



IRAQ

Universal Periodic Review (UPR)

7th Session; 4 February to 15 February

8 September 2009

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Alkarama recalls that it concentrates its work on four priority areas; arbitrary detention, enforced and involuntary disappearances, torture, and extrajudicial executions. We base our work primarily on the documented individual cases we submit to UN Special Procedures and Treaty Bodies, as well as our contacts with local actors including victims, their families, lawyers and human rights defenders.

IRAQ

1. Background and international law

The invasion of Iraq in 2003 by the US led multinational forces (MNF) remains the determining factor in understanding the situation in the country today. Between 20 March and 2 May 2003, the U.S. military launched more than 30 000 bombs and fired 20 000 cruise missiles, destroying a huge amount of the country's infrastructure, already heavily affected by over 12 years of embargo. It must be remembered that this invasion is a serious violation of international law. The invasion was subsequently endorsed by the UN¹, specifically Resolutions 1483 of 22 May 2003 and 1511 of 16 October 2003. These confirmed the occupation and formalised the Coalition Provisional Authority even though it was simply an occupation administered by a foreign government.²

The second phase, covered by Resolution 1546 of 8 June 2004 lasted until the end of 2008. It allowed the presence of multinational forces, based on the appointment of an interim government from 30 June 2004 which was to "assume full responsibility and authority for governing Iraq" heralding the end of the occupation. The presence of a foreign army of 150 000 men was to be at the invitation of that government. Formally, therefore, multinational forces in Iraq have a double mandate: that of the United Nations Security Council, to guarantee order and security in the country, and that of the Iraqi government. It should be noted that the UN played a very marginal role during these years, leaving it up to the United States to decide the fate of the country.³

Some lawyers believe that the UN resolutions, specifically Resolution 1546, legitimise the occupation. The fact that an imposed interim government "invites" the foreign occupation army to stay, and that the latter changes the laws and political structures of the country, gives legal immunity to itself and its subcontractors (mercenaries), establishes a tax exemption for its units and decides on the withdrawal of troops indicates that the principle of "the right of the Iraqi people to freely determine their own future" is completely meaningless.⁴ Even the "political process" was flawed from the outset because the foreign force imposed its own priorities via the decrees of the Coalition's Provisional Authority. In particular, order No. 39 privatised state enterprises and repealed previous legislation, thus allowing foreign companies free reign to establish themselves in the country.

It is in this context of military occupation that legislative elections – boycotted by part of the Iraqi population - took place in January 2005. There were no international observers due to a climate of extreme insecurity. The new Parliament was asked to draft a new constitution, which was adopted by referendum on 15 October 2005. In December, a government led by Nuri al-Maliki was elected.

The third stage began with the signing of a Security Pact (officially known as the "Agreement Between the United States of America and the Republic of Iraq On the Withdrawal of United States Forces from Iraq and the Organization of Their Activities during Their Temporary Presence in Iraq") with the United States on 16 November 2008. This pact replaced the previous UN resolutions which had legalized the presence of foreign troops in the country. The Iraqi parliament, however, set a condition that the Pact should be confirmed by referendum before July 2009. By September 2009, this had still not yet occurred. The agreement allows U.S. forces to stay in the country until the end of 2011, with the provision that withdrawal from towns and villages started in late June 2009. But a number of provisions of the pact give U.S. military command certain prerogatives which limit the sovereignty of Iraq. Article 4 of the Covenant states an exception that gives the US Army a right of legitimate defence that can be interpreted very broadly, even though it is stated that the U.S. military can conduct military operations only with Iraqi consent. The United States has also added the possibility of helping the Iraqis beyond the deadline, in case of "internal threats" and the endangerment of their "democratic institutions". Moreover, when U.S. soldiers commit "serious

crimes" outside their bases and when they are not on duty, they can be tried in Iraqi courts.⁵ It is unclear, however, what happens in case of crimes or offenses committed against Iraqis, or serious violations of human rights, inside military bases. The agreement does not mention the staff of private military or security companies working for the U.S. State Department who may be accused of crimes.

