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BEYOND ABU GHRAIB

Some 14,000 people are currently imprisoned in Iraq by the United States and United Kingdom military, according to official figures. The circumstances of the detention of these people are examined in Amnesty International's report 'Beyond Abu Ghraib: Detention and Torture in Iraq', from which these excerpts are taken. It was published in March 2006.

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

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

At the beginning of 2004 the Coalition Provisional Authority headed by US ambassador Paul Bremer published a list of about 8,500 detainees on the Internet. However, the true figure of those then being held was believed to be much higher. When the Authority was disbanded in June 2004, the number of detainees held by

the Coalition Forces had fallen to about 6,400 persons, according to a US military official. However, since the handover of power, the number of detainees held by the Multinational Force has increased steadily.

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

Legal background to detentions by the Multinational Force

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

With the handover of power in June 2004 the legal situation changed; since then Iraq is considered to be in a situation of non-international armed conflict with the Multinational Force and the Iraqi security forces on one side and the insurgents on the other. Therefore, the Geneva Conventions no longer fully apply to persons detained in connection with the ongoing armed conflict. In this situation, all parties including the Multinational Force are bound by Article 3 common to the four Geneva Conventions, and by customary rules applicable to non-international armed conflicts, as well as human rights law. Article 3 common to the Four Geneva Conventions requires that those placed in detention are treated humanely, though it does not contain detailed provisions regulating such detention.

Since the handover of power, the Multinational Force refer to UN Security Council Resolution 1546 as providing the legal basis for the MNF forces to hold people in detention in Iraq. Resolution 1546, with its attached exchange of letters between, for the United States, Secretary of State Colin Powell and, for Iraq, Prime Minister Ayad Allawi, confers on the Multinational Force authority to resort to 'internment where this is necessary for imperative reasons of security'. Unfortunately, there is no reference in Resolution 1546 to the legal safeguards that are to apply to arrests, detention or internment carried out by armed forces and

troops from countries contributing to the Multinational Force. The United Kingdom and the United States have stated, however, that their internment policies are also governed by Coalition Provisional Authority Memorandum No. 3 (revised) of June 2004, which sets out the process of arrest and detention of criminal suspects, as well as procedures relating to 'security internees' detained by members of the Multinational Force after 28 June 2004.

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

The Memorandum established some basic rules for the detention of 'security internees', concerning review procedures, access to internees and other aspects of their conditions, and the maximum period of internment of children. Coalition Provisional Authority Memorandum No.3 provides that anyone who is interned for more than 72 hours is entitled to have the decision to intern them reviewed within seven days and thereafter at intervals of no more than six months. The Memorandum also states that the 'operation, condition and standards of any internment facility established by the Multinational Force shall be in accordance with Section IV of the Fourth Geneva Convention'.

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

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

Amnesty International considers the Multinational Force system of security internment in Iraq to be arbitrary – in violation of fundamental human rights. All detainees, including security internees, are protected by Article 9 of the

Convention, which provides that no-one should be subjected to arbitrary detention and that deprivation of liberty must be based on grounds and procedures established by law (para 1). Detainees must also have access to a court empowered to rule without delay on the lawfulness of their detention and to order their release if the detention is found to be unlawful (para 4). These requirements apply to 'anyone who is deprived of his liberty by arrest or detention' and therefore apply fully to those interned by the Multinational Force.

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

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

Review process

Jawad M, an Iraqi national who worked for the US forces at military bases in Baghdad, was detained by US forces in August 2004. In October 2004 he received a document from the Office of the Deputy Commanding General, Detainee Operations, Multinational Force-Iraq which informed him about an upcoming review session and included the following one-sentence accusation: 'Gathering of information on interpreters and employees with the Multinational Force'. No further explanation or reference to any relevant legislation was provided. He was not charged or tried. Reviews of his case were conducted by an administrative body before which he was not permitted to appear. Following his release from Abu Ghraib prison at the beginning of 2005, Jawad M told Amnesty International that he still did not know the reasons for his internment. He said: 'It was useless. I was there for five months and I knew that nobody can do anything. Until now I don't know why they sent me to the prison and why I was released and whose decision that was.'

The case of Jawad M illustrates the way in which many internees are detained arbitrarily by the Multinational Force. In violation of international human rights

law, tens of thousands of internees have been held for weeks or months and thousands for more than one year without being charged or tried and with no right to challenge the lawfulness of their detention before a judicial body. They have received no information regarding the grounds for their detention, whether they will be charged and brought to trial or, if not, for how long they are likely to be detained.

