



General Assembly

Distr.: General
28 May 2013

English only

Human Rights Council

Twenty-third session

Agenda item 3

**Promotion and protection of all human rights,
civil, political, economic, social and cultural rights,
including the right to development**

Joint written statement* submitted by the International Organization for the Elimination of All Forms of Racial Discrimination (IAFORD), the Union of Arab Jurists, the General Arab Women Federation (GAWF), North-South XX1, the United Towns Agency for the North-South Cooperation, the Indian Movement “Tupaj Amaru”, the Arab Organization for Human Rights (AOHR), the Asian Women Human Rights Council, the Organisation pour la Communication en Afrique et de Promotion de la Coopération Economique Internationale - OCAPROCE International, the Arab Lawyers Union, the International Federation of University Women (IFUW), Organisation Mondiale des Associations pour l’Education Prénatale (OMAEP) and the World Wide Organization for Women (WOW), non-governmental organizations in special consultative status; the International Human Rights Association of American Minorities (IHRAAM), the Indian Council of South America (CISA), the World Peace Council and International Educational Development, Inc. (IED), non-governmental organizations 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.

[11 May 2013]

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

The impact of war and occupation on the Iraqi judicial system, 2003 – 2013*

The impact of the US- invasion on the Iraqi people has been disastrous. Terror of war and occupation, dismantling of state and institutions, an imposed constitution have led to a situation, where the society has collapsed, millions are living in poverty, public services are in deep crisis, savagery and rampant sectarianism have become everyday reality, the freedom of expression is violated, police abuse persists and security is almost non-existent.

The Iraqi judicial system is a tragic reflection of this chaos. From the initial arrest, over methods of interrogation, torture and sentencing without trials to mass executions, even basic requirements of due process are not met. Security forces target innocent civilians in mass campaigns of arbitrary arrests and many detainees are held in prison for years, without knowing the charges against them and with no access to family members, lawyers, or courts. Executions occur with no evidence except enforced confessions. Accountability is almost non-existent.

The failure of the Iraqi juridical system can be traced back to the destruction and dismantling of the state and the failure of the US and UK to hold their troops accountable for abuses in detention and extra judicial killings. The impunity with which these forces operated after their systematic and sectarian destruction of the country has paved the way for the government to make excuses for abuses, failure of law and order, and lack of accountability.

Systematic dismantling of the judicial system since 2003

The dismantling of the Iraqi juridical system started directly after the US-invasion in 2003, when the US appointed Paul Bremer as director of the Coalition Provisional Authority (CPA), which vested itself with executive, legislative, and judicial authority over the Iraqi government and ruled with an iron fist that exceeded by far the rights and duties of an occupying power¹. Bremer ruled by decree, ²thus suppressing opposition parties, movements, free speech, and individual liberties. His strategy had disastrous consequences.

Among Bremer's first decrees, on May 16, 2003, was the Coalition Provisional Authority Number 1, entitled "De-Ba`athification" of Iraqi society. Thousands of educated and experienced administrators were thrown out of work, without any relation to individual wrongdoings, which led to a situation where "problems with law enforcement and administration of justice appear chronic."³

¹ Compare Article 43, Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907, "The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country".
<http://www.icrc.org/ihl.nsf/full/195>

² He issued over 100 orders, memoranda and declarations and promulgated a new constitution

³ Compare the United Nations Assistance Mission for Iraq (UNAMI) report from June 2012
<http://reliefweb.int/sites/reliefweb.int/files/resources/ReportonhumanrightsinIraqJANJUN2012.pdf>

A week later, on May 23, 2003, Bremer issued Coalition Provision Authority Order Number 2⁴, entitled “Dissolution of entities” and dissolved a variety of organizations⁵: All employees were dismissed. Thousands of trained, armed, troops found themselves unemployed. Bremer’s harsh and comprehensive measures even surprised fellow countrymen, who warned that this would lead to an insurgency.⁶ Many of the newly appointed were ex-prisoners that had been released ahead of the invasion. A system of criminals was created, acting on a sectarian base.

In a next step Bremer went up against the judicial system. With Coalition Provisional Authority Number 7 and 15 he created the Central Criminal Court of Iraq and established the Judicial Review Committee, which had “the power to remove judges and prosecutors from office [...]”⁷. This committee dismissed around 50 % of all judges. Many of the newly appointed had been either dismissed in 2002 for corruption or had never practiced. This strategy ruined courts and legislation and seriously undermined the basic principles on the independence of the judiciary⁸.

