

# **The New Iraq?**

## **Torture and ill-treatment of detainees in Iraqi custody**

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## Summary

Iraq is in the throes of a significant insurgency in which the Iraqi police and other security forces are prime targets. The threat to the lives of police is real. In just the last four months of 2004, approximately 1,300 Iraqi police and scores other Iraqi security forces have died at the hands of insurgents. This insurgency is occurring against a backdrop of general insecurity within Iraq that began soon after U.S.-led forces captured Baghdad and Saddam Hussein's government crumbled. The United States and its allies chose to stand by as widespread looting – driven by a multitude of motives – engulfed Baghdad and other Iraqi cities and towns.

The initial days following the fall of the Saddam Hussein government set the tone for what turned out to be a devastating and violent occupation and political transition. Common criminals terrorize Iraqis with kidnappings and extortion schemes. Insurgents daily target vulnerable civilians, as well as military targets, with suicide bombers and roadside bombs. Revenge killings started slowly but grew to be virtually daily events with perceived Ba'hist supporters, and later those identified as supporting the U.S.-led occupation, caught in the crosshairs. Cities once cited as evidence of the success of the U.S. led coalition's occupation such as Mosul have become bloody battlegrounds. U.S.-led military operations against insurgent forces have resulted in unknown numbers of civilian casualties and destroyed property.

During the U.S.-led military occupation following the fall of Baghdad, the United States and the United Kingdom, in accordance with the 1949 Geneva Conventions, had primary responsibility for the terms of detention, conditions of detention, treatment of detainees, and due process and fair trial protections of both captured insurgents and suspected common criminals. Thousands of Iraqis were detained, and most released, during this period. Following the transfer of sovereignty on June 28, 2004 under Security Council resolution no. 1546, the so-called Multinational Force-Iraq (essentially U.S. forces and its allies) have maintained responsibility for the apprehension and detention of captured insurgents and other security detainees, including "high value detainees" such as Saddam Hussein and former government officials and foreign terror suspects. The Iraqi Interim Government has assumed responsibility for the detention and prosecution of common criminal suspects and insurgents apprehended by Iraqi security forces.<sup>1</sup>

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<sup>1</sup> The Iraqi authorities, in the form of the Iraqi Interim Governing Council (IGC), began taking responsibility for detainees within the criminal justice system in September or October 2003, taking into their custody individuals accused of so-called "Iraqi-on-Iraqi" crimes.

Considerable international attention has rightly focused on torture and other abuse inflicted on detainees by U.S. forces at Abu Ghraib and other detention facilities in Iraq. Accountability for these violations, and confidence that they are no longer occurring, has not been achieved. At the same time, far less attention has been focused on the treatment of persons in the custody of Iraqi authorities. In its February 2004 report to the U.S. government on conditions in 2003, the International Committee of the Red Cross (ICRC) found that Iraqi authorities had “allegedly whipped persons deprived of their liberty with cables on the back, kicked them in the lower parts of the body, including in the testicles, handcuffed and left them hanging from the iron bars of the cell windows or doors in painful positions for several hours at a time, and burned them with cigarettes (signs on bodies witnessed by ICRC delegates). Several persons deprived of their liberty alleged that they had been made to sign a statement that they had not been allowed to read.”<sup>2</sup> Public follow-up on this issue has been insufficient.

This report details serious and widespread human rights violations by Iraqi police against national security suspects, including insurgents, and suspected common criminals since late 2003. As of mid-2004, Iraqi intelligence forces also committed serious violations, principally against members of political parties deemed to constitute a threat to state security.

Human Rights Watch investigations in Iraq found the systematic use of arbitrary arrest, prolonged pre-trial detention without judicial review, torture and ill-treatment of detainees, denial of access by families and lawyers to detainees, improper treatment of detained children, and abysmal conditions in pre-trial detention facilities. Trials are marred by inadequate legal representation and the acceptance of coerced confessions as evidence. Persons tortured or mistreated have inadequate access to health care and no realistic avenue for legal redress. With rare exception, Iraqi authorities have failed to investigate and punish officials responsible for violations. International police advisers, primarily U.S. citizens funded through the United States, have turned a blind eye to these rampant abuses.

