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联合国人权事务高级专员的报告和 世界人权会议后续行动

伊拉克境内目前的人权状况*

* 附件不译，原文照发。

联合国人权事务代理高级专员致人权委员会主席的信

2004 年 6 月 4 日

主席先生，

伊拉克境内的人权状况多年来一直是人权委员会关注的问题。委员会特别报告员调查该国的人权状况已有十多年。上一位特报告员向委员会 2004 年第六十届会议提交了有关伊拉克境内以往发生的侵犯人权现象的报告(E/CN.4/2004/36 和 Add.1)。该届会议没有延长该特别报告员的任期。

伊拉克局势一直是安全理事会审议的问题，目前正受到安理会的关注，也受到秘书长特别顾问和联合国其他高级官员的关注。

从人权的角度来看，伊拉克局势带来了多项挑战。首先，在联军的军事行动之后设立的联军临时管理当局和临时管理委员会不久将被一个刚刚得到任命的临时政府取代。其次，发生了针对联军武装部队的恐怖主义行为和武装抵抗行为。第三，有大量人员被拘留，但被拘留者数目和所处状况直到最近还鲜为人知。第四，平民遭受着各种不利影响，许多人丧生。最后，媒体对联军一些成员所犯的某些不符合国际人权规范的行为作了令人不安的报道。

同时，必须承认：伊拉克人民现已不再遭受在前政权之下发生的大规模、有系统、有组织的侵犯人权行为的侵害，而且，他们现在有可能依据法治并在国际人权规范的指导下安排自己的民主治理结构。

审议冲突状态中有关尊重人权和人道主义法的状况，早已是人权委员会的惯例。委员会第六十届会议就一些此种冲突状态再次通过了决议和决定。

考虑到前述情况，并考虑到现在缺乏有关伊拉克当前的人权状况的资料，我安排人员编写了所附报告，谨向委员会成员提交。

顺致最崇高的敬意。

联合国人权事务代理高级专员
伯特兰·拉姆查兰

内容提要

随着萨达姆·侯赛因的垮台，一个曾经折磨伊拉克人民并且犯下令人震惊的、有系统的侵犯人权罪行的政府消亡了，关于这些罪行，伊拉克境内人权情况特别报告员自 1991 年以来作了详细记录。

令人遗憾的是，在联军占领伊拉克之后，某些联军士兵犯下了一些侵犯人权行为。相关国家最高级别的政府领导人已经对这些违法行为表示谴责，并已承诺将犯有违法行为者绳之以法并维护法治。这样做很有必要，目的是对国际社会负责。

已经发生的严重侵犯人权和违反人道主义法的行为决不能重演。必须建立预防和保护制度。

至关重要的是，必须作为最紧迫事项来加强保护安排。这需要对军队进行监督并在新的伊拉克建立保护机构。就对军队进行监督而言，可以考虑指定一名国际人权和人道主义法监察专员，负责就联军遵守国际人权和人道主义法规范的情况发表定期公开报告。

伊拉克临时政府应当迅速宣布成立一个法律和司法改革委员会，由其负责提出关于立即改革违反国际人权标准的伊拉克法律的提议，如果没有有关法律则要根据伊拉克的国际义务对适当法律程序保护作出规定。无论如何，由于自 1960 年代以来没有对法律进行重大修改，该委员会应当对法律框架进行长期改革，以确保依据联军临时管理当局(联军管理当局)的命令暂停实施的《伊拉克刑法》中极为不得人心的条款得到废除，并确保联军管理当局命令和《基本法》所示的将司法机构变为一个独立的政府部门的安排得到维持。

对于过渡时期的司法工作，伊拉克临时政府应当制定一项战略以消除伊拉克的残暴专制统治和大规模侵犯人权行为的流毒。这种战略必须以人民的需要、态度和对过渡时期司法的认识为中心。只有切实有效地与法律工作者和公众进行协商，才能确保程序的合法性。这种程序必须处理诸如以往的侵犯人权行为、司法和责任追究机制等问题，还必须争取以全面协调和一致的方式进行审查、了解真相和提供赔偿等非司法措施。

伊拉克临时政府不妨对《伊拉克特别法庭规约》进行审查，以确保刑事司法程序符合国际公正审判标准，并考虑到国际刑法领域的最新发展。

有必要研究是否需要设立伊拉克真相与和解委员会这一问题。

伊拉克临时政府应当设立一个赔偿委员会，以便制定一项赔偿方案。

鉴于暴力行为仍在发生，伊拉克临时政府有必要建立恰当机制，保障法律工作者、被告、受害者和证人的切身安全。

伊拉克临时政府应当尽快任命独立的伊拉克国家人权委员会的成员。

伊拉克临时政府还应当尽快指定一名伊拉克人权事务监察专员。

伊拉克临时政府应当考虑采取步骤，向伊拉克民间社会组织提供支持，以便促进和保护人权。伊拉克人权部可以在得到国际协助的情况下为这项工作提供便利。

应当在国内和国际两级向人权部提供充分支持，以帮助该部履行增进和保护伊拉克境内的人权的职责。

应当设立一个伊拉克人权教育国际基金，并且应当向此种基金提供支持。

在冲突状态中和反恐斗争中尊重人权的责任必须得到落实。国际人权和人道主义法的文字和精神必须得到维护。这是有关各方必须履行的义务。

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导 言

1. 伊拉克总统萨达姆·侯赛因领导的政府，是一个由一伙折磨、残害本国人民的人组成的野蛮、凶残的政府。关于在前政权领导之下的伊拉克境内发生的侵犯人权现象，伊拉克境内人权情况特别报告员自 1991 年以来已经作了详细记录(见附件五)。

2. 现在，这一政府已经不复存在，因而伊拉克人民能够向前迈进，摆脱以往的压迫和罪恶。本报告无意探讨联军当时进入伊拉克时所处的情况，也不打算探讨国际社会在这一军事行动之前展开的辩论。这些问题现已成为过去。推翻萨达姆·侯赛因统治的行动不得被看作是对伊拉克境内的人权的一项重大贡献。

3. 本报告真正关注的，是联军临时管理当局(联军管理当局)、联军、伊拉克领导层乃至整个国际社会所必须承担的保护责任。

4. 自 2003 年 4 月以来，已有大约 1,000 名联军成员丧生，另外约有 200 名联军的非军事人员丧生。联盟主管机构似乎没有清点伊拉克平民的死亡人数，因为据称此事由伊拉克主管机构负责。有些人称，迄今已有大约 1 万名平民死亡。至少有 1 万人被拘留。在战事结束之后，已经处于严重失修状态的基本服务设施陷于瘫痪，伊拉克人民生活艰难，而抢劫财物行为则使其生活更加艰难。现在此种状况有所好转。为了对伊拉克进行治理，设立了伊拉克管理委员会(伊管委会)，随后设立了伊拉克临时政府。在国际人权法规范基础上起草了新宪法和其他新的法律文书，并在设立伊拉克特别法庭方面开展了工作。设立该法庭是为了审判被控在以前犯有严重侵犯人权罪行的人。设立了伊拉克人权部，该部设法为增进新伊拉克的人权奠定基础。2004 年 5 月 19 日，向安全理事会通报了有关这些事项的情况。

5. 尽管作出了上述努力，现在众所周知的是，被拘留者遭受了虐待和侮辱，而且在收到联军管理当局以及大不列颠及北爱尔兰联合王国政府和美利坚合众国政府提供的资料(附件一至三)之前，不清楚自前政府垮台以来在伊拉克有何种保护安排。

资料来源和方法

6. 在编写本报告过程中,联合国人权事务代理高级专员曾致函联军管理当局行政长官,请其就伊拉克境内的人权状况提供资料和看法。代理高级专员还曾致函向伊拉克派遣部队或人员的大约 30 个国家的政府、伊拉克临时管理委员会主席、伊拉克外交部长以及伊拉克代理人权部长,请其向代理高级专员提供据认为人权委员会将关注的资料。

7. 还请求下列联合国机构和署及专门机构提供资料:西亚经济社会委员会(西亚经社会)、联合国粮食及农业组织(粮农组织)、联合国人类住区规划署(联合国人居署)、联合国伊拉克援助团(联伊援助团)、联合国开发计划署(开发署)、联合国难民事务高级专员办事处(难民署)、联合国儿童基金会(儿童基金)、联合国妇女发展基金(妇发基金)、国际劳工组织(劳工组织)、联合国教育、科学及文化组织(教科文组织)、世界卫生组织(卫生组织)、世界银行、世界粮食计划署(粮食署)。此外,代理高级专员还请求国际移民组织和伊斯兰会议组织等政府间组织、阿拉伯国家联盟等区域组织,以及一些在经济及社会理事会具有咨商地位的非政府组织提供资料。代理高级专员还酌情查阅了媒体提供的资料。联军管理当局、澳大利亚、捷克共和国、拉脱维亚、日本、新西兰、波兰、联合王国、美国等国政府,大赦国际、阿拉伯人权组织、人权观察社、国际青年和学生拥护联合国运动、国际妇女争取和平与自由联盟等非政府组织,以及一些联合国机构和署及专门机构,均提供了资料和答复。联军管理当局、美国政府以及联合王国政府提供的资料分别见附件一至三。

8. 5月24日至28日,人权事务高级专员办事处(人权高专办)的一个小组前往安曼收集资料。该小组会晤了 30 多位伊拉克人,这些人有些是在人权领域开展活动的非政府组织的代表,有些则是以个人身份作为侵犯人权行为的证人前来提供资料的。这些人为了从巴格达、巴士拉、埃尔比勒、卡尔巴拉、摩苏尔、拉马迪、苏莱曼尼亚等地来到安曼,其中一些人的路程长达 18 个小时。小组还向医救组织(国际紧急医疗救援组织)、牛津救济会以及 *Première Urgence* 等非政府人道主义组织的代表询问了情况,并向参加目前在安曼开展活动的联合国伊拉克国别小组的粮农组织、儿童基金和卫生组织的代表询问了情况。

9. 人权高专办小组向在执行任务过程中与其交谈的伊拉克人表示感谢,这些人总的来说为介绍情况做了充分准备,并且还提交了许多有关伊拉克境内的人权现

状的文件，包括个案研究(又见附件五)。同小组交谈者无一例外都对联合国援助重建伊拉克寄予厚望。本报告如实介绍人权高专办小组听取的证人情况叙述，但是，鉴于当时的情况，无法单独地核实这些说法。

10. 提交本报告的目的，是向人权委员会介绍一个受到国际关注的局势的人权方面的情况，以使委员会乃至整个国际社会能够评估局势，以期加强今后的保护工作。本报告设法尽可能提供实情资料，并提供适用的法律框架。另一个目的，是从人权角度介绍伊拉克境内的局势，并增进复杂、困难局势中的监督和责任。本报告首先简要叙述伊拉克当前的政治形势。

11. 2004 年 6 月 2 日星期三下午，以电子邮件方式分别向大不列颠及北爱尔兰联合王国和美利坚合众国常驻联合国日内瓦办事处代表团发送了报告草稿，请这两国代表团在 6 月 6 日星期四下午 6 时之前就报告所列情况提出具体更正或建议。这两国政府在规定时间之前提交了书面评论。其中许多评论在报告定稿时都得到了考虑，本报告在有些地方提及这两国政府发表的观点。

一、政治形势

12. 伊拉克境内重大战事的结束，造成了一个以美利坚合众国和大不列颠及北爱尔兰联合王国为首的联军充当占领国角色的局面。安全理事会承认了这一局面的存在：2003 年 5 月 22 日，安理会通过第 1483(2003)号决议，其中请秘书长任命一名特别代表，并授权秘书处与“两国作为统一指挥下的占领国(“管理当局”)，根据适用国际法，具有的特定权力、责任和义务”协调，在包括人权在内的多个领域向伊拉克人民提供援助。

13. 在联军接管伊拉克之后，成立了联军临时管理当局，由一名美国任命的行政长官领导。在本报告所涉的多数时间里，这项职能由保罗·布雷默大使行使。他是伊拉克事实上的政治主管。联军管理当局任命了伊拉克临时管理委员会，该委员会的职能是管理政府各部的日常事务，并设法确立今后的政治结构。2003 年 5 月底，秘书长向伊拉克派遣他的特别代表塞尔希奥·比埃拉·德梅洛。秘书长在 2003 年 7 月 17 日提交安全理事会的报告中指出，特别代表向行政长官布雷默大使提出了对拘留条件和被拘留者所受待遇的关切，布雷默大使当时明确表示，正在采取补救行

动处理这一问题(S/2003/715,第 47 段)。特别代表到任后仅七周,便在联合国驻巴格达总部遭恐怖袭击身亡。

14. 在随后的几个月中,伊拉克境内的总体安全状况明显恶化。由于 2003 年 8 月 19 日发生的事件以及安全状况的恶化,秘书长决定将驻巴格达的联合国所有国际工作人员暂时迁出,在伊拉克境外建立联伊援助团核心部分。但尽管如此,联合国一些机构和署仍在伊拉克各地开展多种基本援助活动。

15. 根据安全理事会第 1483(2003)号决议和 2003 年 10 月 16 日第 1511(2003)号决议,并应联军管理当局和伊管委会以及所涉程序之外的许多伊拉克人的请求,秘书长特别顾问拉赫达尔·卜拉希米负责帮助推动伊拉克人开展全民对话和达成共识的进程,目的是确保进行和平、成功的政治过渡。

16. 这一进程的最终结果,是于 2004 年 6 月 1 日宣布组成伊拉克临时政府并随后解散伊管委会。现在人们关注的,是 6 月 30 日主权的正式移交以及制宪大会选举筹备工作,该选举计划至迟在 2005 年 1 月举行。制宪大会将起草新宪法。为于 2004 年 7 月举行国民大会以选出一个临时全国委员会所需的筹备工作也已开始进行,该委员会将协助政府开展工作,并确保过渡进程尽可能广泛并尽可能具有包容性。安全理事会目前正在研究一项关于伊拉克的新的决议草案。

17. 据设想,应伊拉克临时政府的请求,联军仍将呆在伊拉克一段时间,目的是帮助临时政府维持治安并保障伊拉克的安全和防卫。在编写本报告之时,安全理事会正在就这些问题进行磋商。

18. 从人权角度来看,同人权高专办在安曼的小组交谈的证人提请小组注意两个问题。一些伊拉克人指出,应当积极鼓励妇女参加所有政府机关和机构,另外,关于此种机构的组成的决定不应当因性别、种族或宗教而有所区别。

二、军事/安全状况,包括恐怖行为

19. 在安曼进行的访谈过程中,人权高专办小组发现,几乎所有同小组交谈的人都认为,安全状况是关键问题。证人们说,造成安全状况不稳定的主要因素有:萨达姆·侯赛因在战争开始前不久将一些罪犯释放;战争期间和战争结束后作了武器分发,因而基本上每个家庭现在都拥有武器;联军在前政府倒台之后将伊拉克军队遣散,从而留下了一个真空;财物——主要是公共建筑物中的财物——遭到抢劫,

而据说当时联军对此袖手旁观。美国政府提交的评论指出，联军当时采取了行动，以便尽可能阻止抢劫行为，但鉴于当时的安全状况，他们无法阻止所有抢劫行为。

20. 现在谈一下目前的状况：截至 2004 年 5 月，已有大约 21 万名伊拉克保安部队士兵在接受培训或执行任务。美利坚合众国常驻联合国代表在 2004 年 5 月 19 日在安全理事会的发言中说，共有 30 多个国家向联军提供军事和非军事人员。多国部队现在分成三个区：中南区、东南区、伊拉克北部区(含巴格达)。各区的部队都参与维持治安行动、重建工作、培训伊拉克保安部队和民政事务培训。

21. 联军在设法维持治安的同时，不得不面对抗议、抵抗活动和恐怖行为。恐怖分子袭击外国使馆、宗教场所、非军事目标、联合国、红十字国际委员会和联军，造成大量无辜平民丧生。有证据表明，外国武装分子以及“基地”组织成员已经潜入伊拉克，这些人在几起事件中作出了令人憎恶、残暴的行为：他们将一名美国平民砍头，并将整个过程录像，然后将录像带提供给媒体。在此我想表示，我对这些邪恶行为深恶痛绝。

22. 特别是 2004 年 4 月以来，许多外国人、包括新闻记者，被劫为人质。同时，伊拉克犯罪团伙绑架包括妇女和儿童在内的伊拉克平民以索取赎金的案件，已达到了骇人听闻的程度。在有些案件中，被绑架者遭到杀害。绑架者似乎专门将学术界人士作为目标。在安曼参加交谈的一些证人报告说，他们的家庭成员或朋友遭到绑架。

23. 在安曼参加交谈的证人对打击恐怖袭击和预防犯罪方面的困难表示理解。但是，他们对联军在战争刚刚结束时在维持治安方面持袖手旁观的态度表示不满，这一做法导致了治安的彻底瘫痪。他们强调，根据国际人道主义法，联军有责任保障伊拉克公民的安全。

24. 安全状况的另一个方面，是联军雇用私人保安组织的问题。这些保安组织部署了大量人员，估计有 2 万人之多。这就引起了对这些人员适用何种法律制度以及他们承担何种保护义务的问题。美国主管机构提交的评论指出，美方合同人员归联军领导，并受美国联邦法院的刑事管辖。

25. 联军管理当局在提交的书面材料中说：“伊拉克境内目前的安全状况艰难又复杂。反多国部队分子试图挫败多国部队在伊拉克境内创造一个安全、稳定的环境的努力。这些人正在直接攻击多国部队。他们在对伊拉克保安部队人员进行恐吓

和直接攻击，以便干扰和阻止建立一支有效、能干的伊拉克保安部队的努力。这些人还袭击伊拉克的基础设施”（见附件一）。联合王国政府在提交的书面材料中说：

“联合王国受《日内瓦四公约》的约束。联合国在伊拉克行动表明了这一点”（见附件三）。美国政府在提交的书面材料（附件二）中说，美国部队抓获并关押了一些战俘，这些战俘受到的待遇符合《关于战俘待遇的日内瓦公约》（《日内瓦第三公约》）的规定。因安全原因而被拘留者过去受到并且现在仍然受到《关于战时保护平民的日内瓦公约》（《日内瓦第四公约》）规定的保护。

三、保护平民

26. 本报告不讨论在进行战争期间，联军或萨达姆·侯赛因的武装部队是否注意根据国际人道主义和人权法的规定，避免造成平民伤亡的问题。本报告关注的是在战争结束后一段时期内的状况以及联军开始接管的情况。

27. 除担心整个安全状况外，在安曼参加交谈的伊拉克人还就联军对平民缺乏保护的问题表示忧虑。他们说，大多数伊拉克人对萨达姆·侯赛因政权的倒台表示欢迎，尽管很多人不愿意自己的国家被占领，但他们都接受了这一事实，并希望未来更加美好。

28. 然而，可能为了应付困难的安全状况，联军对伊拉克居民越来越警惕。列举的例子有：一名伊拉克司机开车时睡着了，车子开得离一辆联军的吉普车太近，于是被开枪打死。在另一起事件中，一对父子正开车走在高速公路上，看见后面跟了一列联军的汽车，便将车驶向路边给联军让路。而联军在超车时开了枪，其子当场被击中，后死于医院。据另一名伊拉克人陈述，一次伊拉克警方正在逮捕一伙盗贼，恰逢联军经过，联军将他们全部误认为盗贼，于是开始射击，打死四人。

29. 据参加交谈者说，这类事件通常与袭击联军的事件同时发生，但被卷入战斗的往往是无辜的旁观者。例如，在列举的一起事件中，一名伊拉克人朝停在一群和平示威者附近的联军坦克扔了一枚榴弹。联军士兵开了火，向示威人群射击，打死一名女孩，而肇事者很明显是逃往一个不同的方向。许多参加交谈者认为联军纯粹是反应过火。

30. 其他证人提到每天都发生的交通事故，在这些事故中，联军的坦克和装甲车碰撞小汽车，开到路面上，随地任意拐弯并损坏伊拉克人的汽车，有时造成人员损伤。证人们说仅在少数情况中给予了赔偿。¹

31. 自 2004 年 4 月 4 日以来，在巴格达什叶派集居的地区，以及包括阿马拉、库特、卡尔巴拉、纳西里耶和巴士拉在内的南部城市，联军与属于追随什叶派领袖穆克塔达·萨德尔的救世主军(马赫迪军)武装人员发生了多次冲突。据说，有救世主军参与的冲突是由于 2004 年 3 月 28 日布雷默大使以煽动暴力为由下令关闭 al-Hawza al-Natiqa 报社引起的。冲突的另一个原因据说是，2004 年 4 月 3 日穆克塔达·萨德尔的最亲密同盟之一——Mustafa Ya'qubi——由于与 2003 年 4 月什叶派领袖 Abd Al-Mahid Al-Khoei 在纳杰夫遭暗杀有关的指控而被逮捕。