Finally, on December 10, 2003, with the Provisional Authority Order Number 48⁹, Bremer created the Iraqi Special Tribunal (IST). This body proved to be corrupt and sectarian from the outset. The proceedings were an attempt to impose victors’ injustice on the Iraqi people, mainly aimed to capture the former President of Iraq and his allies and to ensure their execution¹⁰. Their arrest was even considered arbitrary by the working group on arbitrary detention.¹¹

From the very outset on the IST was subject of concern to many international bodies, among them the United Nations Working Group on Arbitrary Detention¹² and the Special Rapporteur (SR) on the independence of judges and lawyers¹³, Leandro Despouy, who from

⁴ Coalition Provision Authority Order Number 2, Dissolution of entities <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=country&category=&publisher=NATLEGBOD&type=&coi=IRQ&rid=&docid=4691f4d62&skip=0>

⁵ Among others he dismissed the Iraqi Special Court, military, the paramilitary, as well as several Ministries

⁶ Compare Sustainable Development Under Crisis Conditions: Challenges of War, Phillip J Cooper, Claudia María Vargas http://books.google.de/books?id=hKFkrCvkuwAC&pg=PA44&lpg=PA44&dq=%22Sustainable+Development+Under+Crisis+Conditions%22+iraq&source=bl&ots=_D2dDOQctI&sig=HRi_aMXO90ZRcuNVQis5mmp8JEA&hl=en&sa=X&ei=1bV3UbrSB-j24QSrr4Eo&ved=0CC8Q6AEwAA#v=onepage&q=%22Sustainable%20Development%20Under%20Crisis%20Conditions%22%20iraq&f=false

⁷ Coalition Provisional Authority Order Number 15, Establishment of the Juridical Review Committee <http://gjpi.org/wp-content/uploads/cpa-order-15.pdf>

⁸ The judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law.”

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx>

⁹ Coalition Provisional Authority Order Number 48, Delegation Of Authority Regarding An Iraqi Special Tribunal

http://www.loc.gov/law/help/hussein/docs/20031210_CPAORD_48_IST_and_Appendix_A.pdf

¹⁰ Compare Opinions adopted by the Working Group on Arbitrary Detention A/HRC/4/40/Add.1 <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/106/04/PDF/G0710604.pdf?OpenElement>

¹¹ The lack of independency and lack of security is reflected by the fact that many judges/ candidates have been selectively killed/ dismissed throughout the process. Compare Amnesty International, AI Doc. No. MDE 14/007/2005 (13 May 2005).

¹² Compare the Opinion of the Working Group 46/ 2005, stating that the trial is unfair and violates article 14 of the International Covenant of Civil and Political Rights.

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/106/04/PDF/G0710604.pdf?OpenElement>

¹³ Compare report A/HRC/4/25 from 18 January 2007

the very beginning expressed his reservations regarding its legitimacy.¹⁴ In 2007 he reiterated his concerns, saying that “in many respects the Statute of the Tribunal does not comply with international human rights standards”, further stating that “The death sentence imposed on several of the accused is of particular significance.”

Methods introduced by US-Forces

The methods and weakness of the judicial system in Iraq reflect the methods used by the US-Forces, who established the Special Police Commandos, set up secret prisons and reorganized the Ministry of Interior. Numerous reports indicate that US forces have witnessed extrajudicial executions, torture and abuse in detention centers like Abu Ghraib. The methods were so brutal that they drew condemnation even from the Pentagon.^{15 16}

The abuses in the criminal justice system are reflected in numerous UNAMI reports.¹⁷ US practices have thus been condemned world-wide and were subject to several reports, including the SR on the independence of judges and lawyers¹⁸. In June 2004 the Commission’s special procedures asked four Special Rapporteurs, including the Special Rapporteur on the independence of judges and lawyers, to visit as quickly as possible the persons detained for terrorist or other alleged offences in Iraq. A request was sent by the Special Rapporteur on the independence of judges and lawyers to the Iraqi authorities in 2008, but the request is still pending, although these Human Rights violations continue to exist.

Lack of due process, torture and death penalty

Even ten years after the invasion, the situation of the Iraqi juridical is disastrous and the United Nations Assistance Mission for Iraq (UNAMI) receives frequent reports alleging arbitrary arrest, denial of due process, torture and mistreatment. In 2011 UNAMI underlined its concerns at the lack of consistent respect for due process requirements for persons in detention¹⁹.

UNAMI confirmed that there is significant evidence of widespread mistreatment and torture. These allegations relate to abuses which take place at the time of arrest, during pre-trial detention and following conviction. Common techniques include beatings and death threats; handcuffing and suspension from iron bars; electric shocks; heated metal nails driven under finger nails; cigarette burns; suffocation with plastic bags over the head; deprivation of food, water and sleep; threats against family members.