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

Review for internees held by US forces

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

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

After the handover, a body called the Combined Review and Release Board was established, comprising two representatives each from the Iraqi ministries of Justice, the Interior and Human Rights and three Multinational Force officers. This body reviews the cases of internees and makes recommendations regarding their release or continued detention – according to Human Rights Ministry officials these recommendations are made by majority and none of the board's members has a power of veto – but its recommendations are not binding and it is the Multinational Force's Deputy Commanding General for Detainee Operations who decides whether or not a detainee should be released after first consulting Iraq's Minister of Justice.

The US government's 2005 report to the UN Committee against Torture provided the following description of the detention review process:

> 'Upon capture by a detaining unit, a detainee is moved as expeditiously as possible to a theater internment facility. A military magistrate reviews an individual's detention to assess whether to continue to detain or to release him or her. If detention is continued, the Combined Review and Release Board assumes the responsibility for subsequently reviewing whether continued detention is appropriate.'

Coalition Provisional Authority Memorandum No. 3 stipulates that the review within seven days must be followed by further reviews at intervals of no more than six months. In practice, these appear generally to be respected with some

reviews being done at more frequent intervals. In considering cases, the Combined Review and Release Board has three possible options to recommend: unconditional release, release with a suitable guarantor from the detainee's community, or continued internment. Neither the internee nor his or her legal counsel are permitted to be present during these case reviews, though internees have reportedly been encouraged to make submissions to the Combined Review and Release Board in writing.

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

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

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

Review for internees held by UK forces

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

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

The Governing Officer Commanding informs internees in writing, stating the reasons, when it is determined that they should continue to be interned. However, Amnesty International is concerned that even after months of internment the Multinational Force continues to hold internees without providing them or their legal counsel with substantive evidence to justify their detention.

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

Length of internment

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

This requirement of release after 18 months is not absolute, however. Even the detainees interned after the handover can be held for more prolonged periods at the approval of the Joint Detention Committee. This requires that an application for further internment is made to the Joint Detention Committee two months before the expiry of the initial internment period of 18 months; if the Committee sanctions continued internment it must specify the duration. According to the Human Rights Annual Report 2005 of the United Kingdom Foreign and Commonwealth Office, published in July 2005, the Joint Detention Committee had still to be convened for UK-held internees because none of them by then had been held for as long as 18 months. In mid-February 2006 an application for the extension of internment beyond 18 months of 266 detainees had been made to the Joint Detention Committee.

Amnesty International is concerned about hundreds of security internees who have been detained by the Multinational Force since before the handover of power and may be held indefinitely. In a letter to Amnesty International dated 19 February 2006, Major General Gardner, commander of Task Force 134, which is in charge of Multinational Force detention operations, stated that at the end of

2005 the number of security internees held for more than 18 months was estimated to be 751. The letter confirmed that approval by the Joint Detention Committee to keep an internee beyond 18 months is only required for 'internees detained after 30 June 2004'.

Amnesty International considers indefinite internment as practised by the Multinational Force with regard to security internees held since before the handover of power to be unlawful. According to The UN Working Group on Arbitrary Detentions (established by the UN Commission on Human Rights):

> 'With regard to derogations that are unlawful and inconsistent with States' obligations under international law, the Working Group reaffirms that the fight against terrorism may undeniably require specific limits on certain guarantees, including those concerning detention and the right to a fair trial. It nevertheless points out that under any circumstances, and whatever the threat, there are rights which cannot be derogated from, that *in no event may an arrest based on emergency legislation last indefinitely*, and it is particularly important that measures adopted in states of emergency should be strictly commensurate with the extent of the danger invoked.'

Amnesty International also considers that indefinite internment may constitute a violation of the prohibition on torture and other cruel, inhuman or degrading treatment or punishment. Any deprivation of liberty, even when carried out in accordance with international humanitarian law, inevitably causes some stress or a degree of mental suffering to the internee and his or her family, although this will not automatically render the deprivation unlawful. However, Amnesty International is concerned that the 'security internees' held by the Multinational Force, are being deprived of their liberty in circumstances that cause unnecessary suffering, such as indefinite and incommunicado detention, that cannot be justified as an unavoidable part of a 'lawful sanction'. The UN Committee against Torture has found that administrative detention by a party to an armed conflict may constitute cruel, inhuman or degrading treatment or punishment, based *inter alia* on its excessive length. In addition, the Human Rights Committee has referred to prolonged, indefinite 'administrative detention' as incompatible with Article 7 of the International Convention on Civil and Political Rights, which prohibits, among other things, torture and cruel, inhuman or degrading treatment or punishment.