Directly after signing this agreement, the Americans sought to extend the duration of their presence through the maintenance of thousands of instructors, and advisors, etc. The prospect of full withdrawal by U.S. troops, however, seems ever more remote given the amount of money spent to strengthen their bases, which are clearly designed to last. The Pact has been criticized by many Iraqis who believe that, given the pressure exerted by the presence of an occupying army, a fair bilateral agreement is impossible.⁶

The economic situation and health conditions, which was already fraught due to the UN-imposed embargo which began in 1991, deteriorated dramatically after the invasion because of the dismantling of the State by the administration headed by Paul Bremer. The police and army were disbanded, and tens of thousands of officials, engineers, managers of public services, etc, were dismissed. The existing public infrastructure was destroyed, including the water supply, electricity, telephone, transport, and especially hospitals. Since then, shortages of even the most basic drugs have caused havoc. Millions of Iraqis are malnourished, school enrolment is falling⁷ and the rate of unemployment is above 50%. One of the greatest humanitarian disasters of recent decades is unfolding in what could, and should, be a rich country.

The economy has been privatized and handed over to foreign companies under the guise of a "politics of reconstruction". Corruption is widespread – most notably, huge sums have been diverted⁸ and collected by companies supposedly involved in rebuilding the country. In many cases the contracted work has not been carried out. Vocal opposition by Iraqis has nevertheless averted any weightier decisions being made, particularly in the field of oil, one of the country's vital resources which is coveted by multinational corporations.

2. U.S. policy determines the current situation

The precarious balance between Shiites, Sunnis and Kurds was upset by the invasion, leading to the strengthening of the Kurdish region's autonomy in the north, and pressure being applied on part of the Shiite community by the occupying forces. The Americans have tried to impose their authority by using a policy of ethnic 'divide and conquer'. However, resistance was organized from the beginning of the occupation, both in the Sunni and Shia communities – the latter particularly in southern Iraq. Other actors in the resistance included political parties, unions, professional corporations, women's organizations, students and the unemployed, all of whom participated in various ways. The military struggle was the most visible aspect for Western viewers. The presence of Al Qaeda on the ground, a direct and foreseeable consequence of the occupation, has allowed coalition forces to criminalise all resistance against the occupation by identifying it with terrorism.

The Coalition forces have tried to cement their dominance through "a political process", from which it was expected that a pliable government would emerge. The resulting administration led by Nuri al-Maliki has adopted sectarian practices that exacerbate the existing conflicts which transcend the differences between Sunnis and Shiites, by adding the divergent views within these communities (about the occupation, the Baathists, Iran, etc) to the equation. Al-Maliki's government is trying to impose its will on the ground by force with the support of Coalition forces, but the various demands of the Iraqi political class do not allow him to carry out the wishes of the American administration. The Iraqi government controls the armed forces and the newly created Iraqi police, as well as maintaining militias, which sow terror among the population.

On the eve of the signing of the Security Pact between Iraq and the United States in November 2008, the latter announced a significant decline in the violence⁹ - this decline was short-lived, since a rise has been noted in the last few months. The number of U.S. troops killed may have fallen sharply; the numerous Iraqi dead are not counted.¹⁰

The U.S. occupation strategy has been refined over time: from direct confrontation with the insurgents, it has moved to an invitation to collaborate with some of them. The hope is to overcome a resistance which is becoming increasingly powerful and, more importantly, is managing to overcome its contradictions and attempting to unite. The operation known as "the Surge" was launched in spring 2007: U.S. troops were increased to a total of 168 000 soldiers¹¹, which allowed them to increase their operations throughout the country.¹² U.S. troops supported by some Iraqi units went through Sunni areas with a fine-tooth comb, particularly in Baghdad. Following this surge, the city's Sunni population dropped from 45% to 25%. All men aged between 15 and 60 were registered, their fingerprints were taken and thousands were arrested. Certain Shiite neighbourhoods were also targeted, particularly in Basra and Baghdad (Al A'Adamyia). Pacified neighbourhoods in the capital were then surrounded by 4m high walls, through which people can only pass by going through rare checkpoints.

