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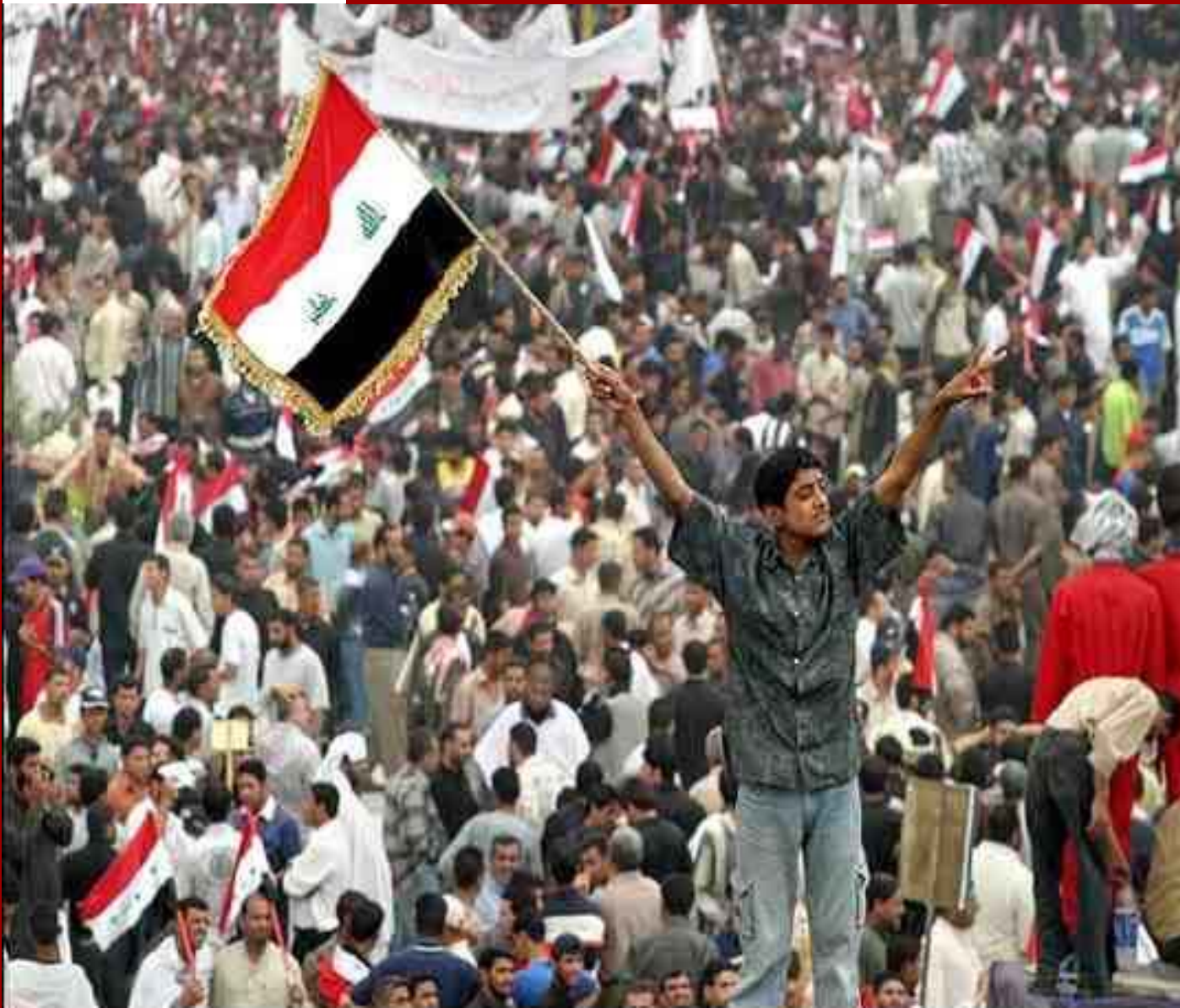


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# 2010 Report on Human Rights in Iraq

UNAMI Human Rights Office/OHCHR,  
Baghdad

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UNAMI HUMAN RIGHTS OFFICE

and

OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

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# Map of Iraq



Source: UN DPKO - Cartographic Centre, NY (2004)





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# Executive Summary

This report is published by the Human Rights Office of the United Nations Assistance Mission in Iraq (UNAMI) in cooperation with the UN Office of the High Commissioner for Human Rights (OHCHR) under their respective mandates. Information for this report has been gathered from direct monitoring by UNAMI as well as from a variety of other sources, including Government, UN Agencies, civil society, NGOs and media. It covers the period from 1 January 2010 to 31 December 2010. The draft of this Report was submitted to the Government of Iraq and the Government of the Kurdistan Region prior to publication and their views are referred to in the text or footnoted where appropriate.

1. The human rights situation throughout Iraq remains fragile as the country slowly transitions from a conflict to post-conflict country that faces enormous development challenges that the Government and people of Iraq must now address. Widespread poverty, economic stagnation, lack of opportunities, environmental degradation and an absence of basic services constitute “silent” human rights violations that affect large sectors of the population. Other issues that affected the human rights environment in 2010 was the fact that the election results were inconclusive and led to a long process of government formation which was not concluded until December 2010. It is believed that this fuelled instability, but it also contributed to a degree of inactivity in relation to implementing reforms and other measures aimed at ensuring the protection and provision of human rights to the Iraqi population. Also affecting security was the withdrawal of all USF-I combat troops during the year that was completed in August 2010.

2. Armed violence continued to impact negatively on civilians and civilian infrastructure. Civilians were subjected to arbitrary loss of life and injury, but also limiting access to, and enjoyment of, other basic rights, including, but not limited to, the right to access basic humanitarian services, and the rights of assembly, freedom of expression, freedom of religion, etc. It also negatively impacted on economic development. Arbitrary or deliberate targeting of civilians also constitute serious violations of applicable rules of human rights law and international humanitarian law. The number of civilians who died from armed violence in 2010 range from 2,953 killed and 14,398 wounded according to UNAMI to 3,254 dead and 13,788 wounded according to figures provided by the Ministry of Human Rights (MoHR) of the Government of Iraq. According to Iraq Body Count (IBC) there were 4,036 civilian deaths in 2010. Improvised Explosive Devices (IEDs), Vehicle Borne IEDs (VBIEDs) and Small Arms Fire (SAF) attacks remained common – frequently carried out in public spaces heedless of the toll on civilian lives or deliberately targeting civilians in breach of applicable international and national legal standards and contrary to the basic principles of humanity. According to UNAMI, there were 209 attempted assassinations or targeted killings during 2010 – 92 against members of the Iraqi Security Forces (ISF), 88 against Iraqi Government Officials, and 29 against civilians. UNAMI recorded a total of 71 civilians killed in assassinations. Public officials, community and religious leaders, journalists, medical and education professionals were the main civilian targets. Baghdad and the North region (particularly Mosul) were the hardest hit by violence and civilian deaths and injuries.

3. Of concern is that the decrease in civilian casualties slowed in 2010 compared with the significant reduction in civilian casualties that took place between 2007-2009. Matched with the relentless campaign of violence waged by Armed Opposition Groups (AOGs) and insurgents, it appears that sustained ad hoc violence could continue to claim a significant number of civilian lives in the future. The distinction between criminal activity and terrorism became increasingly blurred during 2010, as ideologically or politically driven groups have increasingly resorted to funding their activities through ordinary crime.

4. Significant problems remain with law enforcement and the administration of justice, especially in relation to the provision and respect for due process and fair trial rights. Despite some improvement in the physical conditions of many detention facilities and prisons, incidents of abuse and torture remain widely reported. Many pre-trial detainees continue to complain that they are not informed of charges against them, that they have no access to lawyers or family members, and that they suffer prolonged detention beyond legal limits while awaiting trial. There are also credible reports of secret detention facilities operating in various parts of the country where detainees are held incommunicado. The judicial system also remains weak – and an over reliance on confessions, rather than on properly gathered forensic evidence, to convict, encourages an environment where torture of detainees takes place. In this environment it remains of concern that Iraq continues to execute convicted persons and has not considered a moratorium on implementing the

death penalty. Iraq has executed 257 people since 2005, including six women. Although down on previous years, 18 persons were executed in Iraq between 1 January 2010 and 20 December 2010. There are 835 persons on death row in Iraq.

5. Ending impunity also remains a serious challenge in Iraq. Perpetrators of crimes committed over many years continue to be unaccountable. A number of mass graves were discovered during the year containing the victims of various human rights abuses committed at various times over the past few decades – however, despite improvements and cooperation with international partners in relation to the identification, investigation, preservation and protection of mass grave sites, Iraq’s technical and institutional capacity to ensure proper forensic investigation of these sites remains weak.

6. In terms of political rights, the general elections for the 325 seats of the Council of Representatives (CoR) were held on 7 March 2010. According to the Independent High Electoral Commission (IHEC) approximately 62.4 percent of the 18.9 million registered voters turned out to cast their ballots. In all, 8,312 polling centres with 49,088 polling stations were established across the 18 Governorates of Iraq. The elections were monitored and observed by 114,614 Iraqi observers, 657 international observers, 476,366 political agents and approximately 2000 international and national media. Numerous, serious acts of violence perpetrated throughout the country marred the pre-election period and election day, killing ordinary civilians as well as a number of candidates running in the election. Minority groups, particularly Christians, were also targeted, possibly to discourage them from voting freely. Nonetheless, the violence did not appear to deter Iraqi citizens from turning out to vote or affect the overall conduct of the election process.

7. Respect for women’s rights deteriorated in some ways in 2010. While quotas ensured women were elected to the CoR in the general election in March, only one woman was appointed to a cabinet post by the end of 2010 following a prolonged period of government formation. Honour crimes continue to be widely reported, as were instances of women suffering from domestic violence – and in the northern areas of Iraq, female genital mutilation (FGM) remains a significant practice. Sections of the Iraq Criminal Penal Code, which encourage honour crimes, remain in place, and there is still no law dealing with domestic violence. There were also credible reports of women being trafficked within Iraq and internationally. A notable improvement was the establishment of women’s shelters for the victims of domestic violence in Baghdad and other places.

8. Children also continued to suffer from violence and armed conflict – and in some instances were recruited or used to commit or perpetrate acts of violence. Some 194 children were killed and 232 were injured in conflict-related incidents during 2010. Children were also the victims of domestic violence. In the north the practice of FGM is widely reported – perpetrated often against young girls. Improvements seen were the establishment of shelters for children who are victims of violence. Despite the construction of schools, access to education remains uneven throughout the country – the children of internally displaced persons (IDPs) and returning refugees remain particularly effected. Protection of children in conflict with the law continues to be a challenge. There were 520 boys and girls held with adults (although in separate cells) in various pre-trial facilities in Iraq (excluding the Kurdistan Region) while 759 boys and 29 girls were held in facilities for convicts. Despite significant improvements in conditions for children in pre-trial detention facilities operating under the authority of the Ministry of Labour and Social Affairs (MOLSA), the Government needs to consider alternatives to the incarceration of children.

9. Minorities suffered from various attacks throughout Iraq during 2010. In particular Christians, Yezidi and Shabaks, among other minorities, continued to be directly targeted during the year – resulting in some displacement of members of minority groups within the country and internationally, particularly of Christians. The most serious single attack was that on the Sayidat al-Nejat church in Baghdad in which some 58 persons died. Iraqi citizens also continued to be targeted for attack and persecution on account of their real or perceived sexual orientation. While the Government moved to protect minorities from attack, more must be done to build an environment of protection, including the introduction of anti-discrimination laws and reform of the educational curriculum aimed at building respect for diversity among all Iraq’s people as equals.

10. The Government reported that there are an estimated 1,343,568 post-2006 Internally Displaced Persons (IDPs) in Iraq as of January 2011, with Baghdad hosting the largest number of IDPs with some 358,457 persons (62,374 families).. During the first half of 2010, a significant number of IDPs and refugees

returned to their places of origin in Iraq and the Government undertook an important initiative by permitting returnees to claim their property that had been occupied in their absence.

11. Freedom of expression remains under threat in Iraq. Journalists continue to be targeted disproportionately with violence by security forces and armed groups. At least five journalists died in Iraq in 2010, one of whom was killed in crossfire/combat. UNAMI received a number of reports of violent attacks, harassment and illegal arrest of media workers and journalists for reasons related to their the conduct of their profession.

12. Of significance, Iraq completed the Universal Periodic Review (UPR) in February 2010. The Government of Iraq accepted 135 recommendations, and committed publicly to developing and implementing a National Action Plan on Human Rights. However, the prolonged government formation process meant that meaningful law reform through 2010 was largely in abeyance - the notable exception being a law regulating NGOs and another to compensate persons whose property was affected by the previous regime -and no real moves were undertaken to implement the commitments made during the UPR. Another issue put on hold was the establishment of the Independent High Commission on Human Rights.

13. In the Kurdistan Region the situation was generally improving. The security situation was stable, with very few security incidents or casualties reported. The improved security situation, matched with the increasing openness of the Kurdistan Region authorities, meant greater participation of civil society and NGOs in seeking solutions to the remaining human rights concerns in the region. The physical condition of prisons and detention centres improved in 2010 generally, with the construction or announcement of the construction of various new facilities in the region. Delays in bringing detainees to trial were greatly reduced during the year with nearly all detainees (except for a number detained under anti terrorism laws) brought before the courts within the legal time limits. Access to lawyers and representation before the courts also improved. However, there were still reports of incidents of abuse or torture of some detainees – the Kurdistan Regional Government (KRG) has been proactive on this matter, indicating that it takes such reports seriously by investigating and remedying cases of abuse when reported. The KRG has imposed an unofficial moratorium on the death penalty and reportedly legislation to abolish the death penalty in the Region will be proposed in 2011.

14. The KRG also took meaningful steps to address issues affecting women’s rights. While women’s representation in the Kurdistan Region Parliament is set by quotas, (there are 36 female members of parliament out of 111 in the Kurdistan Regional Parliament), as in the Federal Government, there was only one female cabinet member. More women were willing to report to police and other officials that they had been the victims of domestic violence and to seek assistance. In response, a parliamentary committee has been established to examine issues relating to violence against women – and a number of women’s shelters have been established to protect women who are the victims of domestic violence. However, a law on domestic violence is yet to be passed by Parliament and sections of the Iraqi Criminal Penal Code (ICPC) mitigating crimes committed against women for reasons of honour remain on the statute books in the Kurdistan Region. Female genital mutilation (FGM) remains a serious problem in the KRG – and the authorities are urged to implement concrete steps to combat it as a matter of urgency. The KRG also took steps to improve the protection of children – not only committing to construction of schools, but also to establish shelters for children who are the victims of violence. The KRG also established an emergency telephone line that children who are the victims of violence can call for assistance. The KRG moved quickly to respond to the plight of people displaced by violence from other parts of Iraq– particularly Christians and other minorities. However, resources remained a problem to deal adequately with the influx.

15. While there is a flourishing media community in the Kurdistan Region, attacks on journalists have been reported - according to the Kurdistan Journalist Syndicate there were 81 cases of violations of freedom of the press, including one assassination, four threats of kidnapping and/or killing, 18 cases of beatings, 35 cases of harassment and stopping media workers from performing their functions, three arrests, one kidnapping, one assassination attempt, and 18 cases of telephone threats. “Red lines” on reporting certain issues (such as honour killings, corruption, and the Kurdish “civil war” in 1991-2) exist, which limit press freedom.

16. The KRG introduced a number of important legal reforms with respect to compensation of prisoners and home visits, a law regulating demonstrations, and on regulating NGOs.

# Recommendations

Based on its monitoring and assessment of the human rights situation in Iraq, UNAMI reiterates its call to the Government of Iraq (and where applicable the KRG) to implement the following recommendations:

## General

1. Implement the recommendations from the UPR process accepted by the Government of Iraq, including in consultation with Iraqi civil society and members of the international community, develop and implement a national action plan on human rights for the promotion and advancement of human rights;
2. Complete the establishment of the Independent High Commission for Human Rights in accordance with UN General Assembly resolution 48/143 (1993) (The Paris Principles);
3. Review the reservations made by Iraq when acceding to international human rights treaties and consider accepting individual complaints procedures;
4. Complete the procedures for ratifying the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment, (CAT), and consider acceding to the Optional Protocol to CAT and Optional Protocol to the ICCPR, among other instruments;
5. Accede to the Convention on the Rights of Persons with Disabilities;
6. Accede to the 1951 Convention on the Status of Refugees (and the 1967 Protocol), the 1954 Convention Relating to the Status of Stateless Persons, and the 1961 Convention on the Reduction of Statelessness; and
7. Ratify the Rome Statute of the International Criminal Court.

## Ongoing armed conflict

8. In accordance with the Outcome Document of the 2005 World Summit, protect the population from crimes against humanity, war crimes and other international crimes. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means; and
9. Ensure compliance by Iraqi security forces, police and all officials engaged in law enforcement and the administration of justice, with the requirements of international humanitarian law and Iraq's international human rights law obligations in combating armed violence and in dealing with persons who are taking, or who have taken an active part in the hostilities.

## Detention and rule of law

10. Undertake law, institutional and policy reform to ensure that powers of arrest are limited to police, that all detention and incarceration facilities are under one authority and that all due process and fair trial rights of arrested and detained persons are respected;
11. Establish regulatory guidelines and institute training courses for judges encouraging them to consider alternatives to remanding persons charged with criminal offences in custody while awaiting trial;
12. Devote appropriate resources to ensure the physical conditions of detention and prison facilities conform to international standards;
13. Undertake legal and institutional reform to ensure compliance by all State officials or their representatives with Iraq's international obligations in relation to preventing torture and other ill-treatment;
14. Ensure that all allegations of torture or other ill-treatment are promptly, properly and independently investigated, that perpetrators are charged and tried according to law, and that victims are appropriately and adequately compensated including by providing appropriate medical, social and other assistance; and
15. Permit UNAMI/OHCHR and the ICRC, as well as the Ministry of Human Rights to carry out regular, unrestricted and independent inspection visits to all detention and prison facilities.

## Death Penalty

16. Declare a moratorium on the use of the death penalty and consider acceding to the Second Optional Protocol to the ICCPR aimed at abolishing the death penalty;
17. Respect international standards that provide safeguards guaranteeing protection of the rights of those facing the death penalty, in particular the minimum standards as set out in the annex to Economic and Social Council resolution 1984/50 of 25 May 1984 until the death penalty is abolished in Iraq; and

18. Progressively restrict the use of the death penalty and reduce the number of offences for which it may be imposed; including a thorough review of the Penal Code and the Criminal Procedure Code in accordance with UN General Assembly resolutions 62/149 (2007) and 63/168 (2008) to restrict the application of the death penalty to the most grievous, serious and heinous crimes.

### **Women's rights**

19. Undertake legal and regulatory reform to abolish 'honour' as a mitigating excuse in relation to crimes of violence committed against women;
20. Undertake legal and regulatory reform to ensure that all persons who are the victims of trafficking or enforced prostitution are not criminalised or charged with criminal offences where such offences relate to their trafficking or enforced prostitution and ensure that appropriate protection, including medical and other social support, is provided to such persons as victims;
21. Ensure that all persons engaged in acts related to trafficking or enforced prostitution are held accountable according to law;
22. Ensure adequate resources are devoted to the social and medical support of women who are the victims of domestic or other violence;
23. Ensure that all allegations of violence against women are properly investigated and dealt with by officials responsible for law enforcement and the administration of justice and that perpetrators are dealt with according to law;
24. Ensure appropriate training of all State officials responsible for law enforcement and the administration of justice on gender issues, particularly violence against women, and how to deal appropriately and sensitively with such cases;

### **Children's rights**

25. Ensure the protection and care of all children who are victims of violence;
26. Ensure that children charged or convicted of criminal offences are not detained or imprisoned in facilities designed for adults, but in separate facilities specifically designed for their needs and that in all cases alternatives to detention are considered and applied in relation to children;
27. Ensure that proper training courses and other programmes are instituted to sensitise law enforcement and judicial officials on issues involving children;
28. Ensure that children who are the victims of trafficking and enforced prostitution or other sexual or physical violence or abuse are not criminalised but are protected and provided appropriate medical, social and other support; and
29. Adopt a five-year plan on human rights education, focusing on students and young persons of both sexes, in line with the World Programme for Human Rights Education.

### **Minority rights**

30. Undertake legal and institutional reforms to ensure that all laws and policies promote equality and respect for all persons, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, sexual orientation, property, birth or other status;
31. Undertake revision and reform of the school education curricula to introduce educational programmes aimed at promoting equality and respect for all persons, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, sexual orientation, birth or other status;
32. Ensure the accountability, according to law, of any person who incites or promotes hatred, acts of violence, or intolerance against persons based on race, colour, sex, language, religion, political or other opinion, national or social origin, sexual orientation, birth or other status;
33. Institute public information campaigns aimed at fostering harmony between Iraq's various religious and ethnic groups and aimed at promoting equality and respect for all persons, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, sexual orientation, birth or other status;
34. Ensure all State officials responsible for law enforcement and administration of justice are properly trained on and aware of the rights of minorities and their protection; and
35. Withdraw the refusal to investigate and prosecute instances of persecution based on sexual orientation.

### **Freedom of expression**

36. Undertake review of all laws and policies to ensure these provide and protect the right of freedom of expression of all persons, including the repeal of sections of the criminal laws concerning criminal libel; and
37. Ensure that journalists are protected against harassment and violence and that all allegations of such harassment or violence are promptly investigated and those responsible are held accountable according to law.

### **IDPs and refugees**

38. Continue to support the sustainable return and reintegration of IDPs and refugees within the framework of the National Policy on Displacement of July 2008.

### **Camp New Iraq**

39. While the sovereignty of the Iraqi Government over the Camp is unquestionable, and recognising the obligations of the residents of Camp New Iraq to abide by Iraqi law, the Iraqi Government should ensure that the residents of Camp New Iraq are treated in accordance with the applicable provisions of international human rights law and Iraqi law, and that where applicable, they are protected from forcible deportation, expulsion or repatriation in violation of the principle of *non-refoulement*.
40. Ensure that any relocation of residents inside Iraq should be in conformity with applicable international human rights norms.

### **Specific recommendations to the Kurdistan Regional Government**

1. Release all long term detainees held without charge, or ensure that they are charged with recognized criminal offences and brought to trial promptly and in full accordance with international standards of due process and fair trial;
2. Ensure that all safeguards against torture and other ill treatment as set out in the UN Convention against Torture are reflected in legislation and implemented in practice;
3. Adopt the Law on Combating Domestic Violence and criminalizing female genital mutilation and institute public information campaigns aimed at raising awareness of these issues;
4. Ensure that the law establishing the Independent Board of Human Rights is expeditiously implemented, consider a transparent procedure in selecting the members of the Board, and ensure the Board is provided with adequate resources to operate independently;
5. Ensure that the Journalism Law No. 35 (2008) adopted by the Kurdistan Parliament is effectively implemented, disseminated among the judiciary and law enforcement agencies, and that transparent inquiries on allegations of harassment against journalists are conducted;
6. Repeal sections of the criminal laws concerning criminal libel; and
7. Declare an official moratorium on the death penalty pending a thorough review of the Penal Code and the Criminal Procedure Code in accordance with UN General Assembly resolutions 62/149 (2007) and 63/168 (2008).

# Human Rights in Iraq: 2010

## 1. Introduction

### 1.1 Overview

This report is published by the Human Rights Office of the United Nations Assistance Mission in Iraq (UNAMI) in cooperation with the UN Office of the High Commissioner for Human Rights (OHCHR) under their respective mandates. Information for this report has been gathered from direct monitoring by UNAMI as well as a variety of other sources, including Government, UN Agencies, civil society, NGOs and media.

The human rights situation in Iraq remains fragile as the country continues to emerge from years of dictatorship, warfare, and violence. While the government continues to take some measures aimed at improving the protection and provision of human rights of its citizens, given the challenges that the country faces, progress is slow. Iraq continues to transition from a conflict to post-conflict country which faces enormous development challenges that the Government and people of Iraq must now address. Widespread poverty, economic stagnation, lack of opportunities, environmental degradation and an absence of basic services constitute “silent” human rights violations that affect large sectors of the population. Other factors that affected the human rights environment in 2010 included the inconclusive results of the general elections leading to a long process of government formation that was not concluded until December 2010. It is believed that this fuelled instability, but also led to a degree of inactivity in relation to implementing reforms and other measures aimed at ensuring the respect, protection and provision of human rights to the Iraqi population. Also affecting security was the withdrawal of all USF-I combat troops during the year which was completed in August 2010.

### 1.2 Legal responsibilities

The Government of Iraq has an obligation to ensure law and order throughout its territory. In so doing, it must conform to international legal norms it has accepted or which are binding on it. The Iraqi Constitution<sup>1</sup> at Article 8 states, “Iraq... shall respect its international obligations.”

International law applicable to Iraq includes human rights norms which are considered customary international law, as well as a number of human rights treaties to which Iraq is a party. Iraq is a signatory to the International Covenant on Civil and Political Rights (ICCPR)<sup>2</sup>, which requires it to respect, provide and protect the rights pronounced therein without discrimination to all persons within its territory and subject to its jurisdiction. Iraq is also a Party to the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>3</sup>; International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)<sup>4</sup>; International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)<sup>5</sup>; the Convention on the Rights of the Child (CRC)<sup>6</sup>, including the Optional Protocols to the CRC<sup>7</sup>; and most recently in 2010, Iraq ratified the International Convention for the Protection of All Persons from Enforced Disappearance.<sup>8</sup> Iraq ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), by Law No. 30 of 2008, published in the Official Gazette, issue 4129 of 13 July 2009 – however, it has not yet deposited the instrument of ratification with the UN Secretary-General as

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1 Available online <[www.uniraq.org/documents/iraqi\\_constitution.pdf](http://www.uniraq.org/documents/iraqi_constitution.pdf)> accessed 21 January 2011.

2 16 December 1966, 999 UNTS 171; Iraq signed 1969, ratified by Law 193 of 1970, published in the Official Gazette, Issue 1926 of 7 October 1970, entered into force on 23 March 1976. Iraq has not signed the first optional protocol giving the right to individual petition to the Human Rights Committee nor has it signed the second optional protocol aimed at the elimination of the death penalty.

3 Signed 1969, and ratified by Law 193 of 1970, published in the Official Gazette, issue 1926 of 7 October 1970, entered into force on 3 January 1976.

4 Signed 1969, ratified 1970, entered into force on 12 February 1970.

5 Acceded 1986, entered into force on 12 September 1986.

6 Acceded 1994, entered into force on 15 July 1994.

7 Ratified by Law 23 of 2007.

8 Ratified 23 November 2010.



required by the terms of the treaty. Despite this, under principles of international law, Iraq must not act in a way inconsistent or incompatible with the terms of the treaty, and in any event it must comply with other provisions relating to torture which are considered to be customary international law (even *ius cogens*), including rules prohibiting torture and cruel or inhuman treatment contained in International Humanitarian Law (IHL) where applicable. In relation to violations of international human rights law these invoke the direct responsibility of the State in whose territory and under whose jurisdiction those violations take place. Where this is the case, Iraq has the obligation to ensure that action is taken so that the violation is prevented and not repeated, to punish violators (where appropriate) and to ensure an appropriate remedy is provided to the victims.

Although the number of violent incidents has been declining since 2007, Iraq (with the exception of the Kurdistan Region) is still experiencing a serious level of protracted violence that continues to claim a large number of civilian lives. Perpetrators of such violence consist of a variety of insurgent and terrorist groups, including militia groups operating along largely sectarian lines, most notably ‘al-Qa’eda Organization in the Land of the Two Rivers’, also called ‘al-Qa’eda in Iraq’ (“AQ-I”). Some of these armed groups are also involved in a conflict between themselves. Iraq is a signatory to the Geneva Conventions 1949<sup>9</sup> and to the Additional Protocol I of 1977, but it is not a signatory to Additional Protocol II of 1977<sup>10</sup>, nor is it a signatory to the Statute of the International Criminal Court.<sup>11</sup> Article 3 common to the four Geneva Conventions of 1949 establishes the minimum standards that all parties involved in a non-international armed conflict should observe concerning the treatment and protection of civilians, those no longer actively participating in the hostilities, and civilian objects.<sup>12</sup> Additionally, international judicial bodies have indicated that a number of norms contained in the Geneva Conventions and the Additional Protocols are now part of customary international law, which are also applicable in non-international armed conflict.<sup>13</sup> The International Committee of the Red Cross (ICRC) is of a similar view, having concluded that a number of the rules of the four Geneva Conventions of 1949 and Additional Protocol I of 1977 have now acquired the force of customary international law, and that many of these rules are equally applicable in international and non-international armed conflict, binding on all parties involved in the conflict.<sup>14</sup> Among the most important of these principles are those of distinction and proportionality, as well as other rules limiting the means and methods of warfare, aimed at minimising the effects of violence on civilians and non-combatants. In accordance with the Outcome Document of the 2005 Summit, Iraq has the responsibility to protect its populations from crimes against humanity, war crimes and other international crimes. This responsibility entails the prevention of such crimes, including their incitement, through appropriate means.

It should be noted that irrespective of the requirements of IHL, nothing precludes the State from prosecuting persons who actively participate in the hostilities under national criminal law once they cease to participate actively or are captured. However, international human rights standards to which Iraq is a Party or which form part of customary international law will continue to bind it in situations of non international armed

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9 Geneva Convention (I) for the Amelioration of the Condition of Wounded and Sick in Armed Forces in the Field, opened for signature 12 August 1949, (entered into force on 21 October 1950) 75 UNTS 31 (“Geneva Convention I”); Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, opened for signature 12 August 1949, (entered into force on 21 October 1950) 75 UNTS 85 (“Geneva Convention II”); Geneva Convention (III) Relative to the Treatment of Prisoners of War, opened for signature 12 August 1949, (entered into force on 21 October 1950) 75 UNTS 135 (“Geneva Convention III”); Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, opened for signature 12 August 1949, (entered into force on 21 October 1950) 75 UNTS 248 (“Geneva Convention IV”).

10 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, opened for signature on 8 June 1977, 1125 UNTS 3 (“API”); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, opened for signature on 8 June 1977, 1125 UNTS 609 (“APII”).

11 Rome Statute of the International Criminal Court, A/CONF.183/9, Adoption: 17 July 1998 (entered into force on 01 July 2002)

12 Uhler et al., The Geneva Conventions of 12 August 1949 - Commentary: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War , p.35.

13 See for example ICTY, Case No. IT-95-16-T, para. 524.

14 ICRC, Customary International Humanitarian Law, ed. Jean-Marie Henckaerts and Louise Doswald-Beck (CUP/ICRC, Cambridge 2005)

conflict, including in relation to the conduct of counter insurgency/counter terrorism operations and in relation to civilians who are not taking, or who have ceased to take, an active part in the hostilities.<sup>15</sup>

Given the prevailing security conditions and the nature of the conflict in many parts of the country, UNAMI recognizes the difficulties faced by the Government of Iraq in its efforts to ensure law and order. Law enforcement personnel are under attack by insurgency groups, which also carry out attacks through suicide/IED bombings, abductions and targeted killings and assassinations, and regularly fail to properly distinguish between civilians and military objects in the conduct of their operations. Iraq and its people have suffered from years of abusive regimes, international armed conflict, invasion, occupation, non international armed conflict and protracted violence, all of which have taken a terrible toll on the civilian population and civilian infrastructure and have resulted in serious human rights violations. Yet despite this, nothing permits any dilution of the duty of Iraq to comply with their obligations under applicable international human rights standards, IHL or its own domestic law.