The Iraqi Interim Government, led by Prime Minister Ayad ‘Allawi and presented to the international community as a sign that the violence and abuses of the Saddam Hussein

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<sup>2</sup> International Committee of the Red Cross, *Report of the International Committee of the Red Cross (ICRC) on the Treatment by the Coalition Forces of Prisoners of War and Other Protected Persons by the Geneva Conventions in Iraq During Arrest, Internment and Interrogation*, February 2004, p. 16. This report, which has not been released by the ICRC, was reportedly leaked by a U.S. official to the media after the Abu Ghraib scandal broke in May 2004. Several of the detention facilities cited in the ICRC report in connection with the abuse of inmates were among those from where Human Rights Watch also received similar allegations, including the Major Crimes Directorate and police stations in al-Dora, al-Bayya’, al-Qanat and al-Salhiyya.

government are a thing of the past, appears to be actively taking part, or is at least complicit, in these grave violations of fundamental human rights. Nor has the United States, the United Kingdom or other involved governments publicly taken up these issues as a matter of concern.

Human Rights Watch recognizes the enormous difficulties inherent in reconstituting a police force in Iraq today, where prevailing security conditions affect all aspects of life and new police recruits are among the prime targets of attack. Those involved in law enforcement additionally have to contend with the legacy of the Saddam Hussein government, whose human rights record stood out as being among the worst anywhere. Iraq nonetheless remains bound by its obligations under international law. International law is unambiguous in that no government -- not Saddam Hussein's, not the occupying powers and not the Iraqi Interim Government -- can justify ill-treatment of persons in custody in the name of security. International human rights agreements to which Iraq is a party, most notably the International Covenant on Civil and Political Rights (ICCPR), ensures basic protections for persons even in the midst of emergencies now faced by Iraq.<sup>3</sup>

Human rights law recognizes that respect for rights and the rule of law cannot be built on fresh abuses. A new Iraqi government requires more than a change of leadership; it requires a change of attitude about basic human dignity. The new authorities must state unequivocally and publicly that the torture and ill-treatment of detainees will not be tolerated. Equally, it must be made clear to law-enforcement personnel, many of whom held the same jobs under the previous government at a time when torture was the norm, that such abuses are no longer acceptable and will not go unpunished. The current Iraqi authorities have failed to deliver this message, as have their international advisers in assisting them to assume that responsibility. In allowing such abuses to go unchecked while continuing to give absolute priority to bringing the security situation under control, it may prove very difficult further down the line to deliver a police force that the Iraqi people can have confidence in, threatening the ultimate aim of lasting security where basic human rights are respected.

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<sup>3</sup> Article 4 of the ICCPR is explicit: during a state of emergency, states parties may not derogate from the prohibition on torture and other cruel, inhuman or degrading treatment, among other fundamental rights. It reads: "1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin. 2. No derogation from articles 6, 7 [torture and cruel, inhuman or degrading treatment], 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision." Iraq ratified the ICCPR in 1971.

## I. Introduction

Since the appointment of the Iraqi Interim Government in June 2004, Iraqi officials have stated on many occasions that respect for human rights and the rule of law remains a priority, and that tough measures to bring the security situation under control and to reduce the level of violent crime would remain consistent with international human rights standards. The findings of Human Rights Watch's research has shown otherwise, and led to the conclusion that under the banner of bringing security and stability across Iraq, tolerance of the abuse of detainees by government agencies remains high.

On the basis of research conducted in Iraq from July to October 2004, Human Rights Watch found that the abuse of detainees by the Iraqi police and intelligence forces has become routine and commonplace. The police and intelligence services conduct arrests without warrants issued by an appropriate judicial authority,<sup>4</sup> frequently on the basis of information provided by "secret informants" from within the police force. Many persons reported being beaten at the time of their arrest and being very tightly bound in handcuffs or tightly blindfolded. Contrary to the provisions of Iraq's Code of Criminal Procedure (CCP), which requires a defendant to be brought before an investigating judge within twenty-four hours of arrest,<sup>5</sup> the vast majority had been held without appearing before a judge for far longer – in some cases for almost four months.

