. Later, when the men gained access to a lawyer in July 2005 they repudiated their confessions and alleged that they had been systematically tortured for 27 days while being held by the Wolf Brigade in a Ministry of Interior building in the al-Ziyouna district of Baghdad. They stated that they had been beaten with cables and had electric shocks applied to their hands, wrists, fingers, ankles and feet. They also said they were burnt on the face with lighted cigarettes and were placed in a room with water on the floor while an electric current was passed through. They alleged too that a US military officer was present at one time in the room in which they were being interrogated.

The four men also allege that they were forced under torture to sign confessions while they were blindfolded in which they also admitted responsibility for five other bomb attacks said to have been committed at police stations in other districts of Baghdad. However, when their lawyer looked into these other alleged bombings he found that they had never taken place and was able to obtain official documentation to confirm this. Nevertheless, the four Palestinians were transferred to the detention of the Major Crimes Directorate (*mudiriyat al-jara’im al-kubra*) in the Rusafa district of Baghdad on 9 June 2005. At first, the senior officer at this place of

¹² Associated Press, Mariam Fam, *Iraqis Say Security Forces Use Torture*, 6 July 2005; Los Angeles Times, Solomon Moore and Scott Gold, National Guard tied to Iraqi police, 28 July 2005.

detention reportedly refused to accept the four men because they were clearly suffering from serious injuries. However, an investigating officer (dhabit al-tahqiq) reportedly listed all their injuries, so that it would be clear that they had not been inflicted under his direction. Six weeks later, around 23 July, the Palestinians were transferred to the detention centre in al-A'zamiya district of Baghdad, which deals with cases involving terrorism in Iraq.

According to Iraqi legislation, a detainee must be brought before an investigating judge within 24 hours of arrest.¹³ However, the four Palestinians were only brought before an investigating judge on or about 26 July 2005, over five weeks after their initial detention. At the beginning of 2006 the four Palestinians continued to be held.

In July, 2005, the UK's *Observer* newspaper reported on further cases of torture and other grave human rights abuses, including possible extrajudicial executions, by Iraqi security forces. The newspaper included a detailed description of film footage showing the corpse of **Hassan al-Nu'aimi**, a Sunni cleric and member of the Association of Muslim Scholars, who was found dead in May 2005 in Baghdad – one day after he was detained by Iraqi police commandoes. *The Observer's* correspondent wrote:

“There are police-issue handcuffs still attached to one wrist, from which he was hanged long enough to cause his hands and wrists to swell. There are burn marks on his chest, as if someone has placed something very hot near his right nipple and moved it around. A little lower are a series of horizontal welts, wrapping around his body and breaking the skin as they turn around his chest, as if he had been beaten with something flexible, perhaps a cable. There are other injuries: a broken nose and smaller wounds that look like cigarette burns. An arm appears to have been broken and one of the higher vertebrae is pushed inwards. There is a cluster of small, neat circular wounds on both sides of his left knee. At some stage an-Ni'ami [sic] seems to have been efficiently knee-capped. It was not done with a gun - the exit wounds are identical in size to the entry wounds, which would not happen with a bullet. Instead it appears to have been done with something like a drill. What actually killed him however were the bullets fired into his chest at close range, probably by someone standing over him as he lay on the ground. The last two hit him in the head.”¹⁴

¹³ Article 123 of the Code of Criminal Procedure, Law No. 23 of 1971, as amended.

¹⁴ The Observer, Peter Beaumont, *Revealed: grim world of new Iraqi torture camps*, 3 July 2005.

The same month, July 2005, nine out of a group of 12 men who had been detained by police in Baghdad's al-'Amirya district suffocated to death after they were confined in a police van for up to 14 hours in extremely high temperatures. The Iraqi authorities said that the 12 were members of an armed group who had been detained after they were engaged in an exchange of fire with US or Iraqi forces. Other sources, however, suggested that they were a group of bricklayers who had been detained on suspicion that they were insurgents and then brutally tortured by police commandoes before being confined in the police vehicle. Medical staff at the Yarmouk Hospital in Baghdad, where the bodies of those who died were taken on 11 July 2005, reportedly confirmed that some of them bore signs of torture, including electric shocks.¹⁵

Under the eyes of the Multinational Force

MNF officials have generally sought to distance the US-led alliance from any involvement when there has been publicity regarding torture and other abuses by Iraqi government forces. However, the increasing availability of such information since at least the beginning of 2005, as well as the continuing close day to day collaboration between MNF forces and those of the Iraqi government, suggests that MNF commanders and the governments to which they are responsible have been well aware for a considerable time that the Iraqi forces they support are responsible for gross abuses of human rights. Yet, as part of their cooperation with Iraqi government forces, the MNF continued to hand over some of those whom its forces detained into the custody of Iraqi forces, despite the obvious risks to which this must expose such prisoners. In this respect, the MNF would appear to have been either seriously negligent or, effectively, complicit in the abuses committed by Iraqi government forces and supine in their failure to make clear to the Iraqi government and its forces that torture and other violations against prisoners must not be tolerated, and that those who commit such abuse must be brought promptly to justice.¹⁶

¹⁵ Amnesty International, *Iraq: Amnesty International calls for an investigation into death in custody of nine men*, 14 July 2005, AI Index: MDE 14/017/2005.

¹⁶ States composing the MNF have obligations to implement their obligations under human rights law in Iraq. For example, the Committee against Torture has stressed to the UK in relation to the applicability of the Convention against Torture in Iraq that the "Convention protections extend to all territories under the jurisdiction of a State party and considers that this principle includes all areas under the *de facto* effective control of the State party's authorities." Committee against Torture, Conclusions and Recommendations: United Kingdom of Great Britain and Northern Ireland – Dependant Territories, UN Doc. CAT/C/CR/33/3, 10 December 2004.

That the US authorities have been aware of the problem of torture by their Iraqi allies is clear from the US Department of State's annual report¹⁷ to Congress on human rights practices around the world, whose February 2005 edition, reporting on 2004, made extensive reference in its Iraq country chapter to information on torture published by Human Rights Watch.¹⁸ However, it was not until December 2005, nearly a year after the State Department's report was compiled, before a US military commander announced that his forces were suspending their practice of handing over detainees to the Iraqi authorities, Major General John D. Gardner, commander of Task Force 134, which is in charge of MNF detention operations, stated: "We will not pass on facilities or detainees until they [the Iraqi authorities] meet the standards we define and that we are using today".¹⁹

There have also been allegations that US forces knew that detainees were being tortured and ill-treated at places of detention under the control of the Interior Ministry, which they frequently visited. In a radio interview in December 2005, a former commander of special forces at the Interior Ministry, General Muntazar Jasim al-Samarra'i, identified several detention locations of the Interior Ministry where torture has allegedly been commonplace. He claimed: "The prison on al-Nasr Square, next to the TV-tower, it is the largest prison under the responsibility of the Interior Ministry. Members of the US forces visited this prison every day. The US troops knew everything about the torture".²⁰

Former detainees who were subjected to torture or ill-treatment or who witnessed the infliction of such abuses on fellow detainees while they were being held in the custody of the Iraqi authorities, have told Amnesty International that such incidents occurred with the knowledge or even in the presence of US troops.²¹

The *New York Times* reported an incident which occurred in March 2005 in Samarra following a joint raid by US troops and forces under the control of the Iraqi Interior Ministry. The reporter described the beating of an Iraqi detainee by an Iraqi police captain during which US troops were present: "Instead of a quick hit or slap,

¹⁷ US Department of State, *Country Reports on Human Rights Practices, Iraq*, 28 February 2005, <http://www.state.gov/g/drl/rls/hrrpt/2004/41722.htm>.

¹⁸ Human Rights Watch, *The New Iraq? Torture and ill-treatment of detainees in Iraqi custody*, January 2005, Vol 17, No. 1 (D).

¹⁹ New York Times, Eric Schmitt and Thom Shanker, *U.S., Citing Abuse in Iraqi Prisons, Holds Detainees*, 25 December 2005.

²⁰ Deutschlandradio, Marc Thorner, *Urnengang im Schatten des taglichen Terrors*, 14 December 2005, <http://www.dradio.de/df/sendungen/hintergrundpolitik/448279/>.

²¹ See for example: Amnesty International: *Ali Safar al-Bawy: a testimony*, 28 April 2005, <http://web.amnesty.org/pages/irq-280405-testimony-eng>.

we now saw and heard a sustained series of blows. We heard the sound of the captain's fists and boots on the detainee's body, and we heard the detainee's pained grunts as he received his punishment without resistance." A US Air Force captain present at the incident reportedly made the following comment: "If I think they're going to shoot somebody or cut his finger off or do any sort of permanent damage, I will immediately stop them (...) As Americans, we will not let that happen. In terms of kicking a guy, they do that all the time, punches and stuff like that."²²

At the most senior levels, however, there appear to have been different views within the US politico-military establishment as to the responsibility of US troops who witness incidents of torture or ill-treatment. When questioned in November 2005 about the use of torture by Iraqi authorities, US Secretary of Defense Donald Rumsfeld was reported to have responded that he did not consider that US soldiers who see "inhumane treatment" of detainees have an obligation to intervene to stop it. The Chairman of the Joint Chiefs of Staff, however, General Peter Pace, interjected "If they are physically present when inhumane treatment is taking place, sir, they have an obligation to stop it"²³.

The legacy of the Abu Ghraib prison scandal

In February 2004, the International Committee of the Red Cross (ICRC) submitted a report to the Coalition Forces²⁴ which described serious violations of international humanitarian law committed by these forces in Iraq. These included brutality against protected persons during their arrest and initial detention, sometimes causing death or serious injury, as well as various methods of torture and ill-treatment inflicted on detainees. The public release of images in April 2004 showing detainees being tortured and ill-treated by US soldiers at Abu Ghraib prison, caused worldwide shock, horror and outrage. The subsequent US military investigation in Iraq headed by Major General Antonio Taguba found that Coalition Forces were responsible for "systemic" and "illegal abuse of detainees" held at Abu Ghraib prison between August 2003 and February 2004, and concluded that soldiers had "committed egregious acts and grave breaches of international law at Abu Ghraib...".²⁵

²² New York Times, Peter Maass, *The Way of the Commandos*, 1 May 2005. In the same article Peter Maass describes another incident which occurred during his visit to Samara at a detention facility where US troops and Iraqi security forces both operated. He witnessed "a leather-jacketed security official [who] was slapping and kicking a detainee who was sitting on the ground".

²³ Washington Post, Dana Milbank, *Rumsfeld's War on 'Insurgents'*, 30 November 2005.

²⁴ With the disestablishment of the Coalition Provisional Authority (CPA) in June 2004 the term Coalition Forces has been replaced by the Multinational Force.

²⁵ The "Taguba Report" on Treatment of Abu Ghraib Prisoners In Iraq, Article 15-6 Investigation of the 800th Military Police Brigade, <http://news.findlaw.com/hdocs/docs/iraq/tagubarpt.html>.

Amnesty International interviewed former detainees who disclosed that they were among the prisoners subjected to torture and ill-treatment in US custody at Abu Ghraib. They included women who said they had been beaten, threatened with rape, subjected to humiliating treatment and long periods of solitary confinement. Some former detainees told Amnesty International that they had been forced to lie on the ground while handcuffed and hooded or blindfolded for long periods. They were repeatedly beaten, restrained for prolonged periods in painful “stress” positions and some were also subjected to sleep deprivation, prolonged standing, and exposure to loud music and bright lights, apparently intended to cause disorientation.

Other testimonies of detainees who were tortured or ill-treated at Abu Ghraib prison were documented by human rights organizations and in the media. Male detainees complained that they were deliberately degraded by being forced to masturbate in front of female soldiers and to wear women’s underwear. They were kept naked, sometimes for several days. Detainees were assaulted and threatened with rape. They alleged too that they were forced, in breach of their religious beliefs, to eat pork, to drink alcohol and to move about on all fours in imitation of dogs.