Along with this firestorm, "the Surge" intensified the counter-insurgency. Many Sunni tribal leaders were invited to create or reinforce militias, the Awakening Councils (Majalis al-Sahwa), that would cooperate with U.S. troops under the guise of fighting against al-Qaida. Some 80 000 militia members are paid by the Americans. This counterweight to the government allows the Coalition to better monitor all the actors and manipulate their respective capacities in order to weaken resistance against the occupation.¹³ This strategy is a double-edged sword, however. The militias can fight on several fronts: against al-Qaida, as they have done since 2005, but also against the Iraqi forces and government militias. They can even fight against the occupying army itself. Responsibility for the Sunni militias has been transferred to the government, which has been asked to integrate them into the security forces. It has not done so thus far for fear of harming its hegemonic ambitions. The Americans, who opted for a friendly government, have adopted a policy of 'laissez-faire' concerning the issue. The conflict has led to serious tensions between government forces and the Awakening Councils, some of which, according to certain sources, are rallying the resistance. This is one of the reasons used by observers to explain the current resurgence of violence.¹⁴

3. Proliferation of armed agents

Since the invasion in March 2003, hundreds of thousands of Iraqis have been killed and wounded, primarily by Coalition forces and the various security forces and militias controlled by the Iraqi government, but also by militias, various political parties or heads of tribes and by various armed groups. All commit serious crimes. The exact number of violent deaths is not known and is hotly debated.¹⁵ Nearly 4 million people have fled their places of residence, 2 million of whom have gone to neighbouring countries.

The dismantling of the Iraqi army and the Iraqi police has brought mounting chaos. The Coalition forces (as well as NATO) have trained Iraqi officers and established new military structures while maintaining effective command. Joint operations have been performed to pacify districts and rebellious villages. Gradually, the U.S. military command has transferred responsibility for ground combat to the Iraqis, which they still oversee.

In April 2003, the United States created the Iraqi Special Operations Forces (ISOF), a special force of more than 4 500 men (9 battalions over 4 "command bases"). This number is to set to double soon. "By December (2009), each will be supplemented by an 'intelligence cell' that will operate

independently of other intelligence services in Iraq."¹⁶ The ISOF is officially under the control of the Iraqi government, but is seen by the Iraqi people as a clandestine branch of the U.S. military. As if to confirm this, the Americans pushed for the creation of a new department called the Office of Counter-Terrorism at the same time as they began to gradually transfer the control of ISOF to the Iraqis. This new department, created by prime ministerial decree, is controlled directly by Nuri Al-Maliki. No details of its actions are passed to Parliament. The ISOF acts with total impunity - any complaints or protests by civilians are futile. Al-Maliki seems to use the force to get rid of his opponents, as happened in December 2008 when 35 officials from the Ministry of Interior were arrested. According to the press, the ISOF launched a raid on the site of the Diyala provincial government in August 2008 with the support of U.S. helicopters. Several well-known individuals were arrested. Faced with protests from MPs, Mr al-Maliki denied any knowledge of the operation, despite normally having to approve each ISOF mission. This only served to sow doubt about the force's real chain of command.¹⁷

4. Serious human rights violations committed with impunity

The multinational and Iraqi forces conducted military operations during which massive violations of the right to life were committed (excessive and disproportionate use of force, extrajudicial and summary executions), as well as mass arrests followed by arbitrary and incommunicado detention. Cases of enforced disappearances are particularly numerous: in 2007 the Iraqi Ministry of Human Rights indicated that 2 438 cases had been registered at a ministerial level.¹⁸ This figure is certainly far lower than the actual number – there may be tens of thousands of victims. As in all situations of mass disappearances in the context of armed conflict and political instability, families of victims often take a very long time to report the missing. Torture is widely practiced. The Iraqi authorities do not investigate these violations. When such acts are committed by the multinational forces, the Iraqi judiciary cannot intervene because of the agreements mentioned above. As for the employees of foreign private security companies, whose number is estimated at tens of thousands, they also enjoy immunity from prosecution. The Iraqi Parliament has not repealed this provision. And members of Iraqi security forces are not prosecuted for their unlawful acts. Victims' complaints are not taken into account.

Tens of thousands of people are imprisoned without charge or trial. In August 2008, U.S. troops claimed to still hold 21 000 people, having released 10 000 in the same year.¹⁹ Iraqi forces are said to hold between 50 000 and 75 000 individuals. Hundreds of children are among the prisoners. Persons imprisoned by coalition forces for security reasons can be detained indefinitely without any opportunity to challenge the lawfulness of their detention before a judicial authority. As for prisoners held by Iraqi authorities, the national law says they must be presented before a judge within twenty-four hours of their arrest. In reality, detention without being presented before a judge has been the rule rather than the exception – detention can last for months, if not years. Those who are released are required to undertake in writing not to threaten the country's security, and their relatives must vouch for their good conduct.