32. 与此同时，继 2004 年 3 月 31 日美军方面的四名承包商被叛乱分子杀害、焚烧和残害后，联军在拉马迪和费卢杰发起了军事行动。尽管签署了若干停火协定，但这种情况仍然在这些地区时有发生。

33. 在安曼与人权高专办小组交谈的人道主义非政府组织的几名代表提到了费卢杰、纳杰夫、卡尔巴拉和其它城市的情况。据他们报告，出于以下种种原因，进入医疗设施的途径受到严重限制：

- (a) 联军占领了医院，诸如费卢杰的唯一主要卫生设施和纳杰夫的拥有最强外科能力的医院等；
- (b) 军队就驻扎在医院院墙外。在费卢杰，通向医院的桥梁被用作检查站，而在卡尔巴拉，医院前停有一辆坦克；
- (c) 街道普遍不安全。由于街上发生战斗并有狙击兵，街道通常太危险，平民们不敢去医疗设施；
- (d) 不断有关于在医院逮捕人的报道。据称有武装团体进入医院搜查他们的对手，因此许多伊拉克人觉得医疗设施不安全。

34. 就平民而言，在联军接管后的一段时期里，当地局势无疑相当困难。然而，规定战斗人员的作战行为和指挥责任的国际人道主义法规范适用于平民居民：在任何时候都应以人为本的方式对待平民。严禁一切羞辱和侮辱性待遇以及对个人尊严进行任何形式的猥亵攻击或其它侮辱。对平民的保护包括所有平民在内，不加以任何

不利的，特别是基于种族、国籍、宗教或政治见解的区别。禁止威胁生命、健康，或身心安康的暴力行为。妇女和儿童应受到特别尊重。

35. 根据国际人道主义法，必须对民用物体和军事目标加以区别。不得将平民作为直接目标。因此，袭击只能瞄准某个特定的军事目标。如果为击中同一个军事目标可在若干军事方案中作选择，则必须选择可能对平民人口和民用物体威胁最小的方案。任何袭击都不许将平民居民或民用物体集中的地区中一系列明显独立和不同的军事目标视作一个单一的军事目标。鉴于袭击的军事利益及其对平民居民的影响，这种袭击必须是成比例的(1949 年日内瓦四公约关于保护国际性武装冲突受难者附加议定书(第一议定书)，第五十七条)。² 当战斗在市区进行时，这些预防措施尤其重要。

36. 应当指出，严禁以报复或违背战争法的行为来对付敌军的违背行为，尤其不得以平民、受保护的物体和环境为目标。禁止实施集体惩罚。

37. 冲突各方必须尽可能避免将军事目标定在人口密集地区的内部或附近，而且要采取其它必要的预防措施来保护在其控制下的平民居民，使他们不受军事行动造成的威胁。交战的部队不得将学校等民用物体，或医院这类受到特别保护的地区用于军事目的。严禁用平民来掩护某个军事场所。

38. 与保护责任有关的问题是：在涉及到以尊重平民和尊重被拘留者人权的方式来维持法律和秩序的问题时，对联军下达的命令是什么？联合王国在其提交的书面材料(附件三)中说，其自己的部队、伊拉克平民和执法人员、人道主义援助工作者和承包商经常遭到致命的袭击。然而，对英军下达的命令要求必须以人道的方式并根据国际人道主义法原则来对待所有被拘留者。美利坚合众国政府在其提交的材料(附件二)中说：“正在多层次上审查伊拉克境内的所有羁押行动，以便查明任何缺陷并执行程序从而加强我们的承诺，即以人道方式并遵照武装冲突法，包括日内瓦四公约来执行羁押行动。”

39. 与保护责任有关的另一个问题是，联军是否因针对平民居民犯下的暴行而受到了任何制裁。在这方面，现有资料表明，直到最近，几乎没有联军成员因他们所犯下的暴行而接受司法审判。美国当局在其评论意见中表示，在证实有暴行发生后已采取了行动。而且在整个冲突期间曾采取纪律行动，包括军事法庭审判。

四、逮捕、拘留和释放过程中的待遇

A. 导 言

40. 在安曼接受采访的伊拉克人都谈到自 2003 年 4 月以来持续发生的任意逮捕和拘留事件。据称，在许多情况下，联军在进入一所住宅之前，先砸破大门或窗户并向屋内投掷手榴弹。搜查随便进行，而且不出示任何搜查证或逮捕证。在搜捕过程中曾发生过士兵拿走钱财或珠宝并不予归还的情况。在其它情况下，联军士兵的行为被认为具有侮辱性，例如让身着睡衣的妇女到房外去，或对《古兰经》表示不敬，将之扔到地上或撕碎。当他们找不到要搜捕的人时，便将其妻子或儿子逮捕。据称在这类搜捕中还审问儿童。³

41. 国际社会知道，在联军取得胜利后的一段时期内，许多伊拉克人遭到拘留。但很长时间，没有任何人知道到底有多少人被关押，被关在哪里，关押条件如何，以及受到何种待遇。就国际人权和人道主义法的角度来看，严重缺乏保护并且从不追究责任。

42. 关于联军虐待伊拉克囚犯的第一批指控于 2003 年 7 月由包括大赦国际在内的一些国际人权机构提出。⁴ 这些指控包括殴打、电击、不许睡觉、戴头罩以及长时间罚站和罚跪。如上所述，秘书长特别代表在 2003 年 7 月 15 日的一次会议上曾向联军管理当局行政长官提出有关拘留条件和被拘留者待遇的问题。

43. 2004 年 4 月 28 日，美国电视新闻频道 CBS 公布了一些展示美国士兵侮辱伊拉克男性被拘留者场面的照片。这些展示阿布格莱布监狱中伊拉克囚犯遭受身心虐待的照片公布后，全世界感到震惊和愤怒。2004 年 4 月 30 日，《纽约人》杂志发表了一篇关于安东尼奥·塔古巴少将 50 页机密调查报告的文章，该报告认为，军队监狱系统的制度弊病造成了严重的问题。⁵ 美国当局指出，这份报告是在提请美国指挥官们注意关于虐待行为的指控之后编写的。

44. 2004 年 5 月 7 日，《华尔街日报》刊登了从红十字委员会于 2004 年 2 月交给联军的一份 24 页机密报告中摘录的大量内容。⁶ 该报告总结了整个 2003 年期间经常提请联军注意的各种人道主义问题。

45. 此前，联合王国和美国最高当局已对关于酷刑和虐待的指控发起调查，并表示将加强这些调查活动，还说这只是少数士兵的行为，他们将被清查并因此接受军事法庭的审判。

B. 塔古巴报告

46. 2004 年 1 月 19 日，第七联合特遣部队最高统帅里卡多·桑切斯中将要求美军中央指挥部任命一名调查官，调查自 2003 年 11 月 1 日起第 800 宪兵旅执行的羁押和拘留行动。

47. 安东尼奥·塔古巴少将接受任命。他的报告根据收到的指控和他自己的调查，查明了下列做法：

- 对囚犯拳打脚踢和掴耳光；蹂躏他们赤裸的脚；
- 给赤身裸体的男女囚犯录像和拍照；
- 强迫囚犯们摆出各种色情姿势并进行拍照；
- 在给男性囚犯拍照和录像时强迫他们进行手淫；
- 让赤身裸体的囚犯们叠成堆，然后在他们身上跳；
- 将一名赤身裸体、头顶沙袋的囚犯置于一个箱子上，并将电线连接在其手指、脚趾和阴茎上来模拟电击酷刑；
- 在一名据称强奸了一个同被关押的 15 岁犯人的囚犯腿上书写“我是一名强奸犯”，然后让他赤身裸体地拍照；
- 在一名赤裸的囚犯的脖子上系上遛狗用的皮带，并让一名女兵与他合影；
- 一名男宪兵看守与一名女囚犯发生性关系；⁷
- 打碎化学照明用具，将含磷液体泼洒在囚犯身上；
- 用装好弹药的 9 毫米口径手枪威胁囚犯；
- 向赤裸的囚犯身上泼凉水；
- 用扫帚把和椅子殴打囚犯；
- 以强奸威胁男性囚犯；
- 将一名囚犯往其牢房的墙上猛烈撞击，然后让一名宪兵看守缝合由此造成的伤口；

- 用化学照明用具、可能还用扫帚柄对一名囚犯进行鸡奸；
- 用不戴口套的军犬恐吓囚犯，并威胁让狗袭击他们，且至少有一次让狗严重咬伤一名囚犯；
- 强迫囚犯们脱去衣服，每次让他们赤身裸体数日；
- 强迫赤裸的男囚犯穿女人的内衣；
- 给死去的伊拉克囚犯拍照。

48. 报告在列举这些做法的同时指出，目前在美国内部开展的大范围调查正在审查这些做法。

C. 红十字委员会的报告

49. 红十字委员会的报告提请联军注意在 2003 年 3 月至 11 月探访囚犯过程中观察到并记录在案的严重违反国际人道主义法行为。红十字委员会报告中主要陈述了下列违反国际人道主义法行为：

- 粗暴对待遭俘虏和初次拘留的受保护者，有时造成死亡或重伤；
- 不将某人遭逮捕或监禁的情况通知其家人，从而给被剥夺自由者及其家人造成痛苦；
- 在为获取情报进行审问过程中，从肉体或心理上进行胁迫；
- 将囚犯长期单独监禁在不见日光的牢房中；
- 对被剥夺自由者不成比例地过度使用武力，致使他们在监禁期间死亡或受伤；
- 夺取和没收被剥夺自由者的私人财物；
- 让被剥夺自由者执行危险任务；
- 将被剥夺自由者关押在可能遭炮击的危险场所。

D. 法律框架

1. 国际人道主义法

50. 伊拉克境内的情况属于军事占领，可适用国际人道主义法和 1907 年《海牙章程》。此外日内瓦第三和第四公约也可适用于该冲突。美国于 1955 年 8 月 2

日批准日内瓦四公约。自此已释放了绝大多数在重大军事行动中俘获的战俘和平民囚犯。如果对某个囚犯的身份有怀疑，则须根据日内瓦第三公约第五条规定，⁸ 由一个主管法庭来审理其案件。那些在伊拉克犯下刑事罪的人，包括涉嫌参与抵抗联军活动的人，通常被作为“刑事犯”关押。对于被联军关押的人必须遵循一种程序，即一名军事律师必须在关押 21 天内确定合理根据。联军提出了另一程序，要求刑事犯尽早，无论如何自关押之日起不得晚于 90 天接受一名法官的审理。⁹ 必须将刑事犯与未被发现有任何违反联军颁布的刑事规定行为，但出于“必要的安全理由”¹⁰ 而被拘留的平民区别开来。必须根据被拘留者与对安全造成的具体威胁的联系逐个作出判决。根据日内瓦第四公约的评注，“不可能存在采取集体措施的问题：每种情况必须得到单独裁决”。¹¹ 作为确保遵守人道原则的程序保障措施，因安全原因而被拘留的人应有权上诉，并且对维持拘留的任何判决应每六个月复查一次。¹²

51. 为了获取供状或情报对任何囚犯施以酷刑和其它形式的身心胁迫都违反国际人道主义法，¹³ 是被禁止的。联军不得使用通过威逼获取的证据。¹⁴

52. 如果蓄意杀害受国际人道主义法保护的被拘留者，或对他们施加酷刑或不人道待遇，则构成严重违反日内瓦四公约的行为，¹⁵ 并由此也违反了国际人道主义法。因此，无论被拘留者的身份如何，在任何时候都禁止这样的行为。这种行为可以被一个主管法庭定为战争罪。¹⁶ 日内瓦四公约的一项基本规定是，在任何时候都必须以人道的方式对待受保护者。¹⁷ 关押当局必须制定各种措施，以便预先制止使用酷刑以及任何不人道和有辱人格的待遇。所有缔约国均有义务行使管辖权，对犯罪者进行调查、起诉和惩罚。

2. 国际人权法

53. 关于武装冲突情况的国际人道主义法中规定禁止酷刑，这在整套国际人权条约法中得到加强。这些法律不论在和平时期还是在武装冲突时期均禁止酷刑。

54. 任何酷刑做法或其它残忍、不人道或有辱人格的待遇或处罚都违反国际人权标准——美国 and 联合王国都是这些标准的缔约方——其中包括《公民权利和政治权利国际公约》¹⁸，和《禁止酷刑和其他残忍、不人道或有辱人格的待遇或处罚公约》。¹⁹ 无论是在冲突时期还是和平时期都绝对禁止酷刑。《公约》中酷刑的定义为，为了取得情报或供状，为了处罚、恐吓或威胁，由某公职人员授权采取的，造

成严重痛苦或折磨的任何蓄意行为。《公民权利和政治权利国际公约》第七条禁止酷刑和残忍、不人道或侮辱性的待遇或刑罚，除此之外，第十条明确规定所有被剥夺自由的人应给予人道及尊重其固有的人格尊严的待遇。

E. 证人的证词 ²⁰

55. 人权高专办小组在安曼见了 29 岁的 Saddam Salah Abood Al-Rawi, 他是萨达姆·侯赛因政权下的前政治犯，后于 2003 年 12 月 1 日至 2004 年 3 月 28 日被联军关押在阿布格莱布监狱。据他报告，逮捕他时，未说明任何针对他的指控。他的释放令转载于附件四，其中称“无论他们犯有何种罪行均已经得到复查，而且所规定的任何刑期都已服完。这个人，若不犯有另一罪行，不再需要受到关押……目前没有理由继续关押这个人，而且不必由正规法庭进一步调查此案。”他甚至在获释时仍不知道是否曾经对他提出过任何指控。

56. Al-Rawi 先生描述了关押他的监狱区(一区 A 分区)的楼层平面图和牢房的排列情况。许多牢房，包括他的(第 42 号)牢房在内，是单独监禁牢房，但其中 10 个，据他说是留给受酷刑的囚犯的。Al-Rawi 先生被捕后几天，被从第 42 号牢房挪入一间据称的酷刑牢房。在随后的 18 天里，据称他受到了酷刑，有时持续时间长达 23 个小时。每次施加酷刑后，都大声播放音乐不让他睡觉。

57. Al-Rawi 先生详细描述了据他称所遭受的酷刑方法。其中包括从他口中拔牙(他缺了两颗牙齿)、拳打脚踢、看守们站在他的双手上并对他进行精神虐待，如告诉他他将首先被看守们强奸，然后如果他不“供认”，将把他送往古巴的关塔那摩湾监狱。在据称的 18 天酷刑之后，Al-Rawi 先生被搬回第 42 号牢房，他在那里被单独监禁了近三个月，直到被释放。在 2004 年 1 月红十字会对阿布格莱布监狱进行探访时，他被警告说，如果他向红十字会说任何监狱看守不喜欢的情况，他将活不到后悔的那天。他说在红十字会的探访人访问他时，他不敢说任何有关他所遭受的待遇情况，而对多数问题只是回答“我不知道”。他说探访后，阿布格莱布监狱的酷刑行为减少了。

58. Al-Rawi 先生说，他作为萨达姆·侯赛因政权下的政治犯所遭受的虐待是恶劣的，但他作为联军的囚犯在阿布格莱布监狱期间不只遭受肉体上的酷刑，而且受到侮辱和精神虐待。

59. 美国当局在其评论意见中说，他们特别关注这些他们认为极其严重并与其它报告不符的指控。他们将对这些指控进行调查并提出报告。然而，提请他们注意这些指控时，离本报告完成仅剩 24 小时。

60. 人权高专办小组还听取了有关联军在释放囚犯时的侮辱性行为的指控。列举的例子有，囚犯在半夜被释放，他们戴着手铐，衬衫上画着米老鼠，而且他们在被逮捕时拥有的个人物品，包括身份证件，未得到归还。

F. 提供保护的责任

61. 关于囚犯待遇有许多未答复的问题，这些问题与提供保护的责任直接相关，包括：为保证不出现这类暴行有哪些监督系统？看守们是自行对囚犯作出邪恶行为还是这些行为属于有系统的收集情报程序的一部分？显然诸多监督和保护问题仍未得到回答。

62. 红十字委员会向关押当局提交机密报告并就可能令人担忧的问题向他们提出抗议。由于红十字委员会既定和公认的保密政策，所以国际社会不知道有多少人被关押，出于什么理由被关押，在什么地方被关押以及关押条件如何。在一个必须就大量人的拘禁和待遇问题向国际社会作出解释的世界中，显然没有人履行关心的义务和提供保护的责任。

63. 当 2004 年 4 月底 5 月初，媒体揭露出一些囚犯曾遭受有辱人格和不人道的待遇和酷刑时，国际社会发现联军关押着约 10,000 名或更多的囚犯。特别是阿布格莱布监狱中囚犯所遭受的虐待和酷刑受到了国际上的强烈抗议。

64. 2004 年 4 月 30 日，秘书长发表了如下声明：

“秘书长对展示阿布格莱布监狱看守虐待和侮辱伊拉克囚犯场面的照片深感不安。他希望这是起孤立的事件，并欢迎美军方面所表明的似乎是要将责任者绳之以法、并防止今后再发生这类虐待行为的明确决心。在任何情况下，在任何地方，秘书长都强烈反对虐待囚犯。他重申根据国际人权法的规定，所有囚犯均应得到充分保护。”²¹

65. 在囚犯问题上不管监督和保护工作出现了什么样的疏漏，必须承认，虐待囚犯的丑闻一经公开，联军的最高领导人就谴责了这些虐待行为并命令对责任者进行调查和提出起诉。例如，2004 年 5 月 10 日，布什总统说，将“全面清查残忍可

耻地虐待伊拉克囚犯的问题”。他认为，军事人员和民事承包商在伊拉克的据称的行为是“对伊拉克人民的侮辱，并违反了最基本的道德和情理标准”。布什总统指出，某些军人已经受到控诉，并说，“将通过一个有秩序和透明的程序，使涉嫌者对他们的行为负责”。他宣布，美国将尊重法治，并将对伊拉克监狱中的行动进行审查，“以确保不再发生这类罪行”。²²

66. 据报告，2004年5月14日，美军在伊拉克的最高统帅，里卡多·桑切斯中将禁止了几乎所有强迫审问的做法，如强迫囚犯长时间蹲伏或不许他们睡觉等。据那天向记者作简报的一名中央指挥部的高级军官说，最高统帅仍将考虑关于将囚犯单独监禁30天以上的要求，据说自2003年10月以来他已经批准25项这类要求。²³

67. 布莱尔首相所作的评论与布什总统的类似：“我要说明，虐待囚犯、对囚犯施加酷刑、对受联军拘禁的人实施有辱人格的待遇，这些行为是完全彻底令人不能接受的，是不可宽恕的，而且不可能为它们作任何辩解。我们必须做能够做、需要做的一切事，以便根除这些做法并将对此负责者绳之以法。”

68. 为公平起见，需要指出，囚犯待遇问题也是错误宣传运动的对象。一个值得注意的有关情况是，有人公然使用伪造的英军士兵虐待伊拉克囚犯的照片。2004年5月14日星期五，《每日镜报》承认曾刊登过照片，而这些照片“有足够证据表明它们是伪造的，《每日镜报》遭到了蓄意和恶意的愚弄”。

69. 作为一个涉及司法、责任和尊重国际人权和人道主义法问题，必须对伊拉克某些关押设施中无疑曾发生的暴行作出全面解释。主要联军国家的领导人们也不妨考虑指定一名高级国际监察员，以便在联军留驻伊拉克期间监督这方面情况。应当提及，阿布格莱布监狱内部最近成立了一个办事处，由伊拉克人权部的人员充当工作人员。

五、流离失所

70. 冲突前，在伊拉克境外有近400,000难民和寻求庇护者，还有约450,000情况类似于难民的“受人关注的”伊拉克人。据进一步估计，萨达姆·侯赛因政府造成了下述人在国内流离失所：伊拉克北部地区的600,000到700,000库尔德人；来自基尔库克地区超过100,000的库尔德人、土库曼人和亚述人；伊拉克中部和南部地区数万名阿拉伯什叶派教徒；以及离开了他们沿底格里斯河和幼发拉底河下游