The videotaped testimony of one Abu Ghraib victim, **Hussein Mutar**, was shown in evidence to a US military court martial sitting in Texas, USA, in January 2005. Hussein Mutar had reportedly been detained on suspicion of car theft and was tortured and ill-treated while held at Abu Ghraib in November 2003.²⁶ In the evidence laid before the court martial, he identified himself as one of a number of prisoners in a photograph taken by a US guard at the prison which showed several naked male detainees being forced to lie on top of one another. He also spoke of his feelings of humiliation and shame when US guards forced him to masturbate over fellow inmates: “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”.²⁷

Following the worldwide disclosure of the abuses of detainees at Abu Ghraib in April 2004, the US authorities undertook various inquiries and reviews, and court-martialed a number of the US prison guards who were depicted in photographs abusing prisoners. These investigations, however, have mostly been internal military investigations which appear to have focused on the culpability of those within the

²⁶ BBC, *Abu Ghraib inmates recall torture*, 12 January 2005, <http://news.bbc.co.uk/2/hi/americas/4165627.stm>.

²⁷ CounterPunch, *Voices from Abu Ghraib -The Injured Party*, 20 January 2005, http://www.ccmep.org/2005_articles/civil%20liberties/012005_counterpunch.htm.

lower echelons of the military, not on the role and responsibilities of those higher up the chain of command, including at the most senior levels. For example, on 10 March 2005, the US authorities released a summary of the findings of a review carried out by Vice Admiral Albert T. Church, Inspector-General of the US Navy which had been initiated by US Secretary of Defense Donald Rumsfeld in May 2004. The review found “no connection between interrogation policy and abuse”.²⁸ Only the executive summary was made public and the remainder of the 378-page Church Report remains classified. It was revealed, however, that the Church investigation failed to interview any Iraqi detainees or former detainees. Nor did it interview Secretary Rumsfeld.

The US authorities have stated on numerous occasions that its regime of detention in Iraq has fundamentally changed since abuses at the Abu Ghraib prison were exposed. The US government’s second periodic report to the UN Committee Against Torture of June 2005 states: “The Department of Defense has improved its detention operations in Iraq and elsewhere, improvements have been made based upon the lessons learned, and in part because of the broad investigations and focused inquiries into specific allegations. These comprehensive reports, reforms, investigations and prosecutions make clear the commitment of the Department of Defense to do everything possible to ensure that detainee abuse such as occurred at Abu Ghraib never happens again.”²⁹ However, there continue to be reports of torture and ill-treatment of detainees by US troops, which have occurred since the Abu Ghraib prison scandal was exposed.³⁰

While dozens of US soldiers have been court-martialed in connection with the abuse of detainees, senior US administration officials have remained free from independent scrutiny. According to the US government, as of 1 October 2005 there had been 65 courts-martial in connection with the abuse of detainees in Iraq.³¹ In June 2004, two US marines were sentenced to eight and 12 months’ imprisonment by a military court in Iraq. Both men had pleaded guilty to giving electric shocks to an Iraqi prisoner at al-Mahmudiya prison, south of Baghdad.³² At least nine US soldiers were tried before US military courts for their involvement in the high-profile incidents of torture or ill-treatment of detainees at Abu Ghraib prison. Sentences ranged from

²⁸ <http://www.defenselink.mil/news/Mar2005/d20050310exe.pdf>.

²⁹ Second Periodic Report of the USA to the Committee against Torture, UN Doc. CAT/C/48/Add.3, 29 June 2005, Annex 1, Part Two, page 77.

³⁰ See section below: *Treatment of internees*.

³¹ United States of America, Update to Annex One of the Second Periodic Report of the United States of America to the Committee Against Torture, 21 October 2005.

³² The Guardian, *US marines plead guilty to prisoner abuse*, 3 June 2004.

non-custodial disciplinary measures to 10 years' imprisonment.³³ According to the US government, 54 military personnel could be implicated in the incidents at Abu Ghraib prison.³⁴

Amnesty International is concerned that several of those tried and convicted by US military courts for committing serious human rights violations in Iraq, including torture or ill-treatment, have received sentences that fail to reflect the gravity of these violations.

In September 2004, a 1st Lieutenant in the US Army was referred to trial by court-martial on charges including conspiracy, aggravated assault, involuntary manslaughter and obstruction of justice. The case involved incidents on 5 December 2003 in which an Iraqi detainee was forced into the Tigris River near Balad, and on 3 January 2004 in which two Iraqi detainees were forced off a bridge into the Tigris near Samarra. One of the detainees, 19-year-old **Zaidoun Hassoun**, drowned in the latter incident. The lieutenant was facing a maximum sentence of 29 years' in prison. In the event, he was sentenced to 45 days' confinement following a two-day court-martial in Fort Hood, Texas, on 14 and 15 March 2005. Based on a pre-trial agreement, the commanding authority did not pursue the manslaughter charge and the soldier instead pleaded guilty to assault charges.³⁵

On 23 January 2006, a US court martial convicted a US army interrogator of the killing of '**Abd Hamad Mawoush** and sentenced him to forfeit \$6,000 of his salary over the next four months, to receive a formal reprimand and spend 60 days restricted to his home, office and church. 'Abd Hamad Mawoush, a major general in the Iraqi army under the government of Saddam Hussain, died in a US detention facility in Al Qaim in northwest Baghdad on 26 November 2003, two weeks after he had handed himself in to the US military. He died after being interrogated while allegedly being rolled back and forth with a sleeping bag over his head and body, and the interrogator sat on his chest and placed his hands over his mouth. According to witness testimony, the interrogator also stood by while Iraqi personnel of the US Central Intelligence Agency (CIA) subjected 'Abd Hamad Mawoush to a brutal beating with hoses. The convicted interrogator had faced a maximum penalty of life

³³ Army News Service, L.B. Edgar, *Court sentences England to 3 years*, 28 September 2005, http://www4.army.mil/ocpa/read.php?story_id_key=7988. Army News Service, L.B. Edgar, Harman found guilty for Abu Ghraib, 19 May 2005, http://www4.army.mil/ocpa/read.php?story_id_key=7348.

³⁴ United States of America, Update to Annex One of the Second Periodic Report of the United States of America to the Committee Against Torture, 21 October 2005.

³⁵ 7th Infantry Division and Fort Carson Public Affairs Office, Press release, *Court martial verdict and sentence*, 16 March 2005.

imprisonment on charges of murder. However, the court martial found him guilty of lesser charges of “negligent homicide and dereliction of duty,” which carries a maximum of three years’ imprisonment.³⁶

Several UK soldiers have also been charged in connection with alleged torture or ill-treatment and the deaths of detainees. On 21 December 2005, the Court of Appeal of England and Wales ruled in a case arising from the death in September 2003 of 26-year old Baha Dawoud Salem al-Maliki (also known as Baha Mousa) and the deaths of five other Iraqis in the case of *R (Al-Skeini) v Secretary of State for Defence*. Delivering judgment, Lord Justice Brooke recounted what had occurred when UK troops raided a Basra hotel, where Baha Moussa worked as a receptionist, on the morning of 14 September 2003. The troops, who were seeking to locate one of the partners who ran the hotel:

*“rounded up a number of the men they found there, including Baha Mousa. Baha Mousa's father, Daoud Mousa, had been a police officer for 24 years and was by then a colonel in the Basrah police. He had called at the hotel that morning to pick up his son at the end of his shift, and he told the ... lieutenant in charge of the unit that he had seen three of his soldiers pocketing money from the safe. During this visit he also saw his son lying on the floor of the hotel lobby with six other hotel employees with their hands behind their heads. The lieutenant assured him that this was a routine investigation that would be over in a couple of hours. Colonel Mousa never saw his son alive again. Four days later he was invited by a military police unit to identify his son's dead body. It was covered in blood and bruises. The nose was badly broken, there was blood coming from the nose and mouth, and there were severe patches of bruising all over the body. The claimants' witnesses tell of a sustained campaign of ill-treatment of the men who were taken into custody, one of whom was very badly injured, and they suggest that Baha Mousa was picked out for particularly savage treatment because of the complaints his father had made. The men who were arrested had been taken from the hotel to a British military base in Basrah City called Darul Dhyafa”.*³⁷

³⁶ Los Angeles Times, Nicholas Riccardi, *No Jail Time in Death of Iraqi General*, 24 January 2006. See also: Amnesty International: *United States of America: Guantanamo and beyond: The continuing pursuit of unchecked executive power*, 13 May 2005, AI Index: AMR 51/063/205, pages 110-115.

³⁷ [2005] EWCA Civ 1609, see paras 28 and following, in Lord Justice Brooke’s judgment. The Al-Skeini case was one of six test cases brought by the families of Iraqi civilians who are alleged to have been tortured or killed by UK soldiers during the UK occupation of South-Eastern Iraq. In the same judgment, the Court of Appeal of England and Wales also ruled that the UK Human Rights Act 1998 (HRA) is in principle capable of having extra-territorial effect when a person falls within the “jurisdiction” of the UK under the European Convention for the Protection of Human Rights and

Court-martial proceedings have since been instituted, although trials have yet to take place, against seven military personnel, including the commanding officer who has been charged with negligent performance of duty. Three of the seven military personnel have been charged with “inhuman treatment” of the detainee.³⁸

In another case, UK Attorney General Lord Goldsmith announced in July 2005 that four UK soldiers would stand trial in connection with the death of **Ahmed Jaber Karim ‘Ali**, one of four men detained on suspicion of looting in May 2003 in Basra. It has been alleged that UK servicemen, allegedly punched and kicked the suspects and then forced them into the Shat Al-Basra canal, causing Ahmed Jaber Karim ‘Ali to drown.³⁹

In a further case, a court martial convicted three UK soldiers in February 2005 of abusing detainees in May 2003 at Camp Breadbasket, near Basra, and sentenced them to between 140 days and two years’ imprisonment.⁴⁰

Members of the MNF have immunity from prosecution under Iraqi criminal and civil law, as stipulated by United Nations (UN) Security Council resolution 1546 (2004) with its attached exchange of letters between the Iraqi and US authorities. Investigations into human rights violations committed by the MNF in Iraq and the bringing to justice of those responsible, therefore, are entirely in the hands of their own national authorities. Amnesty International is concerned that military investigations and prosecutions in connection with human rights violations committed by members of the MNF may not meet international standards of impartiality.

Amnesty International considers that the torture and ill-treatment to which prisoners in Abu Ghraib prison and other places of detention controlled by occupying

Fundamental Freedoms (ECHR). Thus, the Court held that the HRA can apply to UK authorities outside the territory of UK. The Court also held that the lower court had been wrong to draw the line at “quasi-territorial” premises such as a UK-run prison in Iraq, since the ECHR concept of jurisdiction was in principle broader than that. For example, it could extend to a person who was under arrest at an Iraqi hotel. However, the Court held that the notion of jurisdiction was not broad enough to include persons who were at liberty and not yet in the control of UK forces. Finally, the Court held that the system for investigating deaths at the hands of UK armed forces personnel was seriously deficient, including in its lack of independence from the commanding officer, and it needed to be scrutinized.

³⁸ BBC, *UK soldiers face war crimes trials*, 20 July 2005, <http://news.bbc.co.uk/1/hi/uk/4698251.stm>.

³⁹ CNN, *British trio charged with war crimes*, 19 July 2005, <http://www.cnn.com/2005/WORLD/europe/07/19/britain.iraq/>.

⁴⁰ The Guardian, Audrey Gillan, *Soldiers in Iraq abuse case sent to prison*, 26 February 2005.

powers were exposed prior to the handover of power amounted to war crimes.⁴¹ The organization continues to call on the governments whose troops have been involved in the military operations⁴² in Iraq to ensure that there is no impunity for anyone found responsible for war crimes, regardless of position or rank.