The majority of the detainees interviewed for this report stated that torture and ill-treatment during the initial period of detention was commonplace in facilities under the jurisdiction of the Ministry of Interior's specialized police agencies. Methods of torture or ill-treatment cited included routine beatings to the body using a variety of implements such as cables, hosepipes and metal rods. Detainees reported kicking, slapping and punching; prolonged suspension from the wrists with the hands tied behind the back; electric shocks to sensitive parts of the body, including the earlobes and genitals; and being kept blindfolded and/or handcuffed continuously for several days. In several cases, the detainees suffered what may be permanent physical disability.

Conditions of pre-trial detention are poor. Detainees reported receiving little or no food or water for several days at a stretch, and being held in severely overcrowded cells with no room for lying down to sleep, without air conditioning, and in unhygienic conditions.

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<sup>4</sup> Code of Criminal Procedure (CCP), No. 23 of 1971, as amended, Article 92. The Coalition Provisional Authority (CPA) amended the CCP at various times since April 2003.

<sup>5</sup> CCP, Article 123.

Many detainees also reported being beaten at the time of their arrest and being very tightly bound in handcuffs or tightly blindfolded.

There is little protection from self-incrimination. In many high profile cases, detainees reported that Ministry of Interior officials invited journalists to photograph them and show their photographs in local newspapers or on television. The press commonly labeled them as “criminals” before any preliminary investigations had taken place. Another very common complaint made by such detainees is that police interrogators made them sign statements without being informed of their content or having the opportunity to read them beforehand. They frequently reported that they were forced to sign or fingerprint such statements while blindfolded, often at the end of an interrogation session during which they were physically abused. Having undergone such treatment, in many such cases followed by Human Rights Watch through the courts, investigative judges released the detainees upon questioning because of insufficient evidence (see Section VII).

Corruption is a major impediment to respect for basic rights. One of the most common complaints made by detainees was of police officials threatening them with indefinite detention if they failed to pay them sums of money. The vast majority interviewed by Human Rights Watch said that extortion was rife, and that the refusal or inability to pay such bribes resulted in the detainees remaining in custody until they were eventually referred to court, or released without charge, often several weeks later: “The real criminals, who are able to pay with the proceeds of their crimes, get out, while the poor ones remain behind” was a constant theme running through the accounts recorded by Human Rights Watch.<sup>6</sup>

Officials at detention facilities routinely denied relatives and defense counsel access to detainees. Although several detainees said they had seen lawyers coming into their cell to talk to others held with them, this appeared to be the exception rather than the rule. Friends or relatives who were able to gain access to detainees, again the exception rather than the rule, told Human Rights Watch that they secured such access only through the payment of bribes to police officials, or through highly-placed connections, or both. Instances of access as recorded by Human Rights Watch only applied to the Major Crimes Directorate facility in al-‘Amiriyya, one of the main pre-trial detention facilities.

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<sup>6</sup> The amounts that interrogators or other police officials allegedly demanded ranged from one hundred U.S. dollars to as much as several thousand dollars, well beyond the means of most Iraqis today. Some of those interviewed told Human Rights Watch that sometimes there followed a negotiating process, whereby the sums demanded were reduced and/or asked for in Iraqi dinar equivalents. Since sovereignty transfer in late June 2004, the exchange rate for one U.S. dollar has averaged between 1.40 to 1.46 Iraqi dinars.

The organization was unable to find any instances where either legal counsel or relatives of detainees were able to gain access – even through illicit means – to other detention facilities under Ministry of Interior jurisdiction, notably those located within the ministry’s compound.