居住地的 100,000 到 200,000 沼泽阿拉伯人。联军管理当局提交的材料(附件一)提供了关于流离失所问题的详细情况。

71. 萨达姆·侯赛因倒台后，难民和国内流离失所者已开始返回。尽管由前政府造成的绝大多数流离失所者已经融入接纳他们的社区或不再希望返回，但预期仍有大量的人可能愿意返回。目前不能提供关于返回的可靠统计数据。然而，到 2004 年 4 月，估计已有 80,000 到 120,000 人尤其是从伊朗伊斯兰共和国、黎巴嫩和沙特阿拉伯返回。多数返回是无需帮助和自发的。据估计许多返回者实际上却返回到了流离失所的状况。

72. 在北部，库尔德人也已开始返回家园。这些返回行动的开始造成了新的一波流离失所。随着数千名库尔德人开始要求归还其在伊拉克北部的家园，已被前政权安置在那里的约 100,000 阿拉伯人于战后数月中逃离。

73. 费卢杰发生的冲突在该地区造成了另外的国内流离失所现象，但最近有报告指出，这些流离失所者已开始返回。在巴格达，一些人，包括伊拉克境内的外国难民，在前政府强制执行的房租管制取消后，已被逐出他们的住所。因此，许多人躲避到无人占用的公共建筑中。

74. 该国许多地区普遍存在的不安全状况加剧了多数流离失所者本来已经脆弱的人权情况。继联合国驻巴格达总部于 2003 年 8 月 19 日遭炸弹袭击后，大多数人道主义机构已撤离，现在只能对国内流离失所者提供有限的援助，而且对流离失所者的人权情况没有持续的监督和报告。

75. 从西方国家返回的伊拉克人很可能遭受上述与绑架有关的威胁，因为他们被视为经济条件较好。而且，由于他们不曾遭受那些留在国内的伊拉克人所经历的折磨，所以还受到怀疑。此外，那些返回到其族裔或宗教群体不占多数的地区的人可能发现自己处于某种特别脆弱的状况，面临新的迫害形式和手段。要不然，他们可能发现自己返回后又开始流离失所，这不只会给返回的伊拉克人及其家人造成不应有的痛苦，而且还将使伊拉克境内的流离失所状况进一步复杂。鉴于上述情况，以及伊拉克有限的吸收能力，难民署于 2004 年 3 月要求各国继续向所有寻求庇护的伊拉克人，包括庇护申请已遭拒绝的那些伊拉克人，准予某种形式的临时保护，并颁布一道禁令，禁止强迫返回伊拉克各地，直到作出进一步通知。

76. 要在伊拉克全境提供安全保障和恢复法治，并建立一个有效的系统来解决财产纠纷，这是关键的问题。国际上一定要支持国家当局处理这些问题。伊拉克加入的国际人权条约为解决返回的难民和国内流离失所者的保护需要提供了基本的法律框架。此外，《关于国内流离失所的指导原则》(E/CN.4/1998/53/Add.2)为解决国内流离失所者的保护需要提供了具体的框架。原则上应该承认，流离失所者有权返回家园，有权就地融合或在伊拉克的现有或新地区重新安置。国家和区域有关当局有责任创造条件，并提供手段，让流离失所者自愿、安全和有尊严地实现他们的愿望。

六、妇女状况

A. 导 言

77. 伊拉克是保护妇女和女童权利方面的国际人权文书，包括《消除对妇女一切形式歧视公约》²⁴的缔约国。消除对妇女歧视委员会审议了伊拉克于2000年6月14日提交的第二次和第三次合并定期报告，并在结论性意见(A/55/38，第166-210段)中指出，“缔约国没有废除歧视妇女的法律规定”，呼吁重新审查这些歧视性法律并采取措施，包括临时特别措施，以求为妇女创造法律上和事实上的无歧视环境。

78. 暴力侵害妇女问题特别报告员在2003年提交委员会的报告(E/CN.4/2003/75/Add.1)中，重复了消除对妇女歧视委员会所关注的问题，即没有废除歧视妇女的法律规定，并且没有解决妨碍妇女享受其权利的歧视观点和态度。

79. 自联军接管以后，已采取步骤为改善伊拉克妇女地位奠定基础。根据联军管理当局提交的材料(附件一)，新成立的伊拉克妇女团体已发挥积极作用，主张政府机构中的公平代表性并呼吁在伊拉克民主发展的各个领域注意妇女的权利。在过去一年中，伊拉克妇女在巴格达和各地区组织了会议，讨论妇女的政治参与和人权问题。全国已建立了十八个妇女中心。

B. 安全状况恶化对妇女的影响

80. 人权高专办小组在安曼与接受访谈者讨论了妇女的状况。男性和女性都遭受了冲突给平民带来的影响：由于战斗造成的伤亡，由于面临冲突而生活水准下降，

基础设施被损坏以及公共安全崩溃。然而，妇女在过去一年中觉得特别易受伤害，因为安全状况不断恶化，包括发生绑架平民的事件，致使她们的行动自由，以及获得教育、卫生服务和就业的机会都受到更多限制。

C. 参与政治和公共生活

81. 在安曼参加交谈的伊拉克妇女抱怨，在过去一年中，妇女缺乏对政治和公共生活的适当参与。在占领后，联军管理当局任命了三名妇女参加由 25 名成员组成的临时管理委员会(三人中没有一个是主席团成员，因此不能担任主席)。在成立的 25 个部中，管理委员会挑选了一名妇女任部长。答应给妇女的五个副部长职位没有落实。在为准备挑选制宪会议代表而成立的委员会中没有妇女，在起草《过渡时期行政管理基本法》的委员会中也没有妇女。联军管理当局没有任命一名妇女担任 18 个省长职位，而且省政务会中也几乎没有妇女。然而，最近，伊拉克临时政府中有六个部长职位由妇女承担。

82. 一些宗教领导人和团体反对妇女参与，妇女及其组织受到了更多的骚扰和恐吓。联军管理当局努力在纳杰夫任命一名女法官，但遭到来自宗教领导人以及当地政务会、律师和其他地方团体的反对。人权高专办小组获悉，巴士拉妇女抱怨遭到成群男性的骚扰，要她们戴头巾或不许使用化妆品，并受到压力，有时是来自宗教团体的民兵的压力，要她们遵守严格的伊斯兰教规范。为妇女争取权利的记者、活动分子和组织已经成为目标。他们受到的威胁有骚扰，也有杰出妇女以及为妇女争取权利和反对对伊斯兰法的保守解释的组织所收到的死亡威胁。巴格达 Al Mustansiriya 大学也报告了类似的事件，在该大学，男女显然要走不同的楼梯，而且女性还在穿着方面受到骚扰。

83. 2003 年 12 月 29 日，在几乎没有进行讨论并根本没有征求公众意见的情况下，通过了关于用伊斯兰教教法取代 1959 年《个人身份法》的管理委员会第 137 号决定，这引起了公众的极大关注。该决定也引起了彼此对立的伊斯兰教团体的不同解释。联盟临时管理当局行政长官不支持此决定，管理委员会成员宣布“搁置”该决定，并且除非通过另一法律，否则 1959 年法不得被废除。伊拉克的妇女组织已广泛动员起来，要阻止通过这项决定。

84. 联军管理当局曾赞助旨在援助妇女建立小型企业、组织关于妇女问题的讨论以及支持为暴力受害者提供庇护的方案。据报告，已为妇女方案拨款 2700 万美元。

D. 据称联军人员犯下的虐待行为

85. 关于联军对当地保护妇女隐私的习俗和传统缺乏尊重的问题曾屡有抱怨。此外，在最近关于联军成员对囚犯施加酷刑和进行虐待的指控中有关于妇女受到有辱人格待遇以及强奸、性虐待和暴力的指控。在一个遭受性虐待(包括因裸体而受到侮辱等)和性暴力可能使妇女被其家庭或社区抛弃，且在更严重的情况中，可能导致所谓名誉罪的社会中，对妇女的这种侮辱待遇和虐待可能产生更多的严重后果。在安曼，一些妇女组织的代表告诉小组，曾有关于妇女因为为或曾为联军做翻译或者从事其它工作而被其家人或朋友杀害或者遭到死亡威胁的报告。目前，显然只有位于 Sulaymaniya 的唯一一个妇女庇护所在运作。²⁵

E. 性别歧视和诉诸司法

86. 管理委员会于 2004 年 3 月 8 日通过的《过渡时期行政管理基本法》禁止性别歧视，但并未提供适当的保护，以防止在婚姻(在结婚时、婚姻中或离婚时权利不平等)、继承和能否将公民身份传给子女方面的歧视现象。

87. 据悉，根据伊拉克法律，强奸、性暴力和诱拐行为是重罪，可被判处长期徒刑。然而，诱拐和性暴力受害者在诉诸司法方面仍面临重要的法律和社会障碍，其中包括《刑法》中的一些条款，允许一名犯有诱拐罪的男子通过与受害者结婚来逃避惩罚。《刑法》还规定，如果犯有强奸、鸡奸、性暴力或性暴力未遂行为的人与其受害者结婚，则可获得从轻处罚。还有其它条款规定，对所谓的名誉杀人行为予以相当大程度的从轻处罚。根据 2003 年 7 月获得的资料，虽然 2003 年 6 月 9 日的联军管理当局令中止了某些《刑法》条款，但上述条款却未受到任何影响。

七、儿童状况

88. 伊拉克于 1994 年 7 月 15 日加入《儿童权利公约》，但对第 14 条第 1 款(思想、信仰和宗教自由)持保留意见。儿童权利委员会审议了伊拉克于 1998 年 9 月提交的初次报告(CRC/C/41/Add.3) (其第二次报告自 2001 年 7 月 4 日以来一直迟迟未交)。其关注的主要问题和建议(CRC/C/15/Add.94)如下：

- (a) 儿童健康情况不断恶化；没有关于青少年卫生情况的资料，包括少女怀孕、人工流产、自杀、暴力和吸毒问题，以及为残疾人提供设施和服务的情况；
- (b) 对儿童的经济剥削在前几年中急剧增加。越来越多的儿童、特别是女童辍学，有时是年幼辍学，去做工以维持自己及其家庭的生活。

89. 据儿童基金会和国际非政府组织报告，自 2003 年 8 月以来，由于当地的安全状况不佳，不可能持续对该国的儿童权利进行适当监督。

90. 儿童营养不良现象在 1990 年代初急剧增加，这主要是由于对该国强制实行经济制裁造成的。据儿童基金会报告，这种现象于 1996 年达到顶峰，几乎三分之一的儿童(32%)患有慢性营养不良，而多达 23.4%的儿童体重不足。在随后几年中，儿童基金会和其他国际机构相继努力，终于使患有慢性营养不良和体重不足的儿童的数量减少了(2002 年中，前者减少了 30%，后者减少了 50%)。然而，这些数字仍高于 1991 年。

91. 儿童基金会报告说，由于影响该国许多地区的暴力事件，入学率降低了，有时不足 50%。获得优质卫生保健与服务也日益成为许多儿童及其父母的一个棘手问题。

92. 人权高专办小组在安曼了解到，有伊拉克犯罪团伙诱拐儿童进行敲诈勒索的情况。由于安全状况普遍不稳定，儿童的生命、存活与发展权受到严重威胁。不满 18 岁者直接和间接地受到武装冲突各方暴力行为的影响。他们还特别容易被卷入冲突：曾有来自费卢杰的报道，令人担忧地谈到儿童被武装起来并参与冲突的情况。

93. 2004 年 5 月 11 日，儿童基金会发表声明指出，“令它深感不安的是，有新闻报道令人担心地指控，在伊拉克关押中心和监狱遭受虐待的人中可能有儿童。虽然新闻报道不曾获得独立的核证，但它们仍然令人担忧”。必须严格确保被关押

的青少年的权利，即只作为最后手段才监禁他们，期限应为最短的适当时间，并必须与成人囚犯分开监禁。

94. 儿童中的弱势群体，包括：贫困儿童、收容所的儿童、街头儿童、童工、少数群体的儿童和残疾儿童，尤其可能受到忽视、虐待和剥削。由于公共服务效率差和安全状况差，越来越难获得优质的教育和卫生保健服务。由于父母不能再养活其子女，街头儿童的数量明显急剧增加了。

95. 必须确保女童的权利，包括确保她们获得卫生和教育服务，以及受到保护不遭到任何形式的歧视和暴力，包括性虐待、剥削和名誉杀人等。

96. 在安曼，引起人权高专办注意的另一个问题是，在根除复兴党过程中，继解雇了教育部和劳动社会事务部的职员以及教师后，这两个部和教育机构在一段时期中不能够充分满足儿童的需要。少年司法的权限从劳动社会事务部转到司法部。虽然这些改组程序本身可能不错，但却助长了不安全状况。必须确立一个政府体制框架，以保障儿童的权利。

八、公民权利和政治权利

97. 人权高专办小组收到了宗教和信仰自由方面的一些报告。在言论自由和司法方面也公布了一些报告。本节着重叙述这三个问题。此外，本节还述及联军人员犯下违反适用的国际人权和人道主义法规范的行为问题和追究此种行为的责任问题。

A. 见解和言论自由

98. 许多在安曼与人权高专办小组交谈的人都强调，自萨达姆 侯赛因垮台以来伊拉克在自由方面取得的重大进展之一，是见解和言论自由日益得到加强。伊拉克全国各地出现了许多报纸和刊物，伊拉克人现在能够自由地发表看法，参加针对联军的示威游行和抗议，并参与在以往会因此而惨遭杀害的政治活动。有必要认识到伊拉克境内目前在人权方面取得的这些进步。

99. 但是，应当指出，先前有关见解和言论自由权的行使的法律制度基本上仍在实行，尽管《过渡时期行政管理基本法》第 13 条规定，“言论自由权受到保护”。

100. 具体来说，惩治侮辱和诽谤行为的刑法条款(《刑法》第 202、227、229 条、第 372 条第(1)款和第(5)款；第 433、434 和 435 条)，惩治发表假消息行为的刑法条款(第 179、180、210 和 211 条)，以及有关治安和国家安全的刑法条款(第 201、208、214 和 215 条)仍在得到施行。应当立即审查这些条款，并按照国际人权规范 and 标准对其进行修改。

101. 同样，《出版物法》——这部法律除其他外规定，凡“政治期刊”的所有人均需持有新闻记者联合会颁发的、经政府核准的“资格证书”，而且所有出版物均须持有新闻部颁发的许可证——应当立即废除或得到全面审查。

102. 1980 年《机密资料和电影审查法》也似乎仍在施行。这部法律指定新闻部为审查所有在伊拉克境内制作和伊拉克进口的影片的主管机构。

103. 《刑法》许多条款——第 178 条第 2 款、第 182、228、327 条和第 437 条——过分限制新闻自由，包括获取政府机构掌握的信息的权利。

104. 在伊拉克媒体最近得到蓬勃发展的形势下，据报道出现了一些媒体因煽动暴力而被勒令暂停开展活动或受到限制，以及一家出版物因煽动凶杀行为而被查封的事件。

105. 与此同时，伊拉克记者和外国记者的安全状况非常艰难。据报道，自战争结束以来发生了多起杀人和绑架案件。应当指出，许多为西方媒体工作的伊拉克新闻记者正在成为叛乱团体杀害和绑架的对象。还据报道，新闻记者遭受袭击和威胁的案件得不到恰当调查，因而人们担心，这将导致新闻界特别是伊拉克和其他阿拉伯新闻记者为保护人身安全而进行自我审查。

B. 宗教或信仰自由

106. 宗教或信仰自由权主要由《公民权利和政治权利国际公约》第 18 条、《世界人权宣言》第 18 条、以及 1981 年《消除基于宗教或信仰原因的一切形式的不容忍和歧视宣言》加以规定。伊拉克和多数参加联军的国家都已经批准《公民权利和政治权利国际公约》。

107. 93%至 97%的伊拉克人口为穆斯林。余下的人口分别为基督教徒(亚述人、迦勒底人、罗马天主教徒、亚美尼亚人)、亚齐底教徒、曼达派教徒、巴哈派教徒、犹太教徒。

108. 在安曼的一些证人告诉人权高专办小组，联军有时对伊拉克宗教和文化传统持粗暴无礼的态度。如前所述，据报发生了不尊重妇女和《古兰经》的事件。另外，犯人据称被迫吃猪肉和饮酒。伊斯兰会议组织秘书长阿卜杜勒瓦希德·贝勒凯齐兹博士在 2004 年 5 月 16 日的一份新闻稿中，对纳杰夫、卡巴拉和其他伊拉克城市存在的可能危及宗教场所安全的紧急状况表示关注。他强调，有必要尊重陵墓、清真寺和墓地等圣地的不可侵犯性。美国主管机构在辩论中说，一些宗教圣地正在遭到对联军发动袭击的武装分子的滥用。

109. 自从联军进行干预以来，穆斯林什叶派重要领导人公开呼吁建立一个按照伊斯兰教教法(沙里亚)管理的伊斯兰国家。在这方面，特别是在穆斯林什叶派这一多数派别聚居的伊拉克南部，已经有人设法适用沙里亚。

C. 司 法

110. 在 30 多年时间里，司法部门的各个方面——司法、执法、改造、司法培训和法律教育等——都出现了严重退化。在整个司法系统内，腐败、酷刑和其他违法现象相当普遍。

111. 国家法律框架已经陈旧过时，难以发挥恰当作用。可适用的法律和法律程序，除了自 1960 年代以来未能得到更新以外，还被革命指挥委员会发布的武断的命令所取代，其中一些命令至今仍然是可适用法律的一部分。

112. 伊拉克法律——其中多数目前仍在适用——不符合刑事诉讼程序方面的国际人权标准。《刑事诉讼法》在逮捕权、拘留权和对拘留的司法审查等方面没有作足够明确的规定。没有规定对拘留的合法性提出质疑的权利。《刑事诉讼法》对于聘请律师的权利和受到保护以防自证其罪的权利等其他正当程序权利，也没有作明确规定。公诉人在刑事侦查、起诉和上诉过程中实际上被排挤到一边。自战争结束以来，联军管理当局对《刑事诉讼法》做了某些修正，包括废除了一项允许采用通过酷刑手段获取的证据的条款；规定了在初次受审之时聘请律师的权利；受到保护以防自证其罪的权利；被告知悉其权利的权利，以及暂停实行死刑等。联军管理当局恢复了《政府公报》制度，《政府公报》是刊登 1920 年代以来所有伊拉克法律的官方出版物。

113. 关于联军的拘留权，联军管理当局第 3 号备忘录称，被刑事拘留者须至迟在被送至联军关押中心之后 90 天被带见审判员，并且应当能够在被送至联军关押中心之后的 72 小时之内聘请律师。但是，有报告说，在多数情况下，在联军关押中心被拘留的人在被捕后长期无法与律师取得联系，因为被拘留者通常是在实际被捕数周有时甚至是数月后才受到起诉的。在安曼参加交谈的律师说，不论是在阿布格莱布监狱还是在摩苏尔，他们曾多次设法与被拘留者接触，但均未果。在安曼参加交谈的人还报告说，联军多数时候不允许探望被拘留者，甚至家庭成员前往探望也不允许。还据报告，美国军事警察当局不允许巴格达警察局的被拘留者与律师接触。这些行为违反了 1988 年《联合国保护所有遭受任何形式拘留或监禁的人的原则》所载原则 17 和 18，也违反了《联合国关于律师作用的基本原则》所载原则 6，这些原则应当适用于包括平民刑事嫌疑人在内的所有平民。

114. 在这方面，据报告，在由伊拉克警方管理的拘留设施，根据《刑法》的规定，被拘留者在被捕后 24 小时内可以与律师接触并被带见法官。

115. 关于联军与伊拉克司法机关在被拘留平民的“管理”问题上的关系，一些有资料证明的报告说，联军有时无视伊拉克地方预审法官签发的将被拘留者保释或将其送交法庭审理的命令，从而对法治构成损害。

116. 其他一些报告说，联军将所称的“叛乱分子”的家属拘留，目的是迫使这些人与联军合作并对“叛乱分子”施加压力。另外，联军据称毁坏“叛乱分子”家属的住宅和某一区域的农作物及房屋，目的是报复“叛乱分子”在该区域对联军发起的袭击。在这方面，应当强调，根据国际人道主义法，占领军不得对平民采取报复和集体惩罚行动，也不得劫持人质，这些行为被视为战争罪。