Without charge or trial – detention by the Multinational Force

Since the invasion of Iraq in March 2003 tens of thousands of people have been detained by foreign forces, mainly the US forces, without being charged or tried and without the right to challenge their detention before a judicial body. Between August 2004 and November 2005 an administrative review board (the Combined Review and Release Board),⁴³ composed of representatives of the MNF and the Iraqi government, examined the files of almost 22,000 internees and recommended about 12,000 for release and another 10,000 for continued detention.⁴⁴ The vast majority of “security internees” - that is those individuals held in connection with the on-going armed conflict who are considered by the MNF to be a threat to security - have never been tried. According to statistical data compiled by the MNF, by the end of November 2005, the Central Criminal Court of Iraq had tried 1,301 alleged insurgents.⁴⁵

In reference to the situation of detainees held by the MNF in Iraq, the UN Secretary General Kofi Annan stated in his report to the Security Council in June 2005: “One of the major human rights challenges remains the detention of thousands of persons without due process (...).Prolonged detention without access to lawyers and courts is prohibited under international law, including during states of

⁴¹ Torture or inhuman treatment is a grave breaches of the Fourth Geneva Convention according to Article 147. Grave breaches are war crimes according to international law, as reflected in the Rome Statute of the International Criminal Court (Article 8 (2-ii)). The Geneva Conventions were fully applicable in Iraq during the occupation until the handover of power on 28 June 2004. Cruel treatment and torture in non-international armed conflict are also war crimes under the Rome Statute of the International Criminal Court (ICC).

⁴² The UN and the ICRC have both declared that the occupation of Iraq ended on 28 June 2004, following the had-over of power from the Coalition Provisional Authority (CPA) to the Interim Iraqi Government.

⁴³ See section titled ‘Review for internees held by the US forces’ for further detail.

⁴⁴ Multinational Force, *Combined Review and Release Board*, Last Update on 28 November 2005, <http://www.mnf-iraq.com/TF134/Release.htm>.

⁴⁵ Multinational Force, *Central Criminal Court*, Last Update on 28 November 2005, <http://www.mnf-iraq.com/TF134/Trials.htm>

emergency”.⁴⁶ The US rejected the accusations claiming that all detainees had access to due legal process and their rights under the Geneva Conventions.⁴⁷

The UN Assistance Mission for Iraq has also expressed concern about the situation of people interned by the MNF in Iraq, commenting in its Human Rights Report of September 2005: “Mass detentions of persons without warrants continue to be used in military operations by MNF-I. Reports of arbitrary arrest and detention continue to be reported to the Human Rights Office. There is an urgent need to provide remedy to lengthy internment for reasons of security without adequate judicial oversight”.⁴⁸

Most “security internees” are held at four detention facilities under US control, namely Camp Bucca near Basra, Abu Ghraib prison⁴⁹ in Baghdad, Camp Cropper in Baghdad and Fort Suse near Suleimaniya, which started operating at the end of October 2005.⁵⁰ In addition, US forces hold detainees temporarily in various brigade and division internment facilities throughout the country.⁵¹ A small number of “security internees” are held in the custody of UK forces at the detention facility of Shu’aiba Camp, near Basra. According to the UK’s Foreign and Commonwealth Office, at the end of October 2005, the UK forces held 33 security internees, none of whom were women or children, in their detention facility at al-Shu’aiba.⁵²

At the beginning of 2004 the Coalition Provisional Authority (CPA) headed by US ambassador Paul Bremer published a list of about 8,500 detainees on the Internet. However, the true figure of those then being held was believed to be much higher.⁵³ When the CPA was disbanded in June 2004, the number of detainees held by the Coalition Forces had fallen to about 6,400 persons, according to a US military

⁴⁶ UN Doc. S/2005/373, UN Security Council, Report of the Secretary-General pursuant to paragraph 30 of resolution 1546 (2004), 7 June 2005, para. 72.

⁴⁷ Reuters, *US rejects UN critique of its Iraq prisoner policy*, 9 July 2005.

⁴⁸ United Nations Assistance Mission for Iraq (UNAMI): *Human Rights Report, 1 July – 31 August 2005*, September 2005, <http://www.uniraq.org/aboutus/HR.asp>

⁴⁹ One part of Abu Ghraib Prison is under the control of the US forces and another by Iraqi authorities.

⁵⁰ Multinational Force, *New Theater Internment Facility opens in northern Iraq*, 30 October 2005, <http://www.mnf-iraq.com/Releases/Oct/051030b.htm>.

⁵¹ For example, at the end of November 2005 the US forces were holding an estimated 650 detainees at brigade and division internment facilities (Multinational Force, *Number of security detainees*, Last Update 28 November 2005, <http://www.mnf-iraq.com/TF134/Numbers.htm>).

⁵² See web site of the Foreign and Commonwealth Office, visited in January 2006, <http://www.fco.gov.uk/servlet/Servlet?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1032786062920>.

⁵³ For example, it appears that many non-Iraqi detainees and scores of so-called High Value Detainees - many of whom were held at that time already for months - had not been recorded on that list.

official.⁵⁴ However, since the handover of power the number of detainees held by the MNF has increased steadily.

In November 2004, General Geoffrey Miller, then US head of Iraqi detainee operations, stated that about 8,300 detainees were held by the MNF.⁵⁵ On 1 April 2005, the US Department of State estimated the number of detainees at about 10,000 persons.⁵⁶ According to the official website of the MNF, at the end of November 2005 there were more than 14,000 security detainees held in MNF custody, distributed over the four main US controlled detention centres as follows: Abu Ghraib prison (4,710 detainees), Camp Bucca (7,365 detainees), Camp Cropper (138 detainees) and Fort Suse (1,176 detainees), as well as various military brigade and division internment facilities (650 detainees).⁵⁷

Legal background to detentions by the Multinational Force

Following the US-led invasion in March 2003, Iraq was in a state of international armed conflict. Consequently, persons deprived of their liberty by the occupying forces were protected – in addition to applicable human rights law -- by international humanitarian law, namely the Third (Convention relative to the Treatment of Prisoners of War) or the Fourth (Convention relative to the Protection of Civilian Persons in Time of War) Geneva Conventions of 1949. The deprivation of liberty of a person which is ordered by the executive power without bringing charges against that person is referred to as administrative detention or internment. The Fourth Geneva Convention, applicable in situations of international armed conflict, states that internment “may be ordered only if the security of the Detaining Power makes it absolutely necessary”.

With the handover of power in June 2004 the legal situation changed; since then Iraq is considered to be in a situation of non-international armed conflict with the MNF and the Iraqi security forces on one side and the insurgents on the other. Therefore, the Geneva Conventions no longer fully apply to persons detained in connection with the ongoing armed conflict. In this situation, all parties including the MNF, are bound by Article 3 common to the four Geneva Conventions, and by customary rules applicable to non-international armed conflicts, as well as human

⁵⁴ Agence France Press, *Coalition to keep 4,000 to 5,000 prisoners after Iraq handover*, 13 June 2004.

⁵⁵ Washington Post, Bradley Graham, *Offensives Create Surge of Detainees*, 27 November 2004.

⁵⁶ US Department of State: Second Periodic Report of the United States of America to the UN Committee Against Torture, submitted on 6 May 2005.

⁵⁷ Multinational Force, *Number of security detainees*, Last Update 28 November 2005, <http://www.mnf-iraq.com/TF134/Numbers.htm>. It appears that these numbers do not include the detainees held by UK forces.

rights law. Article 3 common to the Four Geneva Conventions requires that those placed in detention are treated humanely, though it does not contain detailed provisions regulating such detention.

Since the handover of power, the MNF refer to UN Security Council Resolution 1546 as providing the legal basis for the MNF forces to hold people in detention in Iraq. Resolution 1546, with its attached exchange of letters between, for the US, Secretary of State Colin Powell and, for Iraq, Prime Minister, Ayad Allawi, confer on the MNF authority to resort to “internment where this is necessary for imperative reasons of security”. Unfortunately, there is no reference in Resolution 1546 to the legal safeguards that are to apply to arrests, detention or internment carried out by armed forces and troops from countries contributing to the MNF. The UK and the US have stated, however, that their internment policies are also governed by Coalition Provisional Authority (CPA) Memorandum No. 3 (revised) of June 2004,⁵⁸ which sets out the process of arrest and detention of criminal suspects as well as procedures relating to “security internees” detained by members of the MNF after 28 June 2004.

This CPA Memorandum, which was revised only one day before the handover of power, details the authority of the MNF to detain people in Iraq. It elaborates some procedural details regarding detentions by the MNF and distinguishes between “criminal detainees” and “security internees”.⁵⁹ With regard to criminal detainees the document stipulates: “(...) the MNF shall have the right to apprehend persons who are suspected of having committed criminal acts and are not considered security internees (hereafter: “criminal detainees”) who shall be handed over to the Iraqi authorities as soon as reasonably practicable”.⁶⁰

The Memorandum established some basic rules for the detention of “security internees”, concerning review procedures, access to internees and other aspects of their conditions, and the maximum period of internment of children.⁶¹ CPA Memorandum No.3 provides that anyone who is interned for more than 72 hours is entitled to have the decision to intern them reviewed within seven days and thereafter at intervals of no more than six months. The Memorandum also states that the

⁵⁸ CPA Memorandum No.3 (revised): Criminal Procedures, 27 June 2004 [hereafter: CPA Memorandum No.3].

⁵⁹ CPA Memorandum No.3, section 5 and 6.

⁶⁰ CPA Memorandum No.3, section 5.

⁶¹ CPA Memorandum No.3, section 6.

“operation, condition and standards of any internment facility established by the MNF shall be in accordance with Section IV of the Fourth Geneva Convention”.⁶²

Procedures set out in the CPA Memorandum and those which have been developed in practice are crucially flawed because they fail to meet international human rights standards guaranteeing the rights of detainees –including, notably, the right to have access to legal counsel and the right to challenge the lawfulness of the detention before a court.

In addition to the provisions of international humanitarian law related to non-international armed conflict set out above, human rights law remains applicable to Iraq. The US, the UK and Iraq are all states parties to the International Covenant on Civil and Political Rights (ICCPR), which provides basic safeguards for the protection of detainees. As affirmed by the UN Human Rights Committee (the expert UN body responsible for overseeing the implementation of the ICCPR), international humanitarian law and human rights law fully complement one another during times of armed conflict.⁶³ The relevant treaties governing non-international armed conflict⁶⁴ do not contain specific rules regarding questions such as for what duration and under what procedures (Protocol II explicitly accepts internment but does not regulate it), persons may be interned. It is human rights law that squarely addresses this question.

Amnesty International considers the MNF system of security internment in Iraq to be arbitrary - in violation of fundamental human rights. All detainees, including security internees, are protected by Article 9 of the ICCPR, which provides that no-one should be subjected to arbitrary detention and that deprivation of liberty must be based on grounds and procedures established by law (para 1). Detainees must also have access to a court empowered to rule without delay on the lawfulness of their detention and to order their release if the detention is found to be unlawful (para 4).⁶⁵ These requirements apply to “anyone who is deprived of his liberty by arrest or detention” and therefore apply fully to those interned by the MNF.

⁶² Section IV of the Fourth Geneva Convention contains “Regulations for the treatment of internees”.

⁶³ Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004), para. 11: “...the Covenant applies also in situations of armed conflict to which the rules of international humanitarian law are applicable. While, in respect of certain Covenant rights, more specific rules of international humanitarian law may be specially relevant for the purposes of the interpretation of Covenant rights, both spheres of law are complementary, not mutually exclusive.”

⁶⁴ Article 3 Common to the 1949 Geneva Conventions, Articles 4-6 of Additional Protocol II of 1977.

⁶⁵ Article 9 para. 4 of the ICCPR: “Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful”.

The ICCPR (under Article 4) does allow for derogation of some provisions of the Covenant during proclaimed states of emergency, including at a time of armed conflict. However, measures derogating from the Covenant are allowed only if and to the extent that the situation constitutes a threat to the life of the nation. The Human Rights Committee has emphasized that “States parties may in no circumstances invoke Article 4 of the Covenant as justification for acting in violation of humanitarian law or peremptory norms of international law, for instance ... through arbitrary deprivations of liberty”.⁶⁶ Neither the US nor the UK governments, however, have taken the steps necessary formally to derogate from any of their obligations under the ICCPR (which derogation requires that governments notify the Human Rights Committee formally of their intention to derogate from relevant ICCPR provisions).