There is little indication that any serious measures have been taken to enforce existing laws and put an end to these practices. Human Rights Watch is aware of only a handful of cases in which investigations into allegations of torture or ill-treatment by Iraqi law enforcement personnel resulted in the conviction of the perpetrators, and none of those convicted received prison time. An official acknowledgment that police had carried out arrests without warrant came from the minister of interior in response to questions asked by several members of the Interim National Assembly in its October 18, 2004 session: the press quoted Interior Minister Falah al-Naqib as saying that, “There were mistakes in arresting some people without a warrant according to the law, and we will work hard to stop it.”<sup>7</sup> Human Rights Watch was not aware of criminal proceedings that the Iraqi Interim Government may have since commenced with regard to the offending officials or of measures adopted to prevent future recurrence.

The vulnerability of detainees held by the Ministry of Interior’s specialized agencies is compounded by the Ministry’s unwillingness to institute reforms promulgated by the Coalition Provisional Authority (CPA).<sup>8</sup> In June 2003 the CPA transferred responsibility for the management of all detention and prison facilities previously under the jurisdiction of the Ministry of Labor and Social Affairs and the Ministry of Interior to the Ministry of Justice.<sup>9</sup> Accompanying the order that introduced this change was an Implementing Memorandum that set out basic standards for the operation of all such facilities, regulating matters including conditions of detention, medical services, discipline and punishment, complaints by prisoners, and inspection of facilities.<sup>10</sup> To

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<sup>7</sup> “Sacking of crusading judge fans concerns over Iraq rights record”, *Agence France Presse*, October 18, 2004.

<sup>8</sup> In accordance with Article 26(A) of the Transitional Administration Law (TAL), “Except as otherwise provided in this Law, the laws in force in Iraq on 30 June 2004 shall remain in effect unless and until rescinded or amended by the Iraqi Transitional Government in accordance with this Law.” Just prior to sovereignty transfer, the CPA Administrator transferred authority over the Iraqi prison system to the minister of justice (CPA/ORD/28 June 2004/100: Transition of Laws, Regulations, Orders, and Directives Issued by the Coalition Provisional Authority). Section 6(2) of CPA Order 100 stated that “... the minister of justice shall remain in full control of the Iraqi prison system and shall report periodically to the Prime Minister regarding the status of the Iraqi prison system....” To Human Rights Watch’s knowledge, no further amendments to legislation introduced by the CPA relating to the management of prison and detention facilities have since been made.

<sup>9</sup> CPA/ORD/8 June 2003/10 (Management of Detention and Prison Facilities).

<sup>10</sup> CPA/MEM/8 June 2003/02 (Management of Detention and Prison Facilities). Under Section 14(5) of the Memorandum, ICRC delegates shall be granted access “whenever sought,” giving them authority “to inspect health, sanitation and living arrangements and to interview all detainees in private,” as well as to pass messages to and from the families of the detainees.



Human Rights Watch's knowledge, these regulations are not applied in practice to the facilities controlled by the Ministry of Interior, which continues to run a parallel system of detentions beyond the reach of Ministry of Justice officials and inspectors.

The U.S. government has devoted considerable resources towards providing international advisers to assist the Iraqi Interim Government in the training and equipping of Iraq's security and police forces. Unfortunately, these advisers, working closely with the Ministry of Interior on law enforcement and detention issues, have apparently given low priority to addressing the crucial issue of detainee abuse by the Iraqi police as they work towards increasing the capability and effectiveness of these forces. A number of key advisers work at the level of the Ministry, while others are on site at detention facilities under its jurisdiction, but Human Rights Watch is not aware of any serious measures taken by these advisers to assist the Iraqi authorities in addressing issues related to the abuse of detainees (see Section X).

There is a great and urgent need for access to detention facilities by independent monitors. At this writing, the ICRC's ability to conduct regular visits to places of detention other than those run by Multinational Force authorities remained limited for security reasons. No international human rights organization has had access to detention facilities under the jurisdiction of the Iraqi Ministries of Interior or Justice to date, including Human Rights Watch, whose own request for access remains outstanding. Human Rights Watch understands that discussions were underway to grant staff of the Ministry of Human Rights access to Iraqi Interim Government-run facilities, but at the time the organization carried out its research for this report, few such visits were taking place.