¹⁴ Compare report E/CN.4/2006/52, 23 January 2006, by the Special rapporteur on the Independence of Justice and lawyers

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/103/82/PDF/G0610382.pdf?OpenElement>

¹⁵ The Guardian: Camp Nama: British personnel reveal horrors of secret US-base in Baghdad.

<http://www.guardian.co.uk/world/2013/apr/01/camp-nama-iraq-human-rights-abuses>

¹⁶ One of the main actors behind was James Steele, an US veteran from the „dirty war“

The Guardian - Revealed: Pentagon's link to Iraqi torture centers

<http://www.guardian.co.uk/world/2013/mar/06/pentagon-iraqi-torture-centres-link>

¹⁷ Compare UNAMI Report on human rights in Iraq, 2011: “Little progress was made in court proceedings in the United States against military personnel who had served in Iraq and who were charged with violations of the US Uniform Code of Military Justice (UCMJ)

<http://unami.unmissions.org/LinkClick.aspx?fileticket=uGUYVCu7UBs=&tabi>

¹⁸ compare report Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy E/CN.4/2005/60, 20 January 2005

¹⁹ http://www.ohchr.org/Documents/Countries/IQ/IraqUNAMI-OHCHR_HR_Report2011_en.pdf

The excessive use of death penalty in Iraq remains of urgent concern, despite all recommendations by the Special Rapporteur on the Independence of Judges and Lawyers, who “emphatically urged the Human Rights Council to ask the Iraqi authorities to stop applying the death penalty in trials that do not meet international standards.” In 2013 Iraq has become the country that executes more people than any other country.²⁰

Also the UN High Commissioner, Ms Navi Pillay expressed shock about the huge number of executions. She criticised the lack of transparency in court proceedings and called for an immediate suspension of the death penalty. Also the United Nation’s Special Rapporteur on extrajudicial, summary or arbitrary executions said on August 2012 that these executions were tantamount to arbitrary killing. Similar calls were made by the EU foreign policy chief, Catherine Ashton. In view of 33 executions in March 2013, Ms. Navi Pillay sharpened her tone, stressing that the judicial system in the country was “too seriously flawed to warrant even a limited application of the death penalty”²¹ and that “executing people in batches like this [...] is like processing animals in a slaughterhouse.”

Conclusion

The ten-year period in Iraq leading to 2013 was marked by all forms of deliberated, unnecessary and extreme damage that have permanently devastated the nation. Ten years after the invasion the people of Iraq live in a failed state, rife with corruption and brutality. The Iraqi judicial system is flawed and inhumane at all levels, beginning from the initial arrest of persons, over their detention conditions, methods of interrogation to their sentencing without trials and arbitrary execution. The Situation is the result of foreign intervention and reflects its method. Fighting impunity, bringing accountability and the restoration of justice for Iraq therefore should be the paramount and immediate task of the UN.

The NGOs signatories to this statement call on the United Nations in general and the Human Rights Council in particular to:

- Ensure that all human rights violations in Iraq during the sanction and the invasion and occupation be investigated by an international independent body.
- Undertake all measures possible to end the current state of impunity within Iraq and with regard to the culpability and responsibilities of the occupying powers.
- Appoint a UN Special Rapporteur for the Human Rights situation in Iraq.
- Request the High Commissioner to present to the Council a detailed report on the Human Rights violations in Iraq since 2003.

²⁰ UNAMI reports show the increase of death sentence implementations. In 2010 a total of 18 executions were carried out, followed by 67 in 2011 and 129 during in 2012. A total of 1,400 people are still on death row. In March 2013 Iraqi authorities executed 18 “political” prisoners over two days, a further four executions were carried out, bringing the known total to 22. In the case of the first 18 prisoners, it is believed that authorities carried out the executions in a show of power and to avenge the recent attack on the Iraqi Ministry of Justice in Baghdad, <http://unami.unmissions.org/LinkClick.aspx?fileticket=vzOhTQpHHF4%3d&tabid=3174&language=en-US>
<http://www.france-irak-actualite.com/article-18-prisonniers-politiques-executes-en-mars-a-bagdad-116595920.html>.

²¹ <http://unami.unmissions.org/Default.aspx?tabid=2790&ctl=Details&mid=5079&ItemID=1356246&language=en-US>

- Requests the Special Rapporteur on the independence of Justice and lawyers to re-include the topic of Iraq in her future reports and to insist with the Iraqi authorities to schedule the outstanding country-visit as soon as possible.