## 2. Armed conflict and civilians

### 2.1 Civilian casualties

The ongoing, protracted violence in Iraq continues to take a terrible toll on civilians and civilian infrastructure, subjecting civilians to arbitrary loss of life and injury, and to limitations on access to other basic rights, including, but not limited to, the right to access basic humanitarian services, and the rights of assembly, freedom of expression, freedom of religion, and protection against non discrimination, etc. The violence is also having a negative impact on economic development that in turn is having a deleterious effect on other economic and social rights of Iraq's citizens. Arbitrary or deliberate targeting of civilians also constitute serious violations of IHL.

Ascertaining the precise number of civilians killed and wounded as a result of the violent conflict in Iraq is difficult. The Iraq Body Count (IBC) recorded 4,036 civilian deaths for 2010.<sup>16</sup> According to other sources, figures range from 2,953 civilians killed and 14,398 wounded according to UNAMI to 3,254 dead and 13,788 wounded according to figures provided by the Government of Iraq via the Ministry of Human Rights (MoHR). Irrespective of the precise number of civilians killed, even the lowest figures represent a significant number of ordinary Iraqis who lost their lives or suffered impairment of their basic rights through tragic loss, injury, and destruction as a result of the ongoing violence in the country. Regardless of differences in casualty numbers, all sources are in agreement that the rate in decline in civilian casualties has considerably slowed between 2009 and 2010, compared with the significant reduction in civilian casualties seen from the height of the violence in 2007 when 17,956 people were reportedly killed and in 2008 when 6,798 people died. The incidence of violent incidents, particularly the use of IEDs by insurgent and terrorist groups and the resulting number of civilians killed and wounded, suggest that a pattern may be emerging of sustained, ad hoc violence which has the potential to continue for the foreseeable future. As IBC stated in its annual report: "After nearly eight years, the security crisis in Iraq remains notable for its sheer relentlessness: 2010 averaged nearly two explosions a day by non-state forces that caused civilian deaths."

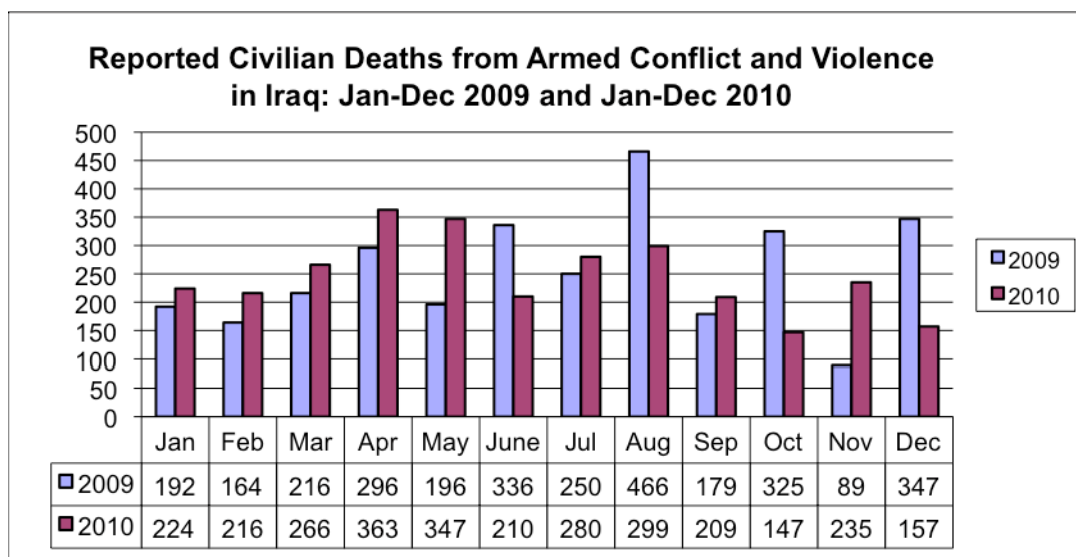
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15 International Court of Justice, *DRC v. Uganda*, para. 216.

16 Iraq Body Count (IBC), "Iraqi deaths from violence in 2010 - Analysis of the year's civilian death toll from Iraq Body Count First published 30 December 2010, available online <<http://www.iraqbodycount.org/analysis/numbers/2010/>> accessed 21 January 2010. Iraq Body Count (IBC), which collates casualty reports, said civilian deaths recorded in 2010 dropped to 4,036 (78 percent of the 5180 deaths documented) from the 4,680 civilian deaths recorded in 2009 – a drop of 15 percent. Of the deaths that occurred in 2010, 66 percent resulted from insurgent bomb attacks; some 685 explosions killing 2,649 civilians, including 9 large-scale bombings which claimed 567 civilian lives during 2010, compared to 750 deaths which resulted from 8 such attacks during 2009. IBC found that the capital Baghdad and the northern city of Mosul were the worst affected areas – although per head of population Mosul was overall more affected than Baghdad, particularly in the first half of the year.

According to figures compiled by UNAMI, some 2,953 civilians were killed during 2010.<sup>17</sup> There were also some 10,434 civilians injured.<sup>18</sup> The worst effected region was Baghdad governorate, with 1,284 civilian deaths and 5,011 injured. The North Central region was also badly affected with 587 deaths and 1,806 injured. South Central region had 382 deaths and 1,369 wounded, North region had 364 deaths and 1,279 wounded, West region had 172 deaths and 540 wounded, and South region had 142 civilian deaths and 362 wounded. There were 22 deaths and 67 wounded reported from the Kurdistan Region.

In comparison, according to figures compiled by UNAMI, a total of 3,056 civilians were killed and 10,770 were wounded in 2009. The most affected region was Baghdad with 1,459 civilians killed (1,843 persons in total), followed by the North Central Region with 574 civilians killed (1,232 persons in total), North Region with 546 civilians killed (1,309 persons in total), South Central Region with 255 civilians killed (390 persons in total), West Region with 151 civilians killed (380 persons in total), and South Region with 66 civilians killed (113 persons in total). In the Kurdistan Region, there were 5 civilians reportedly killed (11 persons in total) in 2009.<sup>19</sup>



**Chart 1: comparative graph of civilian deaths by month 2009-2010: source UNAMI**

According to figures provided to UNAMI from the MoHR of the Government of Iraq 3,254 civilians died from 1 January – 31 December 2010. Of these 2,772 were men, 308 were women, and 174 were children. Furthermore, some 13,788 were wounded, including 11,297 men, 1,718 women, and 773 children. According to these figures, the most affected region was Baghdad with 1,037 civilians killed (892 men, 96 women and 49 children) and 5,991 wounded (4,948 men, 823 women, and 220 children), and Ninawa with 706 deaths (619 men, 62 women and 25 children) and 2,183 wounded (1,721 men, 244 women, 218 children), followed by Diyala with 499 killed (441 men, 25 women, and 33 children) and 1,412 wounded (1,208 men, 113 women, 91 children). These figures for 2010 compare with those figures for 2009 provided to UNAMI by the Government of Iraq during which 4,068 civilians were killed. Of these 3267 were men, 439 were women, and 362 were children. Furthermore in 2009, some 15,935 civilians were injured: 12,553 men, 2,338 women and 1,044 children.

In overall trends, according to UNAMI figures, civilian deaths rose from 224 in January to 363 in April, dropping to 299 in August, and then down to 147 in October, before rising to 235 in November only to decline again in December to 157.

17 The total figure of 5,463 includes at least 968 members of the ISF who were killed, 16 Foreign Workers, 34 Iraqi Officials, 258 civil defence force members. There were also some 690 AOGs killed and 494 whose identities could not be confirmed. Figures were compiled by UNAMI from direct monitoring, media, and official Government sources.

18 Also wounded were at least 16 foreign workers, 34 Iraqi officials, and 258 members of the civil defence forces. There were also at least 115 AOGs wounded.

19 See Appendix 1 below.

Among incidents in which civilians were killed or injured are the following. On 25 January in a series of deadly attacks, explosions struck three hotels in Baghdad killing at least 36 people and wounding 71 others. On 5 February 41 people were killed, including women and children, and 144 others injured, when two suicide car bombs detonated in Karbala' as Shi'a worshippers were commemorating the martyrdom of Imam Hussein. On 26 March two bomb attacks on markets in al-Khalis (Diyala Governorate) killed 53 people.

April and May saw a sharp rise in the number of civilians killed from armed violence, making them the two worst months in 2010. In April the number of civilians killed rose sharply, with 363 deaths recorded along with 1090 injured. Of these 225 were in Baghdad Governorate, 51 were in North Central region, 47 in the North region, 22 in South Central region, 2 in South region, and 11 in West region. There were 5 civilians killed in the Kurdistan region. Among the incidents which took place during the month, three car bombs exploded in Baghdad on 4 April, killing 35 persons. On 23 April, five car bombs and other improvised explosive devices exploded in four Shi'a mosques and an outdoor market resulting in the death of 54 civilians and the injury of 180 others, while multiple bomb attacks in al-Anbar Governorate killed nine civilians. In May a total of 347 civilians were killed and 1198 were injured. Of these 76 were in the Baghdad Governorate, 66 in North Central region, and 43 in North region. A further 103 civilians were killed in South Central region, 45 in South region and 8 in West region. A total of 6 civilians were killed in the Kurdistan Region. The 10 May was the bloodiest day recorded in Iraq during 2010 with at least 100 people killed. Later, on 21 May, a car bomb was detonated in markets in al-Khalis (Diyala Governorate) killing 30 people, almost as deadly as the bombing that occurred there earlier in March.

***The bloodiest day of the year: 10 May 2010***

On this day a series of bombs and shootings took place in different locations within Iraq, killing over 100 people and injuring 350. In the attacks, at least 70 people were killed and 255 wounded north of al-Kut (Wassit Governorate) in two separate attacks involving three car bombs, one explosive charge and a suicide bomber that hit a market and a textile factory. Also, Fallujah was targeted, with at least two deaths resulting from bomb blasts. There were also attacks in Iskandariya, Mosul, Samarra and Al Tarmia (Tarmiyah). Multiple roadside and car bombs killed 17 people Basra. A double bomb struck near a mosque in Suwayrah, killing 11 people and wounding 70 more.

On 20 June, in one incident, two car bombs outside a bank in Baghdad killed 26 civilians. A suicide bomber targeting an army recruitment centre in central Baghdad's Bab al-Muadham neighbourhood (al-Rusafa District) killed 60 persons and injured 160 on 17 August. Car bombs targeting police stations on 25 August killed 15 persons each in al-Kut and in al-Qahera neighbourhood in Baghdad's al-Rusafa District. Among the incidents reported in October, a popular café in Balad Ruz District (Diyala Governorate) was hit by a suicide bomber on 29 October, killing 25 persons. On 31 October an attack took place on the Sayidat al-Nejat (Our Lady of Salvation) Chaldean Catholic cathedral in Baghdad during the Sunday evening Mass. More than 100 persons inside the church were taken hostage, 58 of who were killed. The al-Qa'eda-linked Sunni insurgent group, Islamic State of Iraq, claimed responsibility. On 2 November - a particularly deadly day - more than a dozen possibly coordinated bomb attacks targeted mainly Shi'a areas in Baghdad, killing 64 persons. On 4 December a car bomb killed 15 civilians in a market in Baghdad's al-Baya'a neighbourhood (al-Rashid District).

General factors that might explain the shifting figures through the course of 2010 are difficult to assess. The figures for January through to March 2010 coincided with the lead up to the General Election, held on 7 March 2010 (discussed below). The fact that the outcome of the election was not conclusive may have fuelled instability, as political parties and blocs embarked on negotiations over Government formation, and this uncertainty may account for the rise in casualties during April and May. The draw down of the USF-I was completed by August 2010, when US forces ceased active combat operations throughout the country. Civilian casualty figures rose sharply in July and August before the draw down was completed, but dropped considerably after August, which, along with a decline in the number of security incidents, may indicate a link. The fact that there was a drop in the number of civilian casualties in November and December, as well as a drop in the number of IEDs detonated from the peak of 516 in May to 340 in December, may also indicate that the cessation of active combat operations by USF-I and the announcement of a new government in late November/ December had an effect on insurgent and terrorist activities.

In terms of tactics favoured by the insurgent and terrorist groups, small arms, IEDs and rockets were relied on most often; however, hand grenades, vehicle-borne improvised explosive devices (VBIEDs) and RPGs were also commonly used. In 2010 there were 2,441 incidents of small arms fire recorded by UNAMI, along with 4,974 IEDs, 207 VBIEDs, 43 RPGs, 380 hand grenades and 1063 IDF<sup>20</sup> incidents. According to UNAMI statistics, in 2009 there were 1,899 incidents of small arms fire recorded along with 4,499 IEDs, 257 VBIEDs, 68 RPGs, 634 hand grenades, and 876 IDF incidents. Thus, while the number of incidents increased in 2010 compared with 2009, particularly the use of small arms and IEDs, the numbers of civilians killed declined marginally, while the numbers of ISF killed increased. While the figures suggest that attacks in 2010 were targeted more against ISF and police targets but resulted in large numbers of civilians killed as a consequence, the pattern of attacks in fact indicates that they became more ad hoc and opportunistic in nature, with the fact that less civilians were killed being inadvertent rather than intended. Irrespective of this, most civilian deaths continued to be caused by IEDs, which by their nature are indiscriminate.

Baghdad Governorate and North Central region (especially Diyala Governorate) remained the most affected in terms of insurgent and terrorist attacks, but also in terms of the number of small arms fire incidents, IEDs, and increasingly RPGs and rockets resulting in severe loss of life and severe injury to civilians. In Baghdad there were 1951 IEDs, along with 778 small arms fire incidents and 69 VBIEDs, 283 IDF and 65 hand grenade incidents. In North Central region there were 1445 IEDs, 685 small arms fire incidents, and 50 VBIED, but 467 IDF incidents and 105 hand grenade attacks. The North region and Mosul, the capital of Ninawa, retained its notoriety as the last urban stronghold of al-Qa'eda in Iraq and was a scene of frequent clashes between security forces and insurgents. Despite the drop in civilians killed, the rise in incidents continues to indicate that terrorist and other insurgent groups are still active throughout 13 of the 18 Governorates of Iraq, although the most active and dangerous areas are still Baghdad, North Central and North regions.

There was a substantial decrease in the number of reports involving female suicide bombers, from the 30 such attacks recorded by UNAMI in 2008 to four in 2010. On 1 February, a female suicide bomber targeted Shi'a pilgrims as they made their way from the Shi'a-dominated Baghdad neighbourhood of Sha'ab to Karbala', killing at least 54 people and wounding more than 122. According to one media report, the bomber was wearing the explosive vest underneath her *'abaca* (a black cloak worn from head to toe by women). Four worshippers were killed in Kufa on 12 February when a woman present among them detonated explosives she was carrying. On 4 July, three civilians were killed when a female suicide bomber blew herself up at the Governorate Council Building in al-Ramadi. Three days later on 7 July, 32 people (many of them pilgrims) died in Baghdad's al-Ad'hamiya District. At least 12 female suicide bombers were reportedly arrested before they could detonate their explosives.<sup>21</sup> There were also some instances reported where children were used or exploited for the commission of terrorist acts.

Armed groups continued to employ tactics that deliberately target civilians and there appeared to be a clear pattern as to the choice of locations for executing attacks.<sup>22</sup> Often these are carried out in crowded public areas, revealing a deliberate intention to systematically kill as many civilians as possible. Some attacks appear to be sectarian in nature, targeting religious gatherings (e.g. pilgrimages) or residential areas, particularly of the Shi'a community. Other attacks appear to be undertaken randomly, aimed at creating fear and terror in the population at large, and at portraying the Government of Iraq and State institutions as impotent in providing security for the population. For both types of crimes al-Qa'eda routinely claimed responsibility. There was also a pattern of targeted attacks and assassinations, largely aimed at high-profile political, religious, community or government figures, in which civilian bystanders were killed. For instance, on 14 January 2010, triple bombs exploded near the residence of Ayatollah Ali al-Sistani in Najaf. Al-Sistani himself was not harmed, but 12 bystanders died.

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20 IDF stands for Indirect Fire and usually involves unguided rockets (57mm, 107mm, 122mm or 240mm) launched by the AOGs. They do not have any guidance systems and are aimed at the target by manually orienting the launcher in the direction of the target.

21 Accumulated data from all daily UNAMI SSI Security Information Reports issued in 2010.

22 See 15th Human Rights Report (1 January-30 June 2009), para 14. All previous UNAMI Human Rights Reports can be accessed at <http://www.uniraq.org/docsmaps/undocuments.asp#HRReports>.

Such deliberate targeting of civilians, or the carrying out of attacks heedless of the effect of such attacks upon civilians and civilian objects, constituted serious violations of international humanitarian law.<sup>23</sup> Such acts also constituted crimes against humanity and a violation of the right against arbitrary deprivation of life, as well as violation of other basic rights, which the Government has an obligation to protect.

The distinction between criminal activity and terrorism has become blurred, as ideology-driven groups have increasingly resorted to funding their activities through ordinary crime, such as extortion, kidnapping and armed robbery - targeting banks, jewellery shops, currency exchange or money transfer businesses. The heavy-handed tactics used by those perpetrating these robberies have resulted in significant civilian casualties. For instance, on 25 May gunmen robbed eleven goldsmiths' shops in Baghdad's al-Baya'a neighbourhood, killing 14 persons. In Kirkuk on 26 October, robbers attacked jewellery shops with heavy weapons including rocket-propelled grenades, killing five civilians and six policemen.

## 2.2 Assassinations, targeted killings and extrajudicial executions

Assassinations, targeted killings and extrajudicial executions continued to take place throughout most of Iraq in 2010 – constituting a serious violation of IHL and of basic human rights norms. Victims included members of governorate (provincial) and municipal councils, civil servants and other government employees, journalists, judges, religious figures, members of minorities (ethnic, religious and sexual), and persons engaged in religious events and activities. Those most frequently targeted were members of the security forces (police, military, border and prison guards) and *Sahwa* (Awakening Council) members of all ranks.

According to UNAMI figures, at least 71 civilians were killed in assassinations: 26 civilians, including three persons elected to parliament or who had run as candidates in the general election, lawyers, medical doctors, teachers, and four staff of an NGO. There were also some 45 civilian government employees and civil servants assassinated. At least 27 members of the ISF, and at least 8 traditional tribal and community leaders, including members of the *Sahwa* (Awakening Council) were targeted and killed. There were also a further 55 persons wounded in such attempts, including 2 civilians, 34 members of the ISF, 17 Iraqi Officials, and 2 members of the civil defence forces. Additionally, there were 209 attempted assassinations or targeted killings during 2010 – 92 against members of the Iraqi police and ISF, 88 against Iraqi Government Officials and 29 against civilians.<sup>24</sup>

Many attacks took the form of roadside bombs, car bombs or shootings. UNAMI received reports that a number of these attacks were perpetrated by members of armed groups, sometimes wearing police or military uniforms. Throughout 2010, there continued to be a spate of targeted killings carried out by perpetrators using small firearms with silencers.

It appears that many of these attacks were aimed at undermining the functioning of State institutions and to “punish” anyone seen to be associated with them. However, the motivations varied, and often the distinction between indiscriminate and targeted attacks was blurred: family members of the targets or innocent bystanders were routinely harmed when these crimes were committed. For example, at least five women were among 24 persons killed on 2 April when gunmen stormed three houses in Sufiyah, south of Baghdad with the alleged aim of killing specific individuals. Furthermore, such targeted assassinations and killings risk sparking vendetta or blood feuds, fuelling the spiralling violence, and undermining the Government's attempts to maintain security. For instance, in Mosul on 14 June, gunmen assassinated an employee of the Ministry of Trade. Members of the victim's family then raided nearby homes of suspected al-Qa'eda members who they considered responsible for the attack, killing six persons including two women.

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23 See UNAMI, 10th Human Rights Report (1 January-31 March 2007), p. 2.

24 Data compiled by UNAMI from a variety of sources. The lists of incidents are not necessarily exhaustive. In addition to the killings described, many more were documented of Iraqi civilians whose profession or affiliation was not specified in the incident report. Lastly, some victims may have been targeted for personal reasons unrelated to their profession, political activity, ideology or status.



### *2.2.1 Attacks on Government employees, officials and public figures*

At least nine former or current members and employees of the Governorate Councils of Baghdad, al-Anbar (Fallujah) and Ninawa (Mosul) and of various municipal councils, were killed in separate incidents on 1 and 26 January, 22 March, 10, 12 and 18 July, 24 August, 21 September and 18 October. On 24 May in Mosul, parliament member Bashar Hamid al-U'qaidi was shot by gunmen and subsequently died of his injuries. On 5 June, two persons who had run as candidates in the general election were killed: Ihab Saleh, the Director of al-Obaidi Hospital in al-Ka'im District (al-Anbar Governorate) was killed along with two other civilians when an improvised explosive device planted in his clinic exploded. Faris Jassim, another candidate of the Iraqi List, was murdered in front of his family, allegedly by a group of 20 men dressed in police uniforms who raided his home north of Mosul. Furthermore, seven mayors of districts, villages or city neighbourhoods were assassinated in al-Anbar, Ninawa, Diyala and Kirkuk on 27 January, 6 February, 30 April, 7 July, 8 August, 4 November, and 20 December.

A large number of public servants attached to the Ministries of Education, Electricity, Finance, Higher Education, Human Rights, Industry and Minerals, Justice, Oil, Trade, and Water Resources were also targeted.<sup>25</sup> At least 22 government employees were killed in various incidents in Baghdad, Mosul, Diwaniya, Hilla (Babil Governorate) and in al-Anbar Governorate on 11 January, 20 and 29 March, 24 April, 14 and 18 June, 27 July, 4, 17 and 18 August, 2 September, 9, 10, 18 and 25 October, 23 November, and 1, 16 and 20 December. In addition to these incidents, a Ministry of Education official who was part of Iraq's Universal Period Review (UPR) delegation was assassinated, reportedly only two days after his return from Geneva, while a staff member of the Prime Minister's office who had also been part of the delegation survived an attempt on his life. It is not known if the two officials were targeted because of their participation in the UPR process or for other reasons.

At least two persons affiliated with Iraq's Justice and Accountability Commission (tasked with de-Ba'athification) and the Commission on Public Integrity (an anti-corruption watchdog) became victims of targeted killings, one in Baghdad on 26 September, the other in Mosul on 15 November. Two others survived an assassination attempt in Baghdad on 9 January, but they sustained injuries. An employee of the Independent High Electoral Commission of Iraq (IHEC) was found dead in Baghdad on 20 August, although information on the precise cause of death is uncertain other than that he died violently.

### *2.2.2 Attacks on Judges and legal professionals*

Attacks on judicial and legal professionals occurred throughout the year. Two attorneys were assassinated, one in al-Khalis (Diyala Governorate) on 1 January and another in Baghdad on 14 February. An unnamed judge survived an attack on 29 January in Yarmouk neighbourhood in Baghdad's al-Mansour District, while an attorney survived an attempt on his life on 9 February. On 24 February, a judge at al-Rusafa Criminal Court, Abd al-Ghafoor al-Samara'i, was killed by a gunman in western Baghdad. Later in the year, an appeal court judge was killed by an improvised explosive device on 14 July, again in Yarmouk. Ali Hanoun, a judge at the Missan Criminal Court, escaped an assassination attempt when a bomb attached to his car detonated in Amarah on 9 August. On 17 August a roadside bomb injured three judges (Yasir al-Tamimi, Rafed Abrahmi and Kamel al-Khazraji) in their car in Balad Ruz. On the same day the head of the Cassation Court, Judge Kamal Jaber Bandr, was injured in an assassination attempt when his booby-trapped car exploded in Qadissiya (al-Mansour District) in Baghdad. On 18 August Jabbar Juma'a, a judge at Baghdad's al-Karkh Court of First Instance, was wounded when unidentified gunmen fired on him in al-Khadhimiya District. On 19 August a twin bomb attack on three judges of the Ninawa Criminal Court failed in Mosul. On 8 December, gunmen assassinated Omar Mohammed Hussein, the chief accountant of the Higher Judicial Council, in al-'Amel neighbourhood of Baghdad's al-Rashid District. On 29 December the Chief of the Criminal Court in al-Madaen south of Baghdad was seriously wounded when a bomb, attached to his private car, was detonated.

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<sup>25</sup> Excludes staff targeted from the Ministry of Defence and Ministry of the Interior and other State institutions such as the Prime Minister's Office and the Central Bank of Iraq.



### 2.2.3 Attacks on medical and education professionals

At least six members of the medical profession were assassinated on 5 June, 2 and 11 August, 26 and 29 September, and 24 December. For instance, in the attack perpetrated on 11 August, gunmen attacked the home of the head of Baghdad's maternity hospital, killing her and assaulting her husband. On 24 December, a surgeon was killed in west Baghdad in a small arms fire attack.

At least ten educational professionals (school teachers and university professors) were assassinated on 22 February, 27 May, 10, 17 and 29 June, 14 and 23 July, 14 August, 3 October and 17 December in Baghdad, Kirkuk, Mosul, al-Kut (Wassit Governorate), al-Anbar and Diyala. Motives for such assassinations are not uniform. It is possible that some could have been targeted for personal or criminal motivations, but the motives for many of these killings were not clear.

#### ***Attack on an NGO***

In a rare attack on an NGO, four employees of the Mawtini Organization for Relief and Development were killed at its head office in Baghdad's al-Ad'hamiya District on 18 January. Between 25-26 January a series of coordinated hotel bombings took place in Baghdad that destroyed the offices of the International Rescue Committee, and damaged those of ACTED, Mercy Corps and the International Medical Committee. The Islamic State of Iraq later issued a public statement claiming responsibility for the bombings.

### 2.2.4 Attacks on religious events

Presumed Sunni extremists continued to target Shi'a religious festivals and processions. Attacks on densely packed crowds routinely resulted in massive casualties: on 1 February a female suicide bomber detonated a bomb she was carrying while mingling with pilgrims heading for Karbala' near al-Huseiniya (9 Nissan District), killing 54. Two days later a bomb concealed in a motorcycle killed 20 pilgrims east of Karbala'. On 5 February at least 30 people were killed when two car bombs exploded in Karbala'. On 7 July another female suicide bomber killed 32 people in Baghdad al-Ad'hamiya District. On this and the following day several roadside bombs and mortar strikes in various parts of Baghdad killed an additional 21 persons. Karbala' was hit again on 26 July, when 24 people were killed by a double car bomb in the south of the city. In numerous other, smaller attacks throughout the year on 27 and 30 January, 1, 2, 5, 13 and 21 February, 6 March, 6, 8 and 20 July, 16 August, 8 November, and 5, 14 and 16 December at least 58 pilgrims were killed by explosions or gunfire in and around Baghdad, Karbala', Najaf and in the governorates of Diyala and Salahuddin. Religious or sectarian hatred may also explain the killing of eight Imams on 28 January, 10, 12 and 26 February, 3 May, 2 July, and 7 November in Baghdad, Ba'quba, Mosul and al-Ramadi. On 23 December there was a small arms fire attack on Sheikh Fareed Abdulkareem, the Secretary-General of the Sunni Association of Muslim Scholars in western Baghdad, killing him instantly.

There were also attacks perpetrated against other religious minorities, including against Christians, Shabaks and Yezidi, such as the attack on 31 October against the Sayidat al-Nejat (Our Lady of Salvation) Chaldean Catholic cathedral in Baghdad that claimed the lives of 58 people. These are discussed below.

### 2.2.5 Attacks on members of the Iraqi Security Forces

Attacks were also frequently carried out against members of the ISF and those associated with them. In 2010 at least 1,077 members of the Iraqi Security Forces were killed and 2,859 were wounded. For example, on 18 July a suicide bomber attacked a group of *Sahwa* personnel queuing for their salaries in Radwaniya on the western outskirts of Baghdad, killing at least 39 of them. The vast majority of attacks took place in large cities like Mosul, Kirkuk and Baghdad. However, smaller towns such as Ba'quba, al-Ramadi and Tikrit were also affected. The number of attacks against Iraqi security forces spiked on 25 August, when at least 60 security personnel and civilians were killed in 20 attacks that took place across Iraq. Some analysts have suggested a link between these attacks and the withdrawal of the last USF-I combat forces from Iraq, which was completed during this period. It is possible that such attacks were aimed at undermining public

confidence in the Government to maintain security or to target those possibly seen as exposed due to the removal of US combat troops.<sup>26</sup>

### 2.2.6 Attacks on tribal, community and Sahwa leaders

Traditional tribal and community leaders, particularly those involved in the *Sahwa* (Awakening Council) movement in Iraq were also specifically targeted during 2010. At least eight of them were assassinated on 30 April, 14 June; 10 July, 16 August, 9, 19 and 28 September, and 21 December in and around Mosul – but other such assassinations took place in the volatile, yet still highly tribalised, governorates of al-Anbar and Diyala. UNAMI does not have precise details of those killings.

## 2.3 Civilian deaths as a result of military operations

Following the withdrawal of USF-I from Iraqi cities on 30 June 2009, the US and Iraq agreed that USF-I would continue to conduct military operations in urban areas only with the agreement and coordination of the Iraqi authorities. By the end of August 2010, all US combat troops had departed from Iraq, leaving behind 50,000 soldiers to carry out training, advisory and support functions. This reduction in USF-I troop numbers and the change in its mandate greatly diminished the potential for civilian casualties arising from USF-I operations. However, some civilian deaths continued to be reported during 2010 resulting from joint ISF and USF-I operations, although such deaths were greatly reduced from previous years.

According to IBC non-combatant Iraqi deaths resulting directly from the actions of pro Government forces (ISF, USF-I, or both) stood at 113 in 2010, compared with 151 in 2009. Civilian deaths resulting from actions involving USF-I stood at 17, a significant decrease from the 64 deaths recorded in 2009.<sup>27</sup> There were 81 deaths resulting from the actions of ISF during the year, compared with 103 in 2009.<sup>28</sup> According to IBC, the number of civilians killed in joint USF-I/ISF military actions remained almost the same in 2010, with 15 such deaths recorded, compared with 16 in 2009.

Among the incidents reported to UNAMI, on 12 February allegedly up to ten people were killed and five others were wounded in a joint Iraqi / USF-I operation in a village near the Iranian border, some 75 km north of Amarah in Missan Governorate. Although the identity of those killed have not been ascertained, some witnesses asserted that civilians were among them. Twelve other persons were arrested during this raid. In a statement issued the following day, the USF-I claimed that the objective of the operation was to arrest wanted persons and that the soldiers were fired on as they approached the village.

On 10 March, USF-I soldiers opened fire on a civilian vehicle in west Baghdad's Tobchi neighbourhood, killing an Iraqi journalist, Aseel al-Obeidi, and her husband. Ms. al-Obeidi worked for Dijla Television, an independent Baghdad-based station. USF-I later stated that they were investigating the killing of two Iraqi nationals during a joint patrol by Iraqi and US troops in west Baghdad but did not provide any further details or clarify if they were referring to the same incident. Iraqi morgue officials confirmed both deaths, informing UNAMI that the bodies of both Ms. Obeidi and her husband were riddled with bullets.

On 15 September seven people, including at least one former Iraqi Army officer, were killed during a joint USF-I/ISF military operation in al-Jubeil neighbourhood of southern Falluja (al-Anbar Governorate). A committee of inquiry was reportedly set up by the Prime Minister's office to investigate the incident. On 28 November, USF-I troops shot and killed an employee of Baghdad International Airport on the road between the city and the airport when he reportedly drove too close to a US military convoy in a force protection incident. On 25 December the ISF shot and killed a civilian by mistake in west Mosul.