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

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

The number of long-term detainees has reportedly increased since September 2005. According to the Iraqi Human Rights Ministry, on 28 September 2005 there were 1,443 detainees held by the Multinational Force for more than one year. However, according to figures provided by US officials, in early November 2005, among the nearly 13,900 detainees held by the Multinational Force there were some 3,800 who had by then been held for more than one year and more than 200 who had been held for more than two years.

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

Treatment of internees

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

The abuse was investigated after a soldier who was not involved in the mistreatment discovered film footage showing parts of the abuse on a laptop computer. At least twelve soldiers from the National Guard's 184th Infantry Regiment were charged with misconduct 'relating to abuse and maltreatment of detainees'. Three sergeants were sentenced to between five and twelve months of imprisonment and four other soldiers were sentenced to hard labour.

In another incident, five soldiers from the 75th Ranger Regiment were charged before a court martial in connection with allegations of detainee abuse. The case arose from an incident on 7 September 2005 when three detainees were allegedly punched and kicked by the five US soldiers as they were awaiting movement to a detention facility. On 21 December 2005, it was announced that the five soldiers

had been sentenced to be confined for periods ranging from 30 days to six months and reductions in rank.

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

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

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

Under Coalition Provisional Authority Memorandum No. 3, the Multinational Force was required to ensure that conditions and standards in all of its internment facilities satisfy Section IV of the Fourth Geneva Convention, which sets out standards for the treatment of detainees, including in relation to food, hygiene and the provision of medical attention, as well as contact with the outside world and penal and disciplinary sanctions.

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

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

Amnesty International has previously expressed concern to the US authorities regarding their use of a restraint chair for detainees in Iraq. On 28 October 2005,

John Moore of Getty Images photographed an individual – reportedly a juvenile detained in the maximum security section of Abu Ghraib prison – strapped into a four-point restraint chair. US Army military police reportedly said that he was being 'punished for disrespecting them' and would remain for two hours in the chair 'as punishment'.

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

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

Access to the outside world

Coalition Provisional Authority Memorandum No. 3 is deficient in several respects insofar as the question of access to detainees is concerned. In particular, while it provides for the International Committee of the Red Cross to have access to detainees, it qualifies this, stating that access by the International Committee of the Red Cross can be denied 'for reasons of imperative necessity as an exceptional and temporary measure'.

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

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

Visits by relatives

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

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

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

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

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

Visits by legal counsel

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

Visits by monitoring bodies

As indicated earlier, Coalition Provisional Authority Memorandum No 3 in principle grants the International Committee for the Red Cross access to Multinational Force-held detainees at locations throughout the country. In practice, however, the International Committee for the Red Cross has been able to visit only a limited number of larger detention facilities, mostly due to security considerations. According to the International Committee of the Red Cross, in the period from May to September 2005 'the main detention/internment facilities covered during that period were Camp Cropper (Baghdad Airport); Camp Bucca near the southern town of Basra; and several detention places in Kurdistan'. According to the Multinational Force, the International Committee for the Red Cross has 'access to all Theater Internment Facilities in the theatre'. Amnesty International understands from this that the International Committee for the Red Cross does not have access to brigade and division internment facilities of the Multinational Force – that is, military bases where detainees are mainly held during the first days or weeks of their detention.

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

According to the United Kingdom authorities, the International Committee for the Red Cross has 'full and unrestricted access' to its detention facilities in Iraq and the International Committee for the Red Cross has described conditions of internment as 'generally good'.

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

Several UN human rights experts have faced obstacles in their attempts to visit detainees held by the US forces – including those held in Iraq. In a statement issued on 18 November 2005, five independent experts of the UN Commission on Human Rights – including the Chairperson-Rapporteur of the Working Group on Arbitrary Detention and the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment – expressed their regret about the US refusal of terms for a fact finding mission to the US detention facility at Guantánamo Bay, Cuba. This statement followed a letter of 25 June 2004 and several follow-up letters sent by UN human rights experts to the US authorities requesting to visit 'those persons arrested, detained or tried on grounds of alleged terrorism or other violations, in Iraq, Afghanistan, the Guantánamo Bay military base and elsewhere'. At the time of writing, none of the five UN human rights experts had been able to visit US detention facilities in Iraq.

