

Iraq

The human rights situation in Iraq remained grave in 2004, aggravated by increased armed attacks by insurgents and counterinsurgency attacks by U.S.-led international and Iraqi forces. Both U.S. forces and insurgents have been implicated in serious violations of the laws of armed conflict, including war crimes.

The level of violent attacks on civilians by insurgents, including suicide bombings and the deliberate killing of Iraqi civilians working with U.S. and other foreign forces, remained high in 2004. There was also a marked increase in the number of abductions, and in some cases killings, of both Iraqi and foreign nationals. This high level of insecurity had a particularly negative impact on the ability of women and girls to go to jobs, attend school, or otherwise move outside the home.

U.S. forces have also been responsible for violations of the laws of war. The photographs from Abu Ghraib prison of torture and other mistreatment of detainees, made public in April 2004, provided the most graphic evidence of abuse; further investigations revealed that abuses against detainees were not limited to Abu Ghraib. Security considerations have limited monitoring of U.S. military operations against insurgent strongholds, but reports have emerged of U.S. soldiers killing incapacitated Iraqi combatants, forcing civilians back into battle zones, and using unnecessary force against civilians at checkpoints. U.S. forces continue to detain hundreds of Iraqis on the basis of Security Council authorization but in accordance with no evident law.

In the aftermath of the U.S.-led invasion of Iraq and the overthrow of the Ba'athist government in April 2003, the occupying power and interim government have worked to dismantle the repressive apparatus erected under Saddam Hussein. The U.S.-led coalition's failure to provide adequate security following the invasion, the expansion of the insurgency, and insurgent attacks on humanitarian agencies have seriously impeded this process and efforts at economic reconstruction.

Iraq continues to face the legacy of nearly three decades of authoritarian rule by Saddam Hussein and his Ba'athist government. The legacy includes crimes against humanity, war crimes, and genocide that have long gone unpunished; and a criminal justice system atrophied due to its subordination to the state security apparatus and corrupted by "revolutionary courts" that made extensive use of the death penalty, torture, and arbitrary detention. Many of the victims of the former government were Kurds, an ethnic minority, and Shi'a, the religion of the Iraqi majority. Government policies and comprehensive economic sanctions imposed by the United Nations Security Council left the country's infrastructure and economy devastated.

The Governing Authority in Iraq

Following the declared end of occupation by U.S.-led coalition forces and the dissolution of the Coalition Provisional Authority (CPA) on June 28, 2004, the U.S.-led coalition transferred sovereignty to the Interim Iraqi Government. U.S.-led forces have remained in Iraq under the authority of U.N. Security Council Resolution 1546, adopted on June 8, 2004, creating the Multi-National Force-Iraq (MNF-I). The resolution gives the MNF-I “the authority to take all necessary measures to contribute to the maintenance of security and stability in Iraq,” working with the interim government.

With the transfer of sovereignty, the Law of Administration for the State of Iraq for the Transitional Period (TAL) came into effect. The TAL was promulgated by the CPA on March 8, 2004, and is due to remain in effect until “the formation of an elected Iraqi government pursuant to a permanent constitution,” envisaged for the end of 2005 following general elections. The TAL contains a bill of rights for Iraqi citizens, including the right to freedom of expression and association, religious beliefs, and freedom from discrimination on ethnic, religious or other grounds. The law also stipulates that all citizens are equal before the law, and enjoy freedom from arbitrary arrest and unlawful detention, unfair trials and torture.

Internal Security and Emergency Law

In June 2004, Prime Minister Ayad Allawi announced a major reorganization of Iraqi security forces, including the creation of new agencies with responsibility for intelligence gathering and for law enforcement. An Iraqi National Intelligence Service had already been set up under CPA authority in April 2004, initially reporting to CPA Administrator L. Paul Bremer and subsequently to the prime minister. Several Ministry of Interior agencies were also reorganized and expanded under the CPA with responsibility for investigating serious criminal offenses—such as money laundering, abductions, and organized crime—as well as gathering intelligence on criminal activity.

On July 3, 2004, the interim government passed the Order for Safeguarding National Security (Number 1 of 2004), introducing emergency legislation to the statute books and enabling the prime minister to declare martial law for up to sixty days (renewable with the approval of the Presidency Council). The Order provides for the imposition of curfews; the closure of roads, sea lanes, and airspace; restrictions or bans on public gatherings; surveillance of electronic and other communications; and wide powers to search property and to detain suspects.

Under the Public Safety Law, a state of emergency may be declared “upon the exposure of the people of Iraq to a danger of grave proportions, threatening the lives of individuals and emanating from an ongoing campaign of violence by any number of people, for the purpose of preventing the establishment of a broad based government in Iraq, or to hinder the peaceful participation of all Iraqis in the political process, or for any other purpose” (Article 1.)

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In announcing the Order, Iraqi officials pointed to provisions requiring that persons may not be arrested except upon the issuance of arrest warrants from the judicial authorities, and would be brought before an investigative judge within twenty-four hours. The law, however, does provide for such arrests or searches without warrant in “extreme exigent circumstances,” which are not defined. On November 7, 2004, the Prime Minister declared a state of emergency for a period of sixty days on the eve of a U.S.-led military offensive on the town of al-Falluja, targeting suspected insurgents believed to be based there.

As part of the declared intention to crack down on violent crime, the interim government reintroduced the death penalty, which had been suspended by CPA authorities. Order 3 of 2004, passed on August 8, provides capital punishment for certain crimes affecting internal state security, public safety, attacks on means of transportation, premeditated murder, drug trafficking, and abduction.