D. 追究联军人员犯下的侵犯人权行为的责任

117. 联军管理当局《第 17 号令》规定，联军受派遣国管辖，不受伊拉克管辖。第 3 号备忘录第 2 节第(3)段和第 6 节第(2)段分别指出：联军人员“不受当地刑事、民事和行政管辖，也不受除相关人员以母国名义实施的逮捕或拘留以外的任何形式的逮捕或拘留”；“任何伊拉克法院，包括伊拉克中央刑事法院……都不得在任何案件(不论民事和刑事案件)中对联军成员国的任何人员拥有管辖权”；此外，“凡联军关押的任何被刑事拘留者随后被移交伊拉克法院的，[有关被拘留者待遇的]程

序未能得到遵守的情况不得构成采取任何法律补救办法的理由……。”实际上，就伊拉克管辖权而言，联军人员对于在伊拉克犯下的任何不法行为，包括侵犯人权行为都享有豁免。

九、过渡时期的司法

118. 过去 30 年中，伊拉克社会饱受独裁统治、政治暴力和严重侵犯人权行为之苦，而且该国的司法制度退化。本报告认识到，过去 12 个月中，联军管理当局在过渡期司法领域采取了一些实质性举措。伊拉克临时政府在制定过渡期司法政策过程中，不妨重新考虑到其中的一些举措，以确保这些举措与伊拉克根据国际法承担的义务相符。

A. 体制举措

1. 政 策

119. 制定联军管理当局有关如何处理前政权所犯罪行的政策的任务，由 2003 年 6 月设立的人权和过渡期司法事务处承担。该处具体负责通过建立处理审判、真相及和解等问题的机制，处理伊拉克境内的人权问题和过渡期司法政策程序。该处就设立伊拉克特别法庭问题提出了咨询意见，建立了一个收存有关以往暴行的文件资料的人权档案库，制定了一项乱葬坑和失踪人员政策，为伊拉克境内的非政府组织的工作和发展提供了便利，并且制订了一项旨在提高人们的国际人权意识的全国公民教育方案。

2. 赔 偿

120. 2004 年 5 月，宣布设立前政权受害者赔偿问题特别工作队，还宣布联军管理当局将捐助 2500 万美元作为首笔赔偿款。该特别工作队由伊拉克律师协会现任主席负责，其任务是确定应予赔偿的权利侵害类型，赔偿的资格要求，赔偿的水平以及提供此种赔偿的机制。工作队的报告将在 2004 年 8 月 1 日之前提交伊拉克临时政府。伊拉克临时政府制订赔偿方案的工作将至关重要。

3. 审 查

121. 联军管理当局暂停实施 1979 年《伊拉克司法机关组织法》，并设立了一个称为“司法审查委员会”的实体。司法审查委员会设在司法部内，负责对法官和检察官进行审查，看其是否与复兴党有任何联系，是否从事过犯罪活动，以及是否参与过侵犯人权行为。该委员会的目的是开展审评工作，将被认定不称职、行为腐败的司法人员撤职，从而使公众对法律制度有一定程度的信任。联军管理当局报告说，已有大约 180 名法官被撤职并被替换。联军管理当局还设立了法官委员会，该委员会有权对法官和检察官作出任命和处分，并有权撤消他们职务。

122. 设立了伊拉克消除复兴党影响委员会，目的是对伊拉克政府所有雇员进行审查，看其是否参加了复兴党。这样做的意图，是消除复兴党网络和人员继续留在伊拉克政府中和复兴党官员对公众的恐吓造成的威胁。鉴于不得不在前政权之下生存这一政治现实，多数专业人员除了加入复兴党以外几乎别无其他选择。推行将法律和执法人员全部清除的政策，有可能破坏司法部门的机构经验传承。联军管理当局似乎已经重新考虑这一做法。

B. 法 院

1. 中央刑事法院

123. 司法审查委员会的首要任务之一，是对将要在新设立的中央刑事法院任职的司法人员进行审查。中央刑事法院设立于 2003 年 6 月，自 2003 年 8 月起行使职能。该法院作为“公正审理和秉公司法的范例”在巴格达得到设立，目的是审理自 2003 年 3 月 19 日以来所犯的某些严重罪行。凡“参与复兴党活动”的人均不得被任命在该法院任职。虽然第一批案件于 2003 年 8 月开始得到审理，但由于联合国当时没有在巴格达派驻机构，高专办无法关注法院的审理情况。联军管理当局既没有公布被审理的案件及其审理情况，也没有公布报告介绍设立该法院的行動的成功之处。

2. 伊拉克特别法庭

124. 2003 年 12 月 10 日，临时管理委员会设立了伊拉克特别法庭，以便审判前政权一些高级官员的战争罪、危害人类罪、灭绝种族罪和伊拉克法律之下的某些犯罪(《过渡时期行政管理基本法》确认了《特别法庭规约》)。目前，对于《特别法庭规约》的一些条款是否与国际标准相一致以及伊拉克司法机关是否有能力承担这些复杂任务存在着一些疑问。《特别法庭规约》似乎没有考虑到国际刑法领域的重要发展以确保正当程序。《规约》提到了须通过取证规则和程序规则，然而迄今为止，这些基本规则尚未得到全面拟订。这一点非常关键，因为伊拉克刑法条款似乎与伊拉克承担的国际义务相抵触。伊拉克临时政府不妨全盘审查《伊拉克特别法庭规约》以及其他过渡期司法举措，从而确保所有举措都能符合国际标准，并使其构成审判、真相与和解综合方针的一个组成部分。目前正在与国际非政府组织磋商，讨论取证和程序规则问题。这一磋商进程如能在取证和程序规则最终制定和通过之前完成，便将极有价值。

125. 伊拉克特别法庭考虑到了国际上提供援助，向伊拉克派遣一些法官、检察官和调查人员这一问题。目前正在为此招聘人员组成一个国际小组。除了从伊拉克基金中拨出了超过 2.14 亿美元的经费以外，现已为特别法庭的运转拨出大约 7500 万美元的经费。

126. 人权和过渡时期司法事务处的法医人员一直在对 250 多处可能的乱葬坑进行勘察和鉴定，目的是向特别法庭提供证据，并且为检测和分析工作做准备，以便弄清楚失踪人员的命运，并将遗骸归还家属妥为安葬。

十、经济、社会、文化权利

A. 导 言

127. 伊拉克于 1976 年批准《经济、社会、文化权利国际公约》。前面已经指出，战事结束后，在联军接管之时，平民的状况十分艰难，因为经济活动遭到严重破坏，基本服务长期瘫痪。

128. 当被问到经济、社会、文化权利情况时，一位证人说，战争结束后随即发生的抢劫活动主要影响到公共部门。但是，一旦发生大规模停电，受影响的便是平民百姓。他说，同时，能源需求在战后也有增加。大量电器涌入市场，原本已经十分紧张的电网难以应付，即便是在正常情况下也是如此。另外，有好几万辆汽车流入伊拉克，因而需要为其提供道路和汽油。

129. 一个人道主义非政府组织的代表说，伊拉克并不是在经历一场人道主义危机。但是，伊拉克人对重建速度缓慢感到失望，因为他们曾经对联军寄予厚望。不过，一些证人说，一个积极方面是，工资有了大幅度增加(已从每月只有 2 美元增至每月 200 美元)。

130. 与此同时，极为糟糕的治安状况对伊拉克人的生活产生了不利影响，其中许多人得不到安全饮用水和医疗等基本服务。因惧怕暴力事件，妇女和女童的行动自由受到限制，这产生了特别不利的影响，因为这使她们入学和就业的能力受到限制。极为糟糕的治安状况还对人道主义工作人员造成严重威胁，并且阻碍了提供包括紧急治疗在内的人道主义援助的努力。在伊拉克多数地区，治安状况差和机构能力的缺乏仍在阻碍着包括水、电和环卫等基本服务的恢复。

B. 卫生保健

131. 《联合国经修正的援助伊拉克人道主义呼吁》指出，在冲突于 2003 年 4 月结束时，卫生保健系统状况明显恶化。提供治疗性和预防性卫生保健方面的标准仍然远远低于公共卫生规范，发生疾病的可能性不断增加。卫生保健系统因冲突结束后发生的抢劫行为和出现的混乱局面而受到影响，卫生部和省、区两级的卫生机构的工作也因此而受到影响。经常开支所需的经费缺乏，以及在采取步骤实行权力下放之后卫生系统各级在职责划分和决策方面存在的不确定性，进一步削弱了体制能力。卫生保健方面现有人力资源的水平和配置仍然不充分。

132. 对妇女的暴力和总体安全状况的严重恶化仍在阻碍着妇女获取卫生保健服务。由于妇女缺乏行动自由，加上妇女的人权受到其他限制，妇女和女童的卫生保健遭受了不利影响。一项最近进行的调查发现，只有不到半数的妇女能够在怀孕期间或分娩时得到卫生保健机构和人员的服务和照料。产妇和婴儿死亡率和营养不良率依然很高。

C. 食品、水和卫生状况

133. 在冲突之前，60%以上的人口依靠食物配给。这在冲突期间和之后造成了极大的严重不良的可能性。

134. 疾病和食物摄入量不足，加上经济状况的全面恶化，家庭的普遍贫困，电网和供水网络等关键基础设施的瘫痪，以及社会服务基础设施状况的恶化等，造成了儿童营养不良程度严重的结果。营养不良是显示儿童健康状况的最为全面的指标之一。一项评估显示，主要由于饮用水被污染，十分之七的儿童患有某种程度的腹泻。食品卫生状况较差也使得儿童体弱多病，这一状况差的原因在于停电致使制冷设备无法运转以及煤气稀缺。

135. 粮农组织指出，农村社区很容易受到安全状况的影响。收获周期受到影响。农民靠乞讨度日而且不得不搬迁，大片地区因而荒无人烟。农业部门只有在安全状况得到恢复的前提下才能复苏，而且即便如此，此种复苏也要用二到三年时间。

136. 中央供水和排水系统据说遭到抢劫和破坏，由于这些行为，库存和设备包括净水化学品遭到大量毁坏，水检实验室被损坏。发电机零部件和燃料的缺乏，运送和交通方面存在的困难，以及巴格达内外各地点之间的通信联络的缺乏，致使供水和排水系统受到严重干扰。在农村，洗涤和清洁卫生所需的生水供应被中断。电力短缺也是造成无法向居民充分供水情况的一个因素。由于燃料供应线瘫痪，缺乏维修保养和抢劫行为，污水处理设施经常无法运转。水质和卫生状况较差造成的一个严重后果是，腹泻病例和水传播疾病增加。

D. 教 育

137. 据儿童基金和教育部的估计，冲突及冲突后的状况对教育部门造成了严重影响。教育部和高等教育部大楼完全被毁。据报告，由于遭到抢劫和破坏，多数学校的所有教学物资和设备灭失。一项重大损失是，在冲突之前刚刚建立的国家教育管理信息系统被毁。

138. 由于治安状况极为糟糕，入学率、特别是女童的入学率仍处于极低的水平。据联合国/世界银行所作的需求评估，有四分之一的学生无法正常上学。相当严重的性别和地域不平衡现象依然存在，农村的入学女童和儿童要少得多。阻碍儿童

入学的一个主要因素仍然是家境贫困，同时，教学质量差和课程的政治化也对入学率产生了影响。

十一、监督和责任追究

139. 前面几节叙述了自联军接管伊拉克以来不同领域的人权状况，现在，本报告想讨论一下监督和责任追究这一关键问题。这两个问题是保护责任的核心所在。

140. 在伊拉克领土上派驻部队的联军主要伙伴是 1949 年 8 月 12 日《日内瓦四公约》的缔约国。布什总统的法律顾问在 2003 年 5 月 15 日的《纽约时报》上撰文说：“美国 and 伊拉克都是《日内瓦四公约》的缔约国。美国认识到，这些条约在解放伊拉克战争中具有约束力。我国政府从未说过《日内瓦四公约》在这场冲突中不适用……美国有义务遵守《日内瓦四公约》规定的战争规则”。²⁶ 英国主管机构也认识到，他们受《日内瓦四公约》及其与伊拉克境内的状况相关的《附加议定书》的约束。特别相关的是关于平民和战俘待遇的《日内瓦第三公约》和《日内瓦第四公约》。

141. 伊拉克、美国、联合王国以及多数在伊拉克领土上派驻军队的其他联军伙伴，也是《公民权利和政治权利国际公约》的缔约国。该公约第四条部分规定如下：

“1. 在社会紧急状态威胁到国家的生命并经正式宣布时，本盟约缔约国得采取措施克减其在本盟约下所承担的义务，但克减的程度以紧急情势所严格需要者为限，此等措施并不得与它根据国际法所负有的其他义务相矛盾，且不得包含纯粹基于种族、肤色、性别、语言、宗教或社会出身的理由的歧视。

“2. 不得根据本规定而克减第六条、第七条、第八条（第一款和第二款）、第十一条、第十五条、第十六条和第十八条。”

142. 驻扎在伊拉克的美国和英国军队受各自国家的军事手册规定的约束，这两国提交的书面资料(见附件二和三)提到了此种手册。其他联军伙伴同样也受各自国家的军规的约束。

143. 从军事手册所载原则的精要部分来看，驻伊联军似乎有义务不过分使用武力，而且所用武力须与其处理的局势相称；指挥官似乎有义务意识到其部队的行为并须对此种行为负责；有义务调查有关作出过度行为的指称；还有义务将被控犯有违反国际人道主义法和人权法以及违反军规规定的过度行为的人员绳之以法。

144. 除了上述情况之外，一个严酷的现实是，自联军接管以来，对于伊拉克境内的状况没有任何国际监督和责任追究。人权委员会 2003 年 4 月第五十九届会议决定延长 1991 年设置的伊拉克境内人权情况特别报告员的任期，但只是要求他调查以往在前政权统治下的侵犯人权情况。该届会议没有明确要求特别报告员监测目前的状况。一年之后，在委员会第六十届会议上，特别报告员的任期被完全中止。因而，国际社会处在对伊拉克境内当今人权状况缺乏国际监督的情形中。截至编写本报告之时，联合王国和美国的调查正在进行中。有必要迅速完成这些调查。

十二、人权法律和机构

145. 本报告至此已经察看了如下问题：保护平民、囚犯待遇、妇女的状况、儿童的状况、公民权利和政治权利以及经济、社会和文化权利，并讨论了监督和责任追究问题。本节，将审查现有的人权规范和机构，看它们在今后的困难时期中能否充分保护人权。

A. 国际人权条约和可适用的宪法框架

146. 伊拉克是下述国际人权文书的缔约国，因此这些文书对伊拉克的机构具有约束力：

- 《公民权利和政治权利国际公约》(1976 年 3 月 23 日)；
- 《经济、社会、文化权利国际公约》(1976 年 1 月 3 日)；
- 《消除一切形式种族歧视国际公约》(1970 年 2 月 13 日)；
- 《消除对妇女一切形式歧视公约》(1986 年 9 月 12 日)；
- 《儿童权利公约》(1994 年 7 月 15 日)；

147. 如本报告前面所述的, 伊拉克临时管理委员会颁布了一个宪法框架及相关法律, 其中考虑到国际人权法的某些方面。新的伊拉克临时政府将有必要使这些国家文书进一步符合国际人权法。

B. 立 法

148. 《过渡时期行政管理基本法》第 23 条规定, 伊拉克人民享有适合于一个拥有人的尊严的自由民族的一切权利, 包括国际条约和协定、伊拉克签署并加入的其它国际法文书和被认为对其具有约束力的其它文书以及国际法中所规定的权利。(附件一)

149. 根据联军管理当局第 1 号条例, 截至 2003 年 4 月 16 日伊拉克所有已生效的法律, 除非被联军管理当局中止或替换, 将继续适用, 只要这些法律不妨碍联军管理当局行使其权利和履行其国际义务, 或者与联军管理当局的任何命令或条例发生冲突。

150. 伊拉克前政权的许多法律仍然有效。联军管理当局审查了伊拉克 1969 年《刑法》和 1971 年《刑事诉讼法》, 目的是评估它们是否符合国际人权标准。结果联军管理当局暂时取消了死刑(第 7 号令), 并实行了《联合国囚犯待遇最低限度标准规则》(第 2 号备忘录)。联军管理当局对伊拉克《刑法》作出了可喜的修正, 禁止不人道或有辱人格的待遇或处罚。

C. 对人权的司法保护

151. 在上述伊拉克现行宪法和立法框架背景下, 司法系统一直在非常严重的制约下运作。在前制度下, 由于没有独立的司法机构, 显然几乎不可能求助法院来保护人权, 因此存在大量难以想象的最恶劣形式的侵犯人权行为。自联军接管后, 由于军事状况不安全和政局不稳定, 伊拉克人也很少有机会能求助法院来依法保护其人权。伊拉克临时政府必须首先关注法律和司法改革问题, 这必然需要建立一个法律和司法改革委员会。

152. 如联军管理当局在其提交的书面材料(附件一)中所述, 它已经开始这一进程。目前司法机构已得到重新确立, 成为法官委员会监督下的一个独立的政府部门。司法审查委员会就过去的腐败行为对全国所有 860 名法官和检察官进行了审查。将近 180 名法官被免职和替换。现正在对法官进行培训, 以反复强调一种尊重人权、适当法律程序和法治的基本原则的文化。

D. 人 权 部

153. 作为伊拉克临时管理委员会所作安排的一部分, 2003 年 9 月成立了一个伊拉克人权部, 任务是处理过去侵犯人权的暴行并保证未来伊拉克境内所有人的人权和基本自由。具体而言, 人权部要帮助在伊拉克创造有利于保护人权和基本自由的条件并防止伊拉克境内发生侵犯人权事件; 就防止侵犯人权的措施提出正式建议; 协助社会中所有人使过去暴行的创伤愈合; 充当与国际人权机构关系的协调中心; 并为立法者提供咨询意见(见附件一)。

154. 2004 年 2 月人权高专办为人权部的 10 名工作人员提供了人权培训, 并在人权委员会第六十届会议期间邀请另外两名工作人员(以及司法部的两名工作人员)到日内瓦参加人权培训。通过与安曼的伊拉克人交谈, 清楚地了解到他们希望人权部在未来能够发挥有力的作用。一些接受访谈的人提到人权部在处理往事和就此问题开展全国对话方面的重要作用。其他人认为, 人权部将必须密切参与法律改革, 应接受来自非政府组织的报告并将它们提交给有关政府机构寻求答复。随着伊拉克宪法和政治框架的发展, 必须保留伊拉克人权部这个机构并在未来予以加强。

E. 拟议中的国家人权委员会

155. 《过渡时期行政管理基本法》第 50 条规定, 须成立一个国家人权委员会以履行该基本法的承诺并审查关于侵犯人权的申诉。《过渡时期行政管理基本法》规定, 须根据大会 1993 年 12 月 20 日第 48/134 号决议通过的《巴黎原则》来成立这个委员会。该委员会还应包括一个监察员办公室, 负责处理申诉, 并有权、且可以自行对涉及政府当局任意或违法行为的指控进行调查。

156. 为伊拉克建立一个国家人权委员会应是伊拉克临时政府的首要任务。在此非常重要的一项是委员的任免程序必须公开和透明。这些人应当地位高、廉正并具备适当的人权知识，而且必须代表社会各个阶层。他们的独立性需要通过在委员会的成立立法中作出切实规定来予以保证。

157. 明智的做法应是成立一个由来自伊拉克各种社会力量的成员组成的甄选委员会，提名国家人权委员会的委员。甄选委员会将向负责任命委员的伊拉克临时政府提出建议。国家人权委员会主席可由伊拉克临时政府或委员们自己任命。委员会的委员应当是来自伊拉克国内和伊拉克移民社群，以及伊拉克难民和国内流离失所者社区的各个主要族裔和宗教群体的伊拉克男女。所有委员都应当是伊拉克国民。在伊拉克这样一个多样化的大国中运作的委员会的理想人数应当是 7 至 11 人。

158. 委员会可能承担的职能包括：

- (a) 就增进和保护人权问题向伊拉克临时政府、未来的立法机关和任何其它主管机构提供咨询意见；
- (b) 宣传其咨询意见和看法、建议、提议和报告；
- (c) 审查和报告现行法律和行政规定的情况，起草法律和法案并提出它认为适当的建议，以确保这些规定符合基本人权原则；
- (d) 建议通过新法律、修正现行法律，以及通过或修改行政管理措施；
- (e) 调查、报告和努力解决任何侵犯人权的情况；
- (f) 编写关于伊拉克境内普遍人权情况以及一些更具体问题的报告；
- (g) 提请注意伊拉克境内任何有侵犯人权事件发生的地方的情况，提出行动建议，以便制止这种情况，并在必要时对政府的立场和反应发表意见；
- (h) 促进和确保法律、条例和实践与国际人权法协调一致，并保证切实执行国际人权法；
- (i) 协助制定人权教育和研究方案，并参加这些方案在学校、大学和专业圈内的落实工作；
- (j) 宣传人权并通过提高公众认识，特别是通过信息和教育以及媒体，努力制止一切形式的歧视；