At all times, internees must be provided the right to an effective remedy (ICCPR Article 3(2)), including *habeas corpus*, so that a court may decide without delay on the lawfulness of the detention and order release if the detention is not lawful (Article 9(4)).⁶⁷ A person detained on suspicion of criminal activity must be brought promptly before a judge (ICCPR Article 9(3)) and either released or provided a fair trial before an independent and impartial tribunal established by law (ICCPR Article 14).

Review process

Jawad M⁶⁸, an Iraqi national who worked for the US forces at military bases in Baghdad, was detained by US forces in August 2004. In October 2004 he received a document from the Office of the Deputy Commanding General, Detainee Operations, Multinational Force-Iraq which informed him about an upcoming review session and included the following one-sentence accusation: “Gathering of information on interpreters and employees with the Multinational Force”. No further explanation or reference to any relevant legislation was provided. He was not charged or tried. Reviews of his case were conducted by an administrative body before which he was not permitted to appear. Following his release from Abu Ghraib prison at the beginning of 2005, Jawad M told Amnesty International that he still did not know the

⁶⁶ Human Rights Committee, General Comment 29, States of Emergency (article 4), U.N. Doc. CCPR/C/21/Rev.1/Add.11 (2001), para. 11.

⁶⁷ Human Rights Committee, General Comment 29, States of Emergency (Article 4), U.N. Doc. CCPR/C/21/Rev.1/Add.11 (2001), para. 16.

⁶⁸ At the person’s request the name is not published in this report. The full name of the person with the prisoner sequence number is known to Amnesty International.

reasons for his internment. He said: “It was useless. I was there for five months and I knew that nobody can do anything. Until now I don’t know why they sent me to the prison and why I was released and whose decision that was.”

The case of Jawad M illustrates the way in which many internees are detained arbitrarily by the MNF. In violation of international human rights law, tens of thousands of internees have been held for weeks or months and thousands for more than one year without being charged or tried and with no right to challenge the lawfulness of their detention before a judicial body. They have received no information regarding the grounds for their detention, whether they will be charged and brought to trial or, if not, for how long they are likely to be detained.

As detailed below, the US and UK have established separate systems for reviewing cases of internees held by their respective forces. Both systems have in common that they fail to meet international human rights law and standards - including the requirement for court oversight of the detention. Despite the involvement of consultative bodies in the process, the ultimate decision about the release or continued internment of a person lies with military commanders.

Review for internees held by the US forces

The MNF’s internment procedures were criticised by Iraqi Justice Minister ‘Abd al-Hussain Shandal in September 2005. Speaking to *Reuters* news agency, he complained: “No citizen should be arrested without a court order (...) There is abuse [of human rights] due to detentions, which are overseen by the Multinational Force (MNF) and are not in the control of the Justice Ministry”.⁶⁹

Since the handover of power in mid-2004, however, the Iraqi authorities have participated in reviewing cases of internees held by the MNF in line with changes announced by the US Department of Defense in August 2004.⁷⁰

After the handover, a body called the Combined Review and Release Board (CRRB) was established, comprising two representatives each from the Iraqi ministries of Justice, the Interior and Human Rights and three MNF officers. This body reviews the cases of internees and makes recommendations regarding their release or continued detention – according to Human Rights Ministry officials these recommendations are made by majority and none of the board’s members has a power

⁶⁹ Reuters, Mariam Karouny and Alastair Macdonald, *Iraq Slams U.S. Detentions, Immunity for Troops*, 14 September 2005.

⁷⁰ US Department of Defence, US Central Command, News Release, Detainee Release Board takes on Iraqi Partners, 4 August 2004.

of veto – but its recommendations are not binding and it is the MNF's Deputy Commanding General for Detainee Operations who decides whether or not a detainee should be released after first consulting Iraq's Minister of Justice.⁷¹

The US government's 2005 report to the UN Committee against Torture provided the following description of the detention review process: "Upon capture by a detaining unit, a detainee is moved as expeditiously as possible to a theater internment facility. A military magistrate reviews an individual's detention to assess whether to continue to detain or to release him or her. If detention is continued, the Combined Review and Release Board assumes the responsibility for subsequently reviewing whether continued detention is appropriate."⁷²

CPA Memorandum No. 3 stipulates that the review within seven days must be followed by further reviews at intervals of no more than six months. In practice, these appear generally to be respected with some reviews being done at more frequent intervals. In considering cases, the CRRB has three possible options to recommend: unconditional release, release with a suitable guarantor from the detainee's community, or continued internment. Neither the internee nor his or her legal counsel are permitted to be present during these case reviews, though internees have reportedly been encouraged to make submissions to the CRRB in writing.

Between the establishment of the CRRB in August 2004 and 28 November 2005, the CRRB reviewed the files of 21,995 internees, of whom 4,426 were recommended for unconditional release, 7,626 for release with a guarantor and 9,903 for continued internment.⁷³ According to the US Department of Defense, the CRRB when making a decision is to take into consideration the "circumstances of the detainee's capture, the length of detention prior to review, the level of cooperation by the detainee, and the detainee's potential for further acts of anti-Iraqi misconduct if released".⁷⁴

⁷¹ Over the last year Amnesty International delegates met with representatives of the Iraqi Human Rights Ministry on several occasions. On 13 November 2005 a delegate of Amnesty International met with the Acting Human Rights Minister Nermin Othman in Amman.

⁷² Second Periodic Report of the USA to the Committee Against Torture, UN Doc. CAT/C/48/Add.3, 29 June 2005, Annex 1, Part Two.

⁷³ Multinational Force, *Combined Review and Release Board*, Last Update on 28 November 2005, <http://www.mnf-iraq.com/TF134/Release.htm>. As of 28 November 2005 the exact numbers of reviewed detainee files was 21,995 of which 12,052 were recommended for unconditional or conditional release.

⁷⁴ US Department of Defence, US Central Command, News Release, *Detainee Release Board takes on Iraqi Partners*, 4 August 2004.

In its report to the UN Committee against Torture, the US government referred to the practice of having a military magistrate conduct the initial review within seven days, but such reviews appear generally to be paper-based reviews, in which the internee's file is considered without his being present.

In one case that received considerable media attention, however, a security internee was permitted to be present during the review of his detention conducted by US military officers. But the review procedure followed in the case of 44-year-old US national **Cyrus Kar**, a filmmaker, differed from the normal procedure. Kar and his cameraman, **Farshid Faraji**, were detained on 17 May 2005 by Iraqi security forces while riding a taxi in Baghdad. Whilst Farshid Faraji was held for almost two months in detention by the Iraqi authorities, Cyrus Kar was handed over to the US forces. Kar was denied access to a lawyer during his detention but on 4 July 2005 he was brought before a review board composed of three US military officers. He was released on 10 July, after which he commented: "I couldn't have more respect for the rank-and-file soldiers, but the system is broken. When an Iraqi is detained there, he comes out angry and wanting payback".⁷⁵

Review for internees held by the UK forces

Cases of detainees interned by UK forces are reviewed by the Divisional Internment Review Committee (DIRC), which is composed entirely of MNF officials. Its members are the UK military chief of staff, another senior officer, the chief legal officer and another legal officer and the chief political advisor.⁷⁶ However, the final decision as to whether a detainee should continue to be interned or released rests with the Governing Officer Commanding (GOC).

The initial review has to take place within 48 hours⁷⁷ of internment and thereafter monthly.⁷⁸ An interned person may address written submissions to the DIRC, but neither the internee nor his or her legal representative may be present when the DIRC reviews the internee's case.

The GOC informs internees in writing, stating the reasons, when it is determined that they should continue to be interned. However, Amnesty International

⁷⁵ New York Times, Tim Golden, *How a Trip to Film in Iraq Ended in a Military Jail Cell*, 24 July 2005.

⁷⁶ Foreign and Commonwealth Office, *Human Rights – Annual Report 2005*, July 2005, page 63, <http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1119526503628>.

⁷⁷ This is shorter than the seven days period specified by the CPA Memorandum No.3.

⁷⁸ Foreign and Commonwealth Office, *Human Rights – Annual Report 2005*, July 2005, page 64.

is concerned that even after months of internment the MNF continues to hold internees without providing them or their legal counsel with substantive evidence to justify their detention.

For example, a 48-old dual national with UK and Iraqi citizenship, **Hillal ‘Abdul Razzaq ‘Ali al-Jedda**, has been detained since his arrest on 10 October 2004 in Baghdad. He filed a case against the UK Secretary of State for Defence challenging his internment in Iraq which was dismissed by the High Court of England and Wales on 12 August 2005. However, the court noted that “Although detained for imperative reasons of security, the claimant has not been charged with any offence; and the Secretary of State acknowledges that, as matters stand, there is insufficient material available which could be used in court to support criminal charges against him. The claimant is therefore detained simply on a preventive basis.”⁷⁹ In mid-February 2006, Hillal ‘Abdul Razzaq ‘Ali al-Jedda continued to be held without charge or trial by UK forces. In January 2006, an appeal against the decision of the High Court was heard in the Court of Appeal of England and Wales but judgment was still awaited in mid-February.

Length of internment

Different provisions exist for detainees held by the MNF since before the mid-2004 transfer of power to a new Iraqi government and those detained since that time. Detainees in the first category may be held indefinitely, whereas those detained and interned since 30 June 2004, according to CPA Memorandum No. 3, “must be either released from internment or transferred to the Iraqi criminal jurisdiction no later than 18 months from the date of induction into an MNF internment facility.”

This requirement of release after 18 months is not absolute, however. Even the detainees interned after the handover can be held for more prolonged periods at the approval of the Joint Detention Committee (JDC). This requires that an application for further internment is made to the JDC two months before the expiry of the initial internment period of 18 months; if the JDC sanctions continued internment it must specify the duration. According to the Human Rights Annual Report 2005 of the UK Foreign and Commonwealth Office, published in July 2005, the JDC had still to be convened for UK-held internees because none of them by then had been held for as

⁷⁹ R (on the application of Al-Jedda) v Secretary of State for Defence, para. 11 of Mr Justice Moses’s judgment, [2005] EWHC 1809.

long as 18 months.⁸⁰ In mid-February 2006 an application for the extension of internment beyond 18 months of 266 detainees had been made to the JDC.⁸¹

Amnesty International is concerned about hundreds of security internees who have been detained by the MNF since before the handover of power and may be held indefinitely. In a letter to Amnesty International dated 19 February 2006, Major General Gardner, commander of Task Force 134, which is in charge of MNF detention operations, stated that at the end of 2005 the number of security internees held for more than 18 months was estimated to be 751.⁸² The letter confirmed that approval by the JDC to keep an internee beyond 18 months is only required for those “internees detained after 30 June 2004”.⁸³

Amnesty International considers indefinite internment as practiced by the MNF with regard to security internees held since before the handover of power to be unlawful. According to The UN Working Group on Arbitrary Detentions (established by the UN Commission on Human Rights): “*With regard to derogations that are unlawful and inconsistent with States’ obligations under international law, the Working Group reaffirms that the fight against terrorism may undeniably require specific limits on certain guarantees, including those concerning detention and the right to a fair trial. It nevertheless points out that under any circumstances, and whatever the threat, there are rights which cannot be derogated from, that **in no event may an arrest based on emergency legislation last indefinitely**, and it is particularly important that measures adopted in states of emergency should be strictly commensurate with the extent of the danger invoked.*”⁸⁴

Amnesty International also considers that indefinite internment may constitute a violation of the prohibition on torture and other cruel, inhuman or degrading treatment or punishment. Any deprivation of liberty, even when carried out in accordance with international humanitarian law, inevitably causes some stress or a degree of mental suffering to the internee and his or her family, although this will not

⁸⁰ Foreign and Commonwealth Office, *Human Rights - Annual Report 2005*, July 2005, page 63. According to the report a JDC for UK-held security internees would comprise British representatives at Ambassador or equivalent level.