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26 According to figures provided by the MoHR the number of Iraqi Security personnel killed in 2010 was of 599, and 2662 wounded – however this does not include members of security forces associated, but not officially part of the Government's security forces, including *Sahwa* etc.

27 Excluding traffic accidents with Iraqi civilian deaths in which USF-I vehicles were involved.

28 Iraq Body Count (IBC), "Iraqi deaths from violence in 2010 - Analysis of the year's civilian death toll from Iraq Body Count, first published 30 December 2010, available online <<http://www.iraqbodycount.org/analysis/numbers/2010/>> accessed 21 January 2010.

## 2.4 Civilian casualties involving private security companies

With increasing legal and other restrictions on the operations of private security companies, deaths arising from their activities have greatly reduced from previous years. On 8 July a team of a private security company opened fire on a vehicle along the road linking Baghdad airport with the city centre, killing one civilian. This became the first and only report received by UNAMI of a civilian casualty caused by a private security company in over a year.

In other developments, on 10 February the Minister of Interior ordered the US-based private military and security company Xe (formerly Blackwater) to leave Iraq with all its international employees within seven days. The move came following Prime Minister al-Maliki's vow to seek punishment for the guards charged with Baghdad's Nisoor Square shootout in September 2007, which left up to 14 civilians dead, including women and children. The Iraqi authorities were frustrated that some Blackwater employees had merely transferred to other private security companies. They claimed that about 250 former Blackwater employees remained in Iraq. As previously reported,<sup>29</sup> on 31 December 2009 a US federal judge in Washington D.C. dismissed charges against five of the six guards accused of the Nisoor Square killings, further angering the Iraqi government. To show its disappointment at the court ruling, the CoR sought to pass new legislation that cleared the way for foreign contractors to be prosecuted in Iraqi courts. The US Government has consistently rejected demands by the Government of Iraq that former Blackwater employees be prosecuted by Iraqi Courts.

In related developments, a US prosecutor ruled on 18 October 2010 that there was insufficient evidence to support a criminal conviction of former Blackwater employee, Andrew Moonen. According to a report by the US Congress, Moonen was allegedly drunk after a Christmas party in December 2006 when he fatally shot Raheem Saadoun, an Iraqi guard working for the Iraqi Vice-President, in Baghdad's Green Zone.

## 3. Accountability

### 3.1 Court proceedings for alleged violations of International Humanitarian Law

During 2010, UNAMI was aware of at least four US court proceedings in which soldiers who had served in Iraq were charged with violations of the United States' Uniform Code of Military Justice which, *inter alia*, implements rules of international humanitarian law and is applicable to all US military personnel.

On 28 March a US military judge rejected a motion by the defence to dismiss a charge of premeditated murder against former squad leader Frank Wuterich for his alleged role in an incident in Haditha (al-Anbar Governorate) in 2005 in which US soldiers allegedly killed up to 24 Iraqi civilians, including women and children. Wuterich was one of eight US Marines initially charged. By end 2010, charges against six Marines have been dropped while one was acquitted. Wuterich is the last member of the group to appear before a military tribunal. The trial is scheduled to start on 24 January 2011.

On 22 April, a military jury on a US base in Baghdad acquitted Navy officer Julio Huertas of dereliction of duty. He had been accused of helping to cover up the alleged beating of an Iraqi prisoner, Ahmed Hashem Abed, suspected of involvement in the killing of four Blackwater guards in Falluja in 2004. Two other Special Forces officers, Matthew McCabe and Jonathan Keefe, asked to appear before a military court instead of receiving a formal reprimand in an attempt to clear their names. Both were acquitted: Keefe on 23 April and McCabe on 6 May.

In May the US Army's Criminal Investigation Command started scrutinizing the conduct of Staff Sergeant Calvin Gibbs and subsequently charged him with murdering and dismembering three unarmed civilians in Afghanistan. In the process the US Army began re-examining Gibb's previous deployment to Iraq, particularly an incident in 2004 in which it was alleged that Gibbs and other US soldiers killed three Iraqi civilians (two adults and a child) in their car.

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<sup>29</sup> See UNAMI HRO, 16th Human Rights Report (1 July-31 December 2009), para 21.

On 15 June, a judge at the Navy-Marine Corps Court of Criminal Appeals in Washington DC set aside the conviction on appeal of Sergeant Lawrence Hutchins after he had served four years in prison in Fort Leavenworth, Kansas, for his alleged role in leading a squad of seven troops which killed 52 year-old Iraqi Hashim Ibrahim Awad in Hamdaniya (al-Anbar Governorate) in 2006.<sup>30</sup> On 13 October lawyers for the US Marine Corps appealed against the verdict to the Court of Appeal for the Armed Forces.

### 3.2 Mass graves and enforced disappearance

The number of missing persons in Iraq ranges from 250,000 to over one million according to different public sources, and includes persons missing as a consequence of human rights violations committed during the regime of Saddam Hussein and during years of armed conflict.<sup>31</sup> According to the MoHR the number of persons the Ministry has recorded as missing between 2003 and 2010 totals 137,520 persons.

According to the MoHR at least twenty-two mass graves were discovered and confirmed during 2010; 17 in Baghdad governorate and 5 in the remainder of Iraq outside of the Kurdistan Region. Of those outside Baghdad governorate MoHR stated that 2 mass graves were found in Diyala, and one each near Basra, Karbala', and Babil. All these mass graves date to the period of violence post 2003.

In Baghdad governorate in Abu Ghraib district a mass grave contained between 40 and 50 bodies while another contained between 25-30 victims. In al-Dura/Hur Rajah the number of bodies was 36. In Mahmudiya district the number of bodies discovered was 13, including two females. In the same district 51 bodies were found in a mass grave. In Umm al-Kubar Wael Kazlam/Ur the number of bodies discovered was 16, while in Latifyeh district a grave was discovered containing 20 individuals. In Al Mada'an district a mass grave contained 6 bodies, all of who have been positively identified and their remains returned to their families. The numbers of bodies in the other graves has not yet been ascertained.

In areas outside Baghdad governorate and the Kurdistan Region, in Babil/Sikandiriyeh district a mass grave was uncovered containing between 14-18 bodies. In Karbala the mass grave contained an estimated 100 bodies. All of these were victims of sectarian violence between 2005-2006. In Diyala in Hibhib district a mass grave contained three bodies, all of them unidentified. Investigation into these and other mass graves are continuing.

UNAMI also received unverified reports that another mass grave containing 14 bodies, most likely belonging to victims of post-2003 violence, was discovered by Iraqi Police west of Samarra (Salahuddin Governorate) on 15 April. On 19 December it was reported that the ISF had unearthed a mass grave in Intisar in eastern Mosul that contained the bodies of 11 civilians, including one beheaded youngster believed to have been executed by an armed group in 2007. The MoHR also reported the identification of a mass grave site in the village of al-Dair (al-Qurna District) on 11 December near Basra – however, legal procedures are still underway to permit the Government to open and investigate it.

Near Kirkuk a mass grave was discovered which contained the bodies of 957 persons, including 104 Kurds. All these people were killed during the period of the Saddam Hussein regime

The graves were exhumed by MoHR in cooperation with the International Commission on Missing Persons (ICMP).

According to the MoHR, Iraq has insufficient specialized infrastructure and equipment to collect, treat, preserve and analyse forensic data, which critically hampers progress in the exhumation and investigation of mass graves. Iraq does not have a suitably equipped laboratory or experienced technical experts for the collection and analysis of DNA of victims found in these graves. In addition, Iraq needs to develop a comprehensive database both on missing persons and on bodies that have been identified. Also hindering proper investigation of the mass gravesites is the unstable security environment in areas where graves have been or are likely to be located.

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30 See 13th Human Rights Report (1 January-30 June 2008), para 42.

31 Available online <<http://www.ic-mp.org/press-releases/iraqi-experts-visit-icmp/>> accessed 21 January 2010



The Government of Iraq has taken positive steps aimed at addressing these deficiencies. For instance, the Government issued a decree in February 2005 creating a National Centre for Missing and Disappeared Persons and it passed two laws in 2006, one on Missing Persons and another on the protection of mass graves. In addition, the Government of Iraq through the MoHR has been working in partnership with the ICMP since 2004 to address the problem of missing persons and the proper investigation of mass gravesites. ICMP opened a full-time office in Baghdad in November 2008, and a second office in Erbil in August 2010.<sup>32</sup> Furthermore, in December 2010 a delegation of six Iraqi experts visited the headquarters of ICMP in Bosnia-Herzegovina to explore ways to implement a DNA-led identification project that would adhere to best practice and proper rule of law procedures. Among the Iraqi delegation were experts from the Ministry of Martyrs and Anfal Affairs, the Medico Legal Institute of the KRG, the MoHR, and the Medico Legal Institute in Baghdad. The participants discussed the challenges of mounting a coordinated, countrywide effort to locate, recover and identify the reported quarter of a million to one million missing persons.<sup>33</sup> UNAMI welcomes the fact that on 23 November Iraq ratified the International Convention for the Protection of All persons from Enforced Disappearance, which requires the Government to act to prevent enforced disappearance, to take action in relation to cases of enforced disappearance, and to hold those who perpetrate such acts accountable.

## 4. Detention and Rule of Law

UNAMI continues to have serious concerns about the administration of justice and the rule of law in Iraq – particularly in relation to the observance and respect for due process and fair trial standards, as well as the physical conditions in pre-trial and post-conviction detention facilities and prisons.

### 4.1 Numbers in detention

The number of detainees and prisoners increased slightly during 2010, which may be attributed to the transfer of detainees from USF-I-managed detention facilities as well as delays in judicial processes. According to the figures provided by the MoI, MoD, MoLSA, and the MoJ, the total number of detainees,



security internees and sentenced prisoners held by the Iraqi authorities increased from 28,956 at the end of December 2009 to 35,653 (34,220 adults and 1,433 juveniles; while 757 are female) by the end December 2010. There were only 192 prisoners still under the custody of USF-I at end of 2010. During 2010, some 10,721 persons had been released from Iraqi prisons and detention centres. During 2010, there were 20,232 persons being held in pre-trial detention and 15,421 were convicted of crimes and sentenced to imprisonment. According to information obtained by UNAMI approximately 100 prisoners died while in custody in 2010: 76 in prisons administered by the MoJ, 18 in facilities run by the MoI, and 6 in MoD

facilities. Of these 77 allegedly died from natural causes or from sickness, two died in riots, two were electrocuted, one was killed by another prisoner, nine died as a result of suspected torture, while the deaths of three remain undetermined. Six prisoners also died as a result of suffocation in an incident in Taji Prison.

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32 Available online <<http://www.ic-mp.org/press-releases/iraqi-experts-visit-icmp/>> accessed 21 January 2010

33 Available online <<http://www.ic-mp.org/press-releases/iraqi-experts-visit-icmp/>> accessed 21 January 2010

## 4.2 Treatment in detention

UNAMI regrets that for a considerable period in 2010 its access to prisons, detention centres and other facilities where persons are deprived of their liberty was problematic in certain areas of Iraq, owing to the security situation generally or because access was restricted or prevented by the Government of Iraq.<sup>34</sup> In some instances, despite UNAMI's mandate under international law, the Government of Iraq prohibited UNAMI access<sup>35</sup> or failed to respond within a reasonable time to UNAMI requests for visit permits.<sup>36</sup> In other instances, UNAMI was allowed to enter facilities, but was denied access to any detainees<sup>37</sup> or was prevented from speaking to detainees in private.<sup>38</sup> As a result, the UN High Commissioner for Human Rights appealed to the Government of Iraq "... for unconditional access of UNAMI staff members to prisons and detention facilities"<sup>39</sup> and later "... urge[d] the Iraqi Government to facilitate visits of the United Nations Assistance Mission for Iraq (UNAMI) Human Rights Teams to monitor the human rights situation in detention facilities."<sup>40</sup> Towards the end of 2010, constructive talks between UNAMI and the Ministry of Justice (MoJ) resulted in verbal permission for UNAMI to have unrestricted access to all MoJ facilities, which was later confirmed by letter from the Ministry.<sup>41</sup> A verbal agreement with Ministry of Labour and Social Affairs (MoLSA) already exists, giving UNAMI free access to all MoLSA-run juvenile detention facilities. Unfettered access by UN staff to facilities run by the Minister of Interior (MoI) and Ministry of Defence (MoD) remains problematic.

Despite the difficulties, UNAMI managed to conduct 21 monitoring visits to prisons and detention centres in Iraq (outside the Kurdistan Region) in 2010.<sup>42</sup> The physical condition of these facilities, and the standards applied to the treatment of detainees, varied greatly.

For instance, UNAMI conducted six monitoring visits to the *Tasfeerat* detention centre in Kirkuk. As of 2 November this facility held a total of 471 detainees, including 31 women and three young children. UNAMI found that overall the conditions were adequate, and noted the efforts made by the senior management of the facility to respect and maintain minimum conditions related to detainees' basic needs in line with international standards – however, lack of resources remained problematic. On three occasions UNAMI visited al-Sharaf (Camp Honour) detention centre located in the Green Zone in Baghdad, which nominally operates under the authority of the MoJ, although its security is provided by the 56 ("Baghdad") Brigade of

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34 The MoHR and the International Committee of the Red Cross (ICRC) also visit certain prisons and detention facilities in Iraq.

35 For example, two MoI officials informed UNAMI HRO separately on 28 April by phone that their superiors had passed instructions to ban visits by the United Nations to any MoI detention facility. The MoI resumed cooperation with HRO later in 2010 and granted UNAMI HRO a permit to visit three MoI detention facilities in Baghdad in November.

36 For example, on 31 March UNAMI HRO requested in writing a permit from the MoJ to visit al-Maqil Prison in Basra. Two renewed written requests were made on 16 May and 15 June. In addition, UNAMI HRO made numerous verbal enquiries. No permit has yet been received. Similarly, UNAMI HRO made repeated requests, including written ones, to the MoD throughout 2010 for a permit to visit Camp al-Sharaf. Only on 28 October was UNAMI HRO able to access the facility.

37 For example, when UNAMI HRO visited Camp al-Sharaf on 15 March no access to the inmates was granted. The Ministry of Defence authorities running the detention centre insisted that every single UNAMI HRO visit would require a written request to the MoD, approved by the Prime Minister, and subject to approval by the judge assigned to the detention centre. UNAMI HRO was again refused access to Camp al-Sharaf on 3 June. The situation only improved several months after the facility had been officially transferred to the MoJ. In other examples, UNAMI was denied access to the inmates at Basra's al-Mina detention centre on 4 February and to the prisoners at Basra's al-Maqil Prison on 18 August, 6 October and 4 December. In all cases the wardens cited lack of a written visit permit.

38 During the 10 August visit to al-Rusafa complex in Baghdad UNAMI staff were shadowed by MoJ officials who explained they had instructions to observe the visit, including all UNAMI conversations with inmates. Some Iraqi NGOs visiting prisons and detention centres have reported similar restrictions.

39 Letter dated 8 September from the UN High Commissioner for Human Rights to the Permanent Representative of Iraq to the United Nations at Geneva.

40 Media statement of the UN High Commissioner for Human Rights dated 26 October 2010.

41 This was announced by Deputy Minister of Justice Busho Ibrahim Dizayee in a meeting with a delegation from OHCHR headquarters and UNAMI on 2 December. Letter from Ministry of Justice, dated 26 December 2010.

42 Al-Mina detention centre in Basra (4 February and 24 June), Tasfeerat detention centre in Kirkuk (4 January, 10 February, 16 March, 7 April, 9 June, 2 November), Camp al-Sharaf in Baghdad (15 March, 28 October, 7 November, 30 November and 4 December), Major Crime Investigation Unit in Kirkuk (7 July), al-Rusafa complex in Baghdad (10 August), Juvenile Police Station in Kirkuk (12 August, 6 October), al-Maqil Prison in Basra (18 August, 6 October, 4 December), women's prison inside al-Rusafa complex in Baghdad (27 October, 9 November).

the 5th Division of the Iraqi Army<sup>43</sup> - which in turn is under the nominal administrative control of the MoD, but receives its policy guidance and direction from the Prime Minister's Office. On a visit to the women's prison inside Baghdad's al-Rusafa complex on 9 November UNAMI noted severe overcrowding, inadequate ventilation and the poor standard in general living conditions.

Through various visits to detention centres and prisons, UNAMI found evidence that detainees and prisoners had been threatened with beatings if they raised concerns with UN staff. Overcrowding was seen to be a major problem in many facilities. UNAMI obtained information that some prisoners would be removed from their cells before the arrival of UNAMI in order to prevent them from being seen, in particular detainees who had visible marks of torture or abuse. Furthermore, UNAMI obtained evidence that torture and ill treatment routinely takes place at the time of arrest and while in detention, UNAMI staff seeing marks on some prisoners and detainees that in UNAMI's opinion appeared consistent with torture or mistreatment.<sup>44</sup> In addition, several detainees were threatened with the death or rape of their female family members if they refused to sign confessions. Evidence gathered by UNAMI indicated that some detainees had been held for long periods of time – some up to two years – without being told of the charges against them and without access to family members, lawyers, or the courts. Conditions within facilities were often observed to be cramped, with no natural light, and no ventilation. Often there are no toilets in the cells, prisoners being let out intermittently to relieve themselves – adding to the unhygienic condition of the facilities.

UNAMI had information that on some visits prisoners would be removed from cells and concealed by the authorities to give the impression that over-crowding had been resolved but also to remove from view prisoners who had signs of physical injury. It was observed that prisoners and detainees were often not provided with adequate food, sometimes only being fed a handful of dates on some days, and many showed skin disorders caused from unhygienic conditions. More significantly, there was substantial evidence that prisoners and detainees had been physically mistreated and beaten following previous visits by UNAMI in order to compel them to disclose the nature and substance of their discussions with UNAMI. Further visits to detention centres in Baghdad were suspended from mid December 2010 until unfettered, private access is permitted by the authorities to the inmates, and satisfactory guarantees have been given by the Government of Iraq that prisoners will not be harmed as a result of such visits which UNAMI is able to verify. Visits had not resumed by the end of the year.

### 4.3 Standards of detention

Article 10 of the ICCPR requires that anyone deprived of liberty must be treated with dignity and humanity. This applies not just to pre-trial detainees and convicted prisoners, but also to those detained for immigration purposes or committed to psychiatric care.<sup>45</sup> Article 10 complements Article 7, which prohibits torture and cruel, inhuman or degrading treatment (see below). Article 10 also imposes specific obligations in relation to detainees and convicted prisoners, requiring that detainees awaiting trial must be separated from convicted prisoners, and children should at all times be kept separate from adult detainees and prisoners (Article 10.2). Article 10.3 intends that incarceration of convicted persons should focus on reform and rehabilitation rather than on punishment alone.

Standards in Iraqi detention centres and prisons are required to comply with the CPA Memorandum Number 2 (2003). For instance, the administrative authority responsible for the prison is to ensure that every prisoner is provided at regular intervals with food of sufficient quality and nutritional value to ensure the health and strength of the detainee. Also, clean drinking water is to be made available to every prisoner whenever she or

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43 The MoHR notified UNAMI in May that the facility had been handed over to the MoJ. This was later confirmed by the MoJ. However, UNAMI found that as late as 7 November 2010 MoD officials at Camp al-Sharaf were still exercising considerable de facto control over the facility. This was further illustrated by an initial refusal of guards at Camp al-Sharaf to admit the UNAMI team, which possessed a permit from the MoJ. UNAMI was told that an authorization from the MoD was required instead.

44 In December 2009 the MoHR had reportedly requested that the judiciary investigate al-Sharaf interrogators over allegations of torture.

45 Committee on Human Rights, General Comment No. 21: Replaces general comment 9 concerning humane treatment of persons deprived of liberty (Art. 10): 04/10/1992. CCPR General Comment No. 21. (General Comments).



he needs it.<sup>46</sup> All prisoners should be provided with a separate bed and with sufficient bedding that is clean when issued, kept in good order, and changed on a regular basis so as to ensure its cleanliness.<sup>47</sup>

Furthermore, for persons on remand awaiting trial, the law requires that they must be held in separate facilities from convicted prisoners, and that juveniles are to be kept separate from adults.<sup>48</sup> Also, detainees awaiting trial are to be kept singly in separate rooms,<sup>49</sup> and they have the right to procure their own food through family and friends at their own expense, otherwise the administration is responsible.

The law requires that medical care be provided for convicted prisoners, including the availability of at least one medical officer with some knowledge of psychiatry, and for women detainees, provision of special accommodation for all pre-natal and post-natal cases.<sup>50</sup> For persons held on remand, the law permits them to be allowed to be visited and treated by his or her own doctor or dentist (if such a doctor or dentist is required on reasonable grounds) and if she or he is able to pay any expenses incurred.<sup>51</sup> According to section 6 of the CPA Memorandum Number 2 (2003), all prisoners are to be provided with water and toiletry articles sufficient for necessary health and cleanliness.

Despite the law, in many instances Iraqi detention centres and prisons fall short of these minimum standards for a variety of reasons – much to do with inadequacy of resources and poorly trained staff, as well as a lack of accountable and uniform oversight of the administration of detention facilities and prisons. However, the Government of Iraq has committed itself to addressing these issues.

In prisons and detention centres administered by the MoJ, most detainees and prisoners are housed in large rooms or holding areas together – the exception being the modern prisons such as those in Nassiriya, Basra, Susa and Chamchmal federal prisons. In general, detention facilities and prisons are characterised by a lack of lighting, ventilation, or air-conditioning, and many cells are overcrowded and lack bathrooms and toilets. Overcrowding in cramped conditions contributes to an environment where drug abuse, sexual and physical abuse and infectious disease are prevalent among the prisoners.

Prison facilities operated by the MoD and MoI usually house detainees and prisoners grouped together in large rooms or holding areas and there is often no separation of pre-trial detainees and convicted prisoners. In addition, prisons and detention facilities run by the MoI and MoD are also alleged to be overcrowded and suffer from poor hygiene standards. It is also alleged that there are isolation cells in MoD and MoI run facilities of approximately 1 x 2 metres which are used to hold some detainees.

In facilities housing convicted prisoners it appears that adequate food is provided by the authorities, however, this is not necessarily the case in pre-trial detention facilities. UNAMI has found that food is sometimes substandard and its delivery can be infrequent – particularly for persons held on remand in pre-trial detention.

While bedding is provided to convicted prisoners by the authorities, UNAMI notes that often they are not provided with separate beds – due mostly to financial constraints and overcrowding of facilities. For pre-trial detainees separate beds (or no bedding at all) is the norm in facilities run by the MoI and MoD.

In reality, prison health-care services are under-resourced and understaffed, and access to health-care by detainees and prisoners is limited. In particular, pregnant women receive limited or inadequate ante- and post-natal care in prison – and the food for such women often falls below necessary standards of nutrition.

In practice, there are poor personal hygiene levels maintained for persons in detention. Specific hygiene needs of women are not met (such as provision of sanitary towels, etc). As already noted, UNAMI observed

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46 CPA Memorandum Number 2 (2003) Section 8.

47 CPA Memorandum Number 2 (2003) Section 7.

48 CPA memorandum number 2 (2003) Section 30.

49 CPA Memorandum Number 2 (2003) Section 30 paragraph 6.

50 CPA Memorandum Number 2 (2003) Section 10.

51 CPA Memorandum Number 2 (2003) Section 30 paragraph 12.

that overcrowding in prisons and detention centres remains a problem.<sup>52</sup> Often there are no toilets in the cells, there is no natural light or ventilation and general conditions remain poor.

Security of prisons and discipline with prisons and detention facilities remain problematic. UNAMI received several reports of prisoner escapes, riots and hunger strikes in a number of prisons during the year. Several prisons and detention centres were plagued by violence, inmates' protests or other disturbances. For instance, riots erupted on 5 February in the *Tasfeerat* detention centre in al-Rusafa, Baghdad, which is administered by the MoJ. According to the Minister of Justice, the violence started when some inmates set fire to a large tent installed in the yard due to overcrowding in the main facility. One inmate was killed by prison guards. Three others were injured and taken to hospital. Findings by an investigation committee set up by the Minister of Justice concluded that the riots were deliberately caused by inmates attempting to escape.

On 18 February, inmates in al-Mina detention centre in Basra went on hunger strike to protest against poor conditions and ill treatment. UNAMI managed to inspect this facility on 24 June after two previous attempts had failed because access to the facility had been denied by the authorities. The inspection revealed a series of concerns that were later communicated to the MoJ, including overcrowding, dilapidated and provisional facilities, together with claims of ill-treatment in police custody and lengthy detention without trial (some inmates alleging up to five years). UNAMI also heard allegations that sectarian considerations played a part in decisions about keeping persons in detention. Several inmates claimed that they had been initially arrested by Shi'a militias merely because they were Sunni. In its response to UNAMI's query about the hunger strike in al-Mina, the MoHR confirmed that it had been motivated by delays in the processing of detainees' cases, as well as mistreatment by officials. The Ministry also stated that a committee had been established by the MoJ to expedite the settlement of detainees' issues.

On 19 February, the Human Rights Committee of Basra's Governorate Council announced that inmates in al-Maqil Prison in Basra had commenced a hunger-strike protesting against ill treatment, bad conditions, and delay by the judicial authority in processing their cases. Another hunger strike by inmates in al-Muthanna Central Prison was reported on 31 March by the Legal Committee of al-Muthanna's Governorate Council. According to the same source, the strike was due to the sudden transfer of the prison director that had apparently impacted negatively on the prisoners' living conditions, including access to water. According to the mayor of al-Muqadadiya (Diyala Governorate), on 30 October inmates in the town's prison began a hunger strike to protest against delays in processing their cases. A commission of inquiry was reportedly dispatched to look into their demands. On 3 April UNAMI received reports about 23 prisoners convicted of terrorism who escaped from al-Ghazlani, an Ministry of the Interior -run detention centre in western Mosul. A failed attempt by inmates to escape, or by outside attackers to free detainees, occurred at Basra's al-Mina detention centre on 7 October. Guards fired into the air and/or used tear gas to restore order. UNAMI received reports that indicated up to seven guards were injured (one of whom later died of his injuries); however, no detainees were hurt. Thirty inmates reportedly escaped from al-Rusafa on 17 November in the confusion that ensued following clashes with guards. Some 20 prisoners were said to have been injured.

#### 4.4 Allegations of torture and mistreatment in detention facilities

Torture is absolutely prohibited by international law.<sup>53</sup> Article 7 of the ICCPR prohibits torture and cruel, inhuman or degrading punishment. Article 7 cannot be derogated under any circumstances.<sup>54</sup> The Article is now interpreted to impose similar obligations to those required by the United Nations Convention Against Torture, including not just a prohibition on torture, but requiring governments to take active measures to prevent its occurrence and a prohibition on refoulement.<sup>55</sup> As noted, Iraq has acceded to the Convention Against Torture but has not deposited the instrument of ratification as required by the terms of the treaty.

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52 Despite the fact that the situation had apparently improved from earlier visits, inmates told UNAMI that large numbers of detainees had been removed from the cells prior to the visit by UN staff, that the cells had been cleaned up and food brought in for the prisoners. Many of the detainees held in different cells told UNAMI a similar story, adding credence to their allegations.

53 Article 2(2) of the Convention against Torture.

54 see ICCPR, Article 4.2a.

55 Committee on Human Rights, General Comment No. 20: Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment (Art. 7): 03/10/1992. CCPR General Comment No. 20. (General Comments).

Rules of IHL applicable to international as well as non-international armed conflict also absolutely prohibit torture of persons arrested, detained or captured in relation to an armed conflict.

According to the Iraqi Constitution, Article 37 prohibits all forms of psychological and physical torture and inhumane treatment. Any confession obtained through coercion, threat, or torture is not to be relied on in a court of law. Furthermore, where these prohibitions are breached, the victim has the right to be compensated for the material and moral damages incurred.

Section 12 of the CPA Memorandum Number 2 (2003) prohibits the use of restraints, such as handcuffs, irons and strait jackets as punishment.<sup>56</sup> Article 127 of ICPC prohibits the use of any illegal method to influence the accused to extract a confession. Mistreatment, threats, injury, enticement, promises, psychological influence or use of drugs or intoxicants are considered illegal. Furthermore, Article 333 of the ICPC criminalises any public official who tortures or orders torture, or threatens torture, of a person accused of a criminal act, including witnesses, with the aim of compelling a confession.<sup>57</sup> Any statement of the accused during investigation or trial must be recorded in writing by the magistrate or the investigator and should then be signed by the accused and the judge or investigator. If the accused is unable to sign, this and the reasons for it must be clearly recorded in the written record.<sup>58</sup>

Despite the laws of Iraq and international standards binding on Iraq, which absolutely prohibit torture, there is significant evidence that mistreatment, abuse and torture of persons in detention is widespread in Iraq. Iraqi and international NGOs who monitor detention conditions have voiced their opinion that both international human rights law and Iraqi laws are being routinely violated in prisons and detention facilities. Significant numbers of detainees held in prisons visited by UNAMI, alleged torture and physical abuse, particularly during interrogation – and UNAMI received allegations from a variety of sources, including members of the CoR, alleging mistreatment, torture and abuse of prisoners held in al-Taji detention facility, following its hand-over to Iraqi authority by the USF-I in March 2010. UNAMI has recorded numerous allegations of mistreatment and torture of persons at time of arrest, while in remand awaiting trial, and after conviction. Common techniques alleged include being beaten and threatened with death; being handcuffed and suspended from iron bars in painful positions for lengthy time periods; electric shocks to various parts of the body, including the genitals; cigarette burns to the body; being deprived of food, water, and sleep; having plastic bags placed over the head; and being subjected to threats against family members. From information collected by UNAMI, it appears that a magistrate is not generally present during the taking of statements by accused persons and that different methods of physical and psychological methods of coercion are brought to bear on accused persons by interrogators to obtain confessions and to extract information. UNAMI has received consistent allegations that suspects have been forced often to sign statements, which they had not been permitted to read or had read to them.

UNAMI strongly condemns the continued resort to torture or ill-treatment of detainees in Iraq and urges Iraqi authorities to take urgent steps to bring this to an end. The reasons for such mistreatment and torture are complex, but contributing factors are legal, institutional and environmental. As noted above, responsibility for arrest and detention is split between different ministries and different branches of the ISF, thereby clouding accountability for the administration of detention centres and prisons. UNAMI also notes that there is also a lack of resources devoted to the repair and renovation of existing facilities, and the construction of new facilities in line with international standards – although some progress in relation to this is being made. Iraq also suffers from a ‘culture of abuse’, where there is little public sympathy for persons accused of criminal acts, and where officials have a long history of mistreating detainees and prisoners with impunity. Some abuse is also linked to the fact that judicial procedure is heavily dependent on the extraction of confessions (whether true or false) from a suspect, irrespective that the law disallows confessions obtained through coercion to be used in evidence. The problems are compounded by weak institutional capacity, and

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56 However, clause 2 permits the use of such implements in exceptional circumstances determined by the central prison authorities, and must not be used for any longer than is strictly necessary.

57 Unfortunately, Article 136(b) only permits the prosecution of a State official who has allegedly engaged in abuse or torture where the offence took place in the connection with carrying out official duties only if the Minister responsible grants permission for the referral by the investigating officials of the case for trial.