(k) 与联合国、联合国人权事务高级专员办事处和联合国系统的任何组织，以及区域机构和负责增进和保护人权工作的其它国家的机构合作。

159. 在委员会内部设立一个监察员办公室将确保范围广泛的管理不善问题被视为固有的人权问题。将通过打击行政方面的过分行为和不平等现象来促进享有人权。

十三、结论性意见

160. 联军去伊拉克是为了帮助伊拉克获得自由。他们在这样做的过程中行为是否符合国际法，这是争论的主题，但不在本报告范围之内。本报告讨论的是自联军接管伊拉克以来，尊重和保护人权及人道主义法的情况。

161. 就联军在伊拉克的行为而言，所有人都承认，联军政府的意图是良好的。没有人认为联军政府有侵犯伊拉克普通百姓权利的任何意图。

162. 在斟酌发生在伊拉克的情况时，应当考虑到这样一种可能性，即联军政府采取行动后，很可能会促使伊拉克走上民主道路，走向法治和尊重人权的统治方式。

163. 从人权角度来看，在联军接管伊拉克以来的这段期间内有所进展。其中包括：就顾及到国际人权规范的宪法结构开展了一次国内辩论；成立了伊拉克人权部；伊拉克普通百姓有了更大的自由；妇女更多地参与伊拉克公共生活；以及见解和言论有了更大的自由。

164. 尽管如此，必须承认，存在严重的人权问题。事实是大量人受到监禁，而他们的确切人数、监禁他们的理由、地点、条件以及待遇情况均不为公众所知。

165. 联军胜利后的一段时期内伊拉克人遭受的苦难显然不是蓄意的，但事实是这些苦难的情况发生了。伊拉克普通百姓确实缺乏基本的经济和社会权利。幸而，这种情况已得到改善。

166. 如联军最高层的领导人们所承认的，伊拉克囚犯遭受的待遇玷污了为使伊拉克获得自由而作出的努力。

167. 本报告的主要目的是，从冲突后——但仍然令人担忧——的状况中的照料、管理、保护和追究责任的义务的角度来展望未来。由此，提出了下述建议：

- (a) 联军当局应立即安排对所有关押场所进行定期视察，并立即任命一名国际监察员或专员以监督伊拉克境内尊重人权的情况，向联军和伊拉克当局提交定期公开报告并提出建议；
- (b) 伊拉克临时政府应成立一个独立的伊拉克国家人权委员会，授权它为在伊拉克为增进和保护人权开展工作；
- (c) 联军当局应将那些应对严重侵犯人权行为负责的联军成员绳之以法，并向秘书长报告起诉情况和审判结果；
- (d) 联军当局应为伊拉克设立一项人权基金并向该基金慷慨拨款，使之能够促进人权教育并向伊拉克法官、律师、检察官和监狱官员提供人权材料；
- (e) 伊拉克临时政府应立即颁布一项伊拉克人权政策并予以遵行；
- (f) 伊拉克临时政府应迅速宣布成立伊拉克法律和司法改革委员会，以便就不符合国际人权标准的伊拉克法律提出改革建议，如果没有有关法律，则要根据伊拉克的国际义务对适当法律程序保护作出规定。无论如何，由于许多法律自 1960 年代以来不曾得到重大修改，委员会应对法律框架进行长期改革；
- (g) 对于过渡时期的司法工作，伊拉克临时政府应制定一项战略，以消除伊拉克境内的残暴专制统治和大规模侵犯人权行为的流毒。这种战略必须以人民的需要、态度和对过渡时期司法的认识为中心。只有切实有效地与法律工作者和公众进行协商，才能确保进程的合法性。这种进程必须处理诸如以往的侵犯人权行为、司法和责任追究机制等问题，还必须采取以全面、协调和一致的方式进行审查、了解真相和提供赔偿等非司法性措施；
- (h) 伊拉克临时政府不妨对《伊拉克特别法庭规约》进行审查，以确保刑事司法程序符合国际公平审判标准，并考虑到国际刑法领域的最新发展，继续停止执行死刑；

- (i) 如果该《规约》保持法律形式，并且如果伊拉克特别法庭只象征性地起诉极少数侵犯人权者，那么就必须认真考虑是否要成立一个伊拉克真相和和解委员会；
- (j) 伊拉克临时政府应任命一个赔偿委员会，负责为过去的罪行制定赔偿方案，从而推进由特别工作队开始的工作；
- (k) 鉴于暴力行为仍在发生，伊拉克临时政府将有必要制定恰当机制，确保法律工作者、被告、受害者和证人的切身安全；
- (l) 伊拉克临时政府应考虑采取步骤支持旨在增进和保护人权的伊拉克民间社会组织。可以在国际援助下由伊拉克人权部来促进这项工作；
- (m) 国家和国际方面应给予伊拉克人权部以必要的支持，帮助它履行增进和保护伊拉克人权的责任；
- (n) 如情况允许，联合国应继续为伊拉克政府官员、法官、检察官和律师以及非政府组织和民间社会的代表提供人权培训。

注

¹ 如在本报告“资料来源和方法”部分中所指出的，无法单独核实证人的说法。

² 美利坚合众国没有批准日内瓦四公约附加议定书。伊拉克也没批准。但一般而言，附加议定书的诸部分被视为习惯国际法的一部分。联合王国是附加议定书的缔约国。

³ 如在本报告“资料来源和方法”部分中所指出的，无法单独核实证人的说法。

⁴ 大赦国际的报告“Memorandum on concerns relating to law and order”成为与联军对话的基础；新闻稿 AI07/05/2004：“USA: Pattern of brutality-war crimes at Abu Ghraib”。

⁵ 安东尼奥·塔古巴少将编写的关于在美军位于阿布格莱布和布卡营的监狱中的虐待行为调查报告“Article 15-6 Investigation of the 800th Military Police Brigade”，下面简称《塔古巴报告》。

⁶ “红十字国际委员会关于逮捕、监禁和审问过程中联军对伊拉克战俘和依据日内瓦四公约受保护者的待遇情况的报告”，下面简称《红十字委员会的报告》。报告载有 2003 年 3 月至 11 月间进行探访后的意见和建议，并已呈交给布雷默大使和桑切斯中将。

⁷ 《塔古巴报告》第 17 页；机密刑事调查处关于阿布格莱布监狱虐待罪行的报告，2004 年 1 月 28 日；刑事调查指挥部于 2004 年 5 月 5 日编写的提要，将去年秋季在阿布格莱布监狱发生的一起虐待案定为性攻击，该案涉及三名士兵，他们“进入监狱的女囚区，将一名女囚带入一间空牢房。据称当时一名士兵负责望风，一名抓住女囚的手，第三名士兵亲吻女囚”；报告说，据说女囚曾受到威胁，要让她与一名赤身裸体的男囚犯呆在一起，但“调查既没能证明也没能反驳关于这起猥亵事件的指控。”

⁸ “凡从事交战行为而陷落于敌方者，对其是否属于第四条所列举各类人员之任何一种发生疑问时，在其地位未经主管法庭决定前，应享受本公约之保护。”

⁹ 联军管理当局第 3 号备忘录第 6 节(d)段说明“一名刑事犯应尽快，无论如何自进入联军关押中心之日起不得晚于 90 天，接受一名司法人员审理。”

¹⁰ 日内瓦第四公约第七十八条；日内瓦第四公约第七十八条评注，第 368 页。

¹¹ 日内瓦第四公约评注，第 367 页。

¹² 日内瓦第四公约第七十八条。

¹³ 日内瓦第三公约第十三、第十四和第一三〇条；日内瓦第四公约第二十七、第三十二和第一四七条。

¹⁴ 日内瓦第三公约第十七、第八十七和第九十九条；日内瓦第四公约第五、第三十一和第三十二条。

¹⁵ 日内瓦第三公约第一三〇条和日内瓦第四公约第一四七条。

¹⁶ 显然，根据国际法“不人道的待遇”不只包括“酷刑和蓄意造成巨大痛苦或给身心或健康造成严重损害的行为，还包括违背人道待遇基本原则，特别是构成对人的尊严的攻击的其它行为”。同样“蓄意对身体或健康造成巨大痛苦或严重伤害包括损害精神健康，还包括那些不符合为给酷刑定性而制定的条件的行为，即使酷刑行为也可能符合给出的定义”；*Kemal Mehinovic, et al. 诉 Nikola Vuckovic, a.k.a Nikola Nikolac* 案，美国北佐治亚州地方法院，亚特兰大分庭，198F, Supp.2d 1322, 2002 年 4 月 29 日。

¹⁷ 日内瓦第三公约第十三条；日内瓦第四公约第二十七条；日内瓦第三公约评注，第 140 页，日内瓦第四公约评注，第 200 页。

¹⁸ 《公民权利和政治权利国际公约》第七条规定：“任何人均不得加以酷刑或施以残忍的、不人道的或侮辱性的待遇或刑罚。”人权事务委员会在其 2003 年 3 月第八十届会议上通过的关于《公约》第二条的第 31 号一般性意见“《公约》缔约国的一般法律义务的性质”(CCPR/C/74/CRP.4/Rev.6)中规定“... 必须保证在其领土内和受其管辖的一切个人享有本《公约》所承认的权利。这就意味着缔约国必须尊重和确保在其权利范围内或者有效控制下的任何人享受《公约》所规定的权利。其中甚至包括不在缔约国领土上的一些人的权利。... 这项原则也适用于在境外采取行动的缔约国武装部队的权力范围内或者有效控制下的所有人，而不论这种权力或者有效控制是在何种情况下获得的，例如，这种武装部队是缔约国因为参加国际维持和平行动或者强制实现和平行动而派出的一支部队。”(第 10 段)；“... 《公约》也适用于国际人道主义法规定适用的武装冲突的情况。虽然，就某些《公约》权利而言，国际人道主义法更为具体的规定可能更加适合对于《公约》权利的解释，但是这两种法律范围是互补的，而不是互相冲突的”(第 11 段)。

¹⁹ 《禁止酷刑公约》第 1 条对“酷刑”的定义是：“为了向某人或第三者取得情报或供状，为了他或第三者所作或涉嫌的行为对他加以处罚，或为了恐吓或威胁他或第三者，或为了基于任何一种歧视的任何理由，蓄意使某人在肉体或精神上遭受剧烈疼痛或痛苦的任何行为，而这种疼痛或痛苦是由公职人员或以官方身份行使职权的其他人所造成或在其唆使、同意或默许下造成的”。

²⁰ 如在本报告“资料来源和方法”部分中所指出的，无法单独核实证人的说法。

²¹ 新闻稿 SG/SM/9283-IK/432, 2004 年 4 月 30 日。

²² 美国常驻联合国日内瓦办事处代表团公布的每日公告，2004 年 5 月 11 日，第 1 页。

²³ 《纽约时报》，2004 年 5 月 15 日，第 1 页。

²⁴ 对《总宣言》以及第二条(f)和(g)项，第九条第 1 和第 2 款、第十六条以及第二十九条第 1 款提出了保留意见；两个国家对全部或部分保留意见提出异议。

²⁵ 如在本报告“资料来源和方法”部分中所指出的，无法单独核实证人的说法。

²⁶ 《纽约时报》，2003 年 5 月 15 日星期六，A17 版。

Annex I

Submission from the Coalition Provisional Authority

POLITICAL BACKGROUND

After the end of the former Ba'athist regime, the US and UK accepted the responsibilities of occupying powers and the Coalition Provisional Authority (CPA) was established as the executive body, evolving from the Office of Reconstruction and Humanitarian Assistance. In UN Security Council Resolution 1483 (2003), the Security Council supported the formation of an Iraqi interim administration as a transitional administration run by Iraqis, until the people of Iraq establish an internationally recognized, representative government that assumes the responsibilities of the CPA. On 13 July 2003 the Iraqi Governing Council (IGC) met and announced its formation as the principal body of the Iraqi interim administration referred to in UNSCR 1483. By CPA Regulation No. 6, the CPA recognized the formation of the IGC as the principal body of the Iraqi interim administration, pending the establishment of an internationally recognized, representative government by the people of Iraq, consistent with UNSCR 1483. In UNSCR 1511 (2003), the Security Council determined that the GC and its ministers are the principal bodies of the Iraqi interim administration, which, without prejudice to its further evolution, embodies the sovereignty of the State of Iraq during the transitional period until an internationally recognized, representative government is established and assumes the responsibilities of the CPA. The IGC represents the majority of the different ethnicities, religions and political sectors of Iraqi society. The November 15 Agreement set out a timeline and program for the transfer of governmental authority to Iraqis, the drafting of a permanent constitution, the establishment of democratic processes and institutions and provided for the assumption by Iraqis of full sovereign powers. On March 8, 2004, the IGC members signed the Transitional Administrative Law (TAL) which will serve as the Supreme Law of Iraq from 30 June 2004 until a democratically elected National Assembly drafts a Constitution to be ratified via a referendum scheduled for 2005. By June 30 of this year, the CPA and IGC will be dissolved and replaced with a sovereign Iraqi Interim Government to be selected by the United Nations after a wide-ranging consultative process.

In addition, the CPA has supported a transparent process to ensure that city and provincial councils reflect the composition and character of the localities which they represent. Through caucuses, consultations and elections, Iraqis have chosen those who will represent them at the local level. In addition, with CPA's support, Iraqis have held numerous, well-attended town meetings to discuss their country's transition to democracy. The Administrator has also promulgated an order (CPA Order No. 71, Local Governmental Powers Order) that further devolved certain powers to the provincial and municipal councils, consistent with the TAL's call for decentralizing government powers.

SECURITY SITUATION IN IRAQ

UNSCR 1511 (2003) authorizes a multinational force (MNF) under a unified command to take all necessary measures to contribute to the maintenance of security and stability in Iraq. This includes ensuring the necessary conditions for the implementation of the timetable and program

as well as contributing to the security of the United Nations Assistance Mission for Iraq, the IGC and other institutions of the Iraqi interim administration, and key humanitarian and economic infrastructure. The current security situation in Iraq is difficult and complex. Anti-MNF Force elements are attempting to thwart the efforts of the MNF to create a safe and secure environment within Iraq. They are attacking MNF directly. They are using intimidation and direct attacks on Iraqi Security Force personnel, to disrupt and prevent the creation of an effective and capable Iraqi Security Force. They are also attacking the infrastructure of the country. The level of such activity has increased significantly over recent months and is likely to remain at a high level in the run-up to the transition to Iraqi sovereignty within the next few weeks, as Anti-MNF Forces try to disrupt and discredit this process and mobilize popular support against continued MNF presence within Iraq. The Coalition is making strenuous efforts to ensure that the citizens of Iraq are able to go about their daily lives free from intimidation from Former Regime Elements (FRE), foreign fighters and other extremist elements in Iraq and to protect them from the dangers posed by these elements.

PROTECTION OF CIVILIANS

Prior to the conflict, the U.S. Government established the Disaster Assistance Response Team (DART) to coordinate humanitarian assistance for the civilian population. The DART created the Abuse Prevention Unit (APU) which focused on protection of vulnerable groups and mitigating post-conflict violence and human rights abuses. The APU provided outreach and training for NGOs, CPA officials, military personnel and some UN personnel.

To compensate for injuries and deaths of Iraqis during military operations, the CPA created a \$10 million Civilian Casualty Assistance Fund. This includes such matters as funding for medical treatment, micro-credit lending and materials for rebuilding homes. This is in addition to compensation paid out by individual States' military forces for property damage during the conflict.

The rules of engagement currently being taught to the new Iraqi Army allow the use of force in self-defense when threatened or attacked. Positive Identification (PID) is required, which is defined as 'reasonable certainty' that the object of attack is a legitimate military target. PID is based on reasonable military judgment in the circumstances at the time. Troops must comply with the Laws of War concerning discrimination of targets. Troops are taught that they may use aimed shots to engage enemy combatants, but should take care to avoid injury to civilians in the area. They may not engage individuals until they have PID, that they are demonstrating hostile intent, or they are committing a hostile act. Positive Identification of hostile intent/hostile act requires more than just weapon possession.

It is imperative that, in order to promote respect for the forces of law and order, those forces are seen to abide by the relevant provisions of international humanitarian and human rights law.

The Inspector of the Coalition's Office of Security Cooperation (OSC) is educating its Coalition Military Assistance Training Teams (CMATT) and Coalition Police Assistance Training Teams (CPATT) on issues of human rights in order to ensure the protection of civilians in Iraq.

CMATT and CPATT will then provide training with special focus on protection of civilians during military/police security situations for the instructors, Iraqi Army trainees and military leaders down to platoon level within the military academy, in addition to trainers and trainees in the police training academy.

The academy will use publications of the Office of the High Commissioner for Human Rights and human rights and humanitarian law treaties will form the backbone of its syllabus. It is expected that this syllabus will be a two hour time block of instruction. The syllabus will be written and reviewed in cooperation with the Ministry of Defense and the Ministry of Human Rights. A directive is in progress ordering that the issue of human rights is to be discussed in a classroom setting prior to the formal syllabus being completed. The Inspector of OSC will complete the draft syllabus by 1 June and complete implementation by 15 June.

Basic methods for arrest and detention currently being taught to Iraqi Army recruits are based on Search, Silence, Segregate, Safeguard and Speed. Restraint techniques include the use of blindfolds, zip tying hands and feet and gagging (as long as the prisoner can breathe). Prisoners are segregated as soon as possible by rank, status, gender. Recruits are obliged to then protect individuals against further harm from other detainees, friendly forces or enemy forces. Army recruits must respect the human rights of detained persons and not deny them basic necessities (food, water and safety). Detainees must be treated with dignity and protected. They must not be subjected to unreasonable punishment. They are to be treated in accordance with the Geneva Conventions, so that they are provided with food, clothing and shelter. They are to receive sanitary living conditions with facilities for proper hygiene, medical care and an opportunity to practice religion. They are also entitled to receive a translated copy of their rights, to keep personal property and can send and receive mail.

Regarding the Iraqi Police Service (IPS), human rights training is interwoven throughout both the eight week basic course for new recruits and the three week-long Transition Integration Programme (TIP course). Through the TIP course for serving police and the basic course for new recruits, it is intended that all police in Iraq will be trained in human rights and democratic policing principles. At least 30 hours of human rights related topics are included in both courses. This covers the principles of human rights and deals with them in a practical way. The syllabus for the TIP course is attached as an example. The same subjects are taught to new recruits.

The subject matter covered during the basic and TIP courses include the following:

- Democratic policing principles
- Human rights
- International law basics
- Community policing
- Police ethics and code of conduct
- Police use of force standards

To reinforce the message that the IPS is a civilian police service for and answerable to the people, a code of conduct has recently been published that all Iraqi police must sign. This sets out basic standards of behavior, breach of which may lead to disciplinary action being taken against them. A public signing ceremony involving senior Iraqi police is planned to inform the public of the new standards.

A new discipline code now being drafted will specify the breaches of discipline for which punishments can be awarded.

The Minister of the Interior has asked for a letter to be sent to all Iraqi police that specifically addresses the issue of torture by police. It makes it clear that any Iraqi police officer found to be engaged in any torture or abuse of prisoners will be dismissed and will face criminal charges. The letter is with the Minister and ready for promulgation.

The Minister and his police chiefs take allegations of torture and abuse of prisoners very seriously. A recent case in Baghdad investigated allegations of torture and sexual abuse by IPS staff against women detainees. Following the IPS investigation the Inspector General instructed the Chief of Baghdad Police to dismiss five officers and report them with a view to prosecution for their alleged crimes. It is worth noting that the IPS investigators on this case did a very efficient job and substantiated the allegations made. This is an example of good IPS officers working hard to improve their service.

Much work is being done to improve the IPS, often by the IPS itself. The pre-conflict police viewed torture as an effective interrogation technique that was permitted by law. Many of the IPS were police before the conflict and may have engaged in such acts of brutality. They are changing, but it takes time and firm action by their leaders when instances of torture are alleged.