## **II. Recommendations**

### ***To the Iraqi Interim Government and the successor Iraqi Transitional Government***

#### ***On Torture and Ill-treatment:***

- Publicly condemn the practice of torture and other ill-treatment and state unequivocally that it will not tolerate such abuses.
- Investigate promptly all allegations of torture and ill-treatment, and ensure that guards, interrogators, and other detention facility officials who are responsible for the abuse of prisoners are subjected to disciplinary measures or criminal prosecution as appropriate. To that end, authorize the

establishment of a transparent and independent investigation into allegations of routine and widespread torture by the Ministry of Interior's Major Crimes Directorate and the Criminal Intelligence Directorate in particular.

- Conduct a medical examination of detainees alleging abuse when they are transferred to the jurisdiction of the courts.
- Ensure that prisoners have access to medical care on a regular basis.
- Comply with international standards relating to the treatment of children in detention, in particular by holding them in facilities separate from adult detainees and establishing interim measures to hold possible children separately from adults until authorities establish age in each case.
- Compensate victims of torture, ill-treatment, and arbitrary detention adequately and speedily.

#### ***On Unlawful Arrest and Detention:***

- Immediately release or charge with cognizable criminal offenses all those currently held without charge.
- Ensure that persons taken into custody are brought before an investigative judge within twenty-four hours of arrest, in conformity with Iraq's CCP.
- Ensure that family members and legal counsel have prompt access to detainees.

#### ***On Administration of Justice:***

- Limit the use of confessions as a basis for pre-trial detention or conviction to confessions freely made in the presence of counsel and ratified within twenty-four hours before a judge and the defendant's counsel. Suspend in anticipation of later abrogation those provisions of the CCP that permit the use of confessions and other evidence obtained through torture or other coercive methods.
- Take steps to ensure that arrests by the Ministry of Interior's law enforcement agencies comply with domestic legislation that requires the issuance of arrest warrants from a judicial authority.
- Take immediate steps to end widespread extortion of detainees by police officials. Thoroughly investigate all allegations of abuse by such personnel, and take disciplinary action and bring prosecutions as appropriate against all those found responsible.

### *On Providing Greater Access and Transparency:*

- Ensure that all detention facilities run by Ministry of Interior agencies fall under the jurisdiction of the Ministry of Justice, as is required by legislation currently in force. Such facilities should include those located within the Ministry of Interior's compound. All detainees should be held in recognizable places of detention that are accessible to government inspection, independent monitors, relatives, and defense counsel.
- Grant regular and unimpeded access to these facilities to the Ministry of Human Rights, which should be encouraged to regularly assess treatment of detainees and conditions of detention. The findings of such visits should be made public.
- Ensure and sustain conditions necessary for the ICRC to conduct visits to pre-trial and post-conviction detention facilities.
- Grant access to detention facilities under the authority of the Ministry of Interior to independent and qualified domestic and international monitoring organizations. Authorities should allow such visits to be unimpeded and occurring at frequent intervals.

### *On Meeting International Standards:*

- Ensure that conditions in detention centers conform to international standards, including the U.N. Standard Minimum Rules for the Treatment of Prisoners and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Detainees are entitled to sufficient food and water, prompt access to medical treatment, adequate washing facilities, and clean and adequate bedding. They must not be subject to cruel, inhuman, or degrading treatment or punishment.
- Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture). Consideration should also be given to becoming a party to the Optional Protocol to the Convention against Torture, which allows independent international experts to conduct regular visits to places of detention within the territory of state parties, to assess the conditions of detention and to make recommendations for improvements.
- Implement the general recommendations made by the Committee against Torture in May 2002 and by the U.N. Special Rapporteur on Torture in 2003, to establish a fully independent complaints mechanism for persons who are held in state custody.