* BRussels Tribunal, Arab Lawyers Association- UK, Geneva International Centre for Justice (GICJ), Association of Humanitarian Lawyers (AHL), The International League of Iraqi Academics (ILIA), The Iraqi Commission on Human Rights (ICHR), Women Will Association (WWA), Organization for Widows and Orphans (OWO), Ikraam Center for Human Rights, Belgian Peace Movement, Ligue camerounaise des droits de l'homme, Monitoring Net of Human Rights in Iraq (MHRI), Women Solidarity for an Independent and Unified Iraq, Geneva Global Media Centre, International Coalition against War Criminals (ICAWC), Medical Aid for the Third World, Association of Iraqi Diplomats (AID), The African Association of Human Rights (AAHR), Protection of Human Rights Defenders in the Arab World, Moroccan Association for the Right to a Fair Trial, Americans Against the War (France), General Federation of Iraqi Women (GFIW), The International Action Center (IAC), American Worker, Association of Iraqi Intellectuals and Academics, The International Network of Arab Human Rights NGOs, America In Solidarity, Federacion De Mujeres Cubanas, Association of Victims of American Occupation Prisons, International Anti-Occupation Network (IAON), International Lawyers.org, International Society of Iraqi Scientists, The Perdana Global Peace Foundation, Kuala Lumpur Foundation to Criminalise War, Spanish Campaign against the Occupation and for Iraq Sovereignty- CEOSI, Arab Cause Solidarity Committee, Iraq Solidarity Association in Stockholm, El Taller International, World Courts of Women, Center for Development Studies- India, Wariscrime.org, Action Center for Justice, 1% A Peace Army.org, A Bigger Tent.org, Agir contre la guerre (France), American Voices Abroad (Berlin, Germany), American Voices Abroad Military Project (Europe), Anti War Fair, Arizona Christian Peacemakers, Armbands for Peace, Arms Against War, Artists Against the War, Backbone Campaign, Be the Change, Become Active, Bike for Peace (Germany), Bill of Rights Defense Committee, Bird Dogger Org., Children of Iraq Association (UK),Bloomington Peace Action Coalition (IN), Blue State News Only, Boston Mobilization, Bring Democracy Back, Bring Them Home,Butterfly Gardeners Association, Citizens for Accountability on Iraq, California for Democracy, Camp Casey Blog, Camp U.S. Strike for Peace Campaign, Campaign Against Sanctions and Military Intervention in Iran, Canada Watch, Carolina Peace Resource Center (SC), Cartoon Free America, Catalysts of Hope, Central Colorado Coalition on the Iraq War, Chester County Peace Movement (PA), Cindy Sheehan Org., Cities for Peace, Citizens for Legitimate Government, Citizens for Peace & Justice, Human Rights for all-Morocco, Christian Clergy For Impeachment.com, Clothing of the American Mind, Coalition Against Election Fraud, Coalition for Impeachment Now (COIN), Code Pink, the Iraqi Association for Human Rights (IAHR), Al-Basa'er Media Association, Consumers for Peace.org, Dhafir Trial.org, DC Anti-War Network.org, Democracy Action, Democracy for America Meetup (Birmingham, AL), The Democratic Activist, Democracy Rising.org, Democratic Underground, Human Resources (Tbilisi, Georgia), Democratic Renewal, Democrats.com, Earth Day.org, Earth Island Institute, East Cobb Democratic Alliance (Cobb County, GA), Eastern Long Island Democracy for America (NY), ECU Peace and Justice NC, Election Solar Bus, Environmentalists Against War, Envision a New America, Foundation for the Development of Fox Valley Citizens for Peace and Justice (IL), Global Exchange.org, Global Network Against Weapons & Nuclear Power in Space, Global Resistance Network, Gold Star Families for Peace, Grandmothers Against the War, Grandmothers for Peace, Grass Roots Impeachment, Grass Roots Impeachment Movement, Grassroots North shoreWI, Green Delaware, Hawaii CD-01 Impeachment Action Coalition, Historians Against the War, Honk to Impeach, Idriss Stelley Foundation, Impeach Bush Cheney, Independent Progressive Politics Network, Impeach Bush Coalition, Impeach Bush TV.org, Impeachbush-cheney.com, Impeach Central, Impeach for Peace - Marshall, TX, Impeachable Treason, Impeach Duh, Impeachment