TREATMENT OF SECURITY DETAINEES

In accordance with Article 29 of the Fourth Geneva Convention and Article 12 of the Third Geneva Convention, and in line with the view of the ICRC, US and UK military forces retain legal responsibility for those prisoners of war and detainees in US and UK custody respectively. The US and UK will therefore respond separately on the issue of treatment of detainees within their custody.

JUSTICE & THE RULE OF LAW

When the CPA assumed its responsibilities, the prison system in Iraq had effectively been destroyed and the total criminal population of 38,000 inmates had been released onto the streets. Most courts were not functioning, and most court facilities were destroyed or damaged. The judiciary included corrupt individuals, human rights violators and technically incompetent Ba'ath Party functionaries. The practices of a police state that had been responsible for mass killings and systematic, State-sanctioned torture supported by an extensive policing and intelligence apparatus had to be substantially remodeled.

The CPA's legislative response to this situation included revising the Iraqi Penal Code to excise draconian political crimes and liberalize restrictions on the freedom of the media and the right to

demonstrate. The Iraqi Criminal Procedure Code was amended to prohibit torture, to ensure accused persons were advised of their rights, to provide defense counsel at every level of proceedings and to ensure representation to the indigent. The CPA removed prison management responsibilities from repressive agencies and inappropriate organizations, consolidated that responsibility in the Ministry of Justice, and enacted a comprehensive reform of penal administration laws and regulations that meet UN standards. A new Central Criminal Court was established as a court capable of dealing with the most serious national crimes under reformed criminal procedures. The CPA also ensured the independence of the judiciary, freeing it from the politicization of the Ba'ath regime.

The criminal justice system is the responsibility of the Iraqi Ministry of Justice, assisted by the CPA. In the move toward the transition to complete Iraqi control of the government by July, the CPA is working to ensure that more and more government functions are in the hands of Iraqis. The Iraqi courts are now run almost entirely by Iraqis, as are many detention facilities for individuals accused or convicted of crimes. The Iraqi juvenile courts are in Iraqi hands, and are among the best managed in the system.

The judiciary has been re-established as a separate branch of government under the supervision of a Council of Judges. It was previously under the control of the executive branch as part of the Ministry of Justice. The judiciary now has its own budget, payroll and property, endowing it with the requisite independence to adjudicate criminal cases and enforce rights without political pressure or interference from the executive. A Judicial Review Committee, comprising equal numbers of Iraqi and Coalition members, vetted all 860 judges and prosecutors nationwide for past corruption, ties to the Ba'ath party or former regime, or complicity in atrocities. This was done through CPA Orders 15 & 35 and CPA Memorandum 12. Approximately 180 judges were removed and replaced with new appointments or reappointments of persons improperly removed by the former regime. Judicial salaries have also been increased to reduce the temptation to accept bribes.

Regular training for judges is in progress to inculcate a culture of respect for human rights, due process, and basic tenets of the rule of law. This has included a training course in The Hague in early May 2004 attended by US Supreme Court Justices Kennedy and O'Connor, and Lord Justice Woolf from the British House of Lords.

Criminal defendants are now also guaranteed their rights with regard to due legal process, including the inadmissibility of evidence extracted by torture, an inviolable right against self-incrimination, a right to legal counsel at all stages of criminal proceedings, at government expense if necessary. The right to counsel had previously been available only at the actual trial, after most evidence had already been gathered and entered into the record. Defendants have the right to be informed of these rights. The Council of Judges has been empowered to increase the untenably low legal fees for government-appointed defense counsel.

A Central Criminal Court (CPA Order 13) has been established to investigate and try cases of national importance and in line with the new rights described above.

All of the measures above have been enshrined in the Transitional Administrative Law, which will take effect on July 1, 2004.

CPA advisors have worked with the Ministry of Interior and the Iraqi Corrections Service to ensure that criminal suspects receive the initial judicial hearing to which they are entitled within 24 hours of detention, and if detained afterwards, are not returned to police custody but are transferred to pre-trial detention centers under the control of the Ministry of Justice. Efforts are being made to enforce the 24-hour rule and to forbid return of suspects to police custody in order to forestall opportunities for police corruption and abuse which prevailed under the former regime.

Control of pre-trial detention centers and prisons has been consolidated in the Ministry of Justice. Such facilities are required to be governed according to internationally accepted standards as provided in CPA Memorandum 2. Coalition advisors are training Iraqi Corrections Service guards in those regulations, with an emphasis on human rights standards, and assisting in civilian prison operations.

The CPA has promulgated several laws directly related to prison management. These include CPA Order No. 10, Management of Detention and Prison Facilities (5 June 2003); CPA Memorandum No. 2, Management of Detention and Prison Facilities (8 June 2003); and CPA Memorandum No. 3, Criminal Procedures (18 June 2003). Section 7 of CPA Memorandum No. 3 prescribes specific standards applicable to the treatment of all persons who are detained by Coalition Forces as Security Internees. Subsection 7(1)(c) states that the "operation, condition and standards of any internment facility established by Coalition Forces shall be in accordance with Section IV of the Fourth Geneva Convention." These legal reforms have been coupled with substantial improvements of physical facilities, including court houses, prisons, training facilities for prison guards and police, and the Judicial College.

Other parts of the criminal justice system are currently administered jointly by the CPA and Iraqis, and some are still primarily administered by US and UK MNF troops. For example, should an investigation by US or UK military police determine that an individual is criminally culpable in an attack on MNF, he is transferred to an Iraqi criminal detention facility, where his case will be investigated by an Iraqi Investigating Judge and his trial will be before the Central Criminal Court of Iraq. In addition, MNF troops currently assist in the administration of Iraq's principal criminal detention facilities, and frequently provide transportation for defendants to and from court. However, criminal detainees are dealt with by the Iraqi criminal justice system.

Criminal detainees are allowed family visits: Sundays for female visitors, Mondays for male visitors. Both parents are authorized to visit together with the juveniles on Sundays and Mondays. Visits in Abu Ghraib have been temporarily suspended following some disturbances while cells are being restored. Visits should resume there shortly.

IRAQI SPECIAL TRIBUNAL

The CPA recognized from the outset the importance of addressing past human rights abuses through legal process. The Office of Human Rights & Transitional Justice (OHRTJ) was established to create mechanisms for the Iraqi people to begin to deal with the enormous suffering caused by Saddam Hussein's regime. OHRTJ has assisted with the establishment of the Iraqi Special Tribunal (IST) which will try former members of the regime of Saddam Hussein for genocide, crimes against humanity and war crimes.

The Statute for the IST was adopted by the IGC in December 2003, following lengthy consultation with CPA officials and the IGC's Legal Committee. It provides for the establishment of a court to try members of the former Iraqi regime for war crimes, crimes against humanity and genocide. It allows for international assistance for the judges, prosecutors and investigators and to this effect a Regime Crimes Liaison Office has been created to provide international assistance and necessary expertise to the IST. Defendants will have full legal rights. US Institute of Peace sponsored a seminar in The Hague in March to bring international experts together with Iraqi judges to discuss the mechanics of the IST.

A total of \$75 million has been allocated for this in addition to \$14.4 million from Iraqi funds. An international team is being recruited to staff the Regime Crimes Liaison Office, which will provide the Iraqi judges, prosecutors and particularly investigators with the necessary expertise in the field of investigations under international humanitarian law and work to ensure that all aspects of the investigation and trial process meet international standards.

OHRTJ forensic staff have also been assessing over 250 suspected mass grave sites to determine which may yield evidence for the Tribunal and which may be exhumed for humanitarian purposes such as return of remains and identification of the fate of missing persons. OHRTJ staff have been training Iraqi professionals in this latter task to ensure a sustainable effort is created.

OHRTJ has built an evidence storage facility and regime document processing facility which will use the latest computer software to analyze millions of government documents to assist the work of the IST and for other human rights purposes.

DISPLACED PERSONS

The pre-conflict estimate is that as many as 800,000 persons were internally displaced throughout northern Iraq and an additional 100,000 to 300,000 persons were displaced in the center and south. However these are estimates and obtaining reliable figures has not been possible in the post-conflict climate. An estimated 900,000 Iraqis are considered to be refugees or in a refugee-like situation in countries neighboring Iraq and beyond. An estimated 50,000 to 100,000 Iraqi refugees have returned since May 2003, either spontaneously or with assistance from Iraqi institutions, the CPA, regional authorities and international organizations. There are also about 70,000 non-Iraqi refugees in Iraq. This includes: 40,000 Palestinians living primarily in the Baghdad area; 13,000 Iranian Kurdish refugees living west of Baghdad, in northern Iraq and in the no-man's land along the Jordan-Iraq border; 14,000 Turkish Kurds in northern Iraq and another 1,200 – 1,400 Syrians and Iranian refugees of Arab decent (Ahwazi refugees) in the south.

Living Conditions

Although living conditions for internally displaced persons (IDPs) are very poor throughout the country and there are limited outbreaks of communicable disease, overall crude mortality rates do not indicate a humanitarian emergency. Assistance, however, is essential to ensure that in the parts of Iraq where the situation is fragile, it does not deteriorate into crisis.

Living conditions of IDPs vary considerably according to area and length of displacement. Some IDPs have generally integrated in their areas of displacement, although some percentage would return to their original area, if given assistance to do so. Other IDPs live in less stable conditions, e.g., public buildings, tents and other makeshift shelter with difficult access to basic services, e.g., water, health, education facilities. Priority assistance needs include access to water (a perennial problem in the region), housing, and access to education and health facilities, especially in rural areas.

A large number of the refugees who are returning from Iran come spontaneously and are not registered, and often find their homes destroyed or occupied, and their former means of livelihood no longer viable (such as the Marsh Arabs). These persons often migrate to urban areas, seeking housing and jobs. In the south, displacement has increased the population density in communities without adequate public services, like sewerage, creating the potential for outbreaks of disease. Many returnees in the south have struggled with access to public services, such as the public distribution system, but this has now improved.

Living conditions for the refugees in Iraq vary according to location and situation, but predominately their situation is more settled and they have access to public services. Most receive assistance and protection from Iraqi institutions and the United Nations High Commissioner for Refugees (UNHCR).

Protection Concerns

Protection concerns of displaced people in the north include threat of eviction of those living in public buildings by the authorities reclaiming the public building or by individuals returning to their homes. Non-Kurdish populations sometimes report intimidation and harassment from returning Kurdish populations. National and municipal authorities are responsible for the care and protection of IDPs, but their capacity to provide the necessary protection and assistance is severely limited by security constraints, funding and inadequate staffing and training in care and protection of displaced populations.

While Iraq is not a party to the 1951 Convention Relating to the Status of Refugees or its Protocol, laws have been adopted concerning refugees, most specifically the 1971 Political Refugee Act, which grants refugee status on political and military grounds. Many of the refugee populations in Iraq received preferential treatment from the former regime and after its fall, some faced legitimate protection concerns. UNHCR and the authorities in Iraq are implementing programs to ensure the continued protection of these populations. Access to some populations is limited at this time due to security concerns.

Durable Solutions

CPA first implemented a “stay put” policy for IDPs throughout Iraq and encouraged countries hosting Iraqi populations to discourage immediate refugee returns, in an effort to stem population movements in an often non-permissive environment. However, a return strategy has been developed in the north to provide more assistance to people returning to “non-contentious areas,” i.e., areas where returns will not fuel political or ethnic tension and areas where there are unlikely to be property disputes.

The IGC established the Iraq Property Claims Commission (IPCC) as the entity responsible for resolving disputes arising from violation of property rights by the former regime (since 1968). There is a mechanism in place to initiate a legal, peaceful resolution to property claims by IDPs. This is a key step for finding durable solutions for much of Iraq's displaced populations, particularly in the north. After a claimant files a claim for property they believe to be theirs, the Commission will inform the respondent (the current occupant of the property), who will in turn have the chance to present a written case stating the basis for his claim to the property. A panel of three senior officials, chaired by an Iraqi judge, will then make a determination. There is a right of appeal. It is expected that on average cases will take about six months from initial filing to settlement (although some may take considerably longer). \$30 million has been allocated for the administration of this from the supplemental. \$180m for compensation has just been released from the Oil for Food funds.

UNHCR and the authorities in Iraq are seeking durable solutions for the refugees in Iraq, including return, local integration, and third-country resettlement, based on the unique situation of each population and the options available.

SITUATION OF WOMEN

Women's rights

Newly formed Iraqi women's groups have taken an active role in advocating fair representation in their government bodies and calling attention to the rights of women in all spheres of Iraq's democratic development. The TAL enshrines fundamental human rights for both men and women and states that the electoral law "shall aim to achieve the goal of having women constitute no less than one-quarter of the members of the National Assembly", a positive step in ensuring that Iraqi women are given the opportunity to assume national leadership roles.

Over the last year, Iraqi women have organized conferences in Baghdad and in the regions to discuss women's political participation and human rights issues. In addition, since June 2003, many Iraqi women have attended international meetings and conferences that offered them the chance to bring attention to their needs and hopes for the future.

Eighteen women's centers have been established throughout the country. These centers offer opportunities for women to acquire skills that will open up employment or other economic opportunities, and take part in programs that will lead them to a better understanding of their rights and how to be active participants in the decisions that affect their lives. Small grants have been provided to women's organizations to assist them in a variety of efforts, as well as coordination with organizations that wish to expand the prospects for women in isolated, rural areas, addressing concerns such as health care, child development, women's rights, education and economic development.

Domestic violence, rape

Article 12 of the TAL is clear that discrimination against an Iraqi citizen on the basis of gender is prohibited. Reliable statistics are still not available, but domestic violence, kidnapping and rape are cited by Iraqi women as major areas of concern. Culturally these issues are not publicly discussed but various women's groups that have emerged in the post-conflict period having begun working to address the problem by seeking ways to establish safe houses, or transitional protection services, where women can receive medical attention and counseling. Through a combined effort between CPA, Iraqis and non-governmental organizations (NGOs), steps are being taken to establish a Transitional Protective Service program for women who have been kidnapped, raped, and/or abused and to establish facilities to provide a temporary safe place for women or girls who face physical or sexual abuse by their families.

Traditional Iraqi culture and the right to privacy often mask abuses of women, largely domestic violence. Addressing such abuse, especially because of the cultural traditions concerning women's status inside the families, should therefore not be passed over by state institutions and NGOs. Shelters for women and their children, in case of domestic violence, are administered by the Ministry of Labor & Social Affairs (MOLSA) and we hope this responsibility will be increasingly taken on by local NGOs. Orphanages and child care institutions deal with the immediate intervention of the state on behalf of the superior interest of the child.

SITUATION OF CHILDREN

Child labor

The draft revised Labor Code, in accordance with the ILO conventions ratified previously by Iraq (Abolition of Forced Labor Convention no. 105/1957- ratified in 1959, ILO Convention no. 138 on the minimum age - ratified in 1985 and the Convention 182 from 1999 on the worst forms of child labor - ratified in 2001) forbids any forced labor and establishes the age of 15 as the minimum working age. Despite the fact that Iraq has assumed international obligations relevant to prohibiting many forms of child labor, child labor was and still is prevalent in Iraq. An estimated two million school-age children have dropped out of school over the past few years and turned to labor in attempts to help provide family subsistence. Children are often found working as street vendors and beggars and street children. Many fall into hazardous occupations on the "black" labor market which make them vulnerable to various types of exploitation, including physical abuse, sexual exploitation and recruitment by resistance and/or terrorist forces.

The Department of Labor of MOLSA established a Child Labor Unit in January 2004. Staff are preparing for training later in May 2004 in Dohuk. The responsibilities of this Unit are:

- 1) serving as a body to coordinate efforts (of NGOs, as well as governmental and international agencies) in the country to eliminate the worst forms of child labor
- 2) overseeing a number of child labor inspectors across the country

- 3) increasing awareness and advocacy to eliminate the worst forms of child labor and abuse.

PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

Article 23 of the TAL states that “The enumeration of [specific human rights in the TAL] must not be interpreted to mean that they are the only rights enjoyed by the Iraqi people. They enjoy all the rights that befit a free people possessed of their human dignity, including the rights stipulated in international treaties and agreements, other instruments of international law that Iraq has signed to and to which it has acceded, and others that are deemed binding upon it, and the law of nations. Non-Iraqis within Iraq shall enjoy all human rights not inconsistent with their status as non-citizens.”

Freedom of Religion

Article 7 of the TAL states “Islam is the official religion of the State and is to be considered a source of legislation. No law that contradicts the universally agreed tenets of Islam, the principles of democracy, or the rights cited in Chapter Two of this Law may be enacted during the transitional period. This Law respects the Islamic identity of the majority of the Iraqi people and guarantees the full religious rights of all individuals to freedom of religious belief and practice.”

The Iraq Committee for Reconciliation and Peace (ICRP) brought together several religious leaders for the signing of a ten-point document, known as “The Baghdad Religious Accord”. It calls for an end to violence, and pledges that Iraqi religious leaders will work together to help Iraq become a democracy. The ICRP is holding a formal conference to create a robust, actionable agenda of inter-religious reconciliation initiatives.

Formerly, permission to make the Haj pilgrimage to Mecca was heavily restricted for political reasons. Restrictions now are based purely on logistical, not political, factors (in terms of the numbers accepted by Saudi Arabia). Many religious rituals, such as those associated with the commemoration of Ashura, were banned by the former regime. The people of Iraq are now free to practise them openly.

Other civil and political rights

A good indicator of democratic development is the number of voluntary organizations that emerge in a post-conflict setting. In April 2003, newly formed NGOs began to attend meetings at the CPA Convention Center, in the Green Zone, and at Civil Military Operations Centers (CMOCs) all over Iraq. The CPA began holding weekly meetings at the Convention Center and bi-weekly training courses on how to establish an NGO, were well-attended. On 1 May 2004, the deadline passed for NGO registration with the Iraqi government. Within the Ministry of Planning and Development Cooperation (MOPDC), the NGO Assistance Office is tasked with managing the registration process for both Iraqi and foreign NGOs. CPA has been working

closely with the MOPDC to develop its institutional capacity to manage this process and to understand its role in supporting NGOs. Over 1,000 NGOs have submitted applications to the Office. These include women's centers, human rights organizations, social service and civic education, youth, media, and many others representing a wide range of NGO work. This in large part is made possible by the CPA commitment to promote democratic development as the fundamental basis for long-term stability.

CPA South Central, in particular has led the way in promoting the infrastructure for civil society development in the region. Covering six provinces, CPA-South-Central has set up 18 democracy centers (six women, six human rights, six tribal) through which budding associations can find resources and a safe environment for civic action. Throughout Iraq, foreign NGOs, in coordination with CPA, are training, mentoring, and financially supporting NGOs and community-based organizations.

Several CPA-initiated civic education projects are training Iraqis to educate tens of thousands of Iraqis directly on basic concepts about democracy and the interim institutions that are governing Iraq until a new constitution comes into force, for example, training Iraqis as discussion facilitators using Democracy Toolkits. Currently, there are 600 Iraqi facilitators reaching as many as 5000 Iraqis each week around the country. A similar program, Ambassadors of Democracy, focuses on university campuses.

Programs are in place to identify and support civil society organizations throughout Iraq, at the grass roots level and at the national level. Civil society organizations (CSOs) have been provided with grants and training on organizational strategies, fundraising, and computers. Workshops on democracy and democratic values, conflict management and tolerance have also been held. An increasing number of independent CSOs are being formed or consolidated, and are more effectively representing the interests of their members.

Political Parties and Elections

Article 13 of the TAL states that the right to form and join political parties freely, in accordance with the law, shall be guaranteed.

Article 30 of the TAL states that elections for the National Assembly shall take place by 31 December 2004 if possible, and in any case no later than by 31 January 2005.

Article 20 of the TAL states that every Iraqi who fulfills the conditions stipulated in the electoral law has the right to stand for election and cast his ballot secretly in free, open, fair, competitive, and periodic elections. No Iraqi may be discriminated against for purposes of voting in elections on the basis of gender, religion, sect, race, belief, ethnic origin, language, wealth, or literacy.

Article 30 of the TAL states that the National Assembly shall be elected in accordance with an electoral law and a political parties' law. The electoral law shall aim to achieve the goal of having women constitute no less than one-quarter of the members of the National

Assembly and of having fair representation for all communities in Iraq, including the Turcomen, ChaldoAssyrians, and others.