58 CPA Memorandum Number 2 (2003) Article 128A.

in some instances, corruption. More generally, Iraq's penal system emphasizes imprisonment as a punitive measure, and largely neglects aspects of reform, rehabilitation and reintegration.

According to the MoHR,<sup>59</sup> persons in the custody of MoI (police) or MoD are at particular risk of torture and mistreatment. Information from the MoHR suggests that four persons died from torture while in detention during 2009.<sup>60</sup> The MoHR publicly confirmed on 6 November that it had received 576 complaints alleging torture and mistreatment in Iraqi detention facilities and that 120 cases had been referred to the public prosecutor for investigation and further action.<sup>61</sup> However, the MoHR follows cases where perpetrators are charged only to the conclusion of the criminal trial and does not monitor whether sentences handed down are actually served.<sup>62</sup> In addition, several government officials accused of acts of torture before 2008 subsequently benefitted from the Amnesty Law passed in that same year.<sup>63</sup>

Several cases monitored by UNAMI indicate that victims and survivors are generally reluctant to report any of the violations to which they may have been subjected, primarily because they fear retribution. In the rare instances where investigations were carried out by the responsible authorities, penalties applied to perpetrators were often limited to disciplinary or administrative measures.

In a revelation of prisoner abuse which was reminiscent of the Jadiriya/Site 4 scandal in 2005,<sup>64</sup> the Los Angeles Times on 19 April published information that the MoHR had discovered a secret detention centre<sup>65</sup> at the old al-Muthanna military airport in Baghdad's al-Karkh District in March 2010, allegedly one of two detention facilities in Baghdad run by the "Baghdad" 56 Brigade and overseen by the Baghdad Operations Command, both of which operate under the Prime Minister's office.<sup>66</sup> It was alleged that over 100 of the Sunni detainees transferred from Mosul to al-Muthanna between September and December 2009 were routinely tortured and abused. Detainees alleged that one of their fellow inmates died of torture in the facility in January 2010. According to a statement attributed to the MoHR, three officers who worked at al-Muthanna were arrested. Testimonies of 42 former inmates alleging torture were published by Human Rights Watch, which in late April gained access to 300 former al-Muthanna detainees at the al-Rusafa complex in Baghdad, all of them Sunnis from Ninawa Governorate. One of the victims was found to be a disabled, dual British-Iraqi citizen.

Media reports alleged that at least six women and eight children were among the detainees at al-Muthanna, either because they were suspected of having committed crimes themselves, or had been detained in order to put pressure on their male relatives being held in detention. Following the revelation of conditions at al-Muthanna, the facility was closed on the Prime Minister's order and 403 detainees previously held there were transferred to their home governorate of Ninawa, where they were reportedly released or were held on remand awaiting trial.

In another incident on 12 May, seven prisoners suffocated while being taken from al-Taji Prison to al-Rusafa detention centre in Baghdad. According to one official security source, the vehicles in which approximately 95 or 100 prisoners were transported were designed for no more than 15 passengers each. The prisoners were held in a space made of metal and without windows. The Minister of Human Rights commissioned an investigation into these deaths, later saying that it would take some time because of the need to carry out autopsies and take testimonies from various witnesses including the guards.

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59 2009 Annual report of the prison-monitoring department in the Humanitarian Affairs Directorate of the MoHR (English version), p. 98 and 162.

60 2009 Annual report of the prison-monitoring department in the Humanitarian Affairs Directorate of the MoHR (English version), p. 117.

61 Source: Al-Sharqiya TV. There were 574 cases received in 2009 according to Ministry of Human Rights report for 2009. At time of writing the MoHR report for 2010 was not publicly available.

62 2009 Annual report of the prison-monitoring department in the Humanitarian Affairs Directorate of the MoHR (English version), pp. 101-107.

63 Law No. 19/2008.

64 See 9th Human Rights Report (1 November-31 December 2006), paras. 90-92.

65 The Iraqi Minister of Defence claimed that the existence of the detention centre was kept confidential to protect the staff working there.

66 The Prime Minister has reportedly stated that he was unaware of al-Muthanna's existence.

**Case study: Taha Yasen Saleh**

UNAMI investigated the case of a 21-year-old Sunni Arab man, Taha Yasen Saleh. He was reportedly arrested with 14 others during a joint Iraqi Army/Iraqi Police security operation on 19 April in an area between Kirkuk and Taza in the neighbourhoods of al-Wasit, al-Sinaie and Shegdali. Upon their arrival at the Major Crime Investigation Unit (MCIU) (now known as the Anti-Crime Unit) in Kirkuk, the men were allegedly repeatedly beaten by the wardens, interrogated and subjected to various other acts of torture and ill-treatment. Several other members of the MCIU then allegedly tortured and mistreated Saleh while he was in custody. UNAMI investigations confirmed that Saleh was held incommunicado for eleven days, was not properly informed of his legal rights upon arrest or subsequently, and was not subject to regular medical examination during his detention. On 28 April Saleh was transferred to Azadi Hospital in Kirkuk for treatment, then brought before the investigating judge Farook at the Kirkuk Criminal Court, and was then returned to the MCIU. A day later he was transferred to Kirkuk Court for a hearing before the investigating judge whereupon he and three others were sent directly to solitary confinement in Kirkuk's *Tasfeerat* (main pre-trial detention centre). On 30 April he was taken back to Azadi Hospital where he died on or around 1 May. On 5 May the Kirkuk Federal Appeal Court opened a criminal investigation into the alleged torture and other ill-treatment leading to his death. An autopsy report concluded that he had died from a heart attack as a result of beatings he had received. A warrant was issued by the investigating judge against the principal suspect, who was arrested on 5 May, detained in Kirkuk's *Tasfeerat*, but released on bail in late November. He was initially charged with murder under Paragraph 406(1) of the Iraqi Penal Code (wilful killing), but the Kirkuk Felony Court subsequently changed the charge to Paragraph 410, a less grave crime (assault leading to death or manslaughter). As of early December, the defendant was awaiting a decision by the Ministry of the Interior whether to allow the case to proceed before the criminal court or have the Ministry's internal disciplinary procedures deal with it, since paragraph 136(B) of the ICPC only permits charge and trial of officials with the permission of the Minister. UNAMI believes this is the first case in Kirkuk that a member of the security forces has been arrested and charged in relation to the alleged torture and death of a person in detention.

MNF-I and USF-I incident reports dating to between 1 January 2004 and 31 December 2010<sup>67</sup> which were unofficially published at the end of 2010, indicated that US forces witnessed extrajudicial executions, torture and abuse by Iraqi soldiers, police officers and prison guards. In relation to the publication of these reports alleging abuse by Iraqi authorities, UNAMI welcomes a commitment by Iraq's National Security Council on 25 October 2010 that a committee headed by the Minister of Justice would examine the documents and take appropriate follow-up where crimes perpetrated by Iraqi security force personnel are found to have occurred. The High Commissioner for Human Rights issued a media release on 27 October in which she called upon the Government of Iraq to take all necessary measures to investigate allegations made in these reports and, if confirmed, to bring those behind unlawful killings, summary executions, torture and other serious rights abuses to justice in line with ICCPR.

UNAMI notes that Iraq is making efforts to address some of the issues it faces in relation to the rule of law, particularly in relation to persons in detention, but progress is slow. UNAMI has seen efforts to improve the general conditions in some prisons, and the process of allocating funds to renovate or construct new detention facilities and prisons to bring them into line with international and domestic legal standards. For example, an improvement is the long-delayed opening of the Basra Central Prison, which finally took place in October, easing overcrowding at al-Maqil Prison and allowing the closure of the dilapidated, provisional detention centre at al-Mina. In addition, the Minister of Justice announced that the Government was planning to build a new maximum security prison in Babil Governorate to house inmates convicted of terrorism at a cost of 100 million Iraqi Dinars. While it had no intentions of building other new facilities in 2011, it will rehabilitate and expand a number of existing facilities, including Nasiriyah prison.

However, given the serious and ongoing nature of the allegations concerning torture and mistreatment of persons subjected to Iraq's criminal justice system, UNAMI urges the Government of Iraq to become more proactive and to considerably increase its efforts to combat the problem. Firstly, the government should consider legislative and institutional reform, such as ensuring that procedures for investigation of cases and conduct of court proceedings and trials rely on lawfully acquired, forensic evidence, rather than relying

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67 Available online <<http://213.251.145.96/iraq/diarydig>> accessed 21 January 2011.

merely on the confessions of accused persons; that the powers of arrest and the system of detention and prisons be institutionally reformed so that the powers and procedures to effect arrest are more clearly articulated in law, as well as the requirement that all persons, once arrested, must be taken within the legally stipulated period before a judge, who must actively consider reasonable alternatives to detention for persons awaiting trial. Where a judge orders an accused person to be held on remand, the detainee should be transferred immediately to detention facilities designed and intended solely for persons awaiting trial, which, along with prisons for convicted prisoners, should be administered and secured by professionally trained staff who are themselves administered and responsible to a single Government ministry or department. In addition, the Government of Iraq should ensure essential safeguards, such as legislative reform to permit detainees access to legal counsel, doctors and family visits within 48 hours of initial detention. Furthermore, UNAMI urges the Government of Iraq to dedicate adequate resources for the construction or renovation of prisons and detention facilities to ensure conditions meet minimum standards required by Iraqi and international law, and that all staff charged with administering and securing those facilities are adequately and professionally trained on their legal obligations. In addition, UNAMI urges the Government of Iraq to ensure all efforts are made to investigate every allegation of torture and abuse at the hands of Government officials and security officials, and to hold perpetrators accountable when such crimes are found to have been committed. In relation to this, UNAMI welcomes a written reminder issued by Iraq's Higher Judicial Council to all Cassation Courts that they are obliged to investigate all allegations of torture when medical records in a defendant's case file indicate such evidence.<sup>68</sup>

#### 4.5 Due process and powers of arrest

International law binding on Iraq requires that due process is respected in relation to arrest, charge, detention, and trial of all individuals within the territory and subject to the jurisdiction of the State. Article 9 of the ICCPR recognises the rights to liberty and security of the person.<sup>69</sup> It prohibits arbitrary arrest and detention, requires that any deprivation of liberty be according to law,<sup>70</sup> and obliges Parties to allow those deprived of their liberty to challenge their imprisonment through the courts.<sup>71</sup> These provisions apply no matter what the justification for imprisonment may be, and apply equally to those detained or imprisoned on account of criminal proceedings, terrorism, psychiatric illness, drug addiction, or for educational or immigration purposes.<sup>72</sup> Specifically, Articles 9.3 and 9.4 impose on Iraq procedural safeguards, requiring that any person arrested must be promptly informed of the charges against her or him, and that she or he must be brought promptly before a judge.<sup>73</sup> Article 9.3 restricts the use of pre-trial detention, in that it should only be imposed in exceptional circumstances and only for such time as is strictly necessary.

In an important move, Iraq became the twentieth State to ratify the International Convention for the Protection of All persons from Enforced Disappearance on 23 November 2010.<sup>74</sup> The Convention provides that “no one shall be subjected to enforced disappearance” and that “no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance.” According to the UN Human Rights Council, “secret detention amounts to an enforced disappearance.” Iraq has a history of enforced disappearance from past regimes, war and ongoing violence – and ratifying this Convention is an important signal from the Iraqi Government that it intends to tackle the hundreds of thousands of persons who are still recorded as missing in Iraq.

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68 Document dated 1 June 2010, reference no. 20. In the same instructions the Higher Judicial Council also reminded courts that accused persons have a right to remain silent and that judges may not interrogate an accused person in the absence of his or her attorney.

69 Although Article 9 is derogable under Article 4 of the ICCPR during states of emergency that threaten the existence of the State, Iraq has entered no such derogation according to the procedure established under Article 4.

70 ICCPR, Article 9.1

71 ICCPR, Article 9.4

72 Committee on Human Rights, General Comment No. 8: Right to liberty and security of persons (Art. 9): 06/30/1982. CCPR General Comment No. 8. (General Comments).

73 ICCPR, Article 9.4

74 The Convention entered into force on 23 December 2010, 30 days after Iraq became the 20th state to ratify it on 23 November.

The Iraqi Constitution and laws dealing with arrest, detention and trial enforce many of the above-mentioned rights; however, practice does not always comply with legal requirements.

According to the Iraqi Constitution, Article 15, “every individual has the right to enjoy life, security and liberty; deprivation or restriction of these rights is prohibited except in accordance with the law and based on a decision issued by a competent judicial authority”. In addition, Article 37, paragraph B of the Iraqi Constitution states that “no person may be kept in custody or interrogated except in the context of a judicial decision.” Section II, Article 92 of the Iraqi Criminal Procedure Code (ICPC), Number 23 of 1971, states that the “arrest or apprehension of a person is permitted only in accordance with a warrant issued by a judge or court or in other cases as stipulated by the law”.

Public authorities having the power of arrest are the Iraqi Police and the Security forces, administrative and policy responsibility for which are split, depending on the force in question, between the Ministry of Interior (MoI), the MoD and the Prime Minister’s Office. These authorities consist of the Directorate of Counter Terrorism and Organised Crime under the MoI, the Baghdad Operation Command and Counter Terrorism Unit which is answerable to the Prime Minister’s Office, Brigade 56 which is responsible for security in the Green Zone and Brigade 54 (al-Muthana Brigade) which are administratively within the Department of Defence, but which receive their policy direction from the Prime Minister’s Office. All these authorities may arrest any person against whom a warrant has been issued by a judge or court or in other cases stipulated by law – the exception being authorities under the direction of the Prime Minister’s Officer who may arrest individuals previous to obtaining a warrant.

According to the Iraqi Criminal Procedure Code, any person may carry out an arrest without an order from the authorities, but only where: a) the offence was committed in front of witnesses or b) if the person has escaped after being lawfully arrested by the authorities; c) the person has been sentenced in his or her absence to a penalty restricting his or her freedom; or d) the person is found in a public place, in a clear state of intoxication or confusion or has lost his or her reason.<sup>75</sup>

Furthermore, according to Article 103 of the ICPC any police officer or court official may arrest any person a) against whom an arrest warrant has been issued by the competent authorities; b) carrying arms, whether openly or concealed, without lawful permission; c) on reasonable grounds that he or she deliberately committed a felony or misdemeanour and has no particular place of residence; and d) who impedes a member of the court or public official from carrying out his duty.

There is nothing in the applicable Iraqi law<sup>76</sup> which prescribes the procedures for carrying out arrests, nor are there any restrictions as to the time or place that arrests can be effected, nor are there any provisions dealing specifically with procedures to be followed in the arrest of women.

Where a warrant is issued for the arrest of an individual, it should contain relevant information, including the full name of the accused, identity card details and physical description (if known) place of residence, profession and the type of offence to which the warrant relates, the applicable legal provision and the date of the warrant. It should also have been properly signed and stamped by the court (Article 93 and 94 of the ICPC). There is no legal provision requiring that an arrest warrant be provided to the accused at the time of arrest, however, the accused should be informed of the existence of the warrant at the time of arrest. All arrests carried out under the Counter Terrorism Law are done so without warrant – warrants usually being issued by the judge post arrest.

Following arrest, persons are held at facilities administered by the detaining authority for a period not exceeding 24 hours. According to Article 19, paragraph 13 of the ICPC, a preliminary investigation report must be submitted to the competent judge in a period not exceeding 24 hours from the arrest of the accused person. According to the same law, this period can only be extended once for a further 24 hours. In practice however, it appears that this period is often extended to 72 hours. For all non-terrorist related crimes, the accused is then transferred to the competent investigation court to initiate an inquiry. Persons accused of terrorist crimes are transferred to the Directorate of Counter Terrorism and Organised Crime, which is

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75 Article 102, Iraqi Criminal Procedure Code (ICPC).

76 The law governing the arrest and detention of individuals consist of the ICPC as amended by the Coalition Provisional Authority (CPA) Memorandum Number 2 (2003).



staffed with at least 20 investigating judges, each of whom is a counter terrorist specialist as required by the Counter Terrorism Law.

As noted, once arrested the authorities are required to take the accused person before the court conducting the investigation within 24 hours (48 hours maximum at law, but in reality 72) after proving the individual's identity and informing her or him of the offence for which s/he is accused. According to paragraph 109 of the ICPC, if the person is accused of an offence punishable by a period of detention not exceeding 3 years, by imprisonment for a fixed term of years or by life imprisonment, the judge may order that the accused be held for a period of no more than 15 days (which is extendable for further 15 day periods) or may release the accused on a pledge with or without bail from a guarantor, if the judge is satisfied that release of the accused will not lead to her or his escape and will not prejudice the investigation. If the person is accused of an offence punishable by death, the accused can be held in remand for a period as long as is necessary for the investigation to proceed, up until the examining judge or court issues a decision in the case.

Once the accused person is transferred to the competent court for investigation, the presiding judge is required to issue a detention order containing the full name of the accused, the relevant legal clause under which she or he is held, the date of the start of detention and the date of its expiry. This order should be signed by the issuing judge and then be stamped by the court.<sup>77</sup>

In any event the total period of pre-trial detention should not exceed one quarter of the maximum sentence applicable for the crime, and should not exceed 6 months. If it is considered necessary to extend the period of pre-trial detention to a period of more than 6 months, the examining judge must submit the case to the criminal court to seek its authority for an appropriate extension, which then itself should not exceed one quarter of the maximum applicable sentence; otherwise the investigating judge or the criminal court should order the individual's release, with or without bail.

In every facility where persons awaiting trial are held, there should be a register of all detainees (a bound book with numbered pages), stipulating the name or identity, the reasons the individual is being remanded in custody and the authority issuing the detention order, and c) the day and time of admission to the facility and the day and time of release.<sup>78</sup> In reality, however, UNAMI has found that registration books, if accessible, are often poorly maintained and often lack the required or updated information.

UNAMI remains concerned at the lack of consistent adherence to due process requirements, in particular, the frequent failure to inform persons upon arrest of the charges being pressed against them, the frequently excessive pre-trial detention periods, lack of regular or meaningful access to legal counsel, infrequent visits by the Prosecutor's Office, and delays in carrying out review of the detainees' legal status by investigating judges. Iraqi NGOs familiar with the detention system have expressed the view to UNAMI that it is particularly the shortage of investigating judges and the lack of adequate resources that results in excessive delays for persons in pre-trial detention.

In practice, it is difficult to ascertain whether warrants and detention orders are issued as required by the relevant laws, since accused persons are not usually furnished with copies. UNAMI has recorded claims by a significant number of detainees that they did not know the reasons for their arrest or detention, and that they had not been provided with the details of the actual charges being pressed against them, either verbally or in writing. A number of detainees alleged that they had been detained for reasons not connected to any alleged violation of the criminal law, but from failure to pay bribes to security officials, or for sectarian, or other reasons.

From interviews conducted with pre-trial detainees, UNAMI has found that accused persons are rarely taken before the court within the 24 hours required by the law. UNAMI has recorded many instances in detention facilities and prisons where the accused persons have been held for extended periods beyond the limits prescribed by law; and many complained that they have not been brought before an investigative judge at all. Furthermore, UNAMI has been informed by detainees and former detainees that when they are taken before the court, bail is rarely granted. Accused persons are merely questioned for a few minutes by the presiding judge as to their identity and to confirm what they stated in their "confessions" (which are often produced by

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<sup>77</sup> Article 113, ICPC.

<sup>78</sup> CPA Memorandum number 2 (2003), section 3.

the arresting authority, having been obtained before the accused is presented to the court). Detainees are often then returned to their cells without being informed of the process that will then be applied to them.

According to the Iraqi Constitution, Article 19 the right to defense is guaranteed at all stages of investigation and trial. Article 8(1) of the Coalition Provisional Authority Memorandum Number 3 (2003)<sup>79</sup> provides any person accused of a felony the right to access a lawyer while in detention. Many detainees complained to UNAMI that they had no access to lawyers. When access to lawyers is permitted, detainees are often assigned an attorney only after all investigations are completed, and the lawyer's role commonly remains nominal.

UNAMI has also received credible allegations that there are some persons who are being detained incommunicado or who are being held in places of detention the locations of which is undisclosed, without any contact with their families, lawyers or investigators. As noted above, holding persons in these conditions amounts to an enforced disappearance and violates the requirements of applicable international and domestic Iraqi law. UNAMI would continue to urge the Government of Iraq to actively investigate all reports of secret detention centres or cases of incommunicado detention, to immediately remedy the situation, to compensate persons whose rights have been violated, and to hold perpetrators of such acts accountable under Iraqi law.

#### 4.6 Fair trial procedures

International Law imposes on Iraq obligations in relation to ensuring that fair trial standards are respected. The right to fair trial is enshrined in numerous declarations, which represent customary international law, such as articles 6, 7, 8, 10 and 11 of the Universal Declaration of Human Rights (UDHR).

Article 14 of the ICCPR specifically provides for fair trial rights: all persons are equal before the courts, court or judicial hearings must take place in open court before a competent, independent and impartial tribunal, and all judgments or rulings must be made public (Article 14.1).<sup>80</sup> These obligations are applicable to all judicial processes, including both criminal and civil hearings, and to all courts and tribunals<sup>81</sup> Article 14 also imposes specific obligations in relation to criminal trials which protect the rights of the accused and the right to a fair trial, including protecting the presumption of innocence<sup>82</sup> and prohibiting double jeopardy.<sup>83</sup> Article 14 also provides for the right of appeal to a higher tribunal upon conviction and requires that victims of a miscarriage of justice be compensated.<sup>84</sup> Article 14 requires that all persons arrested or charged must be brought promptly before a judge, and protects the right for the accused to be present in proceedings, the right to provide a defence, the right to access a lawyer and to have legal representation, the right to call and examine witnesses, and the right against self-incrimination. Article 15 of the ICCPR prohibits imposition of criminal penalties retrospectively and also the prosecution of individuals by *ex post facto* law. Importantly, Article 16 of the ICCPR requires States to recognize everyone as a person before the law. Article 26 also ensures that all persons are equal before the law without discrimination on gender, race, ethnic, religious or other grounds.<sup>85</sup> Combined with Article 2 of the ICCPR which requires that the rights protected by the Covenant must be recognised "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status," and Article 3, which ensures that they are enjoyed equally by women, the Government has responsibilities to

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79 18 June 2003 - published in the Official Gazette, issue 3978 of 17 August 2003 and a revised version, signed on 27 June 2004, which was never published in the Official Gazette (which is the version on the CPA archive website at <http://www.cpa-iraq.org/regulations/index.html>)

80 Closed hearings are only permitted for reasons of privacy, justice, or national security, and judgments may only be suppressed in divorce cases or to protect the interests of children (Article 14.1).

81 Committee on Human Rights, General Comment No. 13: Equality before the courts and the right to a fair and public hearing by an independent court established by law (Art. 14): 04/13/1984. CCPR General Comment No. 13. (General Comments).

82 ICCPR, Article 14.2.

83 ICCPR, Article 14.3.

84 ICCPR, Article 14.6.

85 ICCPR, Article 26: "All persons are equal before the law and are entitled without discrimination to the equal protection of the law. In this respect, the law shall prohibit discrimination and guarantee to all persons equal and effective protection against discrimination on any grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, property birth or other status."

ensure the equal application of the rights protected by the Covenant to all persons within its territory and subject to its jurisdiction without discrimination.

The Iraqi Constitution provides that arrested persons have the right to defence, which is inviolable and guaranteed in all phases of investigation and trial.<sup>86</sup> Every person has the right to be treated with justice in judicial and administrative proceedings.<sup>87</sup> The Court shall delegate a lawyer at the expense of the State for a person accused of a felony or misdemeanour who does not have a defence lawyer.<sup>88</sup> All untried detainees are to be permitted to apply for free legal aid where such aid is available, and to receive visits from his or her legal adviser. Interviews between detainees and their lawyers can be held within the sight, but not within the hearing, of a police or institutional official.<sup>89</sup> In reality very few prisoners are provided with legal assistance.

Delays in bringing accused persons promptly before a judge within time limits laid down by law have already been discussed. As already noted, detainees frequently complained to UNAMI about the fact that they had not been properly informed of the charges brought against them, and that they had no access to lawyers – or if they did it was during their trial which was often brief, and merely consisted of the judge certifying confessions which detainees asserted often had been made under duress.

UNAMI undertook some limited monitoring of criminal trials, almost exclusively in Basra.<sup>90</sup> The trials observed were carried out in a calm atmosphere and professional manner, but UNAMI was able to confirm the observations made by some NGOs that the participation of attorneys, when present, is largely nominal. Several defendants, particularly those accused of serious crimes, testified to having suffered abuse at the hands of the police during the investigation phase in order to extract confessions. One judge noted that “tribal reconciliation” also plays a major role in the administration of justice in Basra, which means that cases are usually closed at the police investigation level before reaching the court and settled without reference to the law.

UNAMI notes with concern comments made by public officials in relation to persons arrested or charged in relation to serious crimes, including terrorist acts. For instance, in early December 2010 by the Minister of Interior, Jawad al-Bolani, reportedly called for the execution without delay of 39 al-Qa’eda figures before they had been tried and convicted by a court of law.<sup>91</sup> Such comments undermine the rule of law and prejudice the fair trial of accused persons by threatening the independence of the judiciary and the presumption of innocence.

#### 4.7 Detention in the Kurdistan Region

UNAMI continues to actively monitor the conditions of prisoners and detainees in the Kurdistan Region and to cooperate with the Kurdistan Regional Government (KRG) to address issues of concern. UNAMI carried out 39 visits to prisons<sup>92</sup> and detention centres during the reporting period<sup>93</sup> and conducted 150 private interviews with detainees and prisoners. The total number of detainees, security internees and sentenced

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86 Article 19(4) Iraqi Constitution.

87 Article 19(6) Iraqi Constitution.

88 Article 19(11) Iraqi Constitution.

89 CPA Memorandum Number 2 (2003), section 30 paragraph 14.

90 On 17 August, 5 October and 21 October.

91 Daily Mail, “Justice, Iraq-style: 39 al Qaeda suspects who are all facing execution without trial”, 3 December 2010, available online <<http://www.dailymail.co.uk/news/article-1335291/39-al-Qaeda-suspects-facing-execution-trial.html#>> accessed 21 January 2011.

92 This included two federal prisons located in the Region of Kurdistan, namely Zarga Prison in Dahuk and Chamchamal Prison in Sulaymaniyah Governorate. Both are under the authority of the MoJ in Baghdad.

93 Asayish detention facility in Erbil (24 February, 4 March, 19 May, 23 June, 28 June, 21 December), Muaskar Salam Prison in Sulaymaniyah (28 March, 22 July), Kani Goma Prison (including its Asayish section for pre-trial detainees) in Sulaymaniyah (16 May), Tasfeerat detention facility in Sulaymaniyah (17 May, 8 November), Zarga Prison and detention centre in Dahuk (6 June, 6 October, 14 December), Women and Juvenile Rehabilitation Centre in Erbil (17 June), al-Mahata Prison in Erbil (15 June, 28 October), juvenile pre-trial detention centre in Sulaymaniyah (21 July), juvenile reformatory for convicts in Sulaymaniyah (21 July), Women’s Prison in Sulaymaniyah (22 July), Asayish Gishti detention facility in Erbil (19 May, 10 August), Women and Juvenile Rehabilitation Centre in Dahuk (5 October, 14 December), Asayish detention facility and police detention facility in Rania District (10 October), Chamchamal Prison (12 October), Asayish detention facility in Halabja (13 October), Asayish and Asayish Gishti detention facilities in Sulaymaniyah (7 November), Asayish detention section of Kani Goma Prison in Sulaymaniyah (7 November).

prisoners held by the KRG<sup>94</sup> increased from 2,689 at the end of December 2009 to 3,285 at the end of 2010 according to data provided by the Kurdistan Region authorities. While UNAMI noted some improvement in the *Asayish* (Kurdish Security forces)-run facilities, there was little improvement in the physical conditions inside prisons and detention centres under the authority of the KRG MoI and KRG MoLSA.

Apart from the prison in Dahuk which was built as a model facility and, following assessment by UNAMI, appears to meet the minimum international requirements in relation to physical conditions,<sup>95</sup> the other two prisons visited by UNAMI, al-Mahata pre-trial detention centre in Erbil (which is a joint KRG MoI *Tasfeerat* and MoLSA facility) and al-Salam (for convicted prisoners, under administration of KRG MoLSA) in Sulaymaniyah, were found to be severely overcrowded, with poor hygiene and with cells that have no ventilation or natural light. One cell at al-Mahata that was meant to accommodate 30 inmates in fact had 110 occupants.

During the year, prison authorities acknowledged and shared these concerns with UNAMI, but stated that there were not enough resources available for building new facilities or expanding the existing ones. However, UNAMI is pleased to note that on 31 October construction started on a new prison for adults in Kasnazan, 10 km east of Erbil. MoLSA announced that the prison will have a capacity for 1,500 inmates in 92 cells, will contain exercise grounds, workshops for vocational training, and healthcare. It is estimated that construction of the facility will be completed by mid 2012. In addition, the KRG MoI has started construction on a new pre-trial detention facility 10 kilometres to the south west of Erbil. The facility should be completed by the end of February 2011 when the detainees in al-Mahata will be transferred there.

Detainees interviewed by UNAMI on 7 November in the Kani Goma Prison (*Asayish* detention centre – mostly pre-trial detainees) in Sulaymaniyah and the *Asayish Gishti* detention facility (located in the campus of the *Asayish* offices and mostly holding persons under investigation) in the same town were largely satisfied with their living conditions. UNAMI notes that the conditions in the latter facility had visibly improved when compared with the observations made on two previous monitoring visits to the prison in June 2008 and March 2009. The KRG has informed UNAMI of plans to build a new prison in Sulaymaniyah to solve the problem of overcrowding and the poor living conditions in the al-Salam prison there. The new facility will also have a section for detainees from the police. The construction work has not yet started.

On 27 December, UNAMI conducted a mission to Shaqlawa, a district in Erbil, to visit the detention facilities run by the Police and *Asayish*. The police facility was small, old and without heating, and held one detainee who had been there for five days. The *Asayish* Prison facility in Shaqlawa is used for Peshmerga who are convicted by Court Martial. The facility had improved since UNAMI's last visit in 2009. All cells had heating, gym and there was a small shop. The facility held ten inmates, who complained about lack of space to meet with family members. One inmate was on a hunger strike as he wanted to be released under an amnesty. A plan has already been approved for the construction of a new facility in Shaqlawa and Raniya Districts in Sulaymaniyah for *Asayish* detainees. The new facility will accommodate more than hundred people. It will replace the old *Asayish* prison for convicted persons and will also have a section for *Asayish Gishti* detainees as well. The new prison is supposed to be completed by the end of April 2011.

UNAMI also noted significant improvements in reducing pre-trial detention periods at the *Asayish Gishti* detention centre in Sulaymaniyah. During a visit on 10 May, UNAMI observed that this facility no longer had any detainees held beyond the statutory period for investigation. A subsequent visit in November confirmed this positive trend.<sup>96</sup> When UNAMI visited Kani Goma Prison in Sulaymaniyah in May 2010,

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94 These detainees are under the authority of the KRG MoI, KRG MoLSA and the Kurdish security forces *Asayish Gishti* (controlled by the Kurdistan Region Prime Minister's office and the Office of the Kurdistan Region's President).

