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Islamic Human Rights Commission

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The Islamic Human Rights Commission is an NGO in special consultative status with the United Nations Economic and Social Council.

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Executive Summary.

In this submission, the Islamic Human Rights Commission provides information under sections B, C and D as stipulated in the General Guidelines for the Preparation of Information under the Universal Periodic Review. Under section B, the Islamic Human Rights Commission gives background information which undermines the human rights framework in Iraq. Under section C, the Islamic Human Rights Commission raises concern in relation to arbitrary arrest and incommunicado detention, detention without charge or trial, unfair trial, detention beyond expiry of sentence, torture and other ill-treatment. Under section D, the Islamic Human Rights Commission makes a number of recommendations for action by the government to address the areas of concern.

B. Normative and Institutional framework of Iraq.

1. Iraq has made some progress in the field of human rights last year, but this progress remains seriously undermined by the human rights framework and deep rooted patterns of human rights violations.

Background:

2. The human rights framework in Iraq is undermined not only by weak adherence to international human rights obligations and also Iraq's criminal justice process fails to meet the most basic standards of fairness and prisoners' rights.

3. Attacks on civilians, including children continued by the US-led Multinational Force (MNF) against insurgents throughout the country. MNF operations also continued against Shia and Sunni insurgents throughout the country, leading to thousands of civilian casualties.¹

4. The Iraqi authorities as well as the MNF have held thousands of detainees; some detainees have spent years in custody without charge or trial. Government security forces, including prison guards, have been reported to have committed torture and rape.

¹ UNAMI, human rights report. July to December, 2007 report. Available at: http://www.uniraq.org/documents/double_quarterly_1july-31dec2007_engl.pdf

5. According to the United Nations Assistance Mission for Iraq (UNAMI), widespread torture and abuses of detainees in the detention facilities is of great concern.² In October 2007, officials from the United Nations Assistance Mission for Iraq (UNAMI) reported that detainees had been hung by their limbs, subjected to electric shocks, forced to sit on sharp objects, and burned by their jailers.³

Justice system and impunity

6. The Central Criminal Court of Iraq (CCCI)⁴ established by the US-led Coalition Provisional Authority (CPA), seriously failed to meet international standards of due process and fair trial. The CCCI was established to encompass the task of coping with the country's security related cases under the framework of the Iraqi constitution and Iraqi penal code. Far from serving as a model criminal justice institution, it is accused of gross human rights violations which seriously undermine its legitimacy and credibility. It not only allows for prolonged detention of suspects without charge or trial but also suspects have no rights to challenge in court the legality of their detention or to lodge complaints against a ruling.⁵

7. A related concern is the jurisdiction of the CCCI. As MNF refers only a small number of detainees to the CCCI. Hence the CCCI does not have any jurisdiction over individuals taken into custody by the US-led Multinational Force in Iraq (MNF). This weakness in human rights protection is exacerbated by the jurisdiction of the CCCI, which despite being established by the US-led Coalition Provisional Authority (CPA), falls far short of international standards governing procedures for arrest, detention and trials as well as prisoners rights. The MNF have extensive powers to detain suspects, and deny them the most basic of rights with impunity. Thus the CCCI has failed to provide basic assurance of fairness, undermining the concept of a national justice system serving the rule of law.

² UNAMI, human rights report. Januray to June 30, 2008 report. Available at http://www.uniraq.org/documents/UNAMI_Human_Rights_Report_January_June_2008_EN.pdf

³ *ibid*

⁴ Countries Criminal Justice Institution, command greater resources and broader authority than any other criminal justice institution.

⁵ For details see www.ihrc.org

C. Promotion and protection of human rights on the ground

Arbitrary arrests and detentions-

8. Government critics, security suspects and professionals are commonly subject to arbitrary arrest and detention for indefinite periods of time either by Iraqi forces or Multinational forces.

9. Among those targeted recently because of their profession is Bilal Hussein, a well known photographer, who won the Pulitzer prize for photography. Mr Hussein was arrested by US forces from his apartment in Ramadi, capital of Iraq's Anbar province on 12 April 2006, for '*imperative reasons of security*' and was accused of collaborating with insurgents. He was kept blindfolded for nine days and was reportedly interrogated 32 times during 12 April 2006 to 19 May 2009. The authorities requested him to become an informant for the US army and were offered an increased salary as well. He was told '*your photos pose a threat to us*', but he reportedly refused because of his commitment to his profession, to the AP and to the country.