Detention conditions in Iraqi prisons are beyond deplorable due to overcrowding, lack of care and food, and other ill-treatment and torture inflicted by prison staff. But there are dozens of mostly secret detention centres under the control of U.S. and Iraqi forces and militias, which are controlled by the Interior Ministry as well as some political parties close to the government. Torture is systematic and widely practiced, especially in the secret detention centres. Under the provisions of the Security Pact, the United States undertook to transfer all detainees to Iraqi authorities. It is not known at this time if the transfer has taken place. Alkarama submitted the following case to the special procedures of the UN: on 22 February 2009, arrests were carried out by members of ISOF Special Forces at the office of MP Mohammed Al-Dainy, a place reserved for citizens wishing to file complaints concerning violations of their rights.

The ISOF, infamously known as the "Liou'a Baghdad", receives its orders directly from the Prime Minister. Mr. Al-Dainy himself is persecuted for his activities as a defender of human rights and for disclosing the existence of several secret prisons. His lawyer, Al Ismail Hakki, sent us information about forced disappearances and torture suffered by his clients following their arrest and incommunicado detention in a centre located in the green zone of Baghdad. He was subjected to death threats before being the victim of an attempted murder, following which he was evacuated to hospital in Baghdad, wounded. He recovered rapidly before dying in suspicious circumstances on the night of 25 July 2009.²⁰

The Iraqi Central Criminal Court has the authority to try persons suspected of terrorist activities. Its procedures do not conform to international standards of fair trial. The conviction of defendants on the basis of "confessions" extracted under torture is routine and no allegations of torture are investigated.

The Iraqi High Tribunal (HTPI), set up to try officials of the former regime overthrown by the multinational forces, shows an equal lack of respect for international standards of fair trial.

In August 2008, Iraq ratified the Convention against Torture. In November 2008, Parliament adopted a law creating a national institution for human rights.

5. Recommendations

1 - Respect obligations assumed under international instruments on human rights and international humanitarian law to which Iraq acceded.

2 – Respect and ensure that the occupying forces respect the human rights of all persons who live on its territory and under its jurisdiction, irrespective of their ethnicity or religion.

3 - Protect the right to life by putting an end to extrajudicial and summary executions, including political assassinations. End the implementation of death sentences which are in contravention of the International Covenant on Civil and Political Rights.

4 - End enforced disappearances and abolish all secret places of detention. Establish a reliable and independent entity to control and monitor all places of detention.

5 - Put an end to torture and inhuman and degrading treatment, and investigate allegations of torture. Prosecute and convict those responsible for these acts, and compensate victims and/or their families. Ensure that confessions extracted through torture are not used in court.

6 – Incorporate the crime of torture into domestic law as defined by Article 1 of the Convention and impose appropriate penalties to punish violations of said law.

7 - End impunity for serious violations of human rights by establishing genuine independence for the Judiciary to ensure that it complies with the Basic Principles on the Independence of the Judiciary; completely eliminate any interference by the Executive in the Judiciary.

8 - Consider establishing a Special Rapporteur on Iraq with a mission to conduct a thorough investigation into all violations committed by the Iraqi government, the foreign occupation forces and foreign private companies since 2003.

ANNEX

Notes

¹ Various organizations describe the following acts as war crimes: attacks against the civilian population, use of prohibited weapons, bombing and prolonged attacks against civilian infrastructure, media communication, etc.. See CETIM, LIDLIP, AAJ: The situation in Iraq, since the recent invasion, is characterized by an accumulation of human rights violations, without precedent, since the end of the second world war. http://www.cetim.ch/en/interventions_details.php?iid=244

² According to the American Association of Jurists and CETIM this resolution: "grants the occupying states control of the Iraqi economy and of the political future of Iraq in violation of the 3rd section of Title III (occupied territories) of the 4th Geneva Convention, which allows limited powers to the occupation forces on foreign territory. " http://www.cetim.ch/fr/interventions_details.php?iid=203

³ According to international law professor and member of the German Parliament, Mr. Norman Paech, if we can formally consider the occupation as outdated, it is his opinion that two questions must still be asked: "What of the control of the territory by enemy troops? " and "to what extent should these forces be able to exercise their power over local people? ". The answer to both questions establishes that Iraq is still an occupied country. In: Besetzt Souverän oder? Paper presented at a conference on Iraq, March 8, 2008. http://www.norman-paech.de/fileadmin/user_upload/texte/Irakkonferenz_Berlin_08-03-08.pdf

⁴ CETIM and AAJ, Review of Resolution 1546 (2004) Security Council, and http://www.cetim.ch/fr/interventions_details.php?iid=214 CETIM and AAJ, From Reconstruction to the privatization of Iraq, 2005, and Prof. http://www.cetim.ch/fr/interventions_details.php?iid=246.