Several days prior to the reintroduction of the death penalty, Prime Minister 'Allawi announced an amnesty for a range of offenses connected with the possession of weapons and explosive devices, the failure to inform authorities about the planning or financing of terrorism or other acts of violence, participation with terrorist groups in acts intended to undermine internal state security or public welfare and property, and the giving of refuge to persons sought by the judicial authorities for terrorist or violent crimes or in connection with crimes perpetrated by the former Iraqi government. Order No. 2/2004 excludes from the terms of the amnesty those found guilty of murder, abduction, rape, robbery, and harming or destroying public or private assets. It also limited those benefiting from its terms to Iraqi nationals who committed the said crimes between May 1, 2003, and the date of the law coming into force. The amnesty, initially valid for a thirty-day period, was extended for an additional month in mid-September 2004. It is not known how many people have benefited.

The Criminal Justice System

Following the fall of the Saddam Hussein government, Iraq's criminal courts began functioning again around June 2003, but have had to rely on an outdated and deeply flawed legal framework pending comprehensive reform of Iraq's judicial system and criminal laws.

Human Rights Watch observed numerous trials and investigative hearings during 2003 and 2004 involving suspects charged with various offenses under the Penal Code of 1969 before the ordinary criminal courts in Baghdad as well as the Central Criminal Court of Iraq (CCCI). The latter court was set up in July 2003 under CPA authority to hear cases involving serious felonies such as terrorism, organized crime, governmental corruption, acts intended to destabilize democratic institutions or processes, and violence based on race, nationality, ethnicity, or religion. Defendants brought before the CCCI include those charged with attacks against U.S.-led coalition forces and those who currently remain in MNF-I custody. The court also has jurisdiction over future cases involving suspects arrested and charged in accordance with July 3, 2004 national security order described above.

In the vast majority of cases observed by Human Rights Watch, defendants had been detained without judicial warrants and were brought before the criminal courts without having had prior access to defense counsel. Many of them had been held for weeks or months in pre-trial detention, and in some cases had been tortured or ill-treated to extract confessions from them. Where defendants were unable or unwilling to engage lawyers to act on their behalf, the courts appointed lawyers for them. However, such lawyers did not have prior access to the defendants nor to the evidence against them, and in some cases, lawyers were not present at investigative hearings. Trials before the criminal courts were summary, lasting less than thirty minutes in the majority of cases.

Accountability for Past Crimes

The Statute of the Iraq Special Tribunal, promulgated under the CPA by the Iraqi Governing Council in December 2003, contains serious substantive and procedural shortcomings that, independent of questions of how the tribunal was established and other factors, could undermine the legitimacy of the tribunal and the fairness of future trials.

Among other problems, the tribunal law contains no prohibition on using confessions extracted by torture, no right of access to a lawyer in the early stages of investigation, and no requirement that guilt be proven beyond a reasonable doubt. Those convicted can face the death penalty. And while justice efforts worldwide have created a cadre of judges and prosecutors with invaluable experience prosecuting genocide and crimes against humanity, the tribunal has been structured to almost entirely exclude their participation. Instead, the tribunal is to be run by lawyers and judges who have acknowledged their own lack of experience in complex prosecutions of this kind.

Human Rights Watch has raised these matters with Iraqi and U.S. officials and called for key amendments to be introduced to the law to bring it into line with international fair trial standards. To date the tribunal law has not been amended.

Since the end of June 2004, the MNF-I has retained physical custody of “high value detainees,” among them members of the former Iraqi government who will eventually be tried before the Iraq Special Tribunal. At this writing, over ninety such persons remained in detention and most are believed to be held at Camp Cropper in the vicinity of Baghdad International Airport. To date, only twelve of the defendants have been arraigned, among them former president Saddam Hussein, under the jurisdiction of the Central Criminal Court of Iraq, for crimes punishable under Iraq’s Penal Code.

Key International Actors

The United States, in the aftermath of the war to overthrow the former government, remains the preeminent external power in Iraq. At this writing, 138,000 U.S. active-duty troops were based in the country, engaged in counterinsurgency operations and reconstruction efforts. There is a large and growing U.S. embassy in Baghdad, and numerous U.S. companies are operating in the country under contract with the U.S. government. The United Kingdom is the primary military and political ally in the

U.S.-led coalition, with a troop presence of around 8,500 mainly in the southern part of the country. Other countries with a military presence in Iraq include Italy (2,700), Poland (2,500), South Korea (3,600), and the Netherlands (1,400).

Following public release of photos showing U.S. forces abusing detainees at Abu Ghraib prison (*see* Introduction), the U.N. working group on arbitrary detention and U.N. special rapporteurs on torture, independence of judges and lawyers, and right to health made a joint request on June 25, 2004 to visit all places in Iraq where terror suspects are held.

In the wake of attacks against United Nations headquarters and personnel, and against humanitarian agencies generally, the U.N. has had a limited presence in Iraq. The general deterioration in security conditions has induced many non-Iraqi nongovernmental organizations to pull out their international staff from Iraq or to close down their operations completely. Many foreign journalists, several of whom have been targeted for abduction, also have pulled out of Iraq. By late 2004, security conditions prohibited those who remained from traveling to conduct investigations, apart from “embedded” assignments with U.S. forces engaged in attacks against suspected insurgents.