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**HUMAN RIGHTS SITUATIONS THAT REQUIRE  
THE COUNCIL'S ATTENTION**

**Joint written statement\* submitted by the Women's International Democratic Federation (WIDF), non-governmental organization in general consultative status, the Union of Arab Jurists, the International Organization for the Elimination of All Forms of Racial Discrimination (EAFORD), the General Arab Women Federation (GAWF), the Arab Lawyers Union (ALU), the Indian Movement Tupaj Amaru (MITA), the General Federation of Iraqi Women, the United Towns Agency For North-South Cooperation, the International Association Of Democratic Lawyers (IADL), non-governmental organizations in special consultative status, International Educational Development (IED), Inc., a non-governmental organization on the roster**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[19 February 2009]

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\* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

## **Prisoners of War and Other Detainees in Iraq<sup>1</sup>**

The tragic situation of the prisoners of war (POWs) and detainees in Iraq, who continue to face cruel and inhuman treatment at detentions threatening their lives is of great concern to all human rights defenders

Reports on the ongoing widespread ill-treatment and torture of detainees in Iraq are persisting. The United Nations Assistance Mission in Iraq (UNAMI) has documented such abuse, particularly in pre-trial detention, and cited mistreatment of detainees observed during visits to such facilities.<sup>1</sup> In its December 2008 report UNAMI clearly expresses its concern regarding the **“grave human rights violations that are less widely reported...”** and the **“ongoing widespread ill-treatment and torture of detainees”**<sup>2</sup> Unfortunately members of the Human Rights Council are not aware of this and previous UNAMI reports

UNAMI repeatedly stated that it remains gravely concerned at continuing reports of the **widespread and routine torture or ill-treatment of detainees**, particularly those being held in pre-trial detention facilities, including police stations. Detainees interviewed by UNAMI at Ministry of Interior facilities regularly claimed to have been beaten or otherwise ill-treated, particularly upon arrest or while undergoing initial interrogation, most commonly to extract confessions from them. In some cases, the detainees presented traces on their bodies consistent with the beating or torture alleged.

It also said on the situation of detainees “Many have been deprived of their liberty for months or even years, often under harsh physical conditions, without access to defence counsel, or without being formally charged with a crime or produced before a judge”<sup>3</sup>. Despite the continuing allegations of widespread torture and ill-treatment of inmates, “Slow bureaucratic procedures, insufficient resources, degraded infrastructure and lack of effective accountability measures result in inordinate delays in processing detainees’ cases.”<sup>4</sup>

Human Rights Watch also documented torture and other ill-treatment of detainees by Iraqi police and security forces<sup>5</sup>. The United States, also confirms the **widespread of torture and ill-treatment and the extrajudicial killing**. In its report on human rights (March 2008), the State Department gave details of all kinds of human rights violations by the current authorities in Iraq. The report says: “... there were documented instances of torture and other abuses by government agents and similar abuses by illegal armed groups.” It adds “...numerous and serious reports of torture, abuses, and killings were levelled at MOI's regional intelligence office”.<sup>6</sup>

Amnesty International expresses similar concern over this situation. In its statement on 5 January 2009, Amnesty confirms that “Political and security suspects are routinely tortured or ill-treated in prisons and detention facilities controlled by the Iraqi authorities”.<sup>7</sup> It has also stated in its

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<sup>1</sup> - Association of Humanitarian Lawyers, Association of Arab Lawyers (UK), Monitoring Net of Human Rights in Iraq, Association of Iraqi Diplomats, Women Solidarity for an Independent and Unified Iraq, Women Will Association (WWA), Organization for Widows and Orphans, (OWO), The United Prisoners of Iraq, Association of Victims of American Occupation Prisons, Association of Iraqi intellectual and Academics, Conservation Centre of Environmental & Reserves in Iraq (CCERF), NGOs without consultative status also share the views expressed in this statement.

statement on 28 November 2008 that it received persistent reports of gross human rights violations – including torture – taking place in Iraqi prisons and detention centers.<sup>8</sup>

Human Rights Watch Middle East and North Africa Director Sarah Leah Whitson, clearly said that "Since the United States made itself synonymous with abuse of detainees in Iraq during the Abu Ghraib scandal, the least it can do now is assure that a security agreement does not pave the way for further abuse." She called on the US government to ensure that detainees are not in danger of being tortured by establishing a mechanism that would provide each detainee with a genuine opportunity to contest a transfer to Iraqi custody, and by verifying the conditions of Iraqi detention facilities to which they could be transferred, through inspections that are made public.<sup>9</sup>

Despite all these reports, there is no real discussion in the Human Rights Council on this situation and violations. It is worthy to ask; what is the threshold of the violations on which the Council must interfere in order to protect the victims according to its mandate as stipulated in the General Assembly resolution A/RES/60/251, on 3 April 2006 which clearly stated in article 3 that the Council should address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon. It should also promote the effective coordination and the mainstreaming of human rights within the United Nations system).