## ***To the government of the United States and other Multinational Force governments***

- Ensure that advisers to the Multinational Force providing assistance to the Iraqi government on policing and detentions give immediate and adequate priority to the investigation of allegations of the torture or ill-treatment of detainees by Iraqi police forces.
- Urge and assist the creation of appropriate mechanisms for investigating allegations of abuse of detainees in facilities run by the Ministry of Interior's specialized agencies, in particular the Major Crimes Directorate and the Criminal Intelligence Directorate.
- Recommend an increase in the number of Multinational Force advisers deployed in detention facilities run by the Ministry of Interior. Clarify the role of such advisers with regard to the monitoring of detainee treatment in these facilities. Establish a mechanism allowing for the timely and effective reporting of instances where physical or other abuse of detainees occurs in facilities where Multinational Force advisers are present.
- Assist the Iraqi authorities in establishing a mechanism for the prompt investigation of allegations of torture or ill-treatment at the hands of Ministry of Interior law enforcement officials.
- Encourage and assist the Iraqi government in establishing an independent complaints mechanism, which could include the appointment of an ombudsman for penal and detention matters, to receive and investigate complaints by detainees of physical or other abuse by detaining officials.
- Assist the Iraqi government to comply with international standards relating to the treatment of children in detention, in particular by holding them in facilities separate from adult detainees and establishing interim measures to hold possible children separately from adults until age is established in each case.
- Ensure that assistance to the Iraqi government is not used to contribute to human rights violations.
- In the context of assistance provided to the Iraqi government, send a clear and consistent message that respect for human rights is integral and essential to the success of any security policy, including anti-terrorism operations.

### **To the international donor community**

- Closely monitor any police, security and anti-terrorism assistance to the Iraqi government to ensure that human rights standards are strictly observed by police and intelligence forces.
- Provide human rights training as an integral component of all capacity building and training programs involving the police and intelligence agencies. Such training should include a component designed to stop the use of torture and other cruel, inhuman, and degrading treatment as an interrogation technique or punishment.
- Ensure that aid given includes assistance for the development and support of local human rights groups with a monitoring capacity and the development of an independent human rights commission.

### **III. Methodology**

Human Rights Watch interviewed ninety current and former detainees in Iraq between July and October 2004, of whom seventy-two alleged they had been tortured or ill-treated in detention. At the time of the interviews, seventy-four of them were in custody and the remaining sixteen had been released.

This report focuses on three categories of detainees. The first category comprises twenty-one people apparently arrested for their alleged affiliation with an armed group or an opposition political party or for reasons of state security that may be related to their political party affiliation. The legal authority for such arrests was not specified. In cases investigated by Human Rights Watch, such persons were detained by the police or the intelligence service for an indeterminate period and then released without the case ever reaching the courts. Human Rights Watch's investigation of these detentions focused on suspected members or sympathizers of Shi'a cleric Muqtada al-Sadr's Mahdi Army (*Jaysh al-Mahdi*), an armed group established in June 2003 in contravention of CPA regulations governing armed forces and militias in Iraq,<sup>11</sup> and of the *Hiszbollah* Movement in Iraq, a political party established in Iran in 1982 in opposition to the Saddam Hussein government, and which abandoned armed opposition following its return to Iraq. Human Rights Watch interviewed most of these persons after they had been released from detention without having been charged.

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<sup>11</sup> CPA/ORD/02 June 2004/91 (Regulation of Armed Forces and Militias Within Iraq). Upon its establishment, Muqtada al-Sadr declared that the function of the Mahdi Army was to protect Shi'a religious authorities in al-Najaf.

The second category comprises fifty-four criminal suspects whose cases were referred to the Central Criminal Court of Iraq in Baghdad. The CPA established the Central Criminal Court in July 2003 to hear serious criminal offenses, including terrorism, abduction, money laundering, drug trafficking and acts of sabotage.<sup>12</sup> Suspected insurgents implicated in criminal offenses and organized crime members would normally be referred to the Central Criminal Court. The court also has jurisdiction to hear serious offenses committed during a declared state of emergency.<sup>13</sup> Most of these cases investigated by Human Rights Watch had been referred to the court by the Major Crimes Directorate and the Criminal Intelligence Directorate, while a smaller number had been referred by the Directorate of Ministry Security and Welfare (see Section V).