Article 31 of the TAL states that a nominee to the National Assembly must fulfill the following eight conditions: He shall be an Iraqi no less than 30 years of age. He shall not have been a member of the dissolved Ba'ath Party with the rank of Division Member or higher, unless exempted pursuant to the applicable legal rules. If he was once a member of the dissolved Ba'ath Party with the rank of Full Member, he shall be required to sign a document renouncing the Ba'ath Party and disavowing all of his past links with it before becoming eligible to be a candidate, as well as to swear that he no longer has any dealings or connection with Ba'ath Party organizations. If it is established in court that he lied or fabricated on this score, he shall lose his seat in the National Assembly. He shall not have been a member of the former agencies of repression and shall not have contributed to or participated in the persecution of citizens. He shall not have enriched himself in an illegitimate manner at the expense of the homeland and public finance. He shall not have been convicted of a crime involving moral turpitude and shall have a good reputation. He shall have at least a secondary school diploma, or equivalent. He shall not be a member of the armed forces at the time of his nomination.

CPA has supported various conferences that engage political parties in creating common agendas and promote alliances that will strengthen the ability of these parties to participate in the forthcoming political process. The assistance encourages political parties to develop strategies to achieve their goals through the political transition, and to work for the establishment of a government respectful of civil liberties, free economic systems, equal opportunity for women, protection of minorities, and civilian control of the military. At least 200 political parties now exist in Iraq.

Freedom of Movement and Freedom of Assembly

Article 13(d) of the TAL states that each Iraqi has the right of free movement in all parts of Iraq and the right to travel abroad and return freely.

Article 13(c) of the TAL also states that the right of free peaceable assembly and the right to join associations freely, as well as the right to form and join unions and political parties freely, in accordance with the law shall be guaranteed.

Freedom of Speech and the Media

Article 13(b) of the TAL states that public and private freedoms shall be protected; the right of free expression shall be protected.

Since April 2003, Iraqis have been able to purchase satellite dishes and access regional and international news and entertainment sources. Over 200 newspapers and magazines have sprung up throughout Iraq, as well as local radio and television stations. However, the vast majority of print publications are affiliated with political and regional interests, and reporting is often based on rumor and innuendo. Production values tend to be low, pictures and programs are pirated from international sources, and there are reports of news organizations and journalists asking for bribes to report news.

Over \$170 million has been allocated since January 2003 to support the start-up of broadcast and print media in post-Saddam Iraq, including the transformation of the former Ministry of Information to the Iraqi Media Network (IMN). IMN encompasses the al-Iraqiyah television station, Radio Baghdad and al-Sabah newspaper. Work has been ongoing to establish three news bureaus, a satellite TV network, a national newspaper and a training program for journalists. IMN will be expanded into two television channels, two radio stations, and the one national newspaper. US, Lebanese and Kuwaiti-based companies will provide technical infrastructure, programming content, and training to IMN. Small grants have been provided to support the start-up of regional IMN broadcast affiliates and grants for training, technical assistance and equipment for civic education activities. IMN is currently transitioning into an independent public service broadcaster. The Board of Governors and Director-General were appointed on 13 May 2004.

To ensure a credible legal framework within which a free media can operate, and to provide accountability and improve professional standards, an Independent Communications and Media Commission has been established under CPA Order 65. Together with a self-regulatory body for the print media, this will obviate the need for future government legislation to further regulate the media in Iraq, thus supporting the nascent free press.

However, journalists continue to be killed in Iraq, with 27 killed since March 2003 (gunfire from Coalition Forces being responsible for seven of those deaths). On 28 March 2004 the CPA ordered the offices of the Baghdad weekly *Al-Hawza*, which is affiliated with radical Shiite cleric Moqtada al-Sadr, to be closed for 60 days as the publication had violated a CPA decree promulgated last June that prohibits "incitement" in the media. Specifically, the letter said the paper had published "many articles" containing false information and intended to "disturb public order and incite violence against the coalition forces and the employees of the CPA". In January 2004, the IGC barred the Qatar-based satellite broadcaster Al-Jazeera from covering official IGC activities. The action came in response to an Al-Jazeera talk show in which a guest leveled allegations that some IGC members have had relations with Israel or visited the country. In November 2003, the IGC banned United Arab Emirates-based satellite channel Al-Arabiyya from broadcasting in Iraq, accusing the station of incitement after it aired an audiotape purportedly of Saddam Hussein urging Iraqis to resist the U.S.-led occupation of Iraq. The station was allowed to resume broadcasting in late January. In September 2003, the IGC barred reporters from both Al-Arabiyya and Al-Jazeera from covering official press conferences and from entering official buildings for two weeks because the IGC said that the channels incite "sectarian differences in Iraq," "political violence," and the murders of Council and U.S.

coalition members. Last July, the CPA closed the publication *Al-Mustaqillah*, which had cited the calls of Islamic clerics for the death of "spies" who cooperate with U.S. troops. The clerics said killing spies was a religious duty.

Economic, Social and Cultural Rights

Social and cultural rights

Citizens may freely organize, form and join trade unions. Trade unions are encouraged to organize and to defend workers' rights. Iraqis have the right to demonstrate and strike peaceably in accordance with the law.

Employment opportunities

According to Article 12 of the TAL, discrimination against any Iraqi citizen on the basis of gender, nationality, religion or origin is prohibited. Additionally, it is anticipated that the Iraqi Labor Code, currently being drafted, will provide sanctions against employers promoting discrimination on the basis of gender, nationality, religion or origin.

According to Article 14 of the TAL, the Iraqi state and its governmental units, including the federal government, the regions, governorates, municipalities, local administrations, within the limits of their resources and with due regard to other vital needs, shall strive to provide prosperity and employment opportunities to the people.

For those in poverty, the current social welfare law regulates social benefits for families with children, but the amount of benefits is not means driven nor does it take account of family size. Social benefits for handicapped people only address those who are blind or paralyzed, and there are no comprehensive and effective institutional instruments for training such individuals for employment. Real employment opportunities for the disabled are also currently quite limited. The CPA MOLSA team is outlining for consideration by the future government draft principles for a new Iraqi social welfare system, based on means testing. The "means tested" social welfare system will provide Iraqi families in need with social benefits and services.

• Employment Service Centers

The primary goal established by MOLSA in August 2003 was to open 28 Employment Services Centers by July 1, 2004. The Ministry currently has 18 centers open (by early May 2004). The goal of the Centers is to match job seekers with employment and training opportunities. Former militia and military, disenfranchised youth, women, and other unemployed Iraqis are target groups. Currently, there are limited training classes in certain of the centers for teaching basic computer skills and English as a second language. Fundamental to the economic recovery of Iraq will be the rapid emergence of employment opportunities in both the private and public sectors. The Employment Service Centers currently register job seekers and have established outreach to the employer community. As demand for workers increases, especially with the investment of foreign aid in the construction and reconstruction of

infrastructure and other needed or desired services or goods, the Centers will provide the workers to fill those jobs.

- **Vocational training**

The CPA MOLSA team and the Iraqi Ministry are focused on vocational training centers and programs for Iraqis looking for employment.

The primary goal established by MOLSA in August 2003 was to open 17 vocational training centers to provide training facilities for those workers needing training or upgraded training for employment opportunities.

The six traditional Vocational Training Centers (VTC) across Iraq are Baghdad, Irbil, Mosul, Najaf, Kirkuk and Basra. Baghdad-Central will be the largest and will serve as a hub for the coordination of efforts in the other governorates. KOIKA (a South Korean governmental organization) has approved a four-year \$7 million project to construct, equip and provide international technical assistance and training for the Baghdad Vocational Training Center (VTC). This Center will train five vocations in Baghdad and serve as a center for training the trainers across the country. In addition to the Baghdad VTC, the training program will offer courses in English as a Foreign Language, computer skills and construction skills, among other courses. 11 further centers will be opened across the country. Currently, six centers are functioning.

The percentage of women employed is still low, primarily for cultural reasons. Single parents (mainly women) caring for numerous children are poorly equipped to survive without relying on child labor.

Social Security

Article 14 of the TAL guarantees the right of the individual to social security, although a definition of that right is not spelled out. According to the current legislation, any individual working in the state sector (either directly in government or in state-owned enterprises), or in private companies on the basis of an employment contract, has the right to have social insurance. Currently, two distinctive public pensions systems co-exist: a Social Security system covering private employers that have three or more employees and a pension plan covering those workers who are employed by either the government or a state-owned enterprise. Private sector employers having less than three workers currently do not have to join or pay into the Social Security system. This exemption substantially exempts many workers from coverage because the economy is dominated by government employment and a far smaller private sector base of small employers.

In order to universalize social security insurance and to prevent workers from future poverty in the event they lose their job because of sickness, maternity or old age, the CPA MOLSA team is working to design alternative strategies for consideration by the new government. Those strategies envision a strong unified public social security system in Iraq covering all workers, both those employed by the public and private sectors. The social security reform unfolding in

Iraq is part of the World Bank interest area for future involvement in the Iraqi reconstruction process. The main principles of the new social security system are:

- universal contribution
- unification of the existing public pensions systems
- fair recompense of pensioners for the contributions they paid (proportional redistribution of the pension fund on an earning-related benefit formula)
- reasonable qualifying conditions (age of retirement and length of service), in accordance with the life expectancy at birth and at the age of retirement and with traditional, cultural issues in Iraq
- replacing income during maternity and child care leave
- replacing income during sick leave and work injury or occupational disease recovery period
- disability pensions for long term working incapacity
- survivors' pensions.

NATIONAL/RACIAL/ETHNIC MINORITIES

Article 9 of the TAL states that the Arabic language and the Kurdish language are the two official languages of Iraq. Article 9 also states that the right of Iraqis to educate their children in their mother tongue, such as Turcoman, Syriac, or Armenian, in government educational institutions in accordance with educational guidelines, or in any other language in private educational institutions, shall be guaranteed.

OVERSIGHT AND ACCOUNTABILITY

UNSCR 1511 (2003) authorized a multinational force under unified command to take all necessary measures to contribute to the maintenance of security and stability in Iraq. A fundamental principle of a unified command is that the commander of such a force is responsible for the conduct of military operations. This includes responsibility for ensuring that such operations comply with all applicable humanitarian and human rights laws. Thus, the Multi-National Force (MNF) Commander is responsible for oversight of and accountability for MNF operations.

Discipline of individual members of the MNF is the responsibility of the individual States contributing to the Force. This accords with well established principles of coalition forces operating under a Chapter VII mandate. This concept is incorporated into CPA Order Number 17:

All Coalition personnel shall be subject to the exclusive jurisdiction of their Parent States and, they shall be immune from local criminal, civil, and administrative jurisdiction and from any form of arrest or detention other than by persons acting on behalf of their Parent States, except that nothing in this provision shall prevent Coalition Forces personnel from preventing acts of serious misconduct by Coalition personnel, or otherwise temporarily detaining Coalition personnel who pose a risk of injury to themselves or others, pending expeditious turnover to the appropriate authorities of the Parent State.

In the governance arena, CPA has also taken a series of complementary steps to institutionalize principles of public integrity. The Commission on Public Integrity (established by CPA Order 55, 28 January 2004) is an independent commission vested with broad authority to investigate and initiate criminal cases involving corruption, imposes an annual financial disclosure requirement on senior Iraqi leaders, and requires the Commission to establish anti-corruption education programs. The CPA Inspector General Order (Order 57, 10 February 2004) ensures that each Ministry includes an independent Office of Inspector General capable of conducting investigations, audits, evaluations, and other reviews in accordance with generally accepted professional standards. Inspectors General have extensive authority to access records, subpoena witnesses, and compel the reporting of fraud, waste, abuse or criminal acts. Finally, CPA Order 77 (25 April 2004) revitalized the Iraqi Board of Supreme Audit by confirming that the Board works in conjunction with the newly established Inspectors General and the Commission on Public Integrity to facilitate honest and transparent government in Iraq. The Board is granted broad enforcement powers to compel production of records necessary to audit effectively the disbursement of public funds and may propose new legislative initiatives to further accountability and efficiency at all levels of government in Iraq.

The TAL provides for both a National Human Rights Commission and an Ombudsman which will exercise oversight and accountability of government bodies. These are discussed below. In addition, the Ministry of Human Rights has an oversight function with regard to legislation and a Ministry lawyer sits on the IGC's Legal Committee.

HUMAN RIGHTS INSTITUTIONS

Plans to create a sustainable culture of respect for human rights and an effective system of control and supervision to identify and remedy breaches of human rights in the future Iraq rest on four independent, yet complementary platforms: an effective Ministry of Human Rights; an Ombudsman; an independent National Human Rights Commission; and viable, active and independent human rights NGOs.

Ministry of Human Rights

The first Ministry of Human Rights in the history of Iraq was formally established in September, 2003. It was given the mandate of addressing past human rights atrocities and safeguarding the human rights and fundamental freedoms of all persons within the territory of Iraq in the future. Specifically, the Ministry of Human Rights is to help establish conditions conducive to the protection of human rights and fundamental freedoms in Iraq and prevent human rights violations in Iraq; to make formal recommendations for measures to prevent human rights violations; (3) assist all people in society in healing from the atrocities committed by the Ba'athist regime to include appropriate cooperation with the Iraqi Special Tribunal (IST) or other judicial institutions; (4) serve as focal point for relations with the UN High Commissioner for Human Rights, the UN Commission on the Status of Women, and other international human rights organizations; and (5) provide advice to lawmakers on whether proposed legislation comports with international human rights law, including the legal obligations Iraq has assumed through ratification of international treaties.

CPA secured funds for the refurbishment of a substantial building which was opened by the Minister for Human Rights, Abdul Basit Turki, and Ambassador Bremer on 14 February 2004. In April 2004, Ambassador Bremer and the IGC approved the appointment of Bakhtiar Amin, a well-known human rights activist, as Deputy Minister of Human Rights. The Minister attended meetings of the Human Rights Committee of the Arab league in Egypt in December 2003 and the UNHCR in Geneva earlier this year. Following the Minister's resignation in April 2004, Mr Amin has taken over his duties as Acting Minister. The Ministry has been supported and assisted throughout by the CPA Office of Human Rights and Transitional Justice.

There are approximately 150 employees at the Ministry and now that the infrastructure and management are in place, their substantive work will begin. Not all of these individuals are appropriately qualified as yet, but there is considerable enthusiasm and a substantial degree of expertise amongst the Iraqi technocrats which should ensure competence. An Inspector-General has been appointed. A two-week training course in Amman will be held in June for officials from the Ministry of Human Rights with the support of the UN Office of the High Commissioner for Human Rights and UNICEF. CPA officials have been advising the Acting Minister on a restructuring program to ensure the effectiveness of ministry departments and create specific achievable objectives.

Ministry Activities

International human rights experts and secondees from other governments have sometimes been reluctant to travel to Iraq or have returned home early, and providing secure space for training inside Iraq is not always a simple matter. However, efforts to provide training in secure locations outside Iraq are ongoing. A conference for Iraqi human rights and humanitarian NGOs was held in Beirut in March 2004. The Swiss government is sending a Missing Persons Expert to assist in developing the Ministry's Missing Persons Bureau, which has created an ante-mortem data form for distribution throughout Iraq. This expert will build on the work of a team from the Department of Defense's Missing in Action/Prisoner of War team which visited earlier this year.

MoHR staff have compiled a CD-ROM containing reports and descriptions of mass grave locations throughout Iraq.

Negotiations are ongoing with the Canadian government to host training for NGOs there. At the suggestion of the CPA, the Ministry has plans to host a conference in Suleimaniyah in conjunction with the Ministers of Human Rights from the two Kurdish regions. The objective is to partner nascent NGOs from the rest of Iraq with more established NGOs from the north which have had the benefit of some international assistance and funding and have had an opportunity to thrive in a post-conflict environment. The two Kurdish ministers have recently agreed to work more closely with the national ministry. The Ministry of Human Rights has begun to host weekly workshops on women's issues including CSW, CEDAW and UNIFEM, in partnership with the Ministry of Foreign Affairs and Ministry of Labor & Social Affairs. The Ministry is planning to develop links with women's groups in the UK with a view to establishing a National Commission for Women. The Ministry has recently signaled its intention that Iraq should become a signatory to the UN Convention Against Torture & Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 and will be holding workshops with other government departments.

Minister Turki met with the UN Special Rapporteur on the Situation of Human Rights in Iraq, Andreas Mavrommatis, and bilaterally with officials from many nations at the Madrid Conference in October, 2003, as well as making visits to other Middle Eastern countries to ask for assistance with ministry programs. Both Minister Turki and Acting Minister Amin have developed contacts with the OCHCR and Acting Minister Amin is strengthening the Ministry's contacts with European partners and the EU, as well as the UNDP. The Ministry will work with the Ministry of Foreign Affairs to reestablish a Committee on War Victims to assist Iraqis in proper repatriation of remains from the international wars with Iran and Kuwait.

These programs will run in tandem with widespread efforts to introduce human rights training in schools and universities and to raise awareness of human rights nationwide.

With the full support of CPA, the Ministry has also designated two of its lawyers to act as onsite monitors in the criminal detainee section of Abu Ghraib prison and act as liaison for the families. Following recent positive meetings with Major-General Miller (Deputy Commanding General of Detention Operations carried out by US forces), the Ministry's mandate at Abu Ghraib has been extended to security internees also and Ministry staff will meet with representatives of the security detainees and be given full access to the women's, juvenile and medical sections.

In addition the Ministry will oversee an oral history project designed to interview thousands of Iraqis about human rights abuses under the former regime and store this information in a searchable secure database for use in locating missing persons, preparing for a possible future Truth commission or simply building a historical record of the past to help Iraqis come to terms with the abuses and assist in preventing them reoccurring.

National Human Rights Commission

Article 50 of the TAL provides for the establishment of a National Human Rights Commission (NHRC). CPA has recruited an expert in National Human Rights Commissions from Canada to come to Iraq at the end of May to advise on establishing the Iraqi NHRC. It will be an independent body. One of its powers will be to accept complaints from individuals and organizations concerning alleged government violations of human rights. It will also be able to conduct public inquiries on its own initiative to address effectively the violations of the rights of the most vulnerable and disadvantaged.

Ombudsman

The establishment of this office was also specifically provided for in Article 50 of the TAL. The office will act as a further check on action by the government that is arbitrary or contrary to law and look into maladministration.

Funding for Human Rights

The initial budget for 2004 is 10.7 billion New Iraqi Dinars (approximately US\$7.1 million) rising to 21.4 billion New Iraqi Dinars (approximately US\$14.3 million) by 2006. This is to cover capital building projects to create human rights training centers, human rights training courses and materials, Ministry staff salaries and operating costs. In addition, \$15 million has been allocated to human rights under the Supplemental Budget from the U.S. Congress. Some of this is aimed at recording the past abuses of the previous regime and assisting the Iraqi people in coming to terms with them; a considerable portion is dedicated to supporting the efforts of the Ministry and creating a strong human rights culture in Iraq. \$1.5 million has been attached to USAID's already substantial civic education programs specifically to concentrate on human rights education. An additional \$600,000 is available for direct grants to organizations to assist in this. \$1.25 million has been allocated specifically to assisting in the coordination and development of human rights NGOs in Iraq. Requests for proposals were issued by the U.S. State Department in April 2004. The Department is currently reviewing proposals and intends to expedite these programs as quickly as possible. The UK government has provided further funding for mass grave forensic assessments. In addition the UK has provided grants to initiate projects to analyze regime documentation and gather oral histories relating to regime crimes, as well as providing NGO funding under its Global Conflict Prevention Pool (GCPP), with more to come under this fund.

Annex II

Submission from the United States of America

TREATMENT OF PERSONS IN DETENTION IN IRAQ

Since the inception of hostilities of Iraq, U.S. forces have conducted detention operations involving enemy prisoners of war and persons held for security reasons, including persons having committed violations of Iraqi criminal law. Detention operations have been and continue to be conducted in compliance with the law of armed conflict, including the 1949 Geneva Conventions, and applicable U.S. regulations.

During combat operations, U.S. forces captured and held enemy prisoners of war (EPWs). These EPWs have been treated in accordance with the Geneva Convention Relative to the Treatment of Prisoners of War (GPW). EPWs held by U.S. forces were promptly evacuated from forward areas and transferred to centralized collection points and holding facilities. They have been treated humanely, protected from harm, and provided appropriate medical care and treatment if necessary. All but a handful of the EPWs held by U.S. force in Iraq have been paroled. Those EPWs still under U.S. control continue to be accorded GPW protections.

Establishing a secure and stable environment in Iraq has raised many challenges for Coalition forces and Iraqi security forces. Attacks against the Iraqi people, the Coalition, and international organizations by former regime elements and foreign terrorists undermine the security and stability of Iraq. Under these circumstances, it has been necessary to detain persons for imperative reasons of security. Detainees held for security reasons have been and continue to be provided the protections of the Geneva Convention Relative to the Protection of Civilians in Time of War (GCC).