Secret and unacknowledged detention

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

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

There are indications that persons detained in Iraq have secretly been transferred outside Iraq for interrogation by the CIA. For example, **Hassan Ghul**, a Pakistani national reportedly detained in January 2004 in northern Iraq, is according to Human Rights Watch possibly held in CIA custody. According to a report in the Swiss newspaper, *Der Sonntagsblick*, a confidential communication of the Egyptian Foreign Ministry to its embassy in London intercepted by the Swiss secret service, stated that Egyptian intelligence could confirm that 23 Iraqi and Afghan citizens have been interrogated by US intelligence agents at the military air base Mihael Kogalniceanu in Romania. The communication further stated that similar interrogation centres existed in the Ukraine, Kosovo, Macedonia and Bulgaria.

In at least one incident US officials have tried to cover up the death of an

unacknowledged detainee in Iraq. **Mandel al-Jamadi** was detained by US troops and placed in Abu Ghraib prison where he died on 4 November 2003 as an unregistered detainee. Documents obtained by the American Civil Liberties Union under the US Freedom of Information Act, suggest that Mandel al-Jamadi died due to 'blunt force injuries complicated by compromised respiration'.

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

US military investigations have suggested that up to 100 so-called ghost detainees may have been held in US detention facilities in Iraq. However, the Church report summary of March 2005 stated that 'the practice of Department of Defense holding "ghost detainees" has now ceased'.

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

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

liberty must be held in an officially recognized place of detention.

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

International human rights bodies have held that secret detention and enforced disappearances themselves constitute ill-treatment or torture, in view of the considerable suffering of persons detained without contact with their families or anyone else from the outside world, and without knowing when or even if they will ever be freed or allowed to see their families again.

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

Internment of women and children

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

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

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

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

'High Value' Detainees

The vast majority of detainees who were held or continue to be held by the Multinational Force without charge or trial are so called 'security internees'– that is, persons detained in the context of the ongoing armed conflict. In addition, US forces continue to hold so-called high value detainees – a category which has mainly been used for persons with senior positions under Saddam Hussain's government. Coalition Provisional Authority Order No. 99 refers to a Memorandum of Understanding between the Multinational Force and Iraqi authorities regarding "the handling of High Value Detainees." Amnesty

International requested a copy of that document from the US government, but to date has not received this.

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

The group of 'high value' detainees included former prisoners of war who are now standing trial. Some former prisoners of war, including Saddam Hussain, have been referred to the Supreme Iraqi Criminal Tribunal (formerly known as Iraqi Special Tribunal). Although standing before an Iraqi court, Saddam Hussain and several others continue to be held in the custody of the Multinational Force at the request of the Iraqi authorities.

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

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

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

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

occasions during her detention from May 2003 until November 2005.

In December 2005, several 'high value' detainees were released without having been charged or tried. They included two women scientists, namely (the above mentioned) Huda Salih Mehdi 'Ammash and **Rihab Rashid Taha**. Both had been held in US detention for about 30 months.

Amnesty's recommendations arising from this report, together with the references to it, are available online (www.amnesty.org).

SEEKING MISSING PERSONS IN IRAQ

Eman Ahmad Khamas, an Iraqi journalist who lives in Baghdad, was interviewed by Amy Goodman on 6 March on the Democracy Now! radio programme in the United States.

EMAN AHMAD KHAMAS: … I work on the missing, a very big issue in Iraq, I work on the detainees. People disappear in Iraq. People – especially men – are arrested, and you don't hear anything about them. For example, during the first days of the war, between 20 March and 9 April [2003], when the Iraqi state collapsed, people disappeared. There are eyewitnesses that these people were taken by the American troops. Some of them may be killed. Some of them may be in jail. But now, they don't exist.

AMY GOODMAN: Well, how do you find out? I mean, if you want to find out if someone has been jailed, what do you do?

EMAN AHMAD KHAMAS: There are eyewitnesses in the place that he disappeared, and they say that 'We saw him, he was injured and was taken in an American tank or vehicle,' or 'He was taken,' … There are injured prisoners who are released and they say that in our room and the place, we had this man, and they give his description – many things that no one else would know, only the person who was with him.

AMY GOODMAN: The American authorities in the US-run prisons will not tell you?

EMAN AHMAD KHAMAS: We go to the American military bases, to the prisons, and we ask about these people. They deny them.

AMY GOODMAN: They deny that they are there?

EMAN AHMAD KHAMAS: They deny they exist in that prison. For example, we have a story of a man. He was supposed to be in prison in Umm Qasr, you know, Camp Bucca in the south, deep in the south.