The third category comprises fifteen detainees held at seven different police stations on various criminal charges, including theft and murder.<sup>14</sup> Human Rights Watch interviewed them upon referral to one of Baghdad's criminal courts other than the Central Criminal Court; they were in court for their investigative hearing or trial. Their accounts regarding treatment in detention were largely consistent with those obtained from detainees referred to the Central Criminal Court. In this context, Human Rights Watch also met with five investigative judges at four of the criminal courts covering the al-Rusafa sector (eastern Baghdad) and the al-Karkh sector (western Baghdad). Extracts from the accounts of five of these detainees are contained in the appendix to this report.

All cases highlighted in this report involved male detainees, among them three children.<sup>15</sup> Human Rights Watch did not have the opportunity to interview female detainees, having no access to places of detention where they were held and there being

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<sup>12</sup> CPA/ORD/11 July 2003/13, as amended (The Central Criminal Court of Iraq). The felonies falling within the Central Criminal Court's jurisdiction are principally, but not exclusively: terrorism; organized crime; governmental corruption; acts intended to destabilize democratic institutions or processes; and violence based on race, nationality, ethnicity or religion. The court also hears cases where a determination is made that a criminal defendant may not be able to obtain a fair trial in a local court (Section 18 (2) of CPA Order 13 as amended on April 22, 2004). The CPA published its intent to establish the Central Criminal Court in a Public Notice (Regarding the Creation of a Central Criminal Court of Iraq and Adjustments to the Criminal Procedure Code), dated June 18, 2003.

<sup>13</sup> Order for Safeguarding National Security, No. 1 of 2004, of July 3, 2004. Article 7(1) reads: "The Central Criminal Court of Iraq shall assume the review of serious crimes committed during the period of the state of emergency, and which are referred by a judge of jurisdiction including crimes of murder, robbery, rape, kidnapping, destruction, bombing or burning or damaging of public or private property, and possession of military weapons and their ammunition, or the manufacturing, transportation, smuggling or trading of such weapons."

<sup>14</sup> The seven police stations are: al-Sa'doun, Balat al-Shuhada', al-Masbah, al-Za'faraniyya, al-Muthanna, Baghdad al-Jadida, and Jisr Diyala.

<sup>15</sup> Consistent with the Convention on the Rights of the Child, to which Iraq is party, Human Rights Watch defines a child as any person below the age of 18 years.

very few female referrals to the Central Criminal Court during the period in which the research was conducted.

The kinds of allegations of physical abuse recorded by Human Rights Watch are consistent with medical reports detailing the types of external trauma identified by forensic doctors in typical cases involving defendants referred by the criminal courts to Baghdad's Medico-Legal Institute.<sup>16</sup> Of the thirty-seven cases examined at the Institute, medical records identified external injuries such as recent scar tissue, bruising, contusions, or skin discoloration in twenty of them. Human Rights Watch also made its own observations of the physical condition of the detainees it interviewed, some of whom had visible injuries that appeared consistent with the type of treatment they alleged. Information provided by investigative judges to Human Rights Watch on individual cases also supported the organization's observations on the nature and scope of abuse taking place at the hands of the Iraqi police.

This report does not address the treatment of the roughly 8,500 security detainees held by the United States military at three main prisons in Iraq and at temporary battlefield detention centers.<sup>17</sup>

While the types of allegations of torture and ill-treatment recorded by Human Rights Watch related to all categories of detainees, the largest group interviewed were the criminal suspects referred to the Central Criminal Court. In addition to conducting interviews, Human Rights Watch also attended investigative hearings of dozens of others. Most of the defendants were at the pre-trial stage and had been brought to court to have their statements taken down by the court's judicial investigator (*al-muhaqqiq al-'adli*) and then to face the charges against them before an investigative judge (*qadi al-tahqiq*).