The detention of an individual for security reasons is subjected to several levels of review and an appeal mechanism. The necessity for detention is reviewed shortly after capture, followed by, if continued detention is determined to be necessary, review by a Standing Review Board. The Standing Review Board then considers the necessity of continued detention every six months. These procedures allow an individual to appeal his or her detention, in accordance with the Geneva Conventions. The current rate of review is one hundred cases per day. Those security internees deemed no longer to be a threat to security are released.

The security environment in Iraq is further burdened by the former regime's October 2002 release of all criminals in confinement and the subsequent destruction and looting of the Iraqi prison system. Hardened criminals freed from confinement by the former regime have exploited the instability in Iraq to terrorize the Iraqi people for criminal purposes. It was necessary for Coalition forces to take control of what remained of the Iraqi correctional system. In view of the widespread destruction of the Iraqi prison system, Coalition forces constructed detention facilities to house persons suspected of violating Iraqi criminal law. These facilities were initially operated by Coalition forces, but extensive efforts have been undertaken to train new Iraqi personnel in the effective, humane operation of correctional facilities. The Iraqi

Correctional Service, assisted by Coalition advisors, has now assumed control over the detention of persons suspected of, or convicted of, violating Iraqi criminal laws. During the period when U.S. forces controlled Iraqi criminal detainees, measures were taken to ensure that criminal cases were processed by the Iraqi criminal justice system or that persons held for suspicion of committing minor crimes were released after an appropriate period if their cases were not heard by Iraqi courts.

The abuse of security internees at Abu Ghraib has been a matter of great concern. The President of the United States has said that the abuses reflected in the photographs that took place in Abu Ghraib are "abhorrent." Already, one service member involved in the abuse has been taken to a Special Court-Martial proceeding. Six others are currently facing courts-martial charges, and a full investigation is underway to determine both what happened at Abu Ghraib and who was involved. The Administration has made it clear at the highest levels that if authorities learn of others suspected of committing crimes, they will be held accountable under U.S. law.

The United States takes reports of mistreatment very seriously, investigates all such allegations thoroughly, and, where appropriate, addresses cases of misconduct under U.S. legal processes. Several investigations into these allegations and related matters are now underway. The United States is committed to treating all persons under its control with dignity and respect. U.S. personnel are expected to act appropriately, humanely, and in compliance with the Geneva Conventions. Those responsible for misconduct will be identified and held to account in accordance with U.S. law. In addition, reviews of all detention operations in Iraq are being undertaken on multiple levels to identify any shortcomings and to implement procedures to strengthen our commitment to conducting detention operations humanely and in compliance with the law of armed conflict, including the Geneva Conventions.

New leadership has taken over at the facility at Abu Ghraib. Every person in a leadership position within Iraq is aware of the need to heighten his or her vigilance to prevent any possible mistreatment of Iraqi detainees. Additional training on the Geneva Conventions and applicable rules of procedure has been conducted for the replacement units that are taking over detention operations to ensure all personnel fully understand their duties and responsibilities.

U.S. authorities at Abu Ghraib have established a positive working relationship with the Iraqi Ministry of Human Rights, whose representatives now conduct weekly visits and are allowed free access to the detention facility. The International Committee of the Red Cross (ICRC) continues to have access to the facility.

Notification of Families

U.S. forces, in coordination with the Coalition Provisional Authority, have taken a number of measures to ensure that Iraqi families can obtain information on the location of individuals who have been detained. U.S. forces maintain an up to date list of individuals in detention. The list is provided to ICRC. The list contains the individual's name, Internment Serial Number (ISN), place of birth, address, and the place of detention. Families can obtain information from the list from the Iraqi Assistance Centre (IAC) within the Green Zone. They can also inquire at the nine General Information Centres (GICs) located throughout Baghdad, which obtain updated

copies of the list from the IAC. The primary means for families to locate family members they believe to be detained is through local Iraqi Police Stations which have been provided with a listing of detainees (in both English and Arabic) that includes pictures of detainees. This book of detainees also includes a description of the detainee's current health assessment and outlines how to schedule a family visit to that detainee. For those families with internet access, the list of detainees is also posted on the CPA website in Arabic. A reception office at Abu Ghraib prison deals with on-site queries. There are sometimes difficulties locating particular individuals in detention, notwithstanding the extensive effort exerted to produce detailed and accurate detainee lists. Most of these difficulties stem from translation problems, the difficulty of obtaining the complete names for individuals, and the reluctance on the part of some detainees to provide accurate information.

Family Visits

Since the beginning of the operation, family and attorney visits have been afforded to criminal detainees. Although, at times, security has required us to limit some visits for the safety of the visiting families and attorneys, they have resumed as quickly as possible and to the greatest extent possible. Since the beginning of the operation, security internees have received family visits whenever permissible in the security environment. ICRC has access to all detainees, including security internees. ICRC passes messages from detainees, including security internees, to families and makes representations to US forces regarding any matter concerning the conditions of their detention and their health.

Currently, family visits are afforded to all criminal detainees and nearly all security internees commensurate with logistical and security limitations.

Juveniles

From time to time Coalition forces detain juveniles who are involved in suspected attacks against the Coalition and the Iraqi people, and who are involved in Iraqi-on-Iraqi crimes. Juvenile security internees are segregated from the adult population of detainees. In addition, juvenile cases are rapidly reviewed by the Standing Review Board to determine whether continued detention is necessary.

Females

U.S. forces hold a very small number of female security internees. They are segregated from the male detainee population, for their safety and privacy. All females have been reviewed by the Security Internee Review and Appeal Board.

Annex III

Submission from the United Kingdom of Great Britain and Northern Ireland

UK RESPONSIBILITY FOR INTERNEES AND DETAINEES

The UK currently holds some 120 security internees in southern Iraq. The UK has no interest in holding anyone unless they pose a serious threat to security.

The right to hold such people derives from the IVth Geneva Convention. The UK takes very seriously its Geneva Convention responsibilities. The International Committee of the Red Cross has full and unrestricted access to the detention facilities.

UK forces, Iraqi civilians and law enforcement officials, humanitarian aid workers and contractors are regularly subject to lethal attacks. UK forces are entitled to use arrest against those who pose such a threat.

Anyone suspected of breaking Iraqi law is passed to the Iraqi police to determine what action to take. However some people are not suspected of breaking Iraqi law. They are held as an imperative threat to security as recognised by the Geneva Conventions. Their status is regularly reviewed and anyone no longer deemed to constitute such a threat is released.

Internee Review Process

The UK is bound by the Geneva Conventions. UK operations in Iraq reflect that. This includes authority to arrest and hold people who are a serious security threat to UK forces.

When UK forces decide to intern people they inform the International Committee of the Red Cross who then inform the individual's family. A list of internees is held in local police stations.

1. The initial decision to intern is subject to periodic reviews by an Internment Review Board. These reviews are conducted for each case at the 10 day, 28 day, 3 month and 6 month marks, which is more frequently than required by GC IV. Any written representations made by internees are considered by the Review Board.
2. Files are held on all internees and all reviews are fully recorded.

Conditions

Internees held by the UK are generally held in a secure compound at Shaibah.

Within the compound individuals are free to move around as they wish (i.e. they are not restrained unless they pose a specific threat to coalition personnel). They can exercise freely and can practise their religion freely as they wish.

They are fed halal food three times per day. If they request a change to the menu for religious reasons this can be accommodated. They are also provided with bottled fresh water as they require.

Attached is an update on standard procedures relating to protection of the rights of persons captured by British Forces.

PROTECTING THE RIGHTS OF PERSONS CAPTURED BY BRITISH FORCES

Definitions and Categories

1. There are two main definitions that apply to people captured by British forces in Iraq. Internees are those people whose liberty is restricted for imperative reasons of security, as permitted under the terms of Article 78 of the 1949 Geneva Convention IV relative to the Protection of Civilian Persons in Time of War. Detainees are those people who are apprehended on suspicion of committing a criminal offence.
2. British forces in MND(SE) further categorise captured persons in one of four ways:
 - Category 1. Individuals apprehended on suspicion of minor criminal offences. An Apprehension Report and Complaint Statement (ie a witness statement) are completed by the apprehending unit and the individual is handed over to the Iraqi authorities as soon as practicable, together with the Apprehension Report, Complaint Statement and any other evidence obtained.
 - Category 2. Individuals apprehended solely on suspicion of committing a serious criminal offence (ie murder or manslaughter, serious assault or wounding, rape, theft, kidnapping/unlawful detention, or damage to public utilities). Individuals detained on these grounds are given written notification of their rights to remain silent and to consult a lawyer. Generally such individuals are handed directly to the Iraqi authorities or brought before the Investigating Magistrate with all Apprehension Reports, Complaint Statements and any exhibits. In theory suspects may, in exceptional circumstances, be temporarily detained in MND(SE)'s Divisional Temporary Detention Facility (DTDF), but this has not happened since the facility was opened in December 2003.
 - Category 3. Individuals suspected of committing a serious criminal offence, but who may also pose a threat to either coalition forces or to their mission. Such people are transferred to the DTDF as internees, pending further review of their status. They are informed that they are being held as it is believed they pose a threat and that they will be

released if it is concluded they do not pose a serious threat, and are given the opportunity to advise whether they wish to notify a third party of their whereabouts.

- Category 4. Individuals who have been identified as posing a serious threat to coalition forces may be interned at the DTDF if it is necessary for imperative reasons of security. On apprehension, they are given the same information and opportunity as Category 3 persons.

3. The principle is, therefore, that those suspected of committing a criminal offence should be handed over to the Iraqi authorities to be dealt with under Iraqi criminal law wherever possible. Such hand over is carried out as soon as possible and no later than 12 hours after the initial apprehension.

Guarding and Holding of Internees

4. Direction to British forces requires that all detained persons must be treated humanely and in accordance with the principles of international humanitarian law.

- a. On arrest, they are to be restrained using minimum forces levels. National guidelines on the use of handcuffs are applied, which for the UK means they are to be used to the front of the body.
- b. At the earliest opportunity following arrest, the suspect is handed over to a nominated Custody Officer, which for the UK is a member of the Regimental Provost Staff who has qualified at the Military Corrective Training Centre.
- c. The nominated Custody Officer is then responsible for ensuring the safe treatment and handling of the person whilst in their care. A record of those individuals assuming responsibility for custody at each stage is maintained.

Procedures for Searching and Apprehending

5. When a suspect, vessel or vehicle is apprehended and is being searched, the following is required of British forces in MND(SE):

- a. A record of the search must be maintained.
- b. The reason for the search must be explained.
- c. The individuals being searched are disarmed.
- d. A receipt for any items retained must be given and a copy retained.
- e. Apprehended individuals are allowed to retain property such as clothing, personal effects and religious items that do not represent a threat to security or the safety of the individual.

f. The search has to be conducted with due regard for the individual's personal dignity, taking into account any religious sensitivities. Females are searched by females or by use of scanners.

6. When a suspect is apprehended they must also be informed, in a language they understand, that they have been apprehended by coalition forces, the reason for their apprehension, where they are being taken, and that a member of their family will be informed of their apprehension.

General Principles for Treatment of Individuals

7. Direction to British forces in MND(SE) requires that the following principles be adhered to by all personnel who are responsible for individuals in any form of custody:

- a. Apprehended individuals must be treated at all times fairly, humanely and with respect for his or her personal dignity.
- b. Apprehended individuals must be protected from danger and the elements.
- c. Apprehended individuals must not be kept in direct sunlight for long periods.
- d. Medical care must be provided if required.
- e. Food and water must be provided as necessary, having regard to any national, ethnic or religious dietary requirements.
- f. Physical and mental torture, corporal punishment, humiliating or degrading treatment, or the threat of such, are prohibited.
- g. The use of hooding and stress positions is prohibited. Internees may be blindfolded when in a military sensitive area, but such blindfolding must cease as soon as the reason for the blindfolding ceases to exist.
- h. Females must be segregated from males.

Juveniles

8. Individuals under the age of 18 are categorised as juveniles for the purposes of MND(SE) policy. The age of criminal responsibility under Iraqi law, however, is seven. Juveniles between the ages of 7 and 15 who are detained on suspicion of committing a criminal offence will generally be handed over to Iraqi police. As a matter of policy, juveniles under the age of 16 are not interned, but the senior British officer commanding in MND(SE) does retain the discretion to do so, if it is considered necessary for imperative reasons of security.

Evidence

9. Direction to British forces in MND(SE) includes guidance on the collection and recording of evidence. Any property, including conveyances and other forms of transport which are seized from a person, has to be fully documented and accounted for and a receipt given; the purpose being to ensure that property can be preserved as evidence or returned to the owner as appropriate. If an apprehended person goes to the DTDF, then documentary evidence plus the

apprehension and tactical questioning paperwork goes with him to the DTDF or must reach the DTDF within 48 hours.

Review Procedures

10. Within 8 hours of apprehension, or as soon as possible thereafter, captured persons are categorised in accordance with the principles set out at paragraph 2 above. Where persons are interned for reasons of imperative security, their continued internment is subject to review at the 10 day, 28 day, 3 month and six months points, or more frequently if appropriate.

ICRC

11. We work closely with the ICRC to help us to meet our obligations. They have visited the DTDF (to which they have unrestricted access) on four occasions; once shortly before it opened and three times this year. The details of their reports are intended to remain confidential, but it is fair to say they have been generally satisfied with the DTDF and with our response to concerns they have raised.

Allegations of Mistreatment

12. There have been no allegations of systematic mistreatment of persons held in the DTDF. However, we take allegations of any wrongdoing by our personnel extremely seriously. For example, in the case of the death of Mr Baha Mousa last September [2003] (which the ICRC have commented on and which has been the subject of an Amnesty International letter writing campaign), a Royal Military Police Special Investigation Branch investigation was launched within thirty minutes of his death being confirmed. Should British forces be found to have acted unlawfully, appropriate action will be taken.

Annex IV

RELEASE FORM FOR DETAINED CIVILIANS

The Following individual was detained and processed into the US Prisoner Internment Facility Abu Gharib, Iraq:

NAME: Saddam Salah Al Rawi

ISN: 200144

DATES OF INCARCERATION: Dec 1, 2003 - 28 MAR 2004

Whatever crime they have committed has been reviewed and any time required has been served. This individual, barring commission of another crime, has no further need for detention. This individual may also need to reacquire any property they had in their possession upon incarceration.

There is currently no reason for the continued detention of the individual, and further investigation into the case by way of a formal tribunal is not required.

The release of the above individual is hereby authorized.

SIGNED: 

NAME: LIEUTENANT COLONEL CRAIG A. ESSICK

APPT: CAMP COMMANDANT

FOR THE ATTENTION OF THE INDIVIDUAL TO BE RELEASED

I understand that once released by US forces, any duty of care that existed when I was in their custody ceases. Any actions that occur from the moment of release are not the responsibility of US forces, notwithstanding that an international armed conflict still exists within the nation of Iraq.


SIGNED

Annex V

List of documents

Written submissions

Governments

- Coalition Provisional Authority, 28 May 2004
- Czech Republic, 27 May 2004
- Japan, 25 May 2004
- Latvia, 26 May 2004
- New Zealand, 28 May 2004
- Poland, 28 May 2004
- United Kingdom, 27 May 2004
- United States of America, 1 June 2004

United Nations bodies and programmes and specialized bodies

- ESCWA, 17 May 2004,
- HABITAT, 25 May 2004
- UNHCR, 24 May 2004
- UNICEF, 25 May 2004

NGOs in consultative status with ECOSOC

- Amnesty International, 19 May 2004
- Arab Organization for Human Rights, May 2004
- Human Rights Watch, May 2004
- International Youth and Student Movement of the United Nations (ISMUN)
- Women's International League for Peace and Freedom, 29 May 2004

International humanitarian organizations

- Christian Peacemakers Team, 31 May 2004
- Medecins sans Frontieres Iraq, 27 May 2004

Documents received from interviewees in Amman

- The General Forum for Human Rights and Democracy Organization in Iraq, Baghdad:
 - Report on human rights situation in Iraq during regime of Saddam Hussein and thereafter.
- Human Rights Organization, Mosul:

- Report on the authority of the Coalition to issue new laws in Iraq.
 - Copy of Military Order No. 13 which mentions that Iraqi courts do not have the authority to receive or examine any complaint against the Coalition.
 - Report on violations of human rights during the period of 9 April 2003 to 1 February 2004.
 - Two letters sent in 2003 to the CPA Administrator, Ambassador Bremer, and the SRSG regarding the situation in Iraq and the selection of the IGC members.
- Human Rights Organization in Iraq, Baghdad:
- 14 cases of Iraqi persons arrested by the Coalition, out of which one was released, some allegedly killed and the remaining cases pending.
 - Statement and CD Rom regarding abuses of Iraqi detainees.
 - Statements on human rights situation in Iraq.
 - Report on protection of civilians.
 - Reports on the organization's activities.
 - Newsletter issued by the organization.
- Human Rights Society in Iraq, Mosul:
- Draft report on human rights situation in Iraq during the period of April 2003 to May 2004.
- Iraqi Human Rights Watch, Karbala:
- A release form regarding one detainee.
 - Organization's newspaper.
- Iraqi National Association for Human Rights, Mosul:
- Working paper on the protection of women through international human rights law.
- Iraqi Network for Human Rights Culture and Development, Baghdad:
- General report on human rights situation in Iraq.
 - Specific report on human rights situation in Iraq, including 11 individual cases of alleged human rights violations.
- The Islamic Organization for Human Rights, Mosul:
- A booklet including 8000 names of Iraqis in detention.
 - Nine individual complaints and reports relating to arrests, missing persons and death of civilians as a result of excessive use of force.
 - Report on individual cases of IDPs as a result of the war and their current situation.
 - Statements issued by the Organization regarding the human rights situation in the country.

- Ms. D. A., Lawyer from Mosul:
 - Report on the situation of children in Iraq, April 2003 to 21 May 2004, including three cases of children kidnapped for ransom in Mosul.
- Legal Association for Human Rights, Mosul:
 - Report about the establishment of the organization and its responsibilities.
- National Association for the Defense of Human Rights in Iraq, Samarra:
 - Statements issued by the Organization regarding the situation of human rights after the war.
 - Report on Iraqis in detention.
 - Report on civilian casualties and claims related to US military operation.
 - National Association for Human Rights, Baghdad:
 - Report about the rights of the Mandaean in Iraq – 2004.
 - Report about the human rights situation for the Mandaean during the period of 1 March 2004 to 15 April 2004.
- National Association for Human Rights, Basra:
 - Statement issued by the Organization regarding the work of and cooperation between civil organizations in Basra.
- National Front for Iraqi Tribes Human Rights Bureau, Mosul:
 - Report “Human rights violations in Iraq by the Occupying Forces for the period from 9 April 2003 to 15 May 2004” submitted to OHCHR on 15 May 2004.
- Samiramis NGO:
 - Document related to the establishment and work of the organization.

Reports by the Special Rapporteur on the situation of human rights in Iraq during the administration of Saddam Hussein

- A/46/647 (13 November 1991)
- E/CN.4/1992/31 (18 February 1992)
- A/47/367 and Add.1 (10 August 1992 and 13 November 1992)
- E/CN.4/1993/45 (19 February 1993)
- A/48/600 and Add.1 (18 November 1993 and 19 November 1993)
- E/CN.4/1994/58 (25 February 1994)
- A/49/651 (8 November 1994); E/CN.4/1995/56 (15 February 1995)
- A/50/734 (8 November 1995)
- E/CN.4/1996/61 (4 March 1996)
- A/51/496 and Add.1 (15 October 1996 and 8 November 1996)

- E/CN.4/1997/57 (21 February 1997)
- A/52/476 (15 October 1997)
- E/CN.4/1998/67 (10 March 1998)
- A/53/433 (24 September 1998)
- E/CN.4/1999/37 (26 February 1999)
- A/54/466 (14 October 1999)
- E/CN.4/2000/37 (14 March 2000)
- A/55/294 (14 August 2000)
- E/CN.4/2001/42 (16 January 2001)
- A/56/340 (13 September 2001)
- E/CN.4/2002/44 (15 March 2002)
- A/57/325 (20 August 2002)
- E/CN.4/2003/40 and Add.1 (23 January 2003 and 4 March 2003)
- A/58/338 (3 September 2003)
- E/CN.4/2004/36 and Add.1 (19 March 2004)

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