Sunday, Inform Progressive Virginia, International Socialist Organization, Impeach Bush Cheney Net, Iraq Veterans Against the War, Iraq Veterans Against the War - Kansas City, Justice Through Music, Lake Merritt Neighbours Organized for Peace (Oakland, CA), Latinos for America, Leader of the Free Word - a great screen saver, Liberal Democracy Alliance, Liberal Kids, LIBERTY TREE Foundation for the Democratic Revolution, Los Angeles National Impeachment Centre, Louisiana Activist Network, Marijuana Policy Project, Massachusetts Impeachment Coalition, Men's Project for Peace, Michael Moore Online.org, Michigan Peace Works, Military Families Against the War (UK), Military Free Zone, Stop the War Coalition (Bedford, UK), Plataforma Aturem la Guerra (Stop the War Catalonia), Million Musicians March, Mission Not Accomplished, Montgomery County Progressive Alliance (MD), Musicians and Fine Artists for World Peace, Muslims for Peace (Australia), National Lawyers Guild - Chicago chapter, National Lawyers Guild - Detroit & Michigan chapter, Northeast Impeachment Coalition, North Jersey Impeach Group (NJ), Northeast Georgia Peace Corner Group (Helen, GA), Northwest Ohio Peace Coalition, Northwest Progressive Institute (Pacific Northwest US), Not in Our Name.org, Not in Our Name (Aotearoa, New Zealand), Nyack Impeachment Initiative (NJ), Ohio Progressive Action Coalition, One Global Community, Olympia Citizens' Movement to Impeach Bush/Cheney (WA), One Million Reasons, Operation Cease Fire, Operation Impeachment, Orange County Grassroots (CA), Out of Iraq, Out of Iraq Bloggers Caucus, Patrick Henry Democratic Club, Patriotic Pulse, Patriots for Gore, Peace Action, Peace Action Wisconsin, Peace and Accountability, Peace Drum, Peace Majority, Peace Movement Aotearoa (New Zealand), Peace Reso.org, Peninsula Peace and Justice Center (Palo Alto, CA), People's Campaign for the Constitution, People Powered Impeachment, People's Email Network, People's Glorious Five Year Plan, Picnic to Impeach, Pixel4Peace.org, Playing in Traffic, PledgeToImpeach.org, Political Cooperative, Politics and Art, Progressive Action Alliance, Progressive Action Center, Progressive Avenues, Progressive Democrats of America, Progressive Democrats of Hawaii Project Filibuster, Project for the OLD American Century, Refusing to Kill.org, Rescue Our Democracy, Sacramento for Democracy (CA), St Pete for Peace (FL), Sampsonia Way, San Diego for Democracy, School of the Americas Watch, Sheehan for Congress, South Florida Impeachment Coalition, South Mountain Peace Action (Maplewood & South Orange, NJ), Springs Action Alliance (CO), Stop the War Coalition (UK), Students for Impeachment, Students Towards a New Direction (STAND), Summit County Progressive Democrats (OH), The Known UnKnowns, The Politically Incorrect Cabaret, The Rational Response Squad, Think Blue Dems, Time for Accountability, Toronto Coalition to Stop the War (Canada), Torture Abolition and Survivors Support Coalition International, True Blue Liberal.org, Trumansburg Impeachment (NY), Truth Empowered, Truthtelling Project, UC Nuclear, Underground Action Alliance, Unitarian Universalist Peace and Justice Group (Nantucket, MA), United Blue USA, United for Veterans (Wayne, MI), United Progressives, Upbeat Defiance, US Peace Memorial, US Tour of Duty: Iraq Veterans and Military Families Demand the Truth, Velvet Revolution, Vet Gulf March, Veteran Intelligence Professionals for Sanity, Veterans for Peace, Chapter 27, Virginia Grassroots Coalition, Voters for Peace, We the People for Peace, We the People Network, We the People Now, We The People United Bangladesh.org, Peace Surge, Peace and Justice Action League of Spokane (WA), Stop the War (UK), U.S. Peace Council, World Can't Wait.org, World Prout Assembly, Komite Internazionalista- Basque, Asociación Paz, Igualdad y Solidaridad Internacional, Arab Cause Solidarity Committee, Iraq Solidarity Association in Stockholm, Málaga, Spain, Stop Fascism Action Network, The Asian Jurists Centre, Association of Human Rights Defenders in Iraq (AHRDI), The African Center for Human Rights (ACHR), Veterans for Peace, Your Declaration of Independence.org, Arab Lawyers Network-UK, Conservative Centre of Environmental & Reserves in Fallujah (CCERF), Willie Nelson Peace Research Institute, Studies Centre for Human Rights and Democracy, The Iraqi Centre for Human Rights, Association internationale des droits de l'homme, NGOs without consultative status, also share the views expressed in this statement.