⁵ Karin Leukefeld, billigt US-Iraq Armeeverbleib, Neues Deutschland, 17 November 2008.

⁶ Joachim Guilliard, Mogelpackung für Washington, Junge Welt, 5 December 2008

⁷ The primary school enrolment rate decreased from 83% in 2004 to 53% in 2007. In: Catherine Rebuffel, UNICEF denounces the use of children in Iraq, 3 April 2008.

⁸ As seen in the case of the Bechtel Corporation (for water). See also: Rebuilding Iraq: 9 billion dollars have disappeared, Le Monde, 31 January 2005.

⁹ Only a relative decline since the number of deaths is the same as that of 2005. Iraq Coalition Casualty Count, <http://icasualties.org>

¹⁰ Lowest U.S. casualties not an indication of better security conditions in Iraq, Azzaman, 5 August 2008, <http://www.azzaman.com/english/index.asp?fname=news\2008-08-05\kurd.htm>

¹¹ They increased from 17 000 to more than 40 000 in and around Baghdad. Bob Woodward, Why Did Violence Plummet? It wasn't just the Surge, The Washington Post, 8 September 2008.

¹² While in 2006, airplanes and helicopters of the occupation forces carried out an average of 30 sorties per day, this number has quadrupled, and 10 times more bombs were launched during 2007. The coalition forces acted from the air and tanks, leaving the infantry work to Iraqi troops. In Joachim Guilliard, Iraq - Kein Weg vorwärts, IMI-Magazin, October 2008, p. 17.

¹³ The architect of this strategy is Stephen Biddle, adviser to General Petraeus in Baghdad until October 2008. "What to do in Iraq: A Roundtable," Foreign Affairs, Juli / August 2006, quoted by Joachim Guilliard, Iraq - Kein Weg vorwärts, IMI-Magazin, October 2008, p. 19.

¹⁴ Rifat Ali, Hala Jaber, Sarah Baxter, Iraq: Iraq bloodshed rises as U.S. allies defect, The Times, 3 May 2009, <http://www.timesonline.co.uk/tol/news/world/iraq/article6211364.ece>

¹⁵ Coalition forces have been deliberately evasive about the numbers of violent deaths and give an estimated figure of about 45 000 dead. In June 2006, the British medical journal The Lancet estimated that more than 600 000 Iraqis were dead; one year later, the British polling agency Opinion Research Business put the figure at 1 million. In: Soren Seelow, Bataille de chiffres autour du nombre de mort côté Irakien, Le Monde, 19 March 2008.

¹⁶ According to reports from the U.S. Congress, In: Shane Bauer, Iraq's New Death Squad, The Nation, 3 June 2009, French translation: <http://www.legrandsoir.info/Irak-les-nouveaux-escadrons-de-la-mort-The-Nation.html>

¹⁷ Shane Bauer, Iraq's New Death Squad, The Nation, 3 June 2009.

¹⁸ Ministry of Human Rights, Prisons and Detention Facilities Monitoring Department, Annual Report 2007, published in 2008 (in Arabic).

¹⁹ U.S. command specified in this announcement that its troops are authorized by Resolution 1790 of the United Nations Security Council and the Geneva Conventions to detain anyone "for imperative security reasons". U.S. military says it keeps 21.000 detainees in Iraq, Xinhua, 2 August 2008, http://news.xinhuanet.com/english/2008-08/02/content_8911309.htm

²⁰ Alkarama for Human Rights, Iraq: Disappearance of 11 of Mohammed Al-Dainy's family and staff, May 25, 2009, http://en.alkarama.org/index.php?option=com_content&view=article&id=242:irak-disappearance-of-11-of-mohammed-al-dainys-entourage&catid=23:communiqu&Itemid=114