10. After nearly 20 months of detention, in accordance with the Iraqi law, the magistrate will review the material presented as evidence against Mr. Hussein by the US military and will then determine whether he should stand trial before a panel of judges.

The US military claimed that they had substantial evidence proving that Mr. Hussein was involved in insurgent activity; however they never revealed it to Mr. Hussein or to his attorney until the court hearing on 09 December 2009. According to the AP's own investigation into Mr. Hussein's case, all allegations made by the US military against Mr. Hussein do not prove that he was involved in any kind of terrorist- related activities. The AP believes that Mr. Hussein is being targeted because of his journalistic activity in Ramadi.

11. According to the MNF press release on 14 April 2008, "--on the decision to release Bilal Hussein, an Associated Press photographer held by US forces for two years over alleged links to insurgents. Hussein's case was referred to the CCCI in December 2007 and he received amnesty in April 2008. The statement cited the head of MNF Detainee Operations as saying 'the MNF-1 determination in Hussein's case was based on specific information in the file, as well as improvements in the security situation that have lessened the threat posed by a release in this case,' adding, "The Amnesty law, by its own

terms, applies only to criminal cases before Iraqi courts, and does not apply to those persons detained in Coalition custody as security detainees---⁶

12. According to the CPJ research, Bilal's case is not an isolated incident. Instead, over the last three years, dozens of journalists mostly Iraqis, have been detained by US troops. Most of those held have been released after short periods, however, at least eight cases documented by CPJ Iraqi journalists have been held for weeks or months without charge or conviction.

13. The violation of detainee's rights is so systematic in Iraq not only by the Iraqi forces but also by the US Multinational force. This is very much clear in one of the cases reported to the Islamic Human Rights Commission regarding a British citizen, Mohammed Hussein, who has been detained in Najaf since January 2007 upon allegations of belonging to the Iraqi insurgents group.

14. Mr. Hussein went to Iraq with his family for the sole purpose of visiting his ill mother in Najaf. After the armed conflict near Najaf between US-backed Iraqi forces and insurgents, in which many people were massacred, Mr. Mohammed Hussein was arrested with his family. According to the communication received by the Islamic Human Rights Commission from the Foreign Office in London, full consular support in Mr. Hussein's case is not possible as he is a dual national, having both Iraqi and British citizenships. However, it is important to note that Mr. Hussein does not possess an Iraqi passport and has always travelled under British identity documents, hence he cannot be considered an Iraqi national officially. The FCO has requested the Red Crescent to visit Mr. Hussein but that has not been possible owing to the security issues in Iraq. Being a British citizen Mr. Hussein requires immediate and safe return to the UK. ⁷

Unfair trials and detention beyond expiry of sentence.

15. According to the information available to the Islamic Human Rights Commission, the trials of detainees fall far short of the most basic standards for fair trial. Detainees lack the basic facility to have access to a lawyer. In some cases the detainees are reported to have

⁶ Operation Iraqi Freedom. Press Release. 14 April 2008. Available at: http://www.mnf-iraq.com/index.php?option=com_content&task=view&id=18464&Itemid=128

⁷ Details are available at Islamic Human Rights Commission website. www.ihrc.org

served their sentences, but have remained in detention apparently without further charges being brought against them.

Torture and other ill-treatment.

16. In addition to the secrecy and denial of detainee's basic rights, torture and ill-treatment of detainees is systematically practised in Iraq. This pattern of gross human rights violation is facilitated and perpetuated by Iraqi and US led Multinational forces.

17. The most common methods of torture and other ill-treatment used by the security forces as reported to the Islamic Human Rights Commission include severe beatings with sticks, punching, pulling nails out and twisting arms.⁸

D. Recommendations.

The Islamic Human Rights Commission recommends to the government of Iraq to:

- Implement without delay the law which disallows confessions that have been obtained through torture so that they are brought into line with international human rights standards.
- Charge all detainees with a recognisable criminal offence according to the international human rights law and bring them to trial in accordance with international standards
- Ensure that all allegations of torture and other ill-treatment are thoroughly and impartially investigated, alleged perpetrators are prosecuted, and that any statement that may have been extracted under torture is not used as evidence in the criminal proceedings.
- Ensure that persons taken into custody are brought before an investigative judge within 24 hours of arrest according to the Iraq's Criminal Procedure Code.
- Implement the general recommendations of the UN Committee against Torture. Fulfil obligations as a state party to the Convention against torture.
- The US-led Multinational Force (MNF) should transfer all the detainees to the legal jurisdiction of the Iraqi courts.

⁸ Ibid