With regard to the (Detention under Multinational Force Authority) UNAMI said that, it remained concerned about the internment of suspects in MNF-I custody for prolonged periods without judicial review of their cases, and administrative review procedures that do not fulfil the requirement to grant detainees due process in accordance with internationally recognized norms.

In its response to UNAMI's inquiry, the US Government states that due process "is a human rights concept generally associated with criminal arrests and trials" and does not apply to security detentions under MNF-I authority in Iraq, based in part on its own interpretation of the nature of the conflict. In December 2007, UNAMI received confirmation that the US Government continues to consider the conflict in Iraq as an international armed conflict, with procedures currently in force consistent with provisions of the Fourth Geneva Convention. UNAMI believes that alongside common article 3 to the four Geneva Conventions and customary international law, human rights law also applies. As such, persons held in MNF-I custody are entitled to be informed of the reasons for their arrest, to be brought promptly before a judge if held on a criminal charge, and to challenge the lawfulness of their detention.<sup>10</sup>

Several Iraqi NGOs, especially, the Iraqi National Committee for the Defence of Iraqi Prisoners, and human rights activists as well as members of the detainees families, believe that the United States is under obligation either to release all these POWs and detainees, or to keep them under its custody but bring them to a fair and independent trial. They express their concern about the intention of the US to continue handing over those POWs and other detainees to the sectarian authorities in Iraq, which means the brutal treatment or the extrajudicial killing of them.

This is a fact the US itself knows. It is also proven by experience of the last five years, during which Iraqis who have been arrested by the so-called Iraqi authorities are often handed over to the death squads in the defence or Interior Ministry, the result of that was the death of hundreds or thousands of Iraqis.

Moreover the US report on human rights says: “Unauthorized government agents involvement in extrajudicial killings throughout the country was widely reported. Some police units acted as (death squads) and, while there were resulting transfers and trainings, there were no criminal prosecutions by year's end”. The report shows that significant human rights problems were reported including “a pervasive climate of violence; misappropriation of official authority by sectarian, criminal and extremist groups; arbitrary deprivation of life; disappearances; torture and other cruel, inhuman, or degrading treatment or punishment; impunity; poor conditions in pretrial detention and prison facilities; denial of fair public trials...”<sup>11</sup>

In a press release on 27 April 2008, Joe Stork, Middle East Deputy Director at Human Rights Watch said “The Security Council should insist that the United States abide by international law for persons detained.” He added that “The Bush administration pushed the Security Council to declare that the US-led occupation of Iraq had ended in June 2004, and the end of occupation means that international human rights standards apply – judicial review, access to legal counsel and family members, and a fair trial.” Stork confirms that “Human Rights Watch has serious concerns about the widespread torture of detainees by the Iraqi authorities. Where there is a fear of torture, the US should retain physical custody over individuals formally transferred to the Iraqi justice system for prosecution”.<sup>12</sup>

Those are the conditions under which POWs are treated by the Iraqi authorities. As far as detention facilities are concerned under the control of the Ministry of Interior (MOI) and Ministry of Defence (MOD), the State Department Report clearly says that it “did not meet international standards. There was continued overcrowding. Many lacked adequate food, exercise facilities, medical care, and family visitation..... Medical care in MOI and MOD detention facilities was not consistently provided, and rape, torture, and abuse, sometimes leading to death, reportedly occurred in some facilities.”

Section (d) of the report says “MOI security force effectiveness, particularly the National Police, was seriously compromised by militias, sectarianism, and political party influences. Rampant corruption, organized criminality, and serious human rights abuses were embedded in a culture of impunity.” In addition, it clearly says: “There were continuing reports of torture and abuse and an alleged extrajudicial killing...”<sup>13</sup>

It is really shocking that despite its full awareness of these violations, the US authorities in Iraq are continuously handing over Iraqi POWs and detainees to those abusive authorities. The reality of what has been described by the report is not the full picture of the criminal acts of these authorities; there are a lot of hidden crimes.