⁸¹ Letter of 19 February 2006 to Amnesty International by Major General Gardner, Commanding MNF Task Force 134.

⁸² All security internees who had been held for more than 18 months by the end of 2005 must have been placed in internment before the handover of power.

⁸³ Letter of 19 February 2006 to Amnesty International by Major General Gardner, Commanding MNF Task Force 134.

⁸⁴ Report of the Working Group on Arbitrary Detention, UN Doc. E/CN. 4/2004/3, 15 December 2003, para. 60.

automatically render the deprivation unlawful. However, Amnesty International is concerned that the “security internees” held by the MNF, are being deprived of their liberty in circumstances that cause unnecessary suffering, such as indefinite and incommunicado detention, that cannot be justified as an unavoidable part of a “lawful sanction”.⁸⁵ The UN Committee against Torture has found that administrative detention by a party to an armed conflict may constitute cruel, inhuman or degrading treatment or punishment, based *inter alia* on its excessive length.⁸⁶ In addition, the Human Rights Committee has referred to prolonged, indefinite “administrative detention” as incompatible with Article 7 of the ICCPR, which prohibits, among other things, torture and cruel, inhuman or degrading treatment or punishment.⁸⁷

Indefinite detention causes uncertainty and mental anguish for many internees in Iraq - some of whom have been held for more than two years. Many relatives of detainees with whom Amnesty International has been in regular contact have expressed their despair. For example, in January 2006 the organization received the following email communication sent by a man whose brother had been held for almost two years:

“Thank you for your e-mail and your concern about my brother. There is no change and no development in the case. And it is very difficult to visit him because he is now in Basra. And there are a lot of problems facing Sunnis who go to Basra in order to visit their relatives. Besides it is very difficult to get permission from American soldiers to visit him. And there isn’t any charge. Now we lost the hope to get him again.”

The number of long-term detainees has reportedly increased since September 2005. According to the Iraqi Human Rights Ministry, on 28 September 2005 there were 1,443 detainees held by MNF for more than one year. However, according to figures provided by US officials, in early November 2005 among the nearly 13,900

⁸⁵ Reports in recent years on persons held in indefinite detention in the context of the “war on terror” have shown the severe psychological effects of such detention. For instance, in October 2004, in a report on the mental health of detainees held at the time indefinitely in Belmarsh high security prison, in the UK, under the Anti-Terrorism Crime and Security Act (2001), eminent psychiatrists concluded that the detainees had become seriously clinically depressed and were suffering from anxiety, some of them becoming psychotic as a result of their indefinite detention. (Professor Ian Robbins, Dr James MacKeith, Professor Michael Kopelman, Dr Clive Meux, Dr Sumi Ratnam, Dr Richard Taylor, Dr Sophie Davison and Dr David Somekh, *The Psychiatric Problems of Detainees under the 2001 Antiterrorism Crime and Security Act*, 13 October 2004,

<http://www.statewatch.org/news/2004/nov/belmarsh-mh.pdf>).

⁸⁶ Report of the Committee against Torture, UN Doc. A/53/44, 16 September 1998, para. 283(b).

⁸⁷ Human Rights Committee, Annual Report, vol.1 (1998), UN Doc. A/53/40, para.317.

detainees held by the MNF there were some 3,800 who had by then been held for more than one year and more than 200 who had been held for more than two years.⁸⁸

Amnesty International knows of internees who at the beginning of 2006 had been held for more than two years without having been charged or tried. For example, **Kamal Muhammad ‘Abdullah al-Jibouri**, a 43-year-old former soldier married with 11 children, continued to be held in early February 2006, after some two years in detention without charge or trial. He was detained on 5 February 2004 by US troops in the al-Khusum village of the Salaheddin governorate. He was held at Abu Ghraib prison initially, but transferred to Camp Bucca, near Basra, in May 2005. Since his transfer, it has become particularly difficult for his relatives to visit him. Two relatives of Kamal Muhammad ‘Abdullah al-Jibouri, both aged about 40, were also detained by US troops on 5 February 2004 in al-Khusum village. At least one of the two was reportedly transferred at the end of 2005 to Fort Suse, near Suleimaniya in northern Iraq. As of February 2006, both men, like Kamal Muhammad ‘Abdullah al-Jibouri, continued to be held without charge or trial.

Treatment of internees

Although the US authorities introduced various measures to safeguard prisoners after the Abu Ghraib prison scandal, there continue to be reports of torture or ill-treatment of detainees by US troops. In September 2005 several members of the US National Guard’s 184th Infantry Regiment were sentenced to prison terms in connection with torture or ill-treatment of Iraqis who had reportedly been detained in March 2005 following an attack on a power plant near Baghdad.⁸⁹ According to media reports the abuse involved the use of an electro-shock gun on handcuffed and blindfolded detainees.⁹⁰ The *Los Angeles Times* referred to a member of the battalion having reported that “the stun gun was used on at least one man’s testicles”.⁹¹

The abuse was investigated after a soldier who was not involved in the mistreatment discovered film footage showing parts of the abuse on a laptop computer. At least twelve soldiers from the National Guard’s 184th Infantry Regiment were

⁸⁸ Associated Press, Katherine Shrader: *US has detained 83,000 in war on terror*, 16 November 2005.

⁸⁹ The Los Angeles Times initially reported that the incident occurred in June 2005 (Los Angeles Times, Scott Gold and Rone Tempest, *Army Probes Guard Unit*, 27 July 2005), but in a later report the newspaper referred to March 2005 (Los Angeles Times, Scott Gold and Rone Tempest: *More Tumult Besets Guard Unit in Iraq*, 15 October 2005).

⁹⁰ Associated Press, Jeremiah Marquez, *California Guard sergeant gets year in Iraq detainee abuse case*, 10 September 2005.

⁹¹ Los Angeles Times, Scott Gold and Rone Tempest: *More Tumult besets Guard Unit in Iraq*, 15 October 2005.

charged with misconduct “relating to abuse and maltreatment of detainees”. Three sergeants were sentenced to between five and twelve months of imprisonment and four other soldiers were sentenced to hard labour.⁹²

In another incident, five soldiers from the 75th Ranger Regiment were charged before a court martial in connection with allegations of detainee abuse. The case arose from an incident on 7 September 2005 when three detainees were allegedly punched and kicked by the five US soldiers as they were awaiting movement to a detention facility.⁹³ On 21 December 2005 it was announced that the five soldiers had been sentenced to be confined for periods ranging from 30 days to six months and reductions in rank.⁹⁴

Amnesty International has noted that in the above cases, US officials have apparently taken swift action to investigate the allegations of abuse and to prosecute the perpetrators. However, given that torture or ill-treatment have continued, the organization is concerned that insufficient safeguards have been put in place in order to protect detainees from the recurrence of abuse.

Amnesty International has interviewed former detainees and relatives of detainees held by the MNF about treatment of detainees after the handover of power in June 2004. In one reported incident an electro-shock gun (taser) was used against detainees in circumstances which violate international human rights law prohibiting torture or ill-treatment. According to an eye-witness in November 2005 a US guard at Camp Bucca used a taser against two detainees while they were being transferred in a vehicle to a medical appointment within the detention facility, shocking one on the arm and the other on his abdomen.

Electro-shock weapons have been developed as a non-lethal force option to be used to control dangerous or combative individuals. Amnesty International considers that electro-shock weapons are inherently open to abuse as they can inflict severe pain without leaving substantial marks, and can further be used to inflict repeated shocks.

Under CPA Memorandum No. 3, the MNF was required to ensure that conditions and standards in all of its internment facilities satisfy Section IV of the

⁹² Los Angeles Times, Scott Gold and Rone Tempest: *More Tumult besets Guard Unit in Iraq*, 15 October 2005.

⁹³ Multinational Force, *US soldiers charged with abuse*, 7 November 2005, <http://www.mnf-iraq.com/Releases/Nov/051107h.htm>.

⁹⁴ The Associated Press, *Five US soldiers sentenced*, 20 December 2005.

Fourth Geneva Convention,⁹⁵ which sets out standards for the treatment of detainees, including in relation to food, hygiene and the provision of medical attention, as well as contact with the outside world and penal and disciplinary sanctions.⁹⁶

Article 119 of the Fourth Geneva Convention provides that internees may not be punished other than by fines, discontinuance of privileges, fatigue duties – which may only be “in connection with the maintenance of the place of internment” and not exceed two hours daily - and confinement. Article 119 further provides: “In no case shall disciplinary penalties be inhuman, brutal or dangerous for the health of internees. Account shall be taken of the internee’s age, sex and state of health.”

Despite this, former internees have alleged that disciplinary or penal sanctions have been used which breach the above provisions of the Fourth Geneva Convention and appear also to constitute a violation of international human rights treaties prohibiting torture or ill-treatment. In particular, internees at Camp Bucca are alleged to have been exposed deliberately to extremes of both heat and cold, by being made to wait for hours in the heat of the sun while their accommodation was searched and forcibly showered with cold water and exposed to cold air conditioners.

Amnesty International has previously expressed concern to the US authorities regarding their use of a restraint chair for detainees in Iraq. On 28 October 2005, John Moore of Getty Images photographed an individual – reportedly a juvenile detained in the maximum security section of Abu Ghraib prison - strapped into a four-point restraint chair. US Army military police reportedly said that he was being “punished for disrespecting them” and would remain for two hours in the chair “as punishment”.

The photograph showed the detainee tightly immobilized. He had straps across his chest and his wrists and ankles were bound, with his legs bent at the knee, and his head was thrown back. Such a position would appear to carry a significant health risk as well as cause discomfort and pain. Prolonged immobilization in restraints is known to carry a risk of blood clots or asphyxia. On 15 December 2005, Amnesty International wrote to the MNF Task Force 134, which is responsible for Detainee Operations in Iraq, stating that the organization would “consider the manner of restraint shown to amount to cruel, inhuman or degrading treatment and in violation of the US’s obligations under international human rights treaties”.

⁹⁵ Although the Fourth Geneva Convention no longer applies to the situation of Iraq, the MNF have referred to its standards. In the letter by Colin Powell attached to Security Council Resolution 1546, it is stated that “the forces that make up the MNF are and will remain committed at all times to act consistently with their obligations under the law of armed conflict, including the Geneva Conventions.”

⁹⁶ CPA Memorandum No. 3, sections 6, para 4.

In a letter of 17 January 2006, Major General John D. Gardner, commander of MNF Task Force 134, responded to Amnesty International stating that “in accordance with US Army policy, restraint cannot be used as a form of punishment”.⁹⁷ He continued that a restraint chair may be used in order to gain control of a violent detainee. However, Amnesty International was informed that the incident was being investigated and that policies concerning the use of the restraint chair were under review. The use of the restraint chair has been suspended until the conclusions of this review.

Access to the outside world

CPA Memorandum No. 3 is deficient in several respects insofar as the question of access to detainees is concerned. In particular, while it provides for the ICRC to have access to detainees it qualifies this, stating that access by the ICRC can be denied “for reasons of imperative necessity as an exceptional and temporary measure”.⁹⁸

There are no regulations spelled out in the Memorandum regarding internees’ right of access to relatives or legal counsel. It states that the provisions of section 4 of the Fourth Geneva Convention apply, which include some reference to contact with relatives and legal counsel, but it makes no reference to other international standards relating to the rights of detainees, such as The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and the Declaration on the Protection of All Persons From Enforced Disappearance.

Amnesty International is concerned that the MNF’s failure to guarantee detainees’ access to the outside world, including to their families and to legal counsel, has been a contributory factor facilitating torture and ill-treatment and other human rights abuses of detainees. Such denial of access poses a continuing risk of further such abuses.⁹⁹

⁹⁷ Letter of 17 January 2006 to Amnesty International by Major General Gardner, Commanding MNF Task Force 134.