95 Basic standards on the treatment of persons in detention are embodied in a number of international instruments. Those dealing with the physical standards for persons in detention can be found in UDHR, Art. 25; ICCPR, Art. 10; ICESCR, Art.11; CRC, Art. 27; as well as the Standard Minimum Rules for the Treatment of Offenders, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, Rules 9, 10, 11, 17, 18, 19, 20; and "Basic Principles for the Treatment of Prisoners," United Nations, 14 December 1990, available online <<http://www.un.org/documents/ga/res/45/a45r111.htm>> Principle 10.

96 The Iraqi Criminal Procedure Code provides in Item 3 of Paragraph 109 that the total period of detention of a suspect should not exceed one quarter of the maximum permissible sentence for the offense with which the arrested person is charged and should not, in any case, exceed six months. If it is necessary to increase the period of detention to more than six months, the judge must submit the

only two out of 22 *Asayish* pre-trial detainees held at this facility were found to have been detained for longer than the prescribed period. In addition, the *Asayish* Kani Goma facility, which was previously known for holding large numbers of detainees from disputed areas, held only eight such detainees among the 22 inmates. UNAMI acknowledges this as a significant change in comparison to the past. However, most *Asayish* and *Asayish Gishti* detainees spoken to by UNAMI still complained that their trials were being unreasonably delayed owing to some lack of coordination between the investigating authorities and the courts. This matter was raised with the authorities, who informed UNAMI that work is being done to coordinate the relevant judicial authorities to expedite the cases.

In June 2010, the Kurdistan Region Parliament extended the Law on Anti-Terrorism (Law No. 3/2006) for a further two years until 16 July 2012.<sup>97</sup> This law was initially introduced to deal with crimes related to terrorist activities, including organized use of violence and encouraging or glorifying the use of violence. As noted previously, UNAMI remains concerned this law is used to keep some individuals in detention without charge or without producing them to the courts for trial for extended periods. In the *Asayish* detention facility in Erbil UNAMI came across two cases of persons who have been in custody for extended periods (allegedly up to six years) on suspicion of having committed acts of terrorism. UNAMI interviewed the family members of a further six detainees who allegedly had been held in the facility between three to ten years. Subsequently, UNAMI raised these cases with the KRG Minister of Interior at a meeting held on 10 February. KRG authorities have repeatedly admitted that they are unwilling to prosecute the detainees concerned under the ICPC as the statutory penalties prescribed are considered to be too lenient in relation to the crimes for which the detainees stand accused. As a result, they are being held in detention indefinitely.

***A case of breach of due process and fair trial standards in the KRG***

According to his lawyer, Waleed Yunus Ahmad, has been in *Asayish* custody since 5 February 2000. He was initially arrested under of suspicion of being a member of a radical Islamic group and of being involved in acts of terrorism. UNAMI first interviewed him in 2007. His detention was again extended on 8 February 2010. Also in February, for the first time since his arrest, Ahmad was charged with crimes under the KRG Anti-Terrorism Law. He was investigated by the court, and his statement was taken on 30 March. On 24 June he was found not guilty of the charges. However, at time of writing he remains in detention. UNAMI HRO is seriously concerned at the fact that Ahmad had been held in detention without charge or trial for nearly ten years, that he was charged under a law that was applied to him retrospectively, and that despite being acquitted he is still being held in detention – all of which constitute serious breaches of the guarantees of due process and fair trial under International and applicable domestic law.

An initiative for resolving the caseload of residents from Ninawa Governorate in KRG custody was facilitated by UNAMI as part of a confidence-building measure to help defuse Arab-Kurdish tensions. The Ninawa Detainee Committee was established in April 2010 and comprises representatives from the *Asayish*, the Deputy Prime Minister's Office of the Government of Iraq, the police, and the Ninawa Governorate Council. The Committee was tasked to identify the number of detainees and prisoners in the Kurdistan Region, categorize them based on their legal status, and make recommendations to help resolve their cases. On 5 July, the *Asayish* provided a list of 147 pre-trial detainees and convicted persons from Mosul who were in its custody. The Committee conducted visits to all prisons and detention facilities in the Kurdistan Region where those detainees are held. The Committee then tried to secure the transfer of prisoners from Mosul who are held at Fort Suse Prison<sup>98</sup> back to Mosul. However, due to increasing tensions between the KRG and the Ninawa Governorate authorities, all activities of the Committee were suspended.

Similar efforts have been made in Kirkuk. UNAMI promoted the idea of establishing a committee on detainees and missing persons modelled on the one in Ninawa Governorate to members of the Kirkuk

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case to the Felony Court to seek permission for an appropriate extension, which must not itself exceed one quarter of maximum permissible sentence, or he should order his release, with or without bail.

97 Articles 3, Item 3 and Item 5 of the KRG Anti-Terrorism Law read as follows: "Abducting, arresting or depriving any person of his or her liberty by any means for financial gains or political purposes with a terrorism motivation" and "Providing or collecting, transporting or transferring money directly or indirectly, within or outside the Region, with the intention or knowledge of the intention to use the money to finance any terrorist crimes."

98 A federal prison under the authority of the MoJ of Iraq, but located on territory of the Kurdistan Region.

Governorate Council, representatives of the *Asayish* forces,<sup>99</sup> and representatives from Kirkuk's police and judiciary. However, in September UNAMI and local actors agreed to continue using bilateral discussions to address detainees' issues as a confidence-building measure between Arabs and Turkoman on one side and the Kurdish *Asayish* on the other. Despite the fact that no Kirkuk Detainee Committee was established, UNAMI received unhindered access to those *Asayish* detention facilities in the Kurdistan Region where detainees from outside the Kurdistan Region are held.

UNAMI notes the positive step taken by the KRG in relation to the treatment of prisoners. The KRG passed a new law (Law No. 109/2010) entitling certain categories of convicted prisoners to take one week of home leave every three months after they have served one quarter of their sentence in prison. To be eligible for home visits, prisoners must provide financial guarantees of between 5 million Iraqi dinars (approximately USD\$4,000) and 25 million Iraqi dinars (approximately USD\$20,000). This law does not benefit prisoners convicted of drug dealing, murder, or terrorism.

The Kurdistan Region Parliament passed a law compensating persons who have been detained and later acquitted and released (Law 15/2010). Claims for compensation will be heard by a committee established by the Courts of Appeal under Article 14 of the Judicial Authority Law No. 23/2007 composed of the Head of the Court of Appeal and two judges from the Appeal Court. Its decisions will be appealable to the General Committee of the Appellate Court. Where compensation is awarded it will be based on the magnitude of emotional and social suffering, and physical suffering.

UNAMI remains concerned that detainees and prisoners in the Kurdistan Region are, on occasion, being ill-treated or tortured, particularly during interrogations and investigations – although due to positive action taken by the Kurdistan Region authorities, the cases reported to UNAMI were few. Where abuse has been reported, it is usually in *Asayish* run facilities – such claims are far less common from detainees held in facilities operated by the police. Unlike in the rest of Iraq, the KRG has openly acknowledged in discussions with UNAMI that instances of abuse of prisoners and detainees does occur – and the KRG authorities, in particular those responsible for the administration of prisons and detention facilities, have committed to consider ways to address the problem.

In relation to this, UNAMI encourages the KRG to consider further legal and institutional reform of the criminal justice system in the Kurdistan Region to ensure that the laws and regulation of institutions involved in the administration of justice comply with international and domestic legal standards. Most importantly, UNAMI urges the KRG to consider amalgamating responsibility for all detention facilities and prisons under the administration and authority of one Government ministry or department. The present system, where responsibility for pre-trial detainees and convicted prisoners, depending on the crimes the individual is suspected of having committed or has been convicted of, is split between different Ministries and various security forces, only confuses lines of responsibility and clouds accountability – thus contributing to an environment where abuses can take place with impunity.

UNAMI also urges the KRG to consider further improving the capacity of staff responsible for the administration of prisons to ensure their awareness of, and compliance with, applicable international human rights and domestic legal standards. UNAMI would also urge the KRG to vigorously investigate all allegations of mistreatment of abuse in detention facilities and prisons and ensure that persons accused of such crimes are dealt with appropriately by the courts.

#### 4.8 Detention by USF-I

The number of detainees under the authority of the USF-I dropped from 6,036 by the end of September 2009 to 192<sup>100</sup> at the end of 2010 as USF-I transferred detainees to Iraqi custody or released them under the terms of the Iraq-United States Bilateral Security Agreement.<sup>101</sup> Those who remain in USF-I custody do so at the

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99 The PUK and the KDP maintain their separate *Asayish* security forces not only in the Region of Kurdistan, but also in territories under de facto KRG control.

100 These detainees include senior members of al-Qa'eda as well as former members of Saddam Hussein's government.

101 "The Agreement between the United States of America and Iraq on the withdrawal of United States Forces from Iraq and the organization of their activities during their temporary presence in Iraq."



request of the Government of Iraq and are high profile prisoners including senior members of al-Qa'eda as well as former members of Saddam Hussein's government.

During 2010 USF-I also continued to hand over detention facilities to Government of Iraq responsibility: on 15 March, the US military handed over al-Taji Prison (the second largest facility after Camp Bucca) to the Iraqi authorities. It holds about 2,900 prisoners. Camp Cropper, a USF-I detention facility near Baghdad airport, was likewise handed over to Iraqi authorities on 15 July, who renamed it al-Karkh Prison. Just days after the handover, on 22 July, four detainees escaped, including at least two suspected senior al-Qa'eda figures. Simultaneously, the warden of al-Karkh Prison, Omar Hamis Hamadi al-Dulaimi, who had been appointed when USF-I still operated the facility, abandoned his post and disappeared. At the request of the Government of Iraq, the USF-I retained control of a small section of Camp Cropper/al-Karkh, where the 192 high-value detainees still held by the USF-I are housed. Another four inmates, again suspected al-Qa'eda members, escaped from the US-run part of the detention facility on 8 September.

## 4.9 Death penalty

International human rights law protects the inherent right to life. Specifically, it protects everyone against the arbitrary deprivation of life. While Article 6 of the ICCPR does not prohibit the death penalty, it restricts its application to the "most serious crimes"<sup>102</sup> and prohibits its use on children and pregnant women<sup>103</sup> or in a manner contrary to the Convention on the Prevention and Punishment of the Crime of Genocide.<sup>104</sup> The UN Human Rights Committee interprets the Article as "strongly suggest[ing] that abolition is desirable",<sup>105</sup> and regards progress towards abolition of the death penalty as advancing fulfilment of this right. The Second Optional Protocol to the ICCPR commits its signatories to the abolition of the death penalty within their borders. Iraq formally rejected a recommendation from the UPR process in February 2010 that called on it to accede to the Second Optional Protocol or to abolish the death penalty.

According to information obtained by UNAMI, the number of persons sentenced to death from 2003 to 1 December 2010 numbered 1145, encompassing 39 women and 1106 men. The Deputy Ministry for Justice, Busho Ibrahim Dizayee, was quoted in press reports on 16 December, that Iraq has executed 257 people since 2005. Those executed include six women.<sup>106</sup> In response to a letter sent by UNAMI on 13 December 2010 the MoJ stated that 18 persons were executed in Iraq between 1 January 2010 and 20 December 2010. All those executed were men.

Furthermore, 84 death sentences were handed down by the courts in 2010. According to the Deputy Minister there are, at time of writing, some 37 (four of who are women) had their death sentences confirmed by the Presidency Council in 2010 while a further 385 persons (seven of who are women) have had their death sentences upheld by the Court of Cassation but have not yet received approval from the Presidency Council. The number of persons executed in 2010 represents a significant decline on the 124 persons executed in 2009 – four of who were women. Furthermore, according to the then Minister for the Interior, Jawad al-Bolani, there are 835 persons on death row in Iraq.<sup>107</sup> According to al-Bolani, in relation to terrorism offences alone, there are 14,500 persons who have been convicted; however, the numbers of those serving life sentences in addition to those who have been sentenced to death has not be published.

Under the Iraqi Constitution, all sentences of death must be affirmed by the President before being implemented. In mid-November, Iraqi President Talabani refused to sign the decree<sup>108</sup> authorizing the execution of former Deputy Prime Minister, Tariq Aziz, who had been sentenced to death on 26 October by the Supreme Iraqi Criminal Tribunal for persecuting Islamic parties in the wake of the 1991 Shi'a uprising in

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102 ICCPR, Article 6.2.

103 ICCPR, Article 6.5.

104 ICCPR, Article 6.3.

105 Human rights Committee, General Comment No. 6: The right to life (art. 6): 04/30/1982. CCPR General Comment No. 6. (General Comments)

106 BAGHDAD, 16 Dec 2010 (AFP): Iraq has executed 257 since 2005: minister (Emirates 24/7)

107 Iraq has 835 prisoners on death row: Minister (Zeen News <[www.zeenews.com/](http://www.zeenews.com/)> Dec 13). In July, Government spokesperson, Ali al-Dabbagh stated that Iraq executed 230 people from 2005 to 2009 and that 1,254 death sentences had been handed down.

108 The so-called Republican Decree (Paragraph 285 and 286 of the ICPC). Based on this decree the Prime Minister may issue the execution order.



Iraq.<sup>109</sup> President Talabani reportedly objected to the execution because of Aziz's age and because Aziz is a Christian.

While UNAMI welcomes President Talabani's objection to the execution of Tariq Aziz,<sup>110</sup> the United Nations, in accordance with the General Assembly Resolutions 62/149 (2007), 63/168(2009) and 65/205 (2010) on the moratorium on the use of the death penalty, calls on the Government of Iraq to establish a moratorium on all executions with a view to its abolition and urges it to consider acceding to the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty. Given the systemic problems and weaknesses faced by the criminal justice system in Iraq, including substantial evidence of coercion of detainees to make confessions by investigating authorities, corruption and possible abuse of process, and the weak state of the judiciary, few convictions for serious offences can be considered safe. In this context, once the death penalty has been carried out it is irrevocable and cannot be undone. For these reasons, UNAMI strongly urges the Government of Iraq to suspend indefinitely the implementation of the death penalty and commute all death sentences already considered final to life imprisonment.

If Iraq still intends to carry out the death penalty, it should do so only in the cases of the most serious crimes. The protection of the rights of those facing the death penalty should be ensured, pursuant to the relevant international laws, in particular the minimum standards, as set out in the annex to Economic and Social Council resolution 1984/50 of 25 May 1984. Furthermore, Iraq has an obligation not to carry out the death penalty in secrecy, nor to discriminate in its application.

#### 4.10 Death penalty in the Kurdistan Region

The number of persons sentenced to death whose sentences have been upheld by the Appeal Court of Kurdistan was 19 in 2010. Of those sentenced to death, ten were convicted for murder under Paragraph 406 of the ICPC, while the remaining nine were sentenced under Article 2, Item 3 of the Kurdistan Anti-Terrorism Law.<sup>111</sup>

Despite these sentences, the KRG has implemented a moratorium on carrying out death sentences since 2008 and UNAMI has been informed by Kurdistan Region Parliamentary Committees that a bill is being drafted for presentation to the Kurdistan Region Parliament in 2011 to formally abolish the death penalty in the Kurdistan Region. UNAMI commends the Kurdistan Government for implementing the moratorium on the death penalty, and urges it to pass the proposed law abolishing the death penalty in the Region once it is presented to the Kurdistan Region Parliament.

### 5. Rights of women

UNAMI continues to monitor the status and rights of women throughout Iraq, including participation of women in the political processes, and gender-based violence such as trafficking and domestic violence. For security reasons, UNAMI is not able to collect first hand data on the situation of women in many parts of Iraq outside of the Kurdistan Region.<sup>112</sup> This means that much of the information presented in this report largely concerns the situation of women in the Kurdistan Region; however, anecdotal evidence suggests that many of the issues canvassed affect all parts of Iraq.

As a signatory to the ICCPR, Iraq is required to ensure that women are treated equally before the law (Article 26) and that the rights of the Covenant are assured to women equally to that of men, and irrespective of their race, nationality, religious belief or ethnicity (Article 3). In addition, Iraq is a signatory to the

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109 According to Article 27(2) of the 2005 Law of the Supreme Iraqi Criminal Tribunal "[n]o authority, including the President of the Republic, may grant a pardon or reduce the penalties issued by this Tribunal." The Tribunal's verdicts and decisions, however, may be appealed (Article 25).

110 Similarly, Talabani refused to sign the decree authorizing the execution of the former Iraqi Minister of Defence, Sultan Hashim Ahmad, who was sentenced to death in June 2007. He is still alive and in prison.

111 "Establishing or organizing or managing an organization or association, committee, gang, centre, group or to lead these to commit one of the terror acts mentioned above."

112 Gender-based violence is assumed to be a serious problem outside the Region of Kurdistan, too; however, it is rarely reported.

Convention to Eliminate all forms of Discrimination Against Women (CEDAW) that defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination. By accepting the Convention, Iraq has committed itself to undertake a series of measures to end discrimination against women in all its forms. For instance, according to Article 2 of CEDAW, Iraq must eliminate discriminatory laws, policies, and practices in the national legal framework. Article 3 of CEDAW



states that women are fundamentally equal with men in all spheres of life. Iraq must therefore take measures to uphold women's equality in the political, social, economic, and cultural fields. In addition, CEDAW guarantees women equality with men in respect of education (Article 10), employment (Article 11), health care (Article 12), and economic and social life (Article 13). Article 14 requires States to pay particular attention to the problems faced by rural women (Article 14). Article 15 guarantees the equality of men and women before the law, and secures their right of personal contract, property ownership and right to choose their place of residence.

The Convention on the Rights of the Child also protect girls (and boys) from sexual and physical violence, abuse and exploitation, and requires States to take affirmative action to promote the welfare of children who are the victims of such abuse and exploitation.<sup>113</sup>

The Iraqi Constitution and law also promote and protect the status of women. Article 14 proclaims the equality of all Iraqis before the law without discrimination in relation to gender, as well as race, ethnicity, nationality, origin, colour, sect belief, religion or opinion or economic or other status. Article 16 guarantees equal opportunities to all Iraqis. Article 37 prohibits forced labour, slavery trafficking in women or children and enforced prostitution.<sup>114</sup>

## 5.1 Women in the political process

According to Article 7 of CEDAW, women have an equal right to vote, hold public office, and participate in civil society. Article 49 (4) of the Iraqi Constitution recognizes women's role in political life.<sup>115</sup>

UNAMI monitored the representation and participation of women in the political processes during the general election held on 7 March. Eighty out of 325 parliamentary seats were allocated to women compared to 73 in the previous CoR. Of the candidates vying for election, some 1,816 out of 6,292 were women, reflecting significant female participation in the political process. Female candidates represented a range of political and social views, from liberal to conservative, and from secular to Islamist.

Despite this, women faced serious societal obstacles to their participation, not least of which is Iraq's male-dominated, tribal, often violent post-war political culture. The Ministry of Human Rights points out that while there are women in several parliamentary committees such as the Women, Family and Children's Committee, there is no female representation in what are regarded as some of the more important committees

113 CRC Articles 39, 19, and 24

114 Prostitution is a criminal offence in Iraq – and having been enforced is not considered a defence (Law on Combating Prostitution No.8/1988) Rape is also considered a private tort which cannot be prosecuted by the State unless there is the consent of the victim or a guardian (Iraqi Penal Code no. 111/1969). Under the law persons who commit rape can escape conviction and penalty if they marry the victim, even where a trial has been concluded. Furthermore, the sexual mores of the victim are evidence which the court can consider in trying a rape case – which stigmatises the victims. The law also actively acknowledges that crimes of honour are mitigating circumstances, which thus permits a reduced sentence: see paragraph 128(1) Iraqi Penal Code. Also Article 409 the mandatory sentence of death or life imprisonment for murder is reduced in cases where a man murders his wife caught in an act of adultery.

115 "The elections law shall aim to achieve a percentage of representation for women of not less than one quarter of the members of the Council of Representatives."

such as the Defence and Security Committee, Tribal Committee, and the National Reconciliation Committee. Furthermore, in the weeks before the elections, media reported that some women candidates faced a lack of support from the public at large, public discouragement or even threats from male relatives, patronizing behaviour from male politicians, and internal ideological divisions within the main political groupings on the appropriate role of women in the political, social, and economic life of the country.

When the cabinet of the new Government was announced by Prime Minister al-Maliki in December, it is regrettable that only one female was named as a Minister. Given the number of highly educated, competent women in Iraqi society, it is a lost opportunity for the Government to present women in prime leadership posts who can thus serve as role models for Iraqi society at large. The disappearance of women almost entirely from the cabinet represents a significant shrinkage of space in terms of women's visibility in the political sphere.

## 5.2 Honour crimes

There is some evidence that honour killings and honour-related crimes remain a problem throughout Iraq. In a rare incident documented in Iraq, two women were reported killed in a "family conflict" in Qadisiya Governorate on 2 December. Discoveries of unidentified female bodies are reported regularly from governorates outside the Kurdistan Region, but no information on the motives of the killings is usually available.

In August 2010, an Iraqi NGO, al-Amal Association, published a study entitled "Honour Crimes in the Scales of Justice." The report focused on four case studies from Kirkuk Governorate, and noted the inaction by the police and judicial authorities in preventing and prosecuting honour-related violence. The report found that honour-related crimes are almost certainly under-reported because victims fear reprisals from family members and their communities, and from the belief that the authorities will take not to action to protect the victims or to prosecute the perpetrators. The report found that instances of honour related crimes are often resolved by traditional tribal and customary mechanisms rather than through the judicial system. The report made extensive recommendations to the Government of Iraq, the CoR, and the judiciary in Kirkuk, including the amendment of the ICPC to specifically criminalise honour killings and to eliminate honour as a valid consideration in the mitigation of such crimes, the introduction of human rights training specifically on the issue for police, prosecutors and members of the judiciary, and the institution of a public awareness campaign on the issue.

## 5.3 Female genital mutilation (FGM)

Some surveys and studies suggest that FGM is not common in most areas of Iraq. However, given the attention to this issue by the KRG and civil society organisations operating there, information concerning the practice is more detailed from the Kurdistan Region than in the rest of the country, where evidence remains largely conjectural.

## 5.4 Trafficking and exploitation of female migrant workers

Slavery is prohibited under international law and is *ius cogens*. Article 8 of the ICCPR prohibits slavery and enforced servitude in all situations. The article also prohibits forced labour, with exceptions for criminal punishment, military service and civil obligations. The Article is non derogable. Article 6 of CEDAW specifically imposes on States the obligation to take steps to suppress the exploitation of prostitution and trafficking in women.

UNAMI continued to receive reports alleging trafficking of women within and from Iraq, most of whom were forced into prostitution. Males have reportedly become victims of trafficking, too. Both domestic and international trafficking is being practiced. There is some evidence obtained by UNAMI that women from southern Iraq are being trafficked into Gulf States, on the promise of marriage or after being married, but once arriving in their countries of destination they find themselves reduced to roles as servants, and on occasion, as sex-workers. There is also some evidence indicating the trafficking of women within some parts of Iraq; however concrete information is hard to quantify.

There is also information received by UNAMI that women are being trafficked from foreign countries into Iraq. In Kirkuk, UNAMI received unverified reports of women trafficked by insurgents. They were allegedly forced into prostitution, used as spotters, or placed in weapons-smuggling vehicles to discourage security personnel from searching them.

To tackle this issue, a committee consisting of representatives from the Ministry of the Interior, Ministry of Foreign Affairs, and the Ministry of State for Women's Affairs was established on 31 December 2009, chaired by the Head of the National Institute for Human Rights.<sup>116</sup>

On 2 February, Iraqi security forces unearthed a fake company in Baghdad that was believed to be involved in kidnapping and trafficking of women. Following the arrest of the employees, the MoI started investigating the company's operations and its possible links with international trafficking networks.

## 5.5 Domestic violence

The extent of domestic violence within Iraqi society remains unknown – however, anecdotal and other information suggests that the problem may be widespread.

In late February the first Women's Protection Centre in Iraq, operated by the Ministry of the Interior in cooperation with MoLSA, MoHR, and the Ministry of State for Women's Affairs, opened in al-Salam Police Station in the Tobchi neighbourhood of Baghdad. Its staff includes female and male officers who submit reports to the MoI on cases of domestic violence. By the end of June, the centre had received 13 cases of domestic violence. Noting the modest but encouraging success of this centre and the assistance its professionally trained staff have reportedly been able to offer women victims of domestic violence, the Ministry of the Interior opened a similar centre in July in Baghdad's al-Rusafa District in al-Qahera neighbourhood. UNAMI is encouraged by this positive Government initiative aimed at partly addressing the difficulties faced by women who are victims of domestic violence.

Occasionally, women's prisons double as shelters for individual women who feel safer in prison than at home. For example, in October UNAMI learned from prison authorities in Basra that a 16-year-old girl who had completed a prison sentence preferred to remain in prison rather than return to her family, fearing ostracism or abuse.

UNAMI urges the Iraqi Government to introduce legislative reforms to eliminate laws that are discriminatory against women and incompatible with respect and protection of their human rights. For example, paragraph 41 ("Exercising a legal right") of the Iraqi Penal Code states: "There is no crime if the act is committed while exercising a legal right. The following is considered to be in exercise of a legal right: (1) The punishment of a wife by her husband, the disciplining by parents and teachers of children under their authority within certain limits prescribed by law or by custom [...]". Such laws fuel public perceptions that violence directed against women in the domestic sphere by their husbands is not a crime and is to be condoned. Such laws should be amended or repealed.

### *Case study: domestic violence*

The case of a 23-year-old woman was referred to UNAMI on 27 June by the Women's Human Rights Centre in Diwaniya Governorate. The woman's ordeal had started half a year earlier: She was reportedly kept by her family for six months in a muddy room measuring 1.5 square metres, with no window but a 30 cm by 30 cm hole through which dry bread and water were passed to her. On 20 June, the Diwaniya prosecutor's office issued an order to move the victim to the hospital and record her testimony. When the prosecutor subsequently ordered her transfer to the Ministry of Labor and Social Affairs (MoLSA) medical facility in Baghdad for psychological and medical treatment, the victim was allegedly denied access because the facility specializes in physical disability only. The victim was reportedly returned to her family after its members signed a formal pledge stating they would not hurt her again. An arrest warrant had earlier been issued for the victim's brothers who were identified as the perpetrators, but they had been already released on bail in mid-April and no further action was taken against them.

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<sup>116</sup> The National Institute for Human Rights is a body similar to a directorate within the MoHR. It is tasked with promoting a human rights culture in Iraq.



## 5.6 Women in the Kurdistan Region

The Kurdistan Region authorities have taken significant steps on a number of women's rights. The KRG has established institutions to investigate and combat domestic violence, and has passed laws prohibiting reduced sentences for so-called 'honour killings'. In February 2009 amendments to the election law in Kurdistan Region increased the legal quota for women in the legislature from 25 percent to 30 percent. Thirty six out of 111 members of Parliament are now women. However, there is only one female minister represented in the KRG. UNAMI notes that many of the issues confronting and undermining respect for women's rights result from deeply entrenched cultural traditions and social practices which the Government is attempting to address. However, confronting these issues successfully will require concerted action not only by the Government of the Kurdistan Region, Kurdistan Regional Parliament and the Judiciary, but also by members of civil society, including academics, religious and civil society groups, the media, and members of the international community.

In a significant, positive development, UNAMI and Kurdistan Region authorities have seen an increasing number of women who are willing to report abuse, as is illustrated by the sharp rise in the number of cases reported to the Directorate to Follow up Violence against Women (DFVAW). DFVAW, which works under the control of the KRG Ministry of the Interior and is responsible for collecting data related to gender-based violence from the victims themselves, the police and health officials. In the first six months of 2010 alone, the DFVAW registered 2,040 complaints, including domestic violence, killings, burnings and other forms of abuse, compared with 1,446 cases during the second half of 2009. The cases reported between January and June 2010 include 59 murders and suicides, 239 cases of burning and 641 incidents of physical and psychological abuse including 63 cases of sexual abuse. Some of these cases, particularly burnings, were reported as household "accidents" or as self-immolation attempts by women. Others are reported to have been perpetrated by relatives of the women victims. The remaining 1,038 cases involved other complaints by women alleging abuse or harassment by relatives as well as non-family members. Although the data provided by the DFVAW shows some differences between the three governorates in the Kurdistan Region, approximately 50 percent of violent crimes against women are believed to be committed by a family member. Almost 80 percent of women victims were married. The highest rate of women affected by violence was between the ages of 18 and 30. Married women were disproportionately affected by honour-related crimes.

### *Case study: domestic violence*

In February, a 22 year-old mother from Qaladza (Pshdar District, Sulaymaniyah Governorate) was taken to hospital with severe burns. It was alleged that her husband burnt her using a traditional stove and boiling water to "punish" her for enquiring why he was considering marrying a second wife without informing her. The husband is in detention and investigations into this case are on-going.

In most cases perpetrators remained unidentified. This applies not only to cases in which the perpetrators flee after committing the crime, but also to crimes whose perpetrators are suspected to be family members. Family members are often reluctant to testify against each other, and the capacity of police or judicial investigators to collect and analyse forensic evidence in these circumstances is limited. Even if perpetrators are identified, they often remained unpunished because of the absence of a specific law on domestic violence. Existing laws that could be used to prosecute the perpetrators of gender-based violence are often not implemented properly in a society where perpetrators are protected by patriarchal social norms and practices. While the number of women coming forward to report cases is increasing, many women victims of abuse or violence still fear reprisals, because of the stigma attached to making a complaint, or because the relevant authorities do not seem to be sensitive to, or supportive enough of, the needs of women victims. Continued impunity for perpetrators is a significant factor perpetuating gender-based violence. In a further attempt to encourage women to seek help when confronted with violence, the KRG through the MOLSA opened a help-line for women suffering abuse, and is in the process of implementing a public information campaign aimed at raising public awareness of the problem.

UNAMI is aware of four government-run shelters in the Kurdistan Region as well as a few others run by NGOs. MoLSA has provided UNAMI with written permission to officially visit all shelters under its

administration. UNAMI has visited the shelters in Erbil and Sulaymaniyah. While the physical conditions of the shelters are adequate, there are no or few policies in place to guarantee the rights of shelter residents or to guide staff in their work; and the quality of a shelter largely depends on the degree of initiative and enthusiasm that its staff is willing to invest. However, the MoLSA has assured UNAMI that they are working to address these gaps. UNAMI, UNDP, MoLSA, and the MoI have jointly drafted a shelter policy, which is currently before the KRG Council of Ministers for approval.

### 5.6.1 FGM

The KRG Ministry of Health in November released the results of a July 2010 survey revealing that 41 percent of women in the governorates of Sulaymaniyah and Erbil had undergone female genital mutilation (FGM). The Ministry's research found no evidence of the practice in Dahuk Governorate. A previous survey by the NGO Association for Crisis Assistance and Development Cooperation (WADI) in February 2010 had found a significantly higher prevalence of FGM, namely 77.9 percent in Sulaymaniyah and 63 percent in Erbil.<sup>117</sup> In June 2010, Human Rights Watch issued its own report 'They Took Me and Told Me Nothing – Female Genital Mutilation in Iraqi Kurdistan' in which the deep-rooted cultural and social beliefs surrounding the practice were examined and a series of actions were recommended to the KRG to counter it.<sup>118</sup>

Significantly in August 2010 the Kurdistan Islamic Scholars Union, the highest Muslim authority in the Kurdistan Region for religious pronouncements and rulings, issued a *fatwa* or religious ruling in which it stated that "female circumcision" is not required by Islam and is not an Islamic practice.