If the US authorities see that this handing over comes within a judicial process, because the detainees are under trial by the Iraqi high Tribunal, it is essential to remind these authorities of what they, themselves, are saying regarding this process. In section (e- Denial of Fair Public Trial) of the above mentioned US State Department Report it is stated that: “One of the significant challenges facing the criminal trial courts, however, was insufficient access to defense attorneys. Defense attorneys were theoretically provided, but detainees rarely had access to them before the initial judicial hearing, often for security reasons. Many detainees met their lawyers for the first time during the initial hearing.” It added that “There were reports that

criminal cases at the trial level or on appeal to the Court of Cassation were decided by corruption or intimidation”.

Moreover, the Special Rapporteur of the United Nations on the Independence of Judges and Lawyers, Mr. Leandro Despouy, has repeatedly questioned the legitimacy and credibility of the current Iraqi judiciary system and tribunals, so did the High Commissioner for Human Rights and the Working Group on Arbitrary Detention, in several occasions.<sup>14</sup>

**Therefore, there is no legal basis to hand over those POWs and detainees to such questionable authorities especially within this atmosphere of hatred and revenge.**

Iraq is still under the occupation (or at least under the control of the US), so the U.S. forces bear full responsibility for the consequences of handing over the Iraqi prisoners and detainees to these authorities. We urge all human rights defenders to redouble their efforts to save prisoners from torture and summary execution. The ICRC, UN, and all international bodies, bear legal and moral responsibilities to protect those POWs and detainees. The Security Council should do its part to ensure what is necessary to bring justice to Iraq detainees.<sup>15</sup>

We call upon the International Committee of the Red Cross as well as all international bodies and NGOs to raise their voices against these violations to the Geneva Conventions and to the principles of human rights and humanitarian laws. The Human Rights Council and all concerned bodies must act quickly to prevent this persisting crime against Iraqi prisoners and detainees.

<sup>1</sup> - United Mission Assistance Mission for Iraq (UNAMI), human rights reports for 2006, 2007 and 2008.

<sup>2</sup> - UNAMI, human rights report on Iraq, Dec. 2008.

[http://www.uniraq.org/documents/UNAMI\\_Human\\_Rights\\_Report\\_January\\_June\\_2008\\_EN.pdf](http://www.uniraq.org/documents/UNAMI_Human_Rights_Report_January_June_2008_EN.pdf)

<sup>3</sup> - UNAMI, *ibid*, (Rule of Law, Detention and internment)

<sup>4</sup> - It is worthy to mention what UNAMI has stated in its report that “the Iraqi authorities remained hard pressed to handle the detainee population given the general security conditions in the country, the lack of capacity and resources, slow bureaucratic procedures and degrading infrastructure. Ministerial directives for the handling of detainees from arrest through the investigation and trial processes, as well as treatment and conditions of detention are slow to implement and remain partially or totally ignored in many detention centres”.

<sup>5</sup> - Sarah Leah Whitson, Middle East and North Africa director at Human Rights Watch, [US: Iraq Security Deal Should Shield Detainees](#), October 29, 2008

<http://www.hrw.org/en/news/2008/10/29/us-iraq-security-deal-should-shield-detainees>

<sup>6</sup> - See, Iraq’s section in US state Department human rights report: (<http://www.state.gov/g/drl/rls/hrrpt/2007/100596.htm>)

<sup>7</sup> - AMNESTY INTERNATIONAL, *DETAINEES HELD BY USA AT RISK IF TRANSFERRED TO IRAQI CUSTODY* [HTTP://WWW.AMNESTY.ORG/EN/APPEALS-FOR-ACTION/DETAINEES-HELD-USA-RISK-IF-TRANSFERRED-IRAQI-CUSTODY](http://www.amnesty.org/en/appeals-for-action/detainees-held-usa-risk-if-transferred-iraqi-custody)

<sup>8</sup> - Amnesty International, *Security agreement puts 16,000 Iraqi detainees at risk of torture*, 28 November 2008, said that “The Status of Forces Agreement does not provide any safeguards whatsoever for prisoners transferred to Iraqi custody,” said Malcolm Smart, Director of Amnesty International’s Middle East and North Africa Programme, he added that: “These prisoners will potentially be moving from the frying pan into the fire. We receive persistent reports of gross human rights violations – including torture – taking place in Iraqi prisons and detention centres. The US must ensure that no one is transferred to Iraq custody if they would face a real risk of torture or other human rights violations.” <http://www.amnesty.org/en/news-and-updates/news/security-agreement-puts-16000-iraqi-detainees-risk-torture-20081128>