⁹⁸ CPA Memorandum No. 3, section 6, para 8. The Memorandum further provides for the Iraqi Prisons and Detainee Ombudsman to have access to “security internees” but such access may also be denied “for reasons of imperative necessity as an exceptional and temporary measure” (CPA Memorandum No. 3, section 6, para 8).

⁹⁹ See also section above on *Treatment of detainees*.

Visits by relatives

During the first weeks after arrest detainees held by US forces of the MNF have no access to their families or legal counsel. According to the *Detainee visitation rules and guidelines* issued by the US military in July 2005, security internees are not entitled to receive visits during the first 60 days of internment.¹⁰⁰

US forces have imposed these restrictions also in high profile cases. For example, **Ali Omar Ibrahim Al-Mashhadani**, a 36-year-old cameraman for *Reuters* news agency, was arrested on 8 August 2005 in Ramadi by US forces after a search of his house. Reuters Global Managing Editor Director, David Schlesinger, protested the decision to detain the cameraman without any charges and the restrictions on his access to the outside world: "I am shocked and appalled that such decision could be taken without his having access to legal counsel of his choosing, his family or his employers."¹⁰¹ Despite this protest, Ali Omar Ibrahim Al-Mashhadani could not be visited before the expiry of the 60 days limit. His family visited him for the first time on 7 October 2005 at Abu Ghraib prison. He was transferred to Camp Bucca, near Basra, the same day. He was released in mid-January 2006 without having been charged or tried.

Internees held by the UK forces have also complained about delayed access to the outside world. **Hillal 'Abdul Razzaq 'Ali al-Jedda**, a 48-year-old dual national with UK and Iraqi citizenship,¹⁰² was arrested at his sister's house in Baghdad on 10 October 2004 by US troops who were accompanied by Iraqi security forces. He reported that during his arrest he was beaten, forced to the floor, hooded and tightly handcuffed, causing pain. At Baghdad Airport he was handed over to the UK forces and transferred to the UK-controlled Shu'aiba Divisional Temporary Detention Facility, near Basra. For the first 28 days of his detention he was reportedly held in solitary confinement in a small and badly ventilated cell. He claims that his family was only informed about his whereabouts 33 days after his detention.¹⁰³ According to the UK authorities "[s]tandard operating practices require the MNF to inform relatives of the detention of internees within 24 hours of their internment".¹⁰⁴

¹⁰⁰ Multinational Force, *Detainees visitation rules and guidelines*, 7 July 2005, <http://www.mnf-iraq.com/Releases/July/050709a.htm>; <http://www.mnf-iraq.com/TF134/Visitation.htm>.

¹⁰¹ Reuters, *Reuters cameraman held in Abu Ghraib*, 31 August 2005.

¹⁰² See also previous reference to the case in section: *Review for internees held by UK forces*.

¹⁰³ See also Mr Justice Moses' judgment: "Although the claimant has made some complaints about his initial treatment by US troops and about aspects of the conditions of his detention and interrogation, they are not in issue in the present proceedings. It is the lawfulness of the detention itself that is in issue.", *R (on the application of Al-Jedda) v Secretary of State for Defence*, paragraph 8, [2005] EWHC 1809.

¹⁰⁴ Foreign and Commonwealth Office, *Human Rights – Annual Report 2005*, July 2005, page 64.

Some relatives of detainees have told human rights organizations, including Amnesty International, that for weeks or months they were not able to establish the whereabouts of a detainee. The Christian Peacemaker Teams reported the case of ‘**Adnan Talib Hassan Al-‘Unaibi**, an imam in the town of Hilla, who was detained by US forces on 1 May 2004 while attending a public meeting at the premises of a local human rights organization.¹⁰⁵ During the raid US forces reportedly killed two people. After the detention a brother of the imam went to the Iraqi Assistance Centre (IAC)¹⁰⁶ in Baghdad to find out his whereabouts. However, the detention was only confirmed at the end of May 2004 after the brother had obtained more information from released detainees – including the prisoner’s sequence number. Despite numerous inquiries, relatives were not able to establish ‘Adnan Talib Hassan Al-‘Unaibi’s whereabouts for several months. They were only allowed to visit him after he had been in detention for five months. He was eventually released uncharged in September 2005.

In principle, internees are entitled to four visits per month or one visit per week after they have passed the first 60 days of detention. However, relatives have frequently reported that they were not able to conduct visits, because the detention facility was located far away and travelling long distances in Iraq is unsafe.

Visits by legal counsel

After the first 60 days of internment, internees are entitled to receive visits by legal counsel. Amnesty International has asked numerous relatives of internees, former internees, lawyers and human rights activists about the possibilities of security internees seeking the support of legal counsel. It appears that visits of security detainees by legal counsel are extremely rare. The main reason for this seems to be the belief that it is futile to seek legal counsel when the detainee will not be brought before a court of law. Former internees and lawyers alike have told Amnesty International they did not believe that a lawyer could have significantly furthered the case of a security internee.

Visits by monitoring bodies

As indicated earlier, CPA Memorandum No 3 in principle grants the ICRC access to MNF-held detainees at locations throughout the country. In practice, however, the ICRC has been able to visit only a limited number of larger detention facilities, mostly

¹⁰⁵ http://www.cpt.org/campaigns/adopt/detainee_profiles/documents/AdnanTalibHassanAlOnaibi.doc

¹⁰⁶ The Iraqi Assistance Center (IAC) a military-run center providing services to individuals or NGOs on a range of issues – including detentions. See <http://www.iac-baghdad.org>.

due to security considerations. According to the ICRC in the period from May to September 2005 “the main detention/internment facilities covered during that period were Camp Cropper (Baghdad Airport); Camp Bucca near the southern town of Basra; and several detention places in Kurdistan”.¹⁰⁷ According to the MNF, the ICRC has “access to all Theater Internment Facilities in the theatre”.¹⁰⁸ Amnesty International understands from this that the ICRC does not have access to brigade and division internment facilities of the MNF – that is, military bases where detainees are mainly held during the first days or weeks of their detention.

Therefore, in many locations of detention under MNF control, no independent body is currently able to monitor the treatment of detainees held by the MNF. Yet, visits to places of detention by independent monitoring bodies are an important safeguard for persons deprived of their liberty. Visits enable experts to examine at first hand the conditions of detention and treatment of detainees and to make recommendations for improvements. Visits can have a deterrent effect against abuse and provide a necessary link for detainees with the outside world.

According to the UK authorities, the ICRC has “full and unrestricted access” to its detention facilities in Iraq and the ICRC has described conditions of internment as “generally good”.¹⁰⁹

The Iraqi Human Rights Ministry is conducting periodic visits to detention facilities under the control of the MNF. The ministry has opened an office at Abu Ghraib prison which is also monitoring the situation of internees held by the MNF. The ministry is circulating regular reports on its monitoring activities concerning the situation of detainees in Iraq. An official of the ministry told Amnesty International that its monitoring includes occasional visits to brigade and division internment facilities of the MNF.¹¹⁰

Several UN human rights experts have faced obstacles in their attempts to visit detainees held by the US forces – including those held in Iraq. In a statement issued on 18 November 2005, five independent experts of the UN Commission on Human Rights – including the Chairperson-Rapporteur of the Working Group on Arbitrary

¹⁰⁷ International Committee of the Red Cross (ICRC): *Operational update, Iraq: ICRC activities between May and September 2005*, 30 September 2005,

<http://www.icrc.org/Web/Eng/siteeng0.nsf/iwpList322/083F20662037E9A1C12570A40040FCD6>.

¹⁰⁸ Multinational Force, *Humane Treatment of Detainees*, Last Update on 28 November 2005,

<http://www.mnf-iraq.com/TF134/Humane.htm>

¹⁰⁹ Foreign and Commonwealth Office, *Human Rights – Annual Report 2005*, July 2005, page 64.

¹¹⁰ Phone conversations on 4 and 5 February 2005.

Detention and the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment – expressed their regret about the US refusal of terms for a fact finding mission to the US detention facility at Guantánamo Bay, Cuba.¹¹¹ This statement followed a letter of 25 June 2004 and several follow-up letters sent by UN human rights experts to the US authorities requesting to visit “those persons arrested, detained or tried on grounds of alleged terrorism or other violations, in Iraq, Afghanistan, the Guantanamo Bay military base and elsewhere”.¹¹² At the time of writing none of the five UN human rights experts had been able to visit US detention facilities in Iraq.

Secret and unacknowledged detention

The US has held an unknown number of persons detained in Iraq without any contact with the outside world in violation of international standards. These so called “ghost detainees” were largely hidden to prevent the ICRC from visiting them.

On 17 June 2004, US Defense Secretary Donald H. Rumsfeld admitted that in November 2003 he ordered military officials to detain a senior member of Ansar al-Islam¹¹³ without listing him in the prison’s register. This prisoner was reportedly arrested in late June or early July 2003 and was transferred to an undisclosed location outside Iraq. He was returned to Iraq where he was detained in secret until May 2004 without being registered or assigned a prison register number.¹¹⁴

There are indications that persons detained in Iraq have secretly been transferred outside Iraq for interrogation by the CIA. For example, **Hassan Ghul**, a Pakistani national reportedly detained in January 2004 in northern Iraq, is according to Human Rights Watch possibly held in CIA custody.¹¹⁵ According to a report in the Swiss newspaper, *Der Sonntagsblick*, a confidential communication of the Egyptian Foreign Ministry to its embassy in London intercepted by the Swiss secret service, stated that Egyptian intelligence could confirm that 23 Iraqi and Afghan citizens have

¹¹¹ United Nations press release, *Human Rights Experts “deeply regret” United States refusal of terms for fact-finding mission to Guantanamo*, 18 November 2005. The other three experts for whom access to the detainees was requested are the Special Rapporteur on the Independence of Judges and Lawyers, the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health and the Special Rapporteur on Freedom of Religion or Belief.

¹¹² United Nations press release, *Human Rights Experts “deeply regret” United States refusal of terms for fact-finding mission to Guantanamo*, 18 November 2005.

¹¹³ Ansar al-Islam is an armed Islamist group based in Kurdistan, particularly around Halabja. It has been responsible for grave human rights abuses, including the deliberate killing of civilians.

¹¹⁴ BBC, *Red Cross to study ghost detainees*, 18 June 2004, <http://news.bbc.co.uk/2/hi/americas/3818883.stm>.

¹¹⁵ Human Rights Watch, *List of “Ghost Prisoners” Possibly in CIA Custody*, 30 November 2005.

been interrogated by US intelligence agents at the military air base Mihael Kogalniceanu in Rumania. The communication further stated that similar interrogation centres existed in the Ukraine, Kosovo, Macedonia and Bulgaria.¹¹⁶

In at least one incident US officials have tried to cover up the death of an unacknowledged detainee in Iraq. **Mandel al-Jamadi** was detained by US troops and placed in Abu Ghraib prison where he died on 4 November 2003 as an unregistered detainee. Documents obtained by the American Civil Liberties Union under the US Freedom of Information Act, suggest that Mandel al-Jamadi died due to “blunt force injuries complicated by compromised respiration”.¹¹⁷

US officials have defended the practice of denying detainees’ access to the ICRC for purposes of “imperative military necessity”.¹¹⁸ Under Article 143 of the Fourth Geneva Convention, ICRC visits to civilian internees may be denied “for reasons of imperative military necessity”, but “only as an exceptional and temporary measure”. In Iraq in January 2004, the US authorities invoked “military necessity” when they refused to grant the ICRC access to eight detainees held in Abu Ghraib. According to the Fay report¹¹⁹, one of the eight detainees, a Syrian national, was at that time held in a tiny dark cell without windows, toilet or bedding. The inhumane treatment of this Syrian detainee, facilitated by the invocation of “military necessity”, was not limited to solitary confinement in harsh conditions. Around 18 December 2003, he was abused and threatened with dogs. According to the US military, there is a photograph of him kneeling on the floor with his hands tied behind his back, while an unmuzzled dog is snarling a few feet from his face. During an ICRC visit in mid-March 2004, the organization’s delegates were again denied access to him, and other detainees, on the grounds of “military necessity”. In January and March 2004, the ICRC questioned the “exceptional and temporary” nature of the denial of access. By the time of its March visit, the Syrian detainee had been held incommunicado and under interrogation for four months.¹²⁰

¹¹⁶ Der Sonntagsblick, Sandro Brotz and Beat Jost, *US-Folter Camps: Der Beweis*, 8 January 2006, <http://www.blick.ch/sonntagsblick/aktuell/artikel30413>.