Regrettably, a draft law submitted to the Kurdistan Region Parliament in 2007 outlawing FGM was not passed, owing to sensitivities concerning the issue. UNAMI urges the KRG to consider as a matter of priority legislative reform aimed at prohibiting the practice of FGM in the Kurdistan Region and to consider instituting public information and education campaigns aimed at raising public awareness of the problem and the means of combating it, as well as direct help for women and girls seeking protection or assistance, medical, health or psychosocial, in relation to FGM.

### 5.6.2 Trafficking

There is some evidence that trafficking of women into the Kurdistan Region may be a growing problem. At a shelter in Erbil, UNAMI discovered a 15-year-old girl from Baghdad who had allegedly been taken to Erbil by a man who sold her to a prostitution racket. She was apparently sold twice and forced into becoming a sex worker. She was then arrested by the police, spent five months in detention, and was later transferred to prison before being moved to a shelter.

Whilst undertaking monitoring of prisons and detention centres in the Kurdistan Region, UNAMI learned of cases of foreign women charged with prostitution and/or staying in Kurdistan illegally. Several women from Bangladesh, the Philippines, Nepal and India complained that they were taken to Kurdistan and forced to work as domestic helpers after they had been hired with promises of different jobs, often in countries other than Iraq.

## 6. Rights of children and juveniles

Many of the rights protected by international law applicable to adults, also apply to children. In addition, Iraq is a signatory to the Convention on the Rights of the Child, as well as the two optional protocols thereto; the First Optional Protocol is aimed at prohibiting the recruitment of children and their use in armed conflict, and the Second Optional Protocol prohibits the sale of children, child prostitution and child pornography.

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<sup>117</sup> Based on a sample size of 1,408 women and girls in two provinces of Erbil and Sulaymaniyah, and the area of Germian/New Kirkuk. Overall it found the prevalence of FGM among girls and women aged 14 to 19 years in these areas to be 57 percent. See 16th Human Rights Report (1 July-31 December 2009), para 33. The WADI results were disputed by the DFVAW, which announced it would carry out its own survey on FGM.

<sup>118</sup> Available online <<http://www.hrw.org/en/reports/2010/06/16/they-took-me-and-told-me-nothing-0>> accessed 21 January 2010



Iraq has an obligation to protect, *inter alia*, the social, cultural and economic rights of children, to ensure their access to essential services, including education, healthcare, and to protect them against all forms of violence, exploitation and the effects of armed conflict.

## 6.1 Children in armed conflict



Children continue to be gravely affected by the impact of the armed conflict and ongoing violence in Iraq. Overall numbers of documented violent incidents involving children are slowly decreasing but remain high. On 7 June, the Country Task Force for the Monitoring and Reporting Mechanism (MRM) on grave child rights violations in situations of armed conflict was formally established. The Task Force comprises members of relevant UN agencies operating in Iraq as well as NGO representatives. It is responsible for monitoring and reporting grave child rights violations based on the UN Security Council resolutions 1612 (2005) and 1882 (2009). The MRM

reported that 194 children were killed and 232 injured in conflict-related incidents during 2010. This compares with 362 children killed and 1,044 wounded in 2009 as reported by the Government of Iraq representing a 36 percent reduction in fatalities. The MoHR reported that 174 children were killed and 773 were wounded during 2010.

There are ongoing reports of children being recruited and used by armed groups, including al-Qa'eda in Iraq, to participate in hostilities, both directly and indirectly. Children are allegedly used to carry out surveillance, to transport military supplies and equipment, to videotape attacks for propaganda purposes, to plant explosive devices, and to participate in or perpetrate attacks against security forces and civilians.<sup>119</sup> In meetings involving UNAMI and UNICEF in May and June in Kirkuk, USF-I reported that women and children were still being used by insurgent groups to support or commit attacks against the ISF and the USF-I, although the number of incidents had decreased since 2009. For instance, in early 2010 the USF-I identified a cell of teenage boys who used rockets and mortars to attack a US military base in Kirkuk.

### *Child casualties from terrorist attacks*

Child casualties were largely caused by terrorist attacks against Iraqi officials and national security forces, through improvised explosive devices, car bombs, house raids, and small arms fire in which children became victims. In the most deadly incident on 26 March, 23 children were killed when three bombs went off in a market in Ba'quba. In a particularly violent attack on 21 April, two children were reportedly beheaded by armed men who burst into the home of the chief of the Anti-terror Police in Salahuddin Governorate. In May, a young girl whose father is employed by the Iraqi Army, was killed when unknown gunmen stormed her house in Kirkuk. In August, two boys aged 10 and 12 were killed in Fallujah when insurgents blew up their house intending to kill their father, a member of the Iraqi Police. Insurgents also targeted mosques and places of worship, markets, polling stations and other public places with large crowds of civilians that invariably included children. On 24 October 2010, explosives placed in a parked vehicle exploded inside the Ibn Sina Hospital compound in Mosul. Four children were killed and nine below the age of fourteen were among the thirty persons wounded. Also in October it was reported that three children were among the 58 people killed during an attack against Our Lady of Salvation Church in Baghdad. Responsibility for the attack was claimed by the Islamic State of Iraq. Hospitals have also been directly targeted by insurgent groups. Three children were killed in Ba'quba (Diyala Governorate) on 6 December when an improvised explosive device exploded at the house of a security official.

On 9 January in Mosul, a 16-year-old boy carrying explosives was killed when they detonated. On 22 February, two under-18 year-olds were among a group of armed men who raided a house in Baghdad and

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119 There have been consistent reports received by the UN and its partners that AQ-I operates a youth wing for children under the age of 14 called "Birds of Paradise" (also referred to as "Paradise Boys" or "Youth of Heaven") to carry out suicide attacks.

shot dead eight members of the same family. On 6 April, an 11-year-old boy wearing a suicide vest was arrested by Iraqi Police in al-Ramadi (al-Anbar Governorate). The boy admitted to being recruited by three men allegedly linked to al-Qa'eda. On 17 June, the 3rd Iraqi Army Division in Tala'far tracked down and arrested a 14-year-old boy who led the soldiers to a suicide vest and admitted he was planning to walk into a crowd and set it off. Children have also been used as decoys to lure security forces into ambushes. For example, in August 2010 armed gunmen reportedly entered a house in Sadiyah, north of Baghdad, killed an adult male and two females, and sent two children aged 10 and 12 to the Iraqi Security Forces to report the attack. When the ISF arrived, explosives planted in the house by the insurgents killed eight soldiers and wounded four. The two children were not injured and were later placed in the care of relatives.

Children were also victims of military operations by State armed forces. Three brothers were among those killed on 12 February in Missan during a joint US-Iraqi military operation. On 1 June, a girl was killed in Soran District (Erbil Governorate) during the alleged shelling of the area from across the border. Another report stated that on 20 June a girl was killed and her brother injured when foreign military allegedly bombed a village in Soran, targeting *Partiya Karkerên Kurdistan* (PKK)<sup>120</sup> fighters. ISF have also been reported to be responsible for the deaths of children when attempting to arrest suspects in their homes: in September 2010, it was reported that ISF stormed a house in Fallujah and eight persons were killed, including at least two children.

A consistent threat is explosive remnants of war that continue to claim the lives of children and cause injury long after combat operations have taken place. It is estimated that 2.66 million cluster bombs and 20 million landmines remain in Iraq contaminating 1,700 square kilometres of land. Many of these date from the previous conflicts such as the Iran-Iraq war and the First Gulf War. According to UNDP, around one million Iraqi children are affected by explosive remnants of war and 2,000 children have been killed or maimed by cluster bombs alone since 1991.

Injuries to children in Iraq as a result of the conflict continue to suffer mental health problems. For instance, the Iraqi Mental Health Survey for 2006/2007 conducted by the Ministry of Health and the World Health Organisation revealed that almost half of those surveyed had experienced a war related trauma.

UNAMI received a number of reports of child kidnappings during 2010 involving a total of 31 children in ten different governorates, although not all reports could be confirmed due to the sensitivity of the subject.<sup>121</sup> Between 25 and 27 November alone, three kidnappings of children were reported from Baghdad; at least one victim was killed because the family allegedly refused to pay ransom. In Kirkuk, UNAMI received an unverified report indicating that insurgent groups were recruiting children to abduct other children. Additionally, between November and December 2010 three incidents of abduction were reported to have taken place in Kirkuk, including a case where a boy whose father works for an Awakening Council was abducted and questioned regarding his father's activities. The boy was released by the men the following day.

There is reason to believe that some armed groups resort to abductions for ransom as a means to finance insurgent activities. Ordinary criminals likewise resort to kidnapping for financial gain, trafficking, etc. In one instance, three girls abducted in March in Baghdad were raped and held for two days before being released, presumably after ransom was paid. In October, UNAMI monitored the initial phase of a criminal trial of a gang in Basra that was accused of having kidnapped a child, who was released unharmed after a large ransom had been paid.

## 6.2 Juvenile justice

Protection of children in contact with the law continues to be a challenge. There were 520 boys and girls held with adults (though in separate cells) in various pre-trial facilities in Iraq (excluding the Kurdistan Region)

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<sup>120</sup> Kurdish Workers' Party.

<sup>121</sup> By comparison, in 2009 the Ministry of the Interior estimated that at least 265 children were abducted that year and issued public warnings. The Ministry of Education instructed schools to take precautions and security patrols and checkpoints around schools were increased.

while 759 boys and 29 girls<sup>122</sup> were held in facilities for convicts. Numerous children, some of them extremely young, are deprived of their liberty and a child-friendly environment merely because their mothers, with whom they stay, are detained or imprisoned.<sup>123</sup> Although there have been significant improvements in conditions for children in pre-trial detention facilities operating under the authority of the MoLSA, facilities for convicted children continue to be overcrowded and with potential for disease, abuse and exploitation.

Concerted advocacy efforts by UNICEF and other actors for the creation of alternatives to detention and diversion of children convicted of minor offences from the formal justice system are yet to have a large positive impact. Iraq's Juvenile Care Law provides for alternative measures such as diversion from the criminal justice system, but these options are rarely utilized except for informal applications, such as communal dispute-resolution. However, the use of restorative measures and alternatives to detention in the community is not consistent, difficult to measure, and not yet recognized by the formal justice system.

The MoLSA, supported by UNICEF, commenced a Justice for Children project that combined prevention, protection, reintegration and restorative justice for children and young people in 2009. MoLSA granted UNICEF and its implementing partners access to children in pre-trial detention to all four facilities in Baghdad, Mosul, and MoI/HJC allowed access to Al Maqal from 2009 to the present. Four mobile legal teams provided assistance to 185 children in pre/post trial detention in Baghdad and Basra from 2009 to 2010., including children detained because of their alleged association with armed groups. Additionally, concerted advocacy and programmatic efforts by UNICEF and other actors allowed the creation of alternatives to detention and diversion of children with from the formal justice system. While Iraq's Juvenile Care Law indeed provides for alternative measures such as diversion from the criminal justice system, these options have rarely been utilized except for informal applications such as communal dispute-resolution.

To prevent children at risk from getting into contact with the law, UNICEF has also supported conflict mediation training to over 7,000 children, 1,020 teachers, community police and community leaders in Baghdad and Basra.

### 6.3 Children's access to education

Despite a decrease in attacks on schools and educational professionals during the year (only ten assassinations of education staff were recorded for 2010), according to UNICEF, more than one in six schools have been vandalized, damaged or destroyed during the past years of violence, and there are severe shortfalls in facilities. Lack of infrastructure and overcrowded classrooms forces one third of schools to deliver lessons in two or even three shifts, coupled with acute shortages of essential teaching/learning materials. Most schools lack potable water, toilets or refuse bins - the lack of access to sanitary facilities places particular burdens on girls. Thousands of children with disabilities remain without access to schools, and the children of internally displaced families face a lack of educational facilities.

The UNESCO National Education Support Strategy released in 2008 estimated that 2 million children of primary school age did not attend school largely due to the security situation. While the situation has improved during 2010, children's access to education remains compromised by the security situation. Many threats against schools continue to come from insurgent groups demanding a change in the curriculum or attempting to deny students from certain targeted groups access to education. The punishment for failing to comply with these demands is often violence. In October 2010, as a result of the attack by the Islamic State of Iraq against Sayidat al-Nejat (Our Lady of Salvation) church in Baghdad, it was reported that many Christian schools, often sharing the same grounds as their churches, cancelled classes for several weeks out of fear of a similar attack.

Additionally, in areas of contested administrative boundaries such as Kirkuk, Ninawa and Diyala, it remains difficult for children to receive education in their mother tongue.

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122 According to MoLSA at end December 2010, 555 children (522 boys and 33 girls) held in pre trial detnetoin - of these 202 boys and 11 firls were held in MoJ facilities.

123 UNAMI HRO saw such children in Baghdad's al-Rusafa prison and detention complex and in al-Maqil Prison in Basra.



The Government of Iraq received from the World Bank a loan of \$100 million US dollars over the next 30 years to boost school construction. However, the current capacity of the government to implement construction works and issues of availability of land, are hindering the progress of the school construction programme. UNICEF has supported the Ministry of Education in mitigating overcrowded classrooms and improving school environments through rehabilitation / construction of school buildings, rehabilitation of water and sanitation facilities, and installation of pre-fabricated classrooms. From 2008-2010, 70 schools were rehabilitated /

constructed, water and sanitation facilities were rehabilitated in 174 schools, and prefabricated classrooms were installed in 13 schools, benefiting a total of over 168,400 children (51 percent of who were girls).

## 6.4 Children's rights in the Kurdistan Region

The Kurdistan Regional authorities have done much to address the issues facing children within the region. However, there are challenges that remain.

UNAMI has observed that there is a problem with 'street children' who beg for a living and are, at times, homeless. It seems that some of these children may be Arabs displaced to the KRG from other parts of Iraq. The KRG has responded by establishing homes for children who are either homeless or are unable to live with their families for various reasons. Such houses, catering to both boys and girls, exist in all three governorates. However, there are few programmes aimed at their long-term reintegration into society.

Juvenile police stations have also been established in all three governorates of the Kurdistan Region. The aim of these institutions is to provide dedicated, skilled teams to deal with juveniles. The system is not yet synchronized in three governorates. In Sulaymaniyah there is a Directorate for children, which received 360 cases in the first half of 2010. In Erbil and Dahuk there are juvenile police stations: the Erbil station received 100 cases in the first half of 2010 while Dahuk received 139 cases. A large number of cases concern begging, minor theft, and fighting. The cases involving girls are few, and of those that do, many involve allegations of prostitution. For example, Dahuk police station received 13 cases of alleged prostitution involving minors in the last six months of 2010. In all three governorates staff of the juvenile police stations specifically requested UNAMI for more technical assistance to be able to deal with these cases. The staff also mentioned that lack of human and financial resources remains a problem.

All three governorates of the Kurdistan Region have reformatories or detention centres for children where convicted children are kept. During visits, UNAMI assessed the living conditions as satisfactory in all three reformatories and one detention centre. The rooms are big and clean with natural light and ventilation. Overcrowding is not a problem. Children housed in these facilities expressed satisfaction with the quality of food. However, educational, social, and play activities are few and are not really adequate or geared for children. The staff expressed the view that that children were not interested such activities. UNAMI has observed that on occasion female children are kept in female prisons and detention centres.

In late 2010 in the Kurdistan Region, the KRG established a telephone hotline for children who are the victims of violence.



## 7. Rights of minorities

The ICCPR requires that the Government of Iraq respect the rights protected therein to all persons within its territory and subject to its jurisdiction in a non-discriminatory manner irrespective of religious belief, ethnicity, or other distinction. Article 18 specifically protects freedom of religion while Article 20 mandates sanctions against inciting hatred.

Iraq is also a signatory to the International Convention to eliminate all Forms of Racial Discrimination (ICERD). Under Article 2.1 of ICERD, Iraq has the obligation not only to ensure that all public authorities and public institutions, national and local, do not engage in any practice of racial discrimination, but also to take effective measures to review governmental, national and local policies and to amend, rescind or nullify any laws or regulations which in effect create or maintain racial discrimination.<sup>124</sup> Moreover, Iraq is obliged to prohibit and bring to an end racial discrimination by any individuals or organizations. It should also encourage inclusive multi-racial organizations. In terms of its Article 2.1, therefore, ICERD makes it clear that the prohibition of racial discrimination applies not only to the public sector, but also to individuals and groups or organizations in, for example, matters of education and training, employment, health services, housing, and participation in cultural activities. Further, in Article 2.2, the Convention addresses special “[...] measures, which should be taken in the social, economic, cultural and other fields, when the circumstances so warrant, to ensure the adequate development and protection of certain disadvantaged racial groups or individuals belonging to them.” Article 4 of ICERD imposes obligations on Iraq to adopt legislation to penalize persons who incite hatred or violence or who provides material or financial assistance to racist activities.



UNAMI notes the effort made by the Government of Iraq to officially include members of minorities for the first time in the democratic processes of the country. The amendment of the *Electoral Law No. 26 of 2009 Amending the Electoral Law No. 16 of 2005*, which was approved on 9 December 2009, granted five seats to Christian minorities distributed among the governorates of Baghdad, Ninawa, Kirkuk, Dahuk and Erbil. Other ethnic minorities were also allocated seats, one each going to the Yezidi and the Shabaks in Ninawa Governorate, and one to the Sabian Mandaean in Baghdad.

UNAMI also observed a positive step taken by the Iraqi Federal Supreme Court on 14 June 2010 when it ruled in favour of the complainant, a Yezidi political party. The court decided to increase the number of seats for Yezidi in proportion with their population. The court declared one paragraph in the electoral law unconstitutional as it allocated only one parliamentary seat to the Yezidi minority under the quota system, irrespective of their population numbers. The Court’s decision will come into effect at the next election in 2014.

Despite these improvements, the situation of minorities in Iraq continues to be precarious and UNAMI continued to receive reports of attacks directed at members of minority groups. Violence directed at religious and ethnic minorities was particularly intense during the first quarter of 2010, which coincided with the parliamentary elections, and despite decreasing during the second and third quarters of the year, the last quarter of 2010 saw a significant rise in such attacks. In addition to attacks, minorities continue to suffer from discrimination and insecurity.

According to the Mosul-based Hammurabi Human Rights Association more than 800 Christians, including 12 clergy, were killed between 2003 and 2010, and that 5,000 Christians were kidnapped and tortured. The

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<sup>124</sup> Article 1 of ICERD defines racial discrimination as encompassing “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”

same report states that 51 churches had been attacked in the same time period.<sup>125</sup> According to MoHR the number of Christians falling victim to ethnic violence increased in 2010 during which 83 were killed and 188 were injured, including the victims of the attack on the Al Najat church. This compares with 2009, when 11 Christians were killed,

According to information provided by MoHR, the targeting of Christian by terrorists groups increased during the last quarter of 2010. As a result, the Council of Representatives appointed a parliamentary committee to study ways to enhance the protection of minorities. This Committee presented its recommendations to the cabinet which forwarded them on to the relevant Ministries and Directorates for implementation. These recommendations included:

- 1- instructions to relevant Ministries and Departments to undertake public information campaigns against terrorism during religious occasions and events
- 2- introduction of policies to facilitate and encourage the recruitment and support offered to the Christian and Yezidi minorities by Government entities.
- 3- Introduction of policies aimed at recruiting and deploying Christians and members of other minorities within the security forces and the redeployment to other locations of those forced to leave their work because of the security situation after 2003.

UNAMI, too, documented dozens of attacks against Christians during 2010, mostly in Mosul and the Ninawa plains,<sup>126</sup> usually consisting of IEDs and small arms fire. As a result of these attacks at least 23 people were killed and 213 were wounded. In January alone 12 attacks took place in al-Hamdaniya District of Ninawa Governorate (in the towns of al-Hamdaniya/Qaraqosh, Bartalla and Sadiq) and inside Mosul, killing six persons. On 10 January, a bomb attack on a minibus on the campus of the University of Mosul injured three Christian students. February witnessed 13 attacks that killed nine persons. Christian IDPs told UNAMI that they had been constantly subjected to anonymous threats by phone or letter, which contributed greatly to their sense of insecurity and fear.

On 20 February, the body of an Assyrian Orthodox grocer, 57-year-old Adnan Hanna al Dahan, was found north of Mosul. He had reportedly been kidnapped from his shop by unknown assailants a few days earlier. On 24 February unidentified gunmen broke into the house of the Syrian Catholic Archbishop Mazen Eshoua Matuka in the town of al-Hamdaniya and killed three members of his family. In March five further attacks on Christians in al-Hamdaniya District and western Mosul's mixed Arab-Christian al-Sa'aa neighbourhood were reported, leaving one person dead and five others wounded. On 2 May a convoy of Christian students travelling by bus to the University of Mosul was targeted by two roadside bombs, which left three bystanders dead as well as 100 students injured. The area around the University of Mosul had already been the scene of several attacks in 2009, which is why students travelled in convoys escorted by security forces provided by the governor of Mosul. Several thousand Christians demonstrated in al-Hamdaniya/Qaraqosh on 4 May to protest against the continued attack targeting their community. On 7 June and 30 July gunmen killed one Christian each in Kirkuk. On 19 August Luay Barham al-Malik was killed by kidnappers despite the fact that his family had paid a USD\$15,000 dollar ransom. Two Christians were killed by gunmen in their home in eastern Mosul on 15 October.

In three of the deadliest incidents, two Christians were killed inside their home in the ethnically mixed neighbourhood of Hay al-Zahra, eastern Mosul, on 15 November, while two Christian brothers, Saad and Raad Hannah, were killed in their car workshop in Mosul. A 26-year-old Christian man was killed in east Mosul's al-Qadissiya neighbourhood on 30 November by unidentified gunmen. In Baghdad, three Christians were killed in a drive-by shooting at al-Baladiyat neighbourhood (9 Nissan District) on 5 December.

On 30 December there were several reports of attacks targeting Christians. IEDs targeted Christian houses in different parts of Baghdad killing two civilians and injuring 13 others: one IED was detonated near a Christian family's house in Ghadir District killing two civilians and injuring three others. Another IED was

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125 See <<http://www.hhro.org>> for further details.

126 A loosely defined area north and west of Mosul usually understood to comprise the districts of al-Hamdaniya, al-Shikhan and Tilkaif where Christians, Shabak, Yezidi and Kurds make up the majority of the population.



detonated near a Christian family's house in Karrada District injuring three civilians. Another two IEDs were detonated near a Christian family's home in al-Amil District, injuring 3 civilians, while another IED was detonated near a Christian family's house in Doura District in the Mechanik area, injuring 4 people. On 31 December an IED was found and defused near a Christian house in the Karrada area while another was discovered near a Christian house in the Doura area.

#### ***Attack on the Sayidat al-Nejat Catholic church: Baghdad***

The worst attack against members of Iraq's Christian minority took place on 31 October, when al-Qa'eda extremists stormed Sayidat al-Nejat Catholic church in Baghdad's al-Karrada District and took some 120 people hostage. When Iraqi security forces stormed the church, the hostage-takers responded by killing hostages. The final death toll was 58: 41 civilians inside the church, seven policemen, five passers-by and five gunmen. It is not clear how many persons were killed by the militants and how many by the security forces. The brutal attack was uniformly condemned in Iraq and abroad. Foreign countries such as France offered the injured victims medical treatment. The attack greatly raised the fear of the Christian minority in Iraq and has further encouraged migration of Christians from the country, based on the perception that the Iraqi State and their own community are powerless to provide them adequate protection. According to the Hammurabi Human Rights Association, the numbers of Christians in Iraq more than halved from 1,500,000 in 2003 to 700,000 in 2010.

Ongoing violence targeting members of the Christian community led to reports of large numbers of Christians fleeing Mosul to the Ninawa plains. By the time of the general elections on 7 March, the Head of Relations in the Assyrian Movement, Duraid Zrma, stated that more than 250 families had fled, while UNHCR reported that some 866 families had been displaced due to the violence or threat of violence. Christian leaders associated the attacks with the elections, believing that they were aimed at preventing Christians from casting their vote freely.

There were also attacks recorded on other minority communities. On 14 May there was a significant attack on the Turkoman minority in Iraq when a suicide bomber targeted a football match in Tala'far (Ninawa Governorate) – a town that is inhabited predominantly by ethnic Turkoman. The attack killed 17 persons and injured 132; 17 of whom were transferred to hospital in Dahuk in the Kurdistan Region. On 24 February unidentified gunmen killed two persons belonging to the Shabak minority in the eastern part of Mosul.

In relation to the Yezidi community, UNAMI remains concerned about the ongoing detention of Mr. Wa'ad Hamad Mattu, the president of the Yezidi Progress Party, who was arrested on 5 September 2009 in Mosul, allegedly without an arrest warrant. According to information provided by the MoHR, he was released from Ninawa Detention Centre on 25 August 2010. He was reportedly then transferred to *Tasfeerat* pre-trial detention facility in al-Rusafa (Baghdad) on 30 August 2010 following a request from the Counter-Terrorism Department for reasons that UNAMI has been unable to ascertain. He remained in custody at the end of 2010.<sup>127</sup>

According to MoHR there were no attacks committed against members of the Yezidi and Shabak communities during 2010, compared with 2009 when 59 were killed and 52 were injured. According to MoHR there were 8 members of the Sabeen Mandeian community killed and 5 injured in 2010 in ethnically motivated attacks.

## **7.1 Minorities in the Kurdistan Region**

In an inclusive measure, the Kurdistan Parliament recognized four Yezidi holidays and made Yezidi New Year (the first Wednesday in April) a public holiday throughout Kurdistan.

Following the attack on the Sayidat al-Nejat church in Baghdad, more than 500 Christian families reportedly fled towards the Kurdistan Region. While the KRG actively moved to protect the IDPs, resources were stretched to the limit, and many Christians reported difficulties to UNAMI in normalizing their legal and residence status, transferring social security entitlements, and accessing employment and education opportunities. In November, the KRG established a task force and facilitated certain bureaucratic procedures to address some of these issues – a move widely welcomed by leaders of the Christian community.

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<sup>127</sup> Subsequent to the preparation of this report, Mr Mattu was released on 20 March 2011 and was interviewed by UNAMI HRO.

According to UNHCR and IOM, the total number of Christian families who have taken refuge in the Kurdistan Region at end of 2010 stands at 866: 648 in Erbil, 118 in Sulaymaniyah, and 113 in Dahuk. There are also some 594 families displaced to Ninawa: 175 in Telkeyf, 326 in Hamdaniyah, 65 in Bashiqa, 16 in Shekhan and 12 in Bahzani.

## 8. Attacks against persons on the basis of their sexual orientation

Article 17 of the ICCPR mandates the right of privacy. This provision, specifically Article 17(1), protects private adult consensual sexual activity, including homosexual behaviour.<sup>128</sup> In 1994 the Human Rights Committee considered the case of *Toonan v Australia*. The committee concluded that the criminalisation of sexual acts between consenting adults was a breach of a right to privacy and that the right to be free from discrimination on grounds of sex included sexual orientation. Since then, the committee has developed and consolidated its own jurisprudence. During the Universal Periodic Review at the Human Rights Council in Geneva in February 2010, Iraq expressly and officially rejected calls by UN member States to act to protect persons on account of their sexual preferences, and to investigate homophobic hate crimes and to bring perpetrators of such crimes to justice.

UNAMI continued to receive reports during 2010 of attacks against individuals based on their perceived or actual sexual orientation. The topic of homosexuality is largely taboo in Iraq and seen as incompatible with the country's culture and religion.<sup>129</sup> Members of the Lesbian, Gay, Bisexual and Transgender (LGBT) community usually keep their sexual orientation secret and live in constant fear of discrimination, rejection by family members, social ostracism, and violence. The Iraqi Penal Code does not expressly prohibit homosexual relations between consenting adults. However, a variety of less specific, flexible provisions in the Iraqi Penal Code<sup>130</sup> leave room for active discrimination and prosecution of LGBT persons and feeds societal intolerance. Police and courts regularly take into account the alleged homosexuality of the victim as a mitigating factor in relation to crimes committed against persons on account of their perceived or real sexual orientation.

Reports published by Ali Hilli, the pseudonym of the sole publicly known representative of the London-based Iraqi LGBT, state that on 16 June, 12 police officers burst into a "safe house" in Karbala' and violently beat up and blindfolded the six occupants before taking them away in three vans. The same report states that the police confiscated computer equipment found in the house before burning it down. The six people arrested reportedly included three men, one woman and two transgender people. Two days later, one of the men turned up in hospital with a throat wound claiming he had been tortured. UNAMI has not been able to ascertain the whereabouts of the other five individuals.

UNAMI continued to follow the cases of ten men who were persecuted in Baghdad because of their perceived or actual sexual orientation. As previously reported,<sup>131</sup> the men had suffered extreme forms of violence and abuse at the hands of members of the Mahdi Army, police officers, religious leaders and local criminal gangs, which had forced them to flee to a neighbouring country in May 2009 from where they hoped to seek protection in third countries. While one of these cases was subsequently resettled through UNHCR, some of these men subsequently returned to Iraq because they claimed they lacked funds and adequate means of support. One of them contacted UNAMI stating that he was homeless and alleging that he

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128 However, the wording of this covenant's marriage right (Article 23) excludes the extrapolation of a same-sex marriage right from this provision. See *Joslin v New Zealand* (2002) Comm. No. 902/1999 U.N. Doc. A/57/40 at 214 (2002) at 8.2-9.0 (majority) & at 1(Lallah & Scheimin JJ) "Joslin v New Zealand (2002) Comm. No. 902/1999 U.N. Doc. A/57/40 at 214 (2002)". Available online at <<http://www1.umn.edu/humanrts/undocs/902-1999.html>> accessed 21 January 2010.

129 In the Vienna Declaration and Programme of Action of 25 June 1993 (UN document A/CONF.157/23), States adopted the following point 5: "While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms." The statement by the delegation of Iraq made upon the adoption of the Declaration did not comment on, or object to, this obligation.

130 For example, paragraph 401 (indecent acts in public), 402 (indecent advances), 403 (publications violating public decency), 501 (indecent state of undress) and 502 (loitering with indecent intent).

131 See 15th Human Rights Report (1 January-30 June 2009), para 47.

was being subjected to further acts of violence. He reported that he could not return to his family who had threatened to kill him because of his sexual orientation.

## 9. Refugees and internally displaced persons

Official government statistics<sup>132</sup> reported that there are an estimated 1,343,568 post-2006 Internally Displaced Persons (IDPs) in Iraq as of January 2011.<sup>133</sup> Baghdad hosts the largest number of IDPs with some 358,457 persons (62,374 families).<sup>134</sup> Many IDPs express a willingness to return to their places of origin, but only if security allows, or when they have access to their property, employment or assistance.<sup>135</sup>



During 2010, a significant number of IDPs and refugees returned to their places of origin in Iraq. According to data provided by UNHCR, 125,290 persons returned to Iraq between January 2010 and January 2011, mainly to Baghdad (50 percent) and Diyala (31 percent). IDPs returns may be attributed to the relative improvement of the security situation in Iraq and the introduction of Order 101 by the Prime Minister enabling returnees to regain possession of their occupied homes.<sup>136</sup> The continued insecurity in some parts of the country, destruction or occupation of housing, lack of access to adequate sources of livelihood and basic services present significant obstacles

to the sustainable return and reintegration of many other refugees and IDPs. However, more than a third of refugees who returned from abroad to Baghdad's al-Rusafa and al-Karkh Districts between 2007 and 2008 – generally because they could not financially afford to stay abroad any longer – said in mid-2010<sup>137</sup> that they regretted their decision, due to lack of security, unemployment, economic hardship and insufficient public services. A similar survey of Iraqi refugees currently living in Syria and Jordan found that most of them were reluctant to return to Iraq.