<sup>9</sup> - HRW, [US: Iraq Security Deal Should Shield Detainees](#), press release on 29 October, 2008, <http://www.hrw.org/en/news/2008/10/29/us-iraq-security-deal-should-shield-detainees>

<sup>10</sup> - UNAMI continue its explanations by saying that (These rights are consistent with the US Government's obligations under the International Covenant on Civil and Political Rights (ICCPR). The US Embassy challenged the extra-territorial application of the ICCPR, stating in its letter of 2 October 2007 that UNAMI "asserts that international human rights law applies to international armed conflict. The United States has long taken the position that the ICCPR does not apply extraterritorially" UNAMI does not share the view expressed by the US that the international human rights law including the ICCPR lacks extraterritorial reach under all circumstances. Extraterritorial interpretation was confirmed by the Human Rights Committee's General comment n° 31 of 2004 on the Nature of the General Legal Obligation Imposed on States Parties to the Covenant, in which "States Parties are required by article 2, paragraph 1, to respect and to ensure the Covenant rights to all persons who may be within their territory **and to all persons subject to their jurisdiction**". This means that a State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party. This is also reflected in the Human Rights Committee's General Comment 15 of 1986 stating that "the enjoyment of Covenant rights is not limited to citizens of States Parties but must also be available to all individuals, regardless of nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State Party". At the highest political level of the United Nations, the General Assembly, in its Resolution A/RES/45/170 of December 1990 on the situation of human rights in occupied Kuwait, confirmed the application of Iraq's obligations under the Covenant in territory occupied by it in Kuwait (adopted by vote of 144 -1, with the United States in favour). Also, the International Court of Justice in its Advisory opinion on the legal consequences of the construction of a wall in the Occupied Palestinian Territory of July 2004, considered that the Covenant is applicable in respect of acts done by a State in the exercise of its jurisdiction outside its own territory.

<sup>11</sup> - US State Department Human Rights' Report, *ibid*,

<sup>12</sup> - Human Rights Watch, [UN: Tell US to End Illegal Detention Practices in Iraq](http://www.hrw.org/en/news/2008/04/27/un-tell-us-end-illegal-detention-practices-iraq), <http://www.hrw.org/en/news/2008/04/27/un-tell-us-end-illegal-detention-practices-iraq>

<sup>13</sup> - In section (**e- Denial of Fair Public Trial**) of the report the US state Department says: "One of the significant challenges facing the criminal trial courts, however, was insufficient access to defense attorneys. Defense attorneys were theoretically provided, but detainees rarely had access to them before the initial judicial hearing, often for security reasons. Many detainees met their lawyers for the first time during the initial hearing." It added that "**There were reports that criminal cases at the trial level or on appeal to the Court of Cassation were decided by corruption or intimidation**".

<sup>14</sup> - In this regard we should also mention what the United Nations Special Rapporteur on the independence of judges and lawyers, Mr. Leandro Despouy, has said in front of the Human Rights Council on the 2<sup>nd</sup> of June 2008, when he was introducing his report. He clearly said that he reiterates what he is saying from the first day of establishing the Iraqi Criminal Courts and then later when its name has been changed to the Iraqi High Tribunal.- The Special Rapporteur clearly described that one of its shortcoming is **(the lack of observance of a legal framework that conforms to international human rights principles and standards, in particular the right to be tried by an independent and impartial tribunal which upholds the right to a defence)**.

<sup>15</sup> - In its [letter to the Security Council on MNF detention practices in Iraq](#), dated, April 24, 2008, Human Rights Watch urge the Council to "address serious concerns regarding MNF detention practices, particularly respect for the rights of persons deprived of their liberty under international human rights law. As the MNF has invoked Security Council resolutions as the basis for its detention practices, we believe the security council must scrutinize those practices and do its utmost to assure that they conform to internationally recognized norms". It added that "Further, and in light of past abuses from which the MNF seeks to distance itself, the MNF should make its detention facilities accessible to independent Iraqi and international human rights observers. Such access, in order to be credible, would require unhindered and confidential contact with detainees. The Security Council should also press for the implementation of UNAMI's own recommendations to grant such access to UNAMI and independent monitors who make their findings public".

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