¹¹⁷ American Civil Liberties Union, *U.S. Operatives Killed Detainees During Interrogations in Afghanistan and Iraq*, 24 October 2005. <http://www.aclu.org/intlhumanrights/gen/21236prs20051024.html>.

¹¹⁸ United States Department of Defense, *Defense Department Regular Briefing*, 17 June 2004, <http://www.defenselink.mil/transcripts/2004/tr20040617-secdef0881.html>.

¹¹⁹ “Fay Report”, AR 15-6 Investigation of Intelligence Activities at Abu Ghraib, Conducted by Major General George R. Fay and Lieutenant General Anthony R. Jones, page 66, <http://www.defenselink.mil/news/Aug2004/d20040825fay.pdf>.

¹²⁰ Amnesty International, *United States of America: Human dignity denied: Torture and accountability in the ‘war on terror’*, 27 October 2004, Amnesty Index: AMR 51/145/2004.

US military investigations have suggested that up to 100 so-called ghost detainees may have been held in US detention facilities in Iraq.¹²¹ However, the Church report summary of March 2005 stated that “the practice of DOD [Department of Defense] holding ‘ghost detainees’ has now ceased”.¹²²

The practice of holding detainees in secret, with no contact with the outside world, places the person outside the protection of the law, denying them important safeguards and leaving them vulnerable to torture and ill-treatment. They have no access to lawyers, families or doctors. They are often kept in prolonged arbitrary detention without charge or trial. They are unable to challenge their arrest or detention, whose lawfulness is not assessed by any judge or similar authority. Their treatment and conditions are not monitored by any independent body, national or international. The secrecy of their detention allows the concealment of any further human rights violations they suffer, including torture or ill-treatment, and allows governments to evade accountability.

In certain circumstances, when people are held in secret detention and the authorities refuse to disclose their fate or whereabouts, they have “disappeared”. This practice, known as enforced disappearance, is expressly prohibited under international law.¹²³ International law requires that any person deprived of their liberty must be held in an officially recognized place of detention.

Enforced disappearance violates the rules of international law which provide for, among others, the right to recognition as a person before the law, the right to liberty and security of the person and the right not to be subjected to torture or other ill-treatment. It also violates - or constitutes a grave threat to - the right to life. In certain circumstances, enforced disappearance can also be a crime against humanity.¹²⁴

International human rights bodies have held that secret detention and enforced disappearances themselves constitute ill-treatment or torture, in view of the considerable suffering of persons detained without contact with their families or

¹²¹ Washington Post, Bradley Graham and Josh White, *General Cites Hidden Detainees*, 10 September 2004.

¹²² <http://www.defenselink.mil/news/Mar2005/d20050310exe.pdf>.

¹²³ See the 1992 UN Declaration on the Protection of All Persons from Enforced Disappearance, and the draft International Convention for the Protection of All Persons from Enforced Disappearance.

¹²⁴ Amnesty International: *‘Disappearances’ in the ‘war on terror’*, 3 November 2005, AI Index: ACT 40/013/2005.

anyone else from the outside world, and without knowing when or even if they will ever be freed or allowed to see their families again.

The same is true for the suffering caused to family members of “disappeared” persons. In a number of cases, international human rights bodies have held that the authorities’ denial of their right to know what has happened to their relatives has violated the prohibition of torture and ill-treatment.

Internment of women and children

CPA Memorandum No.3 includes provisions for the internment of children: “Any person under the age of 18 interned at any time shall in all cases be released not later than 12 months after the initial date of internment”.¹²⁵

According to the UK authorities, there are no UK or US detention facilities allocated for women or children in Iraq. They further stated that at US detention facilities women and juveniles are segregated from adult males unless they are members of the same family.¹²⁶ As of October 2005 UK authorities were not holding any women or children in detention.¹²⁷

At the end of September 2005 there were about 200 juveniles held by the MNF who were scheduled to be transferred shortly to the jurisdiction of the Iraqi Ministry of Labour and Social Affairs.¹²⁸ The newspaper *al-Sharq al-Awsat* reported in December 2005 that the Iraqi Judicial Council had appointed a judge to deal specifically with cases of detained juveniles held by the MNF.¹²⁹

At the end of January 2006 a US military spokesman announced the release of five woman detainees, while four others remained held by the US forces.¹³⁰

¹²⁵ CPA Memorandum No.3, section 6, para 5.

¹²⁶ Foreign and Commonwealth Office, *Human Rights - Annual Report 2005*, July 2005, page 63.

¹²⁷ See web site of the Foreign and Commonwealth Office, visited January 2006, <http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1032786062920>.

¹²⁸ Iraqi Ministry of Human Rights, *Detention Places and Numbers of Detainees according to information provided by the Ministry of Human Rights*, 28 September 2005.

¹²⁹ *al-Sharq al-Awsat*, *Majlis al-Qada' al- 'Iraqi yanzur qadaya al-ahdath al-muhtajizin lada al-quwat al-muta'addida al-jinsiya (The Iraqi Judicial Council Looks into Juvenile Cases under the Control of the Multinational Force)*, 23 December 2004,

<http://www.aawsat.com/sections.asp?section=4&issue=9887>.

¹³⁰ BBC, *US releases Iraqi women prisoners*, 26 January 2006, http://news.bbc.co.uk/1/hi/world/middle_east/4649714.stm.

“High Value” Detainees

The vast majority of detainees who were held or continue to be held by the MNF without charge or trial are so called “security internees” – that is, persons detained in the context of the ongoing armed conflict. In addition, US forces continue to hold so-called high value detainees – a category which has mainly been used for persons with senior positions under Saddam Hussain’s government.¹³¹ CPA Order No. 99 refers to a Memorandum of Understanding between the MNF and Iraqi authorities regarding “the handling of High Value Detainees.”¹³² Amnesty International requested a copy of that document from the US government, but to date has not received this.¹³³

At least two “high value” detainees have died in custody under circumstances suggesting that torture or ill-treatment caused or contributed to their deaths. **‘Abd Hamad Mawoush**, a major general in the Iraqi army under Saddam Hussain, died in US detention on 26 November 2003 after having a sleeping bag forced over his head and body and one of his interrogators sat on his chest. On 23 January 2006, a US court martial convicted a US army interrogator of his killing and sentenced the soldier to forfeit \$6,000 of his salary.¹³⁴ **Muhammad Mun’im al-Izmerly**, a 65-year-old chemical scientist, was detained in April 2003 and taken to Camp Cropper where he died in January 2004. An autopsy report found that he “died from a sudden hit to his head”.¹³⁵

The group of “high value” detainees included former prisoners of war (POW) who are now standing trial. Some former POWs, including Saddam Hussain, have been referred to the Supreme Iraqi Criminal Tribunal¹³⁶ (formerly known as Iraqi Special Tribunal). Although standing before an Iraqi court, Saddam Hussain and

¹³¹ It is unclear whether or not this category of “high value detainees” is confined to those with senior positions in Saddam Hussain’s government. The term has mainly been used in the context of investigations into the existence of weapons of mass destructions in Iraq. The report of the Special Advisor to the Director of Central Intelligence on Iraq’s Weapons of Mass Destruction defines a “high value” detainee as a detainee who holds relevant knowledge or insight due to his or her senior position in the military, security, scientific/technical, or governmental structures under Saddam Hussain’s government. (http://www.cia.gov/cia/reports/iraq_wmd_2004/glossary.html).

¹³² CPA Order No. 99, 27 June 2004, section 4.

¹³³ Letter of Amnesty International to Donald Rumsfeld, US Secretary of Defence, 17 December 2004.

¹³⁴ The Denver Post, Arthur Kane, *Iraqi General beaten two days before death*, 5 April 2005. See also: Los Angeles Times, Nicholas Riccardi, *No Jail Time in Death of Iraqi General*, 24 January 2006. For more details on the case see section above: *The legacy of the Abu Ghraib prison scandal*.

¹³⁵ Human Rights First, *Twenty Seven Detainee Homicides in U.S. Custody*, 19 October 2005, http://www.humanrightsfirst.org/media/2005_alerts/etn_1019_dic.htm.

¹³⁶ Also referred to as Iraqi Higher Tribunal.

several others continue to be held in the custody of the MNF at the request of the Iraqi authorities.

According to MNF Task Force 134, in mid-February 2006 thirteen “high value” detainees continue to be held without charge or trial. Their cases were said to be subject to review by the High Value Detainee Special Review Committee, described as a “U.S. Government panel staffed by military and civilian security and intelligence specialists qualified to assess security threat, as well as by representatives of the Regime Crimes Liaison office, which acts in support of the Iraqi Higher Tribunal”.¹³⁷

Earlier, the US government stated in its report to the UN Committee Against Torture, that US forces in Iraq were holding a “small number of enemy prisoners of war (EPW)”.¹³⁸ These apparently included persons who had been detained as POWs between March 2003 and June 2004, and therefore should have been released or charged at the end of the occupation on 28 June 2004.

Amnesty International calls on the Iraqi Authorities and the international community to ensure that all persons who have been responsible for human rights violations under the government of Saddam Hussain are brought to justice in trials conforming to international standards. However, according to Amnesty International’s information - nearly three years after the demise of Saddam Hussain’s government - some former officials of that government continue to be held without charge or trial.

Most of the “high value” detainees – if not all of them – are currently being held at Camp Cropper, a detention facility of the US forces near Baghdad Airport. Relatives of “high value” detainees have reported restrictions on visits. According to a former detainee at Camp Cropper, visits by relatives are generally only allowed once every three months. For example, **Huda Salih Mehdi ‘Ammash**, the only female member of the Revolutionary Command Council under Saddam Hussain’s government, was reportedly permitted family visits on only four occasions during her detention from May 2003 until November 2005.

In December 2005, several “high value” detainees were released without having been charged or tried. They included two women scientists, namely (the above

¹³⁷ Letter of 19 February 2006 to Amnesty International by Major General Gardner, Commanding MNF Task Force 134. The Iraqi Higher Tribunal is elsewhere referred to as Supreme Iraqi Criminal Tribunal.

¹³⁸ Second Periodic Report of the USA to the Committee against Torture, UN Doc. CAT/C/48/Add.3, 29 June 2005, Annex 1, Part Two.

mentioned) Huda Salih Mehdi ‘Ammash and **Rihab Rashid Taha**. Both had been held in US detention for about 30 months.¹³⁹

Insufficient safeguards for detainees – no lessons learned?

International human rights law contains safeguards to protect the fundamental rights of people held in detention – including the right not to be subjected to torture or ill-treatment. Article 7 of the International Covenant on Civil and Political Rights (ICCPR) stipulates: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

Further rights of detainees are guaranteed in Article 9 of the ICCPR according to which no-one should be subjected to arbitrary detention (para 1). In addition every detainee must have access to a court empowered to rule without delay on the lawfulness of their detention and order their release if the detention is unlawful (para 4).

Iraq and all 27 countries¹⁴⁰ who were contributing at the end of 2005 to the MNF are state parties to the ICCPR. In addition, all 27 countries contributing to the MNF are state parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

Even though Iraq is not a state party to the CAT, the absolute prohibition of torture and ill-treatment is regarded as part of customary law, binding on all states, from which no derogation is allowed at anytime, even in times of emergency or war. International humanitarian law, which Iraq is bound to observe, also contains provisions that expressly prohibit torture and ill-treatment during both international and non-international armed conflicts.

Furthermore, Iraqi law prohibits the use of torture and ill-treatment. Article 35 of the Iraqi Constitution of 2005 prohibits “all forms of torture, mental or physical, and inhuman treatment”. Although not fully consistent with the definition of torture

¹³⁹ New York Times, John F. Burns: *24 Ex-Hussein Officials Freed from U.S. Custody*, 20 December 2005.