During 2010 sporadic outbreaks of violence created new, localized displacement. According to UNHCR, in the first quarter of 2010 approximately 866 Christian families were displaced from Mosul to other parts of Ninawa as well as to the Kurdistan Region after a series of allegedly election-related threats and killings targeting Christians. Numerous sources, including local authorities in Mosul, Telkayf and al-Hamdaniya, confirmed that most of the displaced Christian families subsequently returned to Mosul. According to information provided by the KRG Ministry of the Interior to UNAMI on 29 November, 507 Christian families had fled to the Kurdistan Region and a few to the Ninawa plains as a result of a wave of violent attacks in Baghdad and Mosul that had taken place in late October and November. By 17 December, the

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132 Provided to UNHCR by the Ministry of Displacement and Migration and the KRG.

133 A significant number of persons were also displaced also prior to 2006, and many of these remain displaced to date. The Region of Kurdistan has experienced displacement within the Region as well as an influx of IDPs from the rest of Iraq.

134 According to MOHR the figure is 74,130 families.

135 UNHCR monitoring between January and October 2009 of 4,653 IDP families (24,167 persons) reported that 80% would opt to return home.

136 Council of Ministers Order 262 (July 2008) provides for rental subsidies (300,000 IQD per month for 6 months) to all IDP families evicted under Order 101.

137 UNHCR survey carried out between April and September 2010.

number of Christians fleeing from Baghdad, Mosul and parts of Ninawa Governorate to the Kurdistan Region, the Ninawa plains, Syria, Jordan and Lebanon had reached 6,000, according to UNHCR.<sup>138</sup>

In and around Kirkuk UNHCR received reports of harassment and detention of IDPs, allegedly in an attempt to engineer shifts of population and political power in this disputed area before the holding of a planned national census that was scheduled to take place in December but which has been postponed.<sup>139</sup>

The KRG authorities reported that some 945 families have been displaced since mid-May 2010 due to cross border shelling. The families were scattered into eight different locations. UNHCR, UNICEF and the International Organisation for Migration (IOM) were among the international organisations that provided assistance. Some of the families returned within a few weeks. However, UNHCR notes that at time of writing 620 families are still displaced. The largest number of IDPs supported by UNHCR lives in Sadeh (Pshdar District, Sulaymaniyah Governorate). They travel regularly to their places of origin to tend their livestock and fields. The likelihood is that these people will not return for good until they are certain the shelling will stop.

Violence in northern Diyala Governorate (Jalawla in Khanaqin District, Jabara and Qara Tapa in Kifiri District) and in Tooz District of north-eastern Salahuddin Governorate in October 2010, both of which contain territory disputed between Arabs and Kurds, led to the displacement of 851 families according to UNHCR. They fled citing threats and extortion by extremists and Arab security forces, as well as an absence of Kurdish security forces to protect them. The IDPs settled temporarily in the districts of Kalar and Darbandikhan (Sulaymaniyah Governorate) as well as in Kurdish-controlled parts of Khanaqin District (Diyala Governorate).

For IDPs as well as returnees, the continued insecurity, destruction or occupation of housing, lack of access to livelihoods and basic services present significant obstacles to sustainable return and reintegration. Most IDPs are living in rented accommodation, or with host families. More than 413,000 persons, some 134,000 of whom are in Baghdad, are living on land that they do not own or are located in public buildings where they face potential eviction.<sup>140</sup> Those living in public buildings have limited or no access to water and other essential services, creating serious health issues, particularly for vulnerable members of the community including children and the elderly. The lack of employment opportunities and high levels of unemployment generally across Iraq create additional challenges for IDPs seeking to raise their standard of living. Amongst IDP children, large numbers of school drop outs have been reported by UNHCR protection monitors. Access to education is hampered by the high cost of transportation, uniforms and school supplies as well as severe overcrowding. In addition, of serious concern is the prevalence of child labour, to supplement family income.

The Government of Iraq has developed extensive measures to assist IDPs and to facilitate returns. This includes a long-term strategy to address the needs of displaced persons that is documented in the comprehensive 2008 National Policy on Displacement. Some decrees and other directives have been promulgated to support the government's strategy to address displacement in Iraq. For example, UNHCR has constructed 180 shelter units in Missan on land allocated by the government for returnees.

On 29 September, during an eight-day visit to Iraq, Representative of the UN Secretary-General on the Human Rights of Internally Displaced Persons (IDPs) Walter Kälin urged the Government of Iraq and the humanitarian community to address the immediate needs of displaced persons, protect their human rights, and develop durable solutions to displacement. Mr. Kälin also commended current efforts in these regards, including commitments by the GoI to draft a comprehensive strategy for providing assistance and compensation to IDPs.

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138 According to AK news (Erbil) on 5 January 2011, the Iraqi Immigration and Immigrants Minister, Dindar Najman Doski said in 2010 over 5,000 families left their homes behind in search of safer places in other provinces across Iraq. Most of the immigrants are from Baghdad and have relocated to the Kurdistan Region, northern Iraq, and the Ninawa plain. The immigration was escalated by the attack on the Our Lady of Salvation Church in Baghdad.

139 The census was originally scheduled for 2007, but was postponed four times. It was then scheduled to take place on 20 December 2010 but was postponed again. At time of writing the census has not taken place.

140 Pursuant to Council of Ministers Order 440 of July 2008. Order 157 of 17 May 2009 authorizes delay or suspension of evictions from state land which is used for housing for a non-extendable period of more than one year starting from 19 February 2009, but a provision exists for trespassers, squatters and construction to be removed without compensation once the time has elapsed. UNHCR-January 2011.

Several European countries (including Belgium, Denmark, the Netherlands, Norway, Sweden and the UK) have forcibly repatriated failed Iraqi asylum seekers to Iraq, through Baghdad.<sup>141</sup> UNHCR has publicly stated that Iraqi asylum applicants originating from the governorates of Baghdad, Diyala, Kirkuk, Ninawa and Salahuddin should continue to benefit from international protection in the form of refugee status under the 1951 Convention on the Status of Refugees or another form of protection depending on the circumstances of the case, given the lawlessness, volatile security situation and the human rights violations taking place in these parts of Iraq which could seriously threaten the life, physical integrity or freedom of persons forcibly returned to these areas. On 22 October, the European Court of Human Rights recommended that deportations to Baghdad should be suspended due to an increase in violence.<sup>142</sup> On 16 November the Council of Europe criticized some European countries for continuing deportations.<sup>143</sup> There have been reports of some deportees being arrested or ill-treated upon arrival, and others refused entry due to mistaken identity or nationality. Some deportees flown from the UK to Baghdad on 16 June reportedly showed signs of physical abuse to support their claims that they had been physically assaulted by British and Iraqi security guards on the plane transporting them. Sweden deported a further 20 failed asylum seekers to Iraq in mid-December, including five members of Iraq's Christian minority who were returned to Baghdad, prompting a renewed protest from UNHCR on 17 December.

On arrival to Baghdad, deportees undergo security checks and those without documents are detained until their identity can be confirmed. Whilst the majority of deportees have been single adult males, women and children have also been amongst those deported. In addition, reports have been received by UNAMI and UNHCR of Christians and other minorities being returned to Iraq, including those originally from Baghdad and Mosul. Deportations of Christians continued even after the attack on the Sayyidat-al-Najat Christian Church in Baghdad on 31 October, prompting renewed criticism from UNHCR.<sup>144</sup>

Iraq (including the Region of Kurdistan) also plays host country to a sizeable group of refugees itself, although the State is not a signatory to the 1951 UN Refugee Convention. As of September, UNHCR pursuant to its mandate had registered 38,055 asylum seekers and recognized refugees in Iraq, including 33,706 *prima facie* refugees.<sup>145</sup> Almost 12,000 Turkish Kurds live in Makhmour Camp (Ninawa Governorate) and more than 10,000 Palestinians in Baghdad while several hundred more live in the al-Waleed camp close to the border with the Syrian Arab Republic. Other sizeable groups are Syrians (including Syrian Kurds) and Iranians (including Kurds and Ahwazis, the latter found mostly in southern Iraq).

UNHCR continues to work with refugee communities and authorities to seek durable solutions for all caseloads of refugees in Iraq. Whilst voluntary repatriation or local integration may be a solution for some refugees residing in Iraq, for others facing serious protection risks in Iraq, resettlement is considered the most appropriate durable solution. However, resettlement places are limited. For refugees living in Iraq the protection environment remains challenging, with communities facing the same difficulties as Iraqis in terms of security, poor infrastructure and services.

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141 Forcible repatriations by direct flights to the Kurdistan Region have been ongoing since 2005. Returns to this part of Iraq generally expose the returnees to fewer risks than those to the rest of the country. However, the KRG has repeatedly expressed its opposition to the deportations, though not necessarily for reasons related to human rights.

142 In a letter to the governments of the Netherlands, Sweden and the UK, the Court announced that any Iraqi challenging his deportation would have it suspended in application of Rule 39 of the Rules of Court, which enables the Court to adopt interim measures either "at the request of a party" or "of its own motion.": European Court of Human Rights ECHR-LEO.IG bis PHA, 22 October 2010. Other Signatories to the European Convention on Human Rights, such as Sweden and the United Kingdom, announced that they would not halt deportations except in the case of individual Iraqi nationals unless the European Court of Human Rights communicates with the State concerned that the deportation would be inappropriate: see Swedish Migration Board (Migrationsverket), 'No General Stop for Deportations to Iraq', 16 November 2010, available online <[http://www.migrationsverket.se/info/3155\\_en.html](http://www.migrationsverket.se/info/3155_en.html)> accessed 21 January 2010.

143 Only those Iraqis whose case actually reaches the European Court of Human Rights can benefit from interim measures granted by the Court.

144 On 15 December 20 persons were deported from Sweden, including five Christians; on 8 January, some 70 persons, including families with children and at least one Christian, were deported to Iraq from Norway.

145 *Prima facie* refugees usually form part of a large influx and are regarded as refugees in an expedited process (group determination) without going through a full, individual refugee status determination, for example, when a State has no capacity to conduct the latter.



## 10. Freedom of expression and the targeting of media workers

The freedom of assembly and the right to express an opinion are fundamental to the democratic system. Article 19 of the ICCPR specifically protects freedom of expression. Article 21 of the ICCPR protects the right to peaceful assembly, although it balances this right against other interests.<sup>146</sup> The Iraqi Constitution, Article 38 expressly protects all means of freedom of expression, including the freedom of the press, media, publications, printed advertisement etc., provided it does not threaten public order or morality. Article 46 expressly permits restrictions on the right of freedom of expression but only as long as such restrictions do not limit the fundamental essence of the right. Defamation in Iraqi law is both a criminal act and civil tort. According to the ICPC it is a criminal offence to insult the Iraqi people, national flag or state institutions and emblems (Article 202), to insult the President or his legate (Article 225); to insult public institutions (courts, parliament etc) (Article 226); a foreign State, or national emblems or flags or an international organisation operating in Iraq (Article 227); to insult a public servant in the execution of his or her duties (Article 229); to insult the beliefs, symbols or persons involved in religion (Article 372); to insult a person which attacks their honour or is offensive (Article 434), an offence which is aggravated if printed or published by the media. There are a range of other protected interests, such as the disclosure of official secrets (Article 178) or the dissemination of false rumours or news or propaganda aimed at disturbing public peace and security or is contrary to the public interest (Article 210), or publishing material that violates public morals or decency (Article 403). CPA Order 14 (2003) amended the above provisions to include a prohibition on the publication of material aimed at inciting violence, civil disorder, rioting, malicious damage to property, or advocating the rehabilitation of the Ba'ath Party.

### *Attack on a journalist in Ramadi*

Iraqi television journalist Omar Rasim al-Qaysi was killed in a booby-trapped car bomb on 12 December. A-Qaysi, an anchor working for the satellite television channel Al-Anbar TV, died when a car bomb exploded as he was walking to work in central Ramadi in al-Anbar province. His brother Mustafa al-Qaysi, a cameraman for the same channel, was injured in the attack, which killed at least 13 people and injured 40. The Islamic State of Iraq, an Al-Qaeda-affiliated group, claimed responsibility for the attack, according to news reports.

Freedom of expression remains an issue of concern in Iraq. UNAMI received reports that journalists continued to be targeted with violent attacks, harassment, intimidation, and illegal arrests for reasons related to their profession. Acts were perpetrated by extremists and insurgents, government officials, or unidentified attackers. There were also instances where journalists were arrested and detained usually because of writings perceived to be critical of the Government or exposing corruption. Numerous media workers reported receiving threats – often anonymous – by telephone, SMS or e-mail. Others were intimidated, often in public, by government officials unhappy with critical reporting. Even outside Iraq, journalists are not entirely safe: a former reporter of al-Iraqiya TV now living in Denmark and working for Shabakat Al-I'lam Al-Iraqi was allegedly threatened by Iraqi government authorities to deter him from returning to Iraq.

According to figures released by the NGO Committee to Protect Journalists (CPJ) at least five journalists died in Iraq in 2010, one of whom was killed in crossfire/combat.<sup>147</sup> This compares with 28 murdered in 2006, 27 murdered in 2007, nine murdered in 2008, and four journalists killed in combat/crossfire in 2009. According to CPJ, the total number of journalists killed in Iraq since 2002 is 146.<sup>148</sup> According to Reporters

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146 Nevertheless, freedom of expression and freedom of demonstration are not absolute rights and may be restricted under certain circumstances, particularly where exercise of these rights infringes or harms the rights of others (such as incitement to racial or ethnic hatred, incitement to commit crimes, etc) or constitutes a threat to the peace. Article 21 states: "The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others."

147 In addition, TV presenter Omar Rasim al-Qaysi died in an indiscriminate bomb attack in al-Ramadi on 12 December that killed a dozen civilians.

148 Available online <<http://cpj.org/killed/mideast/iraq/>> accessed 21 January 2010.



without Borders, 7 journalists were killed in Iraq in 2010.<sup>149</sup> At least 77 journalists and media assistants have been kidnapped in Iraq since March 2003. Twenty-three of them have been murdered, 40 have been released and 13 are still being held by their abductors.<sup>150</sup> As stated by Irina Bokova, the Director-General of UNESCO:

“While the number of journalists killed in 2010 represents a decline from previous years, it nonetheless remains unacceptably high and underlines the violence that journalists confront on a daily basis... As bombings and attacks continue in Iraq and other areas of conflict or social unrest, journalists are paying an unacceptably high toll for defending the basic right of freedom of expression...”<sup>151</sup>

Of the five journalists killed in Iraq in 2010: the body of Kamal Qasim Mohammed, deputy editor-in-chief of al-Mustaqilla newspaper, was found in Baghdad on 19 August, six days after his abduction. Riyadh al-Saray, a presenter of political and religious programmes on al-Iraqiya TV, was killed on 7 September in al-Harthiya neighbourhood (al-Mansour District, Baghdad) by assassins using pistols with silencers. Only a day later Safaiddin al-Khayyat, another presenter of religious programmes for the local TV station al-Mousiliya, was killed outside his home in eastern Mosul. On 4 October freelance cameraman Tahreer Kadhum Jawad al-Halboosi, who was working for al-Hurra TV, was killed by a bomb attached to his car east of Falluja in al-Anbar Governorate. On 21 November gunmen killed 18-year-old Mazen Mardan al-Baghdadi, also a presenter of al-Mousiliya, at his home in northern Mosul.

There were numerous reports of attacks on media workers other than killings and assassinations: on 17 February, Hussam Dawood al-Eqabi, a 22-year-old radio reporter for al-Ahed station in Kirkuk thought to be linked to radical Shi'a cleric Moqtada al-Sadr was abducted in front of his house by unknown kidnappers. He was released 11 days later. Ziyad Tariq, the director of al-Rasheed TV in Mosul, was reportedly attacked and injured by Iraqi Police on 4 July. Unidentified armed men shot at the house of Ahmed Jum'a, the correspondent of al-Iraqiya TV in al-Ramadi, on 8 July. On 26 July, a suicide car bomber hit the office of al-Arabiya satellite TV in central Baghdad, killing one non-journalist employee of the channel and two security guards.

While raiding the home of Haider Hassoon al-Faza'a, the head of the Iraqi Press Agency, in Baghdad's al-Sha'ab neighbourhood on 27 August policemen injured his wife and other family members. Alaa Mushsin of al-Iraqiya TV survived an assassination attempt by car bomb in Baghdad's al-Baya'a neighbourhood (al-Rashid District) on 27 September, but was seriously injured. In a fall-out from the Sayidat al-Nejat church attack, Iraqi Police on 1 November raided the Baghdad office of Egypt-based al-Baghdadiya satellite TV and confiscated some of its equipment because the station had broadcast the demands of the al-Qa'eda gunmen occupying the church. A day later Iraq's Communications and Media Commission<sup>152</sup> confirmed that the station had been closed down. Producer Haidar Salam and a switchboard employee were arrested. The latter was released the next day, but as of early December Salam was still being detained. Faced with such obstacles, al-Baghdadiya announced on 25 November that it was terminating its presence in Iraq altogether.

UNAMI is also concerned about the restrictions imposed by the Iraqi authorities on media outlets. In one incident on 28 February, the police and army reportedly stormed three printing houses in Baghdad (Maghrib, Janoob, and Kawthar) and confiscated a booklet called “Where Iraq's Money Went.” Six people were arrested and detained at an unidentified location. The security forces were reported to have taken control of these printing houses for several days after the raid. The Baghdad Operations Command later alleged that the printing houses were publishing seditious material.

The Basra police commander sued two journalists of al-Sharqiya and al-Fayha for libel when they (correctly) reported improvised explosive devices as the cause of deadly explosions in Basra on 7 August, insisting instead that the blasts had been caused by a generator accident.<sup>153</sup>

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149 Available online <<http://www.bbc.co.uk/news/world-12098675>> accessed 21 January 2010.

150 Available online <<http://en.rsf.org/iraq.html>> accessed 21 January 2010.

151 UN News Centre, ‘Journalists working in conflict areas need better protection, UN agency stresses’, 22 December 2010 available online <<http://unclef.com/apps/news/story.asp?NewsID=37138&Cr=journalist&Cr1=>>> accessed 21 January 2011

152 An independent administrative body under Article 103 of the Constitution of Iraq, established by Order 65 of 20 March 2004 of the Coalition Provisional Authority.

153 The commander withdrew his case before the first hearing.

The appeal court in Wassit Governorate issued a warrant to arrest Sajjad Salim al-Fatlawi, the editor in al-Sada newspaper, on 6 September, after the Wassit Governorate Council and the President of Wassit Appeal Court had sued al-Fatlawi for defamation and slander after he had criticized the executive and judicial authorities in Wassit.

The NGO Iraqi Journalist Rights Defenders Association reported on 9 March that there were no problems with the freedom of movement of journalists on elections day, 7 March. However, individual journalists did complain about violence during the pre-election period.

In another incident, the Director of the Iraqi Media News Agency was reportedly injured after he was shot by the Iraqi military at a checkpoint in the Baghdad neighbourhood of Sha'ab on 7 March. He was covering the election process when the shooting happened. In al-Anbar Governorate, the Independent High Electoral Commission allowed journalists to monitor the election in only 12 polling centres out of 610.

On 11 July the High Judicial Council announced the establishment of a special court (housed at Baghdad's al-Rusafa appeal court) to deal with media-related cases, both civil and criminal. The New York-based Committee to Protect Journalists subsequently asked the Government of Iraq to disclose more details about the reasons behind the establishment of this court and to indicate how it will operate. The Journalistic Freedom Observatory, an Iraqi NGO, cautioned against the establishment of this court because Article 95 of the Constitution of Iraq outlaws special or extraordinary courts. An early case handled by the court concerned Ziyad al-Ajily, editor of Aalam newspaper and head of the Journalistic Freedom Observatory, who was sued for damages on 26 September by the Ministry of Youth over an article about a sports complex construction in Basra. The court ruled on 31 October that al-Ajily had not defamed the Ministry and that his article satisfied the citizens' legitimate demands be informed about matters of public interest.



Demonstrations and street protests were not common in Iraq, but grew in number during 2010 as the security situation improved. Many ended peacefully, but occasionally the authorities showed heavy-handed tactics. For instance, an angry crowd of several hundred protesters demonstrated against the lack of public services, particularly insufficient electricity supply in Basra on 19 June. Chanting slogans outside the Governorate Council building and the Governor's office, the protesters demanded the resignation of the Governor and the Minister of Electricity. According to eyewitnesses interviewed by UNAMI a few days later, Iraqi security forces fired shots into the air first, then at the demonstrators, killing 28-year-old Haider Salman Daud. Three persons were injured and several were arrested by the Iraqi security forces. They were released after they signed a pledge not to participate in future demonstrations. Basra's Governorate Council decided on 21 June to form a committee to investigate the circumstances of the demonstration and its violent escalation. On 20 and 21 June demonstrations were held in Nasiriya (Dhi-Qar Governorate) to voice similar grievances. At

least seven demonstrators were injured in clashes with security forces. From December, demonstrations, mostly protesting lack of access to basic services and jobs, commenced in various governorates throughout Iraq.

## 10.1 Freedom of expression in the Kurdistan Region

The Law of Journalism in Kurdistan constitutes considerable progress in terms of freedom of expression and press freedom, notably since it decriminalises press offences. This legislation concerns only the print media and not all means of communication. The law is a result of efforts undertaken by the Kurdistan Journalists Syndicate. Kurdistan Region's Parliament amended the bill proposed by the Syndicate in 2007, proposing negative changes. In response to protests by the Syndicate and media professionals, the suggested amendments were ultimately dropped by Parliament. The Press Law was passed by the Kurdistan Region Parliament in 2010.

Although it constitutes a substantial improvement in terms of press freedom, this law nevertheless contains certain flaws. For example, the press offences mentioned in Article 9, Chapter V are not clearly defined. The use of vague terms leaves a wide margin of interpretations and arbitrariness and may create an environment where journalists "self-censor". UNAMI would urge the Government of Kurdistan to amend the law to more clearly define press offenses so as not to potentially inhibit the free reporting of issues by media and journalist professionals in the Kurdistan Region.

Journalists also point out that the fines prescribed by the law are exorbitant, as compared to a journalist's average income. Article 9, paragraph 1, of Chapter V stipulates that a journalist who has written the article, and his or her chief editor, can be fined ranging from 1 to 5 million Iraqi dinars (USD\$850 to USD\$4,200). Moreover, the organisation publishing the offending article may be forced to pay a fine of 5 to 20 million dinars (USD\$4,200 to USD\$17,000), as provided for under Article 9, paragraph 2, of Chapter V. While journalists interviewed by UNAMI appeared satisfied on the whole with the protective and innovative nature of the 2010 law, they have raised concerns at the fact that its interpretation depends on the judges, whom they fear may lack of independence.

Moreover, journalists can be charged under other laws including for "breaches of the peace" or offences under the Iraqi Criminal Code. The latter provides for suspended prison terms for defamation offences in cases involving "breaches of the peace". Journalists have accused judges of labelling offences in order to apply the provisions of the Iraqi Criminal Code. This occurred in the case of the complaint filed by Kurdistan Region President, Massoud Barzani, against Ahmed Mira, Editor-in-Chief of Lvin magazine, in November 2010.

Despite concerns with the application of the Iraqi Criminal Code to journalists, KRG President and head of the Kurdistan Democratic Party (KDP), Massoud Barzani reiterated his support for protection of freedom of expression and the media during the KDP party congress on 13 December.<sup>154</sup>

Nevertheless, there have been some attacks on journalists recorded by UNAMI in the Kurdistan Region. For example, on 4 May, a 23-year-old student and freelance journalist Sardasht Othman was kidnapped in broad daylight outside the main entrance of the Liberal Arts College of Salahuddin University, a large public university in Erbil. He was found tortured and shot dead on 6 May in eastern Mosul. It was not immediately clear where and when Othman was killed. Othman had penned a number of satirical articles that dealt with taboos not mentionable according to the interests of certain KRG political figures. Only a day before the abduction, Othman had published an article that was critical of the internal PUK issues including criticisms of the lifestyle of the Kurdistan Region's President. Following Othman's murder, large demonstrations protested the killing. It was only after considerable public pressure was brought to bear that the President of Kurdistan Region issued a statement on 20 May condemning the killing and announcing the establishment of a committee of inquiry made up of representatives from the KDP *Asayish*<sup>155</sup> and the police. On 15

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154 Available online <<http://en.rsf.org/irak-iraqi-kurdistan-lawsuits-raining-20-12-2010,39086.html>> accessed 21 January 2011.

155 Two parallel, political party-affiliated security forces originally under the control of the KRG MoI, but in reality – like other KRG institutions – split between and controlled by the KDP and the PUK, carrying out policing (economic and political crimes), law-enforcement and intelligence functions. The unification of both *Asayish* forces has been a slow, ongoing project since 2005.

September the committee released its first<sup>156</sup> report, which blamed the Kurdish Sunni extremist group Ansar al-Islam responsible for Othman's murder. However, the result of the investigation led to further protests, raising as it did concerns about the credibility and transparency of the investigation and, in general, about the approach by which the KRG handles some cases of human rights violations against journalists and media workers.

On 11 August, policemen and *Asayish* officers reportedly harassed several journalists covering a protest against water shortages in Chamchamal (Sulaymaniyah Governorate).<sup>157</sup>

On 30 June the Kurdistan Journalist Syndicate released its fifth regular report covering 1 January to 30 June. The syndicate reported that it registered 81 cases of violations of freedom of the press, including one assassination, four threats of kidnapping and/or killing, 18 cases of beatings, 35 cases of harassment and stopping media workers from performing their functions, three arrests, one kidnapping, one assassination attempt, and 18 cases of telephone threats. These figures represent an increase in the number of violations compared with the second half of 2009, when 71 cases were reported.

In the Kurdistan Region on 2 March, UNAMI met with the Editor-in-Chief of a magazine who claimed that he received death threats from an Islamist political party, Komal Islam, after he had published a Kurdish translation of Salman Rushdie's "Satanic Verses" on 15 February. He also said that an Imam had made death threats against him while giving his Friday sermon. In response to UNAMI, Komal Islam officials categorically denied this allegation.

A Kurdish correspondent working for the newspaper Hawlati claimed to UNAMI that he was attacked, beaten and had his camera confiscated on 18 February by men in military uniforms identified by the victim as bodyguards of the Minister of Peshmerga (Defence) in the KRG. At the time of the attack, the journalist was covering the election campaign in Sulaymaniyah Governorate.

UNAMI notes with concern that political and other entities appear to use judicial procedures as a tool to discourage media from investigating allegations of bad governance, often seeking disproportionate fines or damages. For example, on 2 August the KDP filed three lawsuits for defamation against the newspaper *Roznama*, its editor-in-chief, and one author. *Roznama* is funded by the opposition party Gorran (Change List) and had accused the KDP and PUK of benefitting from oil smuggling. The KDP also sued three other newspapers, Hawlati, Awene and Levin, for damages, relying on provisions of the ICPC and not on the more liberal KRG Journalism Law.<sup>158</sup>

It thus appears that the law is being used as a tool to silence reporting considered unfavourable to political interests. On 12 December a court in Erbil fined the magazine *Rega* 35 million Iraqi dinars (USD\$29,500) for a report in which it was suggested that KDP's security force were involved in the murder of journalist Sardasht Othman in May 2010. The lawsuit was filed by the KDP general secretary, Fazil Mirani, on 23 September in which he had demanded 500 million Iraqi dinars (USD\$424,000) in damages. The magazine was prosecuted under provisions of the Iraqi civil code instead of the press code in force in the Kurdistan Region, which provides of a maximum fine of 17 million dinars (USD\$14,400).

In another case, a court in Erbil fined the *Standard* newspaper 6 million Iraqi dinars (USD\$5,000) on 13 December as a result of lawsuit brought by the agriculture ministry. Another editor, Shwan Muhammad of the weekly *Awene*, stated he received seven court summonses in one week in December 2010 (and a total of ten since April 2010) as a result of complaints filed by Naliya, a company whose owners allegedly have close ties with Jalal Talabani's Patriotic Union of Kurdistan (PUK), which governs Iraqi Kurdistan in coalition with the KDP. These lawsuits were prompted by an article that appeared in the 28 September edition of the paper alleging that newly-built houses in a residential area of Sulaymaniyah, known as the "German Village" failed to meet official safety regulations following a fire in the Soma Hotel on the night of 16 July 2010 which resulted in the deaths of 27 people. Awene reported that the safety committee had

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156 No further updates had been issued by early December 2010.

157 As this Report covers 2010, the demonstrations that have taken place in Kurdistan Region and elsewhere in Iraq during 2011 will be dealt with in subsequent reports.

158 Law No. 35/2008. See also 14th Human Rights Report (1 July-31 December 2008), paras. 61 and 62.



publicly stated that the houses were not in non-compliance with the latest regulations, but the public notices posted by the safety committee in the “German Village” had been illegally removed by the company.

In another case, the Kurdistan Islamic Union (KIU) (which has seven seats in the KRG parliament and three in the National Assembly in Baghdad) sued the pro-KDP weekly *Bas*, which were filed in response to an article published by the weekly on 23 November which included a letter allegedly from the KIU’s leader, Salahuddin Muhammad, to Oussama Tikriti, the general secretary of the Iraqi Islamic Party (IIP) requesting USD\$350,000 dollars to help the KIU overcome its financial difficulties and embark on new projects. The KIU in its lawsuit accused *Bas* of libel and of publishing false documents, and demanded 2 billion Iraqi dinars (USD\$1.7 million) in damages. The court postponed its decision until 28 December.<sup>159</sup>

In another case, the satellite TV station, Speda, affiliated with the KIU, sued the popular singer Loka Zahir for 1 billion Iraqi dinars because she had named the TV station in one of her music videos, which the KIU alleged was insulting because of the TV station’s Islamic values. The station finally withdrew the case after an apology was made by the singer for the ‘mistake’.

In other instances, journalists have alleged receiving threats following publication of articles critical of political figures and parties. Darbaz Younis, the editor of *Bas*’ arts section, alleged to Reporters without Borders that he had received death threats for criticizing two of the presenters on pro-KDP *Channel 4* television. Younis filed a complaint on 13 December.

The above incidents support the contention that there are some ‘red lines’ in journalism in the Kurdistan Region that journalists cannot report on publicly without risking the ire (and legal actions) of offended power-brokers.<sup>160</sup>

In response to these issues, the Kurdistan Regional Government, in a letter addressed to UNAMI, stated:

“[W]e think that it is important to mention that most of the media workers in the Kurdistan Region remain untrained and are not held to even the most basic professional standards for documentation and substantiation of their reports. In this environment, it is important for public officials to have some recourse to the often politically motivated and unsupported virulent attacks upon their character that are sometimes aired in the press. Further, ... there are literally hundreds of news outlets freely operating in the Kurdistan Region. These outlets represent every imaginable political group, and they frequently publish scathing opinions of government personalities and entities without reprisal.”

On 3 November the Kurdistan Region Parliament issued Law No. 11/2010 regulating demonstrations. The law was ratified by the President of the Kurdistan Region on 8 December and was published in the Kurdistan gazette No. 120 on 20 December. Some civil society organisations have objected to the law, criticising it on several grounds.

## 11. Political rights

Despite some violent incidents in the lead up to the election and Election Day itself, the Iraqi people were not deterred from participating in the elections and exercising their rights to freely elect their representatives.

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159 See Reporters Without Borders available online <<http://en.rsf.org/irak-iraqi-kurdistan-lawsuits-raining-20-12-2010,39086.html>> IRAQI KURDISTAN: Lawsuits raining down on news media Published on Monday 20 December 2010.

160 “Between Freedom and Abuse: The Media Paradox in Iraqi Kurdistan” available online at <[http://en.rsf.org/IMG/pdf/rsf\\_rapport\\_kurdistan\\_irakien\\_nov\\_2010\\_gb.pdf](http://en.rsf.org/IMG/pdf/rsf_rapport_kurdistan_irakien_nov_2010_gb.pdf)> Reporters without Borders, published November 2010. These issues are: religion, corruption within institutions and political figures, Kurdistan Region’s neighbours, traditional leaders and historic/heroised figures, sex, and Kirkuk. In response, the Government of Kurdistan stated by letter to UNAMI dated 14 June 2011 the following: “This statement is worded in such a way as to make it seem that there are no limits to what is appropriate for dissemination to the public. However, every country and every culture has limits to what they deem appropriate for dissemination to the general public – from restrictions on explicit material to prosecution for libel. Religion, history, and public decency are all highly valued in most cultures, and as such, we consider maintaining basic standards for content that is intended for public consumption to be both natural and desirable. Additionally, the latter four “red lines” that you mention are not substantiated by the examples that precede the statement. We recommend acknowledging that reasonable limitations for content that is intended for public consumption is normal, and clarifying your statement to indicate if there are some specific topics that are improperly and verifiably targeted.”

According to the Independent High Electoral Commission (IHEC) approximately 62.4 percent of the 18.9 million registered voters turned out to cast their ballots. In all, 8,312 polling centres with 49,088 polling stations were established across the 18 Governorates of Iraq. There were also 37 stations were opened in the International Zone.

Voting, however, had commenced earlier on 4 March (Special voting Day), when IHEC opened 711 polling centres containing 2,856 polling stations in all governorates of Iraq for special voting to be conducted for eligible police, military, detainees and persons in hospitals. IHEC reported approximately 600,000 persons had been registered as special category voters. While the majority of police and military had been registered by IHEC on the special voter list, the IHEC Board of Commissioners following a request by the ISF which was supported by UNAMI, opened conditional voting stations on Special Voting Day to accommodate voting for those military and police personnel omitted from the special list. Detainees and those hospitalized participated via conditional voting. The Out of Country Voting, for Iraqi voters registered overseas, was completed over three consecutive days between 5 and 7 March. IHEC announced that 272,016 voters had cast their ballots in 16 out-of-country locations.

The elections itself was monitored and observed by 114,614 Iraqi observers, 657 international observers, 476,366 political agents and approximately 2000 international and national media. UNAMI visited polling centres in Anbar, Ninawa, Kirkuk, Erbil, Najaf, Sulaymaniyah, Salahuddin, Diyala, Basra, Dahuk and Baghdad.

On Election Day, all the votes cast were counted at the polling stations. Original results sheets from all governorates were then transferred to the IHEC Data Entry Centre in Baghdad where they were tabulated. The results of the elections were announced by IHEC on 26 March 2010. Overall UNAMI assessed that the electoral process, including the adoption of the election law, the campaign, polling day and count met reasonable demands and standards, with errors and doubts remaining within normal margins.<sup>161</sup>

Following a complaint lodged by the State of Law Coalition regarding certain election results, the Electoral Judicial Panel ordered IHEC to conduct a manual recount of all ballots cast in the Baghdad governorate and to announce the results of the count. "The manual recount represented a legal right to deal with complaints and thus has affirmed the legitimacy of the elections", the SRSG noted.<sup>162</sup>

On 1 June 2010, the Federal Supreme Court certified the results of the CoR election in accordance with the Iraqi Constitution. However, there followed several months of political deadlock as the major political blocs and parties negotiated the formation of a government that was not concluded until December 2010.

Overall the general elections were largely considered to have been free and fair, despite the violence. As such it represented the right of ordinary Iraqi citizens to fully participate in the political processes of the country and marks another significant step in securing Iraq's future as a State based on democracy and the rule of law.

Numerous, serious acts of violence perpetrated in many different areas within the country marred the pre-election period as well as Election Day itself. It was predominantly ordinary civilians who became victims of



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161 UNAMI Press Release, "Statement by the Special Representative of the UN Secretary-General for Iraq, Ad Melkert on the Occasion of the Announcement of the Election Results", Baghdad, 26 March 2010, available online < <http://www.uniraq.org/newsroom/getarticle.asp?ArticleID=1301>> accessed 21 January 2011

162 UNAMI Press Release, "The SRSG welcomes the proper conduct of the recount process" available online < <http://www.uniraq.org/newsroom/getarticle.asp?ArticleID=1334>> accessed 21 January 2011



this violence, but some candidates in the election were also targeted. Furthermore, there were reports of attacks against minority groups, particularly Christians, possibly aimed at deterring them from casting their votes freely. Nonetheless, the violence did not deter nearly two thirds of Iraqi citizens from turning out to exercise their political right to vote nor did it effect the overall conduct of the election process.

Elections-related violence occurred in central Basra, where on 22 January, according to information received by UNAMI, gunmen attacked the office of the National Congress Party, but they were repelled by the security guards and no casualties were reported. In the run up to the elections, media reported that at least five candidates of the Iraqi List and Kurdish Islamic Group political parties were killed. On 7 February, Dr. Suha Abdullah al-Shemagh, a candidate of the Iraqi List, was assassinated by unknown gunmen in Ras al-Jadeh in the centre of Mosul on the right (western) bank of the Tigris. On 28 February, UNAMI received reports that an unnamed member of the Kurdish Islamic Group had been shot dead in front of his house in Tuz Khormatu in Salahuddin Governorate. On 6 March, Sirwan Kakai'e, a candidate of the Kurdistan Democratic Party (KDP), reportedly escaped an assassination attempt in Kirkuk.

Closer to Election Day violence increased. On 3 March, a series of bombs struck the city of Ba'quba (Diyala Governorate), targeting government buildings. It killed at least 29 people and wounded 42 others. According to various media reports received by UNAMI, between 4 and 7 March mortar attacks and bombings killed at least 57 civilians and wounded more than 96 others. On the eve of the elections on 6 March, a car bomb exploded in Najaf Governorate, killing three and wounding 54 others. On Election Day on 7 March, 25 people were killed when mortars hit a residential building in Baghdad's Ur neighbourhood (al-Ad'hamiya District). In terms of the number of attacks across Iraq, Election Day was by far the most violent day of 2010. Attacks on polling stations were particularly numerous in Baghdad, al-Anbar, Diyala and in Mosul, where three stations had to be closed due to the violence.

## 12. Camp New Iraq (formerly Camp Ashraf)

The situation in Camp New Iraq (CNI) remains unresolved. Some 3380 persons<sup>163</sup> affiliated with the People's Mujahedin of Iran (PMOI) remained in their self-administered settlement in Camp New Iraq (formerly Camp Ashraf) in Diyala Governorate.

Since the January 2009 transfer to the GoI of the control of CNI, an inter-ministerial committee under the direction of the Prime Minister's Office, known as the Ashraf Committee, manages the CNI file. Guided by a Council of Ministers' decision dated 17 June 2008, which reiterated the qualification of the PMOI as a terrorist organization and called for its expulsion, the Government of Iraq through its Ashraf Committee has gradually been asserting its authority over CNI. Several times in 2010, skirmishes erupted between Iraqi security forces and residents of CNI, which resulted in the injury of some residents. While reaffirming its commitment not to deprive the residents of their humanitarian needs, the Government of Iraq has imposed limitations on the import of certain items that could potentially be used or converted to weapons; however, the PMOI frequently attempts to ignore this prohibition. Residents complain that some items necessary for repair of essential infrastructure, such as water pipes, are prohibited, leading to contamination of the water supply in the Camp. Such restrictions are a source of constant disputes between the Ashraf Committee and CNI residents. Access to medical care is not denied. It is, however, subjected to a disputed procedure that often causes unnecessary delays, some of which are imposed by the PMOI, in accessing medical facilities and obtaining the appropriate treatment. The PMOI obtains food and other essential supplies from private contractors, who also organize supply convoys that travel to CNI, often from locations as far away as Kuwait.

Residents also continue to complain about the loudspeakers situated at various places surrounding the camp (180 at the beginning of January 2011). The Camp leadership maintains that such measures are intended to tighten control in preparation for its closure and the relocation of its residents, something they have repeatedly resisted on the ground that they believe they are protected persons under the Fourth Geneva Convention. The Iraqi authorities continued to insist that the situation in the Camp would not be allowed to

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163 USF-I figure of 24 April 2010.

continue indefinitely. A number of disputes between residents and Iraqi officers in charge on the ground reportedly turned violent several times in late December as a result of which some residents sustained injuries.

There are longstanding concerns that some residents of CNI may be held against their will, kept in isolation from the outside world, or deprived of certain rights and freedoms by the PMOI leadership.<sup>164</sup> Residents of CNI generally stress the voluntary nature of their total devotion to the PMOI and its causes. However, their communal and highly regulated lifestyle in which most signs of personal individualism have disappeared suggests that the PMOI leadership exercises considerable control over the lives, behaviour and minds of the CNI residents. Whenever PMOI defectors have confirmed these suspicions, the PMOI claimed the witnesses had been forced into making their statements by Iranian government pressure.

Established with the consent of the Government of Iraq, USF-I and the PMOI, the UN Monitoring Team Ashraf observed the situation at CNI on a daily basis from October 2009 until 22 June 2010, when it had to end its presence because the nearby USF-I military base that hosted the UN team closed down as part of the ongoing withdrawal of US forces from Iraq. UNAMI continues to undertake weekly visits to CNI to monitor the situation.

While recognising the legitimate sovereign rights of the Government of Iraq in relation to CNI and its residents, UNAMI again reminds the Government of Iraq to ensure that the treatment of the residents of CNI is in accordance with international human rights law and that, where applicable, they be protected from forcible deportation, expulsion or repatriation in violation of the principle of *non-refoulement*. UNAMI notes that the GoI has on several occasions confirmed to UNAMI its commitment to abide by international law in dealing with the situation at CNI. UNAMI reiterates that those residents of CNI suspected of responsibility for illegal past activities should be brought to justice in conformity with internationally recognized standards of fair trial and due process of law. Similarly, as long as they remain on Iraqi territory, the residents of CNI are expected to fully respect the laws of Iraq.

### 13. Implementation of previous UNAMI recommendations and developments in protection and provision of Human Rights in Iraq

Due to a number of factors, progress on implementing important reforms aimed at enhancing the respect, provision, and protection of human rights in Iraq, as recommended in UNAMI's 16th Human Rights Report issued at end of 2009, was slow or largely halted, but there were one or two notable exceptions.

The political impasse following the 7 March general election meant there was no progress on developing a national action plan aimed at implementing the recommendations accepted by Iraq in the UPR (recommendation (a)). It also hampered further progress in establishing Iraq's Independent High Commission for Human Rights (recommendation (k)). The legality of the Expert Committee established to select the commissioners was challenged by al-Fadhila Party, one of the political blocs in the previous CoR. As a result, the work of the Expert Committee was suspended by the CoR. The Speaker of the CoR sent the issue to the new CoR for review, which however had not held a substantive session between January and November. To avoid having to start from scratch, the CoR decided to keep on file all 1,456 applications received from individuals interested in appointment to the Commission. On 4 November, UNAMI met the Human Rights Committee of the CoR, which agreed to press for a speedy resumption of the process of creating the IHCHR as soon as a Speaker of Parliament is appointed.

There was also little in the way of reforming the Iraqi Criminal Procedure Code (recommendation (b)) with a view to abolishing the practice of reliance on confessions in judicial proceedings, particularly confessions obtained under duress and torture, and ensuring that the rights of detainees not to incriminate themselves is respected. There was no movement on recommendation (d) which called on the Government of Iraq to ensure procedural and policy reform to ensure the right of detainees to meaningfully challenge their

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164 See 15th Human Rights Report (1 January-30 June 2009), para. 52

detention before a court and to ensure prompt and regular access to defence council and relatives and there was no reform of the law and policy relating to the detention of juveniles in a way commensurate with international obligations pertaining to children (recommendation (e)). Irrespective of this there was some evidence that action had been taken in relation to reducing overcrowding in prisons and detention centres (recommendation (c)). There was little evidence that the Government had taken serious action against those accused of having committed human rights violations in prisons and detention centres (recommendation (f)). Furthermore, the Government of Iraq has categorically rejected the call in the UPR to declare a moratorium on the death penalty pending a thorough review of the Penal Code and the Law on Criminal Proceedings in accordance with UN General Assembly resolutions 62/149 (2007) and 63/168 (2008) (recommendation (g)). Iraq ratified the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) in July 2008 in a positive step towards combating torture in compliance with international law. However, the Government has not deposited the instrument of ratification with the Secretary-General of the United Nations to ensure the entry into force of the instrument at the international level pursuant to paragraph 2 of Article 27 of the Convention.

There was little legal and policy development on investigating claims of gender based violence and to deal effectively and appropriately with so-called honour crimes (recommendation (h) and (i) nor was there any legislation to ban female genital mutilation (Recommendation (j)).

The Government took seriously attacks on individuals and groups for the reason of their ethnicity or religion, placing more resources in terms of security to protect such communities (recommendation (l)); however, more needs to be done to create an environment in which minority religious and ethnic groups can be protected. In relation to recommendations (n) and (o), the interim Government, while cognisant of the problems faced by people displaced internally or refugees, and while there was some law reform relating to property restitution for those seized by the former regime, there were some indications that greater resources still need to be channeled to address these issues.

There was no movement on recommendation (m) that Iraq accede to the Convention on the Rights of Persons with Disabilities and to pass the bill on the establishment of a national body for the welfare of persons with disabilities

The Government continued to work on the issue of mass graves and to address gaps in technical and other expertise in addressing these issues (recommendation (p)). On the whole the Government took seriously the role of the ISF in carrying out security and counter terrorism operations, although in the conduct of actions against terrorist and other groups it is unclear whether ISF apply the UN Code of Conduct for Law Enforcement Officials as called for in recommendation (q). As noted above, UNAMI commends Iraq for ratifying, on 23 November 2010, the International Convention for the Protection of All Persons from Enforced Disappearance.<sup>165</sup> Iraq being the 20th ratifying state, the Convention officially came into force 30 days later on 23 December. The Convention outlaws enforced disappearances without any possibility for derogations or exceptions, prohibits secret detention, and makes widespread enforced disappearances a crime against humanity. State parties to the Convention are obliged to bring their domestic legislation in line with the Convention and to hold criminally responsible any person violating the Convention. The topic of the Convention is painfully relevant to Iraq where thousands of persons<sup>166</sup> have vanished as a result of war and displacement, extrajudicial arrest by sectarian militias, or after being held incommunicado in the State-run detention system.

The political stalemate that characterised the government formation process for much of 2010<sup>167</sup> meant that the CoR was not able to finalise the vote on some of the draft laws submitted in 2009. For example, the draft law to ratify the Convention on the Rights of Persons with Disabilities, a draft *Law on Assistance for Women without Income*, a draft *Law on Child Protection* and a draft *Law on Freedom of Expression* are yet to be

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165 Available online <<http://www2.ohchr.org/english/law/pdf/disappearance-convention.pdf>> accessed 21 January 2010.

166 According to the 2009 annual report of the prison-monitoring department in the Humanitarian Affairs Directorate of the MoHR, the ministry registered 11,770 missing persons between 2003 and 2009.

167 Following inconclusive elections on 7 March, Shi'a, Sunni and Kurdish political parties negotiated government formation and power-sharing for over eight months. A deal was announced on 11 November and approved by the CoR on 13 November; President Talabani tasked Prime Minister al-Maliki to form a government on 25 November. On 21 December the CoR approved a partial cabinet list.

voted on. As noted in previous reports, UNAMI stresses the importance of these laws they aim specifically to address some of the gaps in Iraq's fulfilment of its international obligations.

In a positive development, a new *Law of Non-Governmental Organizations* (Law No. 12/2010) was passed in April after years of consultations and discussions involving several Iraqi government ministries, the CoR, civil society organizations, and the United Nations. The law is considered by most NGOs as preserving the independence and the integrity of NGOs in conducting their operations in Iraq. On 5 July, representatives of the Secretariat of the Iraqi Council of Ministers, the NGO Directorate government ministries and NGOs agreed on recommendations for implementing regulations. These recommendations centred on topics such as the registration process, reporting requirements, and public benefits status. However, when the Secretary-General of the Council of Ministers issued the decree with implementing instructions pursuant to Article 35 of the law it restricted "political activities" of NGOs in a manner incompatible with Law No. 12/2010. UNAMI urges the Government of Iraq to review the regulations to ensure that they comply with the requirements of the legislation.

Another positive legislative development was the passing of the *Law on the Compensation of the Victims' Properties Affected by the Former Regime* (Law No. 16/2010). It provides for the compensation of Iraqi citizens who, under the regime of Saddam Hussein, had their properties (movable and immovable) confiscated, destroyed or impounded for political, ethnic, racial or sectarian reasons. Submitted by the Prime Minister, the draft law was reviewed by the Martyrs' Committee as well as the Immigrants and Displaced Persons' Committee of the CoR before it was passed. The law, which was endorsed by the Presidency Council on 16 March, applies retroactively from 17 July 1968 until 20 March 2003. This means that anyone who lost property in similar circumstances after 20 March 2003 has no legal protection.<sup>168</sup>

In an effort to promote federalism, Law No. 18/2010 on the *Disengagement of the Social Affairs Department in the MoLSA* was passed on 15 February by the Presidency Council. It was decided that five departments of MoLSA (Social Welfare, Care of Women, People with Special Needs, Retirement and Social Security, Juvenile Reform) would henceforth operate under the jurisdiction of a Directorate-General established in each Iraqi Governor's Office. However, an appeal against this law was launched by MoLSA. As a consequence, the Federal Supreme Court abolished the law and kept these departments under the immediate control of MoLSA.

### 13.1 Kurdistan Regional Government

The Kurdistan Regional Government has shown itself to be open to dialogue and works in a largely cooperative manner with the United Nations in relation to human rights issues throughout the region. In relation to recommendations made to the KRG in UNAMI's 16<sup>th</sup> Human Rights Report, UNAMI notes that the KRG did much in relation to recommendation (a) to ensure that prisoners and detainees were dealt with according to law as noted above. For instance, on 23 November the Kurdistan Region Parliament passed a law granting compensation to persons who had been unlawfully arrested and/or detained (Law No. 15/2010). According to this law, any person who has been either detained or convicted and is later found innocent has a right to seek compensation. A committee should be established in the courts of appeal contained in Article 14 of the Judicial Authority Law No. (Law No. 23/2007) the Head of the Court of Appeal and two judges from the same court will review requests for compensation and shall be subject to appeal in front of the General Committee of the Appellate court (Article 3). The compensation will be based on two things, magnitude of emotional and social suffering and physical suffering.

There was also much positive reform in relation to the detention of juveniles as called for in recommendation (b) with some attempts to reform the places of detention of juveniles and introduction of courses, counseling and assistance services for children in detention.

In relation to recommendation (c) the KRG has done much to ensure that women are protected against all forms of violence, particularly by establishing women's shelters in various districts of the Kurdistan Region, establishing a Parliamentary Committee to examine the issue of violence against women, and establishing

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<sup>168</sup> Similar discrimination is enshrined in compensation schemes that exist for political prisoners and for persons whose relatives were killed in war during the period of Saddam Hussein's regime only.

greater access to community and other services for women victims of violence – as well as awareness raising activities. Unfortunately, in relation to recommendation (d) legislation has not yet been passed banning female genital mutilation and other measures aimed at combating the problem – although a KRG study has done much to raise awareness of the problem.

In relation to recommendation (e) the KRG has an unofficial moratorium on implementation of the death penalty, but it is yet to become official.

In relation to recommendation (f) the KRG continued to work in cooperation with the Ministry of Human Rights to locate and exhume mass graves, to take steps to identify remains and hand them over to their relatives and to investigate the killings and prosecute those responsible for such killings.

On 24 May, the Kurdistan Region Parliament passed legislation establishing the Independent Board of Human Rights (Law No. 4/2010), replacing the KRG MoHR that was abolished by the sixth cabinet of the KRG. This legislation was discussed for some time and HRO Erbil was consulted during the drafting process; however, none of the suggestions provided were taken into consideration in the final text of the law as enacted by the Kurdistan Parliament. The law stipulates that the President of the Board will be appointed following a joint recommendation by the Council of Ministers and the Kurdistan Parliament. The process of selecting the other members of the Board is not clear. The Board's role is to build capacity, monitor state institutions and represent the KRG. The board will be responsible to the parliament. It will have four Directorates dealing with different aspect of the work of the Board. The President of the Board has the right to change the structure of Directorates. Article 3(7) of the law states that the Board will have the authority to receive individual complaints, but it is unclear what investigative powers the Board will actually have. A preliminary analysis of the steps taken so far suggests that the Board will function as a government-affiliated body rather than an independent human rights institution in accordance with the "Paris Principles" (UN GA resolution 48/143 (1993)).

In the Kurdistan Region, the MoI of the KRG issued new regulations (Official instructions no. 9703 of 20 April 2010) on the right to demonstrate and assemble. The instructions were seen by civil society organisations interviewed by UNAMI as a setback to freedom of expression and assembly since they require organizers of any public events to first submit to the Ministry of the Interior the exact details of the gathering including its location, purpose and number of participants before being granted the permission to hold the event. A draft law on the same topic was approved by the Kurdistan Region Parliament on 3 November and was immediately criticized by civil society organizations and independent newspapers. They claimed the new law violated freedom of expression and the right of assembly and appealed to the President of Kurdistan Region not to ratify it.

A number of consultations were held in 2010 between civil society organizations and the KRG in relation to a new, long-delayed NGO law. Progress was finally made on 27 June when the Kurdistan Parliament held its first reading of the draft law. Controversies between government representatives and civil society activists had centred on the registration of NGOs. The KRG MoI wanted to have sole responsibility for deciding on the setting up of an NGO while NGOs believed the Ministry's role should merely be to be informed of the decision to establish such an organization. Another contentious issue was the NGOs' demand for an independent body overseeing the work of NGOs while the government proposed this responsibility for itself. On 27 November the Civil Society Committee of the Kurdistan Parliament stated that the principle of registration, not permission, had been incorporated in the draft law but that registering NGOs would be undertaken by an office under the Council of Ministers and not an independent commission.

Also on 27 June, the Kurdistan Region Parliament held the first reading of two other draft laws, including the draft *Law on Access to Information* which aims at facilitating citizens' access to information held by the government and ensuring a better environment for freedom of expression by disclosing the sources of information to media workers. The second draft relates to the establishment of a regional Supreme Election Commission. The second draft was heavily criticized by a number of opposition parties, which denounced the law as a government attempt to control electoral processes.

On 3 November the Kurdistan Region Parliament issued Law No. 11/2010 regulation demonstrations. The law was ratified by the President of the Kurdistan Region on 8 December and was published in the Kurdistan



gazette No. 120 on 20 December. Some civil society organisations have objected to the law, criticising it on several grounds, such as the need to pre-register a demonstration before it is lawful.

According to the Kurdistan Regional Government, it strives to promote the safety, freedom and welfare of its citizens and maintains an “open door” policy to all international assistance towards these ends.

## 14. Other human rights concerns

### 14.1 Migrant workers

UNAMI has received anecdotal evidence over a number of years concerning the trafficking, exploitation and abuse of migrant workers in Iraq.<sup>169</sup> In a recent case, UNAMI was informed by an international NGO on 3 March that four Ethiopian women had been detained for two months in Dahuk under Article 8 of the Iraqi Residence Law for illegally crossing Iraq’s border. They had left their employer company in the Kurdistan Region because of alleged ill treatment and abusive work conditions. All four women tried to cross into Turkey to seek better employment opportunities but were stopped at the border because they did not have proper documents. After two months in detention, the four women were released and sent to a women’s shelter. UNAMI referred their case to the International Organization for Migration, which arranged for their repatriation to their country of nationality.

UNAMI also documented the case of a Bangladeshi who was brought to the Region of Kurdistan by an employment agency as early as 2007 but never received an employment contract, despite changing employers repeatedly. As a result he could not obtain a residence permit. He was about to be arrested when he contacted UNAMI seeking help. UNAMI approached the Director-General of the Residency Office who waived the USD\$1,500 fine the migrant worker would have had to pay, or face imprisonment. The International Organization for Migration eventually arranged for his repatriation to his country of nationality.

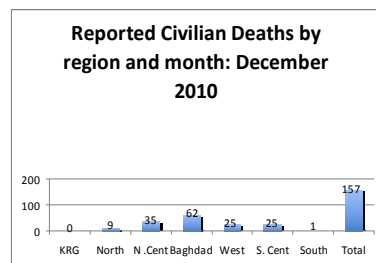
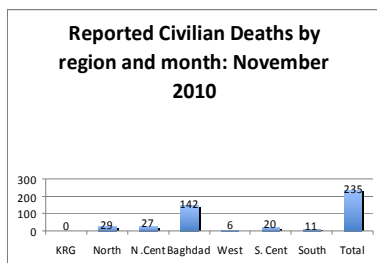
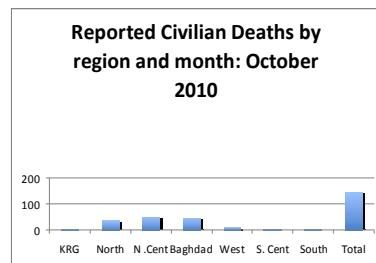
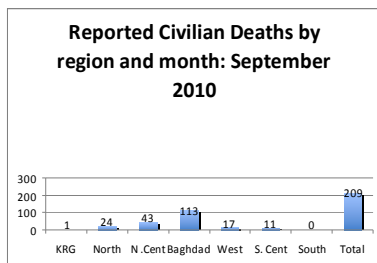
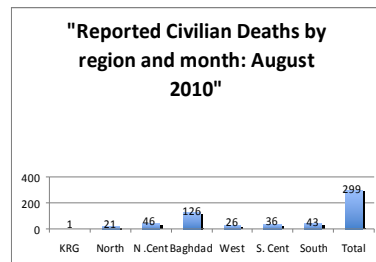
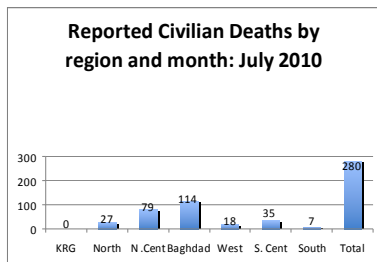
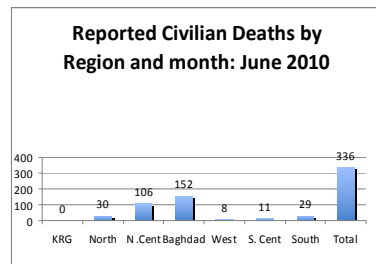
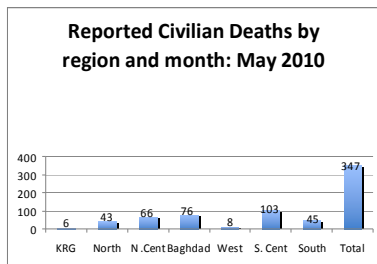
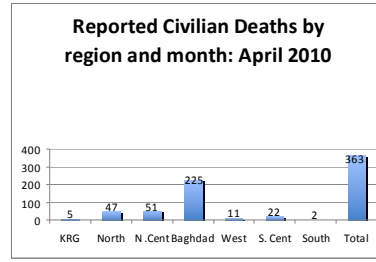
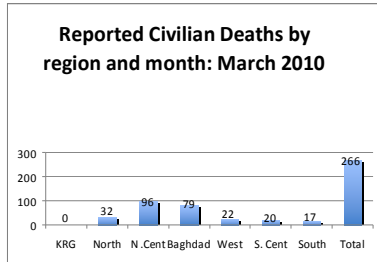
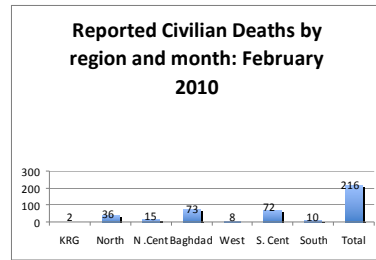
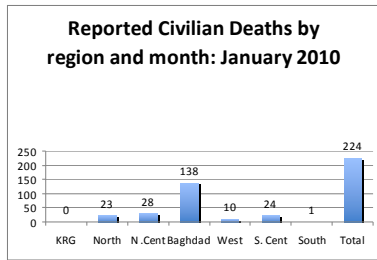
The KRG authorities have confirmed to UNAMI that there are some cases of exploitation and lack of proper documentation for a small number of international workers, however compared with the large number of migrant workers in the Kurdistan Region, these cases remain relatively few. MoLSA stated that many migrant workers arrive in the Kurdistan Region without proper documents and employment contracts. MoLSA officials admitted that it is the responsibility of the ministry to issue permits for companies wishing to hire foreign labourers, yet it does not fulfil its responsibility due to lack of resources. Fraudulent employment agencies in the migrant workers’ countries of origin, unscrupulous employers in Iraq, overwhelmed or unresponsive Iraqi State institutions, and a lack of diplomatic representations of the workers’ home countries in Iraq all contribute to an environment where abuse and exploitation of migrant workers can take place.

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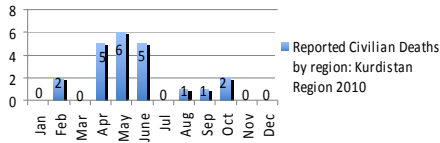
169 See e.g. 14th Human Rights Report (1 July-31 December 2008), paras. 52-54.



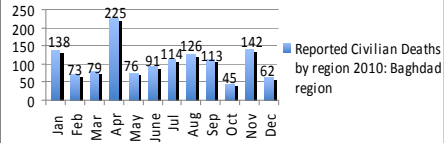
# APPENDIX 1 - Graphs



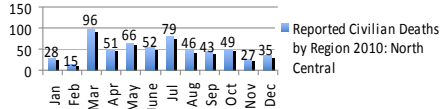
**Reported Civilian Deaths by region 2010: Kurdistan Region**



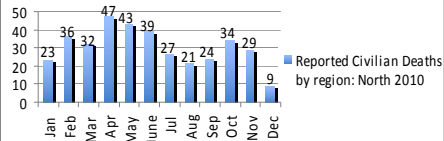
**Reported Civilian Deaths by region 2010: Baghdad region**



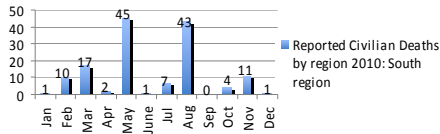
**Reported Civilian Deaths by Region 2010: North Central region**



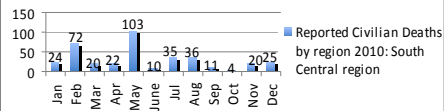
**Reported Civilian Deaths by region 2010: North region**



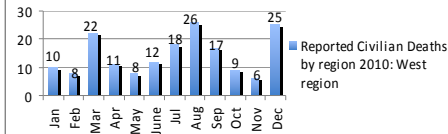
**Reported Civilian Deaths by region 2010: South region**



**Reported Civilian Deaths by region 2010: South Central region**



**Reported Civilian Deaths by region 2010: West region**



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