¹⁴⁰ According to the UK Ministry of Defence as of 15 November 2005 the following countries were contributing to the MNF: Albania, Armenia, Australia, Azerbaijan, Bosnia-Herzegovina, Bulgaria, Czech Republic, Denmark, El Salvador, Estonia, Georgia, Italy, Japan, Kazakhstan, Latvia, Lithuania, Macedonia, Mongolia, Netherlands, Norway, Poland, Romania, Slovakia, South Korea, UK, Ukraine and the US (<http://www.operations.mod.uk/telic/key.htm>).

according to CAT, Article 127 of the Code of Criminal Procedure 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.” In fact the Iraqi Penal Code criminalizes the use of torture by any public servant. Article 333 states 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”.

In addition, Iraqi legislation provides for pre-trial detention procedures which contribute to the safety of detainees. For example, Article 123 of the 1971 Law on Criminal Procedure contains particularly important provisions as it requires a detainee to be brought before an investigating judge within 24 hours.

However, for many detainees held by the MNF and the Iraq authorities the reality is in stark contrast to human rights standards as guaranteed under international and Iraqi law. The ongoing practice of US forces and Iraqi authorities to restrict access to detainees and reports of torture and ill-treatment of detainees – in particular those held by forces of the Interior Ministry - demonstrate that sufficient safeguards to protect detainees have not been put in place. On numerous occasions Amnesty International has expressed its concerns about this failure and made recommendations to stop and prevent the violations of fundamental human rights of detainees in Iraq - including in communications and meetings with representatives of the Iraqi authorities and with representatives of governments contributing to the MNF in Iraq.

Amnesty International is concerned that, as yet, insufficient safeguards have been put in place, in order to protect detainees from abuse. The organization is particularly concerned that a person taken into detention by the MNF is not eligible to receive visits by relatives or legal counsel during the first 60 days of detention. The organization fears that these regulations, which delay the detainees’ access to the outside world, significantly increase the risk of detainees being tortured or ill-treated. During the initial period detainees are often held in so-called holding centres within a US military basis. Under the current circumstances independent bodies are not in the position to monitor the treatment of detainees at such locations. However, even after being transferred to a detention centre equipped with facilities for visitors, detainees

are not allowed to receive visits until 60 days have elapsed since the date of their detention.¹⁴¹

Many detainees have been held for weeks in pre-trial detention by the Iraqi authorities without being presented to a judicial body (that is, an investigating judge or court) – in violation of Iraqi law. Their rights to receive visits by family members and to have access to defence counsel frequently have been denied. Many families of detainees have to wait anxiously for days or weeks before they learn where a person is being held.

Denial of access by detainees to the outside world during the first weeks of detention has been recognized by international human rights bodies and experts to be a major factor in facilitating torture and ill-treatment of detainees. For example, in 1995 the then UN Special Rapporteur on Torture emphasized that detainees should have immediate access to the outside world and called for a total ban on incommunicado detention. He stated: “Torture is most frequently practiced during incommunicado detention. Incommunicado detention should be made illegal and persons held in incommunicado detention should be released without delay.... Legal provisions should ensure that detainees be given access to legal counsel within 24 hours”.¹⁴² The Human Rights Committee and the Committee against Torture have also both called for the elimination of incommunicado detention.¹⁴³

Amnesty International is also concerned that in many incidents of torture or ill-treatment of detainees, including in cases of deaths in custody, the MNF and Iraqi authorities have failed to conduct prompt, thorough and impartial investigations as international standards require. As a consequence of insufficient investigations into allegations of torture and ill-treatment only a limited number of perpetrators have been brought to justice.

It appears that at least some members of the MNF who have been convicted by military trials for their involvement in torture or ill-treatment of detainees may have received sentences that do not adequately reflect the gravity of these violations and that these proceedings may not have established the full truth or extent of abuse. The organization calls on the US, UK and Iraqi authorities to allow international monitors to conduct investigations into past and ongoing human rights violations in Iraq.

¹⁴¹ See also section above: *Access to the outside world*.

¹⁴² UN Doc. E/CN.4/1995/434, para 926 (d).

¹⁴³ See the Human Rights Committee’s General Comment No. 20, para. 11, and the Committee against Torture’s observations in UN Doc. A/52/44, referring to Georgia, para. 121 (d); UN Doc. A/53/44, referring to Spain, para.135; UN Doc. A/54/44, referring to Libya, para.182(a).

It appears that in many incidents where Iraqi security forces have been involved in torture or ill-treatment, the Iraqi authorities have never conducted investigations. There have been only rare reports of perpetrators of torture or ill-treatment being brought to justice. The US Department of State refers to one case of prosecution of police officers in Baghdad who were accused of “systematically raping and torturing female detainees”.¹⁴⁴

Following reports of torture or ill-treatment at detention facilities in al-Jadiriya district of Baghdad under the control of the Interior Ministry, Iraqi authorities announced on 15 November 2005 that they had launched an investigation headed by Deputy Prime Minister Rozh Nuri Shawes.¹⁴⁵ A report on the findings was expected within two weeks, but at the beginning of February 2006 no findings had yet been disclosed. There have been media reports, however, that some of the high-ranking officers who were believed to be involved in the human rights violations had fled to neighbouring Iran.¹⁴⁶ On 5 February 2006, Iraqi Prime Minister Ibrahim al-Ja'fari reportedly established a further committee to investigate complaints filed with the Iraqi authorities concerning human rights violations allegedly committed by forces of the Iraqi Interior Ministry.¹⁴⁷ This committee's initial findings are due to be announced in early March 2006.

Amnesty International Recommendations

To the Iraqi authorities

Concerning torture and other ill-treatment

* Declare publicly the government's total opposition to torture and other cruel, inhuman and degrading treatment or punishment and make clear to all members of the

¹⁴⁴ US Department of State, *Country Reports on Human Rights Practices, Iraq*, 28 February 2005, <http://www.state.gov/g/drl/rls/hrrpt/2004/41722.htm>.

¹⁴⁵ Al-Jazeera, *Suspected Torture Center in Iraq*, 16 November 2005, <http://english.aljazeera.net/NR/exeres/BFFFC9C0-206D-4821-9CA9-8D0B822E8F93.htm>.

¹⁴⁶ Al-Hayat, Basil Muhammad 'Abd al-Wahid Ta'ama, *al-Amerikun yabhathun 'an mu'taqalat sirriya li-l-dakhiliya bi-musa'ida quwa siyasiya (The Americans Search for Secret Detention Centres with the Assistance of Political Forces)*, 9 December 2005.

¹⁴⁷ Agence France Press, *Iraq abuse probe findings expected next month*, 17 February 2006.

Iraqi Police Service, the Iraqi Armed Forces, prison guards and members of other security agencies that torture and other ill-treatment will never be tolerated.

* Ensure that all complaints and reports of torture and other ill-treatment and deaths in custody are promptly, impartially and effectively investigated by an independent body and that the methods and findings of such investigations are made public. This should include cases cited in this report, such as those of the detainees discovered being held at various Iraqi Interior Ministry buildings in November and December 2005 and those of the four Palestinians detained and tortured by the Wolf Brigade in May 2005.

* Suspend officials suspected of committing torture and other ill-treatment from active duty during the investigation.

* Ensure that complainants, witnesses and others at risk are protected from intimidation and reprisals.

* Bring to justice those responsible for torture and other serious human rights violations and try them according to international standards for fair trial and with no possibility of the death penalty.

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

* Ensure that victims of torture and other ill-treatment and their dependants should be entitled to obtain prompt reparation from the state including restitution, fair and adequate financial compensation and appropriate medical care and rehabilitation, and establish appropriate mechanisms and procedures to facilitate this.

* Ratify, as a matter of urgency, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) and its Optional Protocol, which allows independent international and national experts to conduct regular visits to places of detention within the territory of states parties, to assess the conditions of detention and to make recommendations for improvements.

Concerning protection of detainees and prisoners

* Release or charge with recognizable criminal offences all those currently held without charge.

- * Ensure that persons taken into custody are brought before an investigative judge within twenty-four hours of arrest, in conformity with Iraqi law.
- * Ensure that detainees have access to legal counsel within 24 hours and are given prompt access to their families.
- * Ensure that all prisoners and detainees are informed promptly of the reasons of their detention.
- * Ensure that all detainees are held only in officially recognized places of detention and that accurate information about their arrest and whereabouts is made immediately available to relatives, lawyers and the courts.
- * Ensure that all detainees are immediately informed of their rights. These include the right to lodge complaints about their treatment, to have a judge rule without delay on the lawfulness of their detention and to have a lawyer present during interrogations.
- * Ensure that conditions of detention conform to international standards for the treatment of prisoners. The authorities responsible for detention should be separate from those in charge of interrogation. There should be regular, independent, unannounced and unrestricted visits of inspection to all places of detention.
- * Provide unhindered access to all places of detention, their installations and facilities, and detainees by relevant international organizations and bodies, including the UN Special Rapporteur on torture, and by Iraqi human rights organizations.

To governments of countries contributing to the MNF – in particular the US and the UK

Concerning torture and ill-treatment

- * Declare publicly in relation to the activities of the MNF in Iraq the government's total opposition to torture and other cruel, inhuman or degrading treatment or punishment and make clear to all members of the military and all other government agencies, as well as MNF allies, that torture or other ill-treatment will not be tolerated under any circumstances.

- * Ensure that all complaints of torture and other ill-treatment - whether involving members of the MNF, other government agencies, medical personnel, private contractors and interpreters - are subject to prompt, thorough, independent and impartial civilian investigations in strict conformity with international law and standards concerning investigations of human rights violations. Ensure that the methods and findings of such investigations are made public.
- * Suspend officials suspected of committing torture and other ill-treatment from active duty during the investigation.
- * Bring to trial all individuals – regardless of position or rank - against whom there is evidence of having authorized, condoned or committed torture or other ill-treatment or other serious human rights violations. Ensure that all trials for alleged perpetrators comply with international fair trial standards.
- * Ensure that victims of torture and other ill-treatment and their dependants should be entitled to obtain prompt reparation from the state including restitution, fair and adequate financial compensation and appropriate medical care and rehabilitation.
- * Prohibit the use of electro-shock guns against an individual who is already in the custody or control of security or law enforcement officials, and take measures to ensure that they are never made available or used during interrogations or as a means to discipline a detainee.

Concerning protection of detainees and prisoners

- * End indefinite internment of persons in Iraq.
- * Ensure that all detainees are informed promptly of the reasons for their detention.
- * Ensure that all detainees are brought promptly before a court in order that the court can assess the lawfulness of their detention and order the release of individuals whose detention is found to be unlawful, in accordance with rights set out in Article 9 of the ICCPR.
- * Ensure that all detainees are released or charged with a recognizable criminal offence promptly and provided a fair trial in accordance with international law and which excludes the death penalty.

- * Ensure that all detainees handed over to the Iraqi authorities are not at risk of being subjected to torture and ill-treatment and where there is such a risk to hold the detainees on behalf of the Iraqi authorities, while criminal proceedings are ongoing and until such time as sufficient safeguards are put in place to prevent torture and ill-treatment.
- * Ensure that relatives and legal counsel have prompt access to detainees.
- * Ensure that accurate information about their arrest and whereabouts is made immediately available to detainees' relatives and lawyers.
- * Ensure that all detainees are held only in officially recognized places of detention and prohibit the holding of persons without record as "ghost detainees" and any transfer of detainees outside Iraqi territory.
- * Ensure that conditions of detention conform to international standards for the treatment of prisoners. Make provision for there to be regular, independent, unannounced and unrestricted visits of inspection to all places of detention by an independent body with appropriate expertise in assessing detention conditions and the treatment of prisoners.
- * Provide unhindered access to all places of detention, their installations and facilities, and detainees by relevant international organizations and bodies, including the UN Special Rapporteur on Torture, and by Iraqi human rights organizations.