In the course of documenting cases of torture and ill-treatment for this report, Human Rights Watch received many other allegations of police abuse that it was unable to follow up or verify. Security conditions on the ground placed constraints on the organization's ability to travel outside the Baghdad area to interview former detainees, family members, eyewitnesses or officials in other cities. In the case of al-Najaf, for example, Human Rights Watch arranged for recently released detainees to travel to Baghdad to be interviewed. Within Baghdad, the organization was able to interview

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<sup>16</sup> The Medico-Legal Institute is Iraq's principal center for forensic medicine.

<sup>17</sup> Douglas Jehl and Neil A. Lewis, "U.S. Said to Hold More Foreigners in Iraq Fighting," *New York Times*, Jan. 8, 2005.

several former detainees in al-Sadr City, but access to the district was limited due to ongoing armed clashes there. Security conditions also prevented Human Rights Watch from following up cases at police stations, which remained prime targets for insurgent attacks.

#### IV. Legal Framework

With the declared transfer of sovereignty, the Law of Administration for the State of Iraq for the Transitional Period (Transitional Administration Law or TAL) came into effect. Issued by the CPA on March 8, 2004, following its adoption by Iraq's Interim Governing Council (IGC), the law is considered to be effective until "the formation of an elected Iraqi government pursuant to a permanent constitution," envisaged for the end of 2005 following general elections.<sup>18</sup> The TAL stipulates that all Iraqi citizens are equal before the law, and that their rights to freedom from arbitrary arrest, unlawful detention, unfair trials, and torture are protected by law.<sup>19</sup> An Annex to the TAL, issued on June 1, 2004, conferred to Iraq's Council of Ministers the authority to "issue orders with the force of law" with the unanimous approval of the state's Presidency Council, comprising the president and two deputy presidents.<sup>20</sup>

Under the occupation by United States and other coalition forces, responsibility for the setting up of law enforcement agencies lay with the CPA, headed by its then administrator, L. Paul Bremer. This took place in coordination with officials represented in the IGC and its relevant Ministries.<sup>21</sup> After June 28, 2004, that responsibility was transferred to the Iraqi Interim Government, but with the Multinational Force having "the authority to take all necessary measures to contribute to the maintenance of security and stability in Iraq" in accordance with the terms of United Nations (U.N.) Security Council Resolution no. 1546 of June 8, 2004, and its annexes.<sup>22</sup> The resolution sets out the responsibilities of the Multinational Force, among them "building the capability of

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<sup>18</sup> Law of Administration for the State of Iraq for the Transitional Period, March 8, 2004, Article 2(A).

<sup>19</sup> These and other rights, including the right to freedom of expression and association, religious beliefs, and freedom from discrimination on ethnic, religious or other grounds, are set out under Chapter Two of the TAL (Fundamental Rights: Articles 10-23).

<sup>20</sup> Annex to the Law of Administration for the State of Iraq in the Transitional Period, June 1, 2004 (Section Two: Institutions and Powers of the Iraqi Interim Government).

<sup>21</sup> The IGC was appointed by the CPA on July 13, 2003 (CPA/REG/13 July 2003/6 – Governing Council of Iraq), and dissolved itself upon the appointment of the Iraqi Interim Government on June 1, 2004 (CPA/REG/9 June 2004/9 – Governing Council's Dissolution).

<sup>22</sup> S/RES/1546 (2004). The annexes to the resolution, texts of letters from Iraqi Interim Government Prime Minister Ayad 'Allawi and U.S. Secretary of State Colin Powell, both dated June 5, 2004, to the president of the Security Council, outline the role of the Multinational Force in achieving security and stability in Iraq.



the Iraqi security forces [including the police] and institutions, through a programme of recruitment, training, mentoring, and monitoring.”<sup>23</sup> The annexes to the resolution reflect the close coordination envisaged between the Iraqi Interim Government and the Multinational Force on security matters and combating violent crime.<sup>24</sup>

Following its appointment in early June 2004,<sup>25</sup> the Iraqi Interim Government announced its intention to “establish appropriate security structures” to enable Iraqi forces to progressively take on the responsibility for security, operating within the framework of bodies set up under CPA authority to formulate policy in this regard. These bodies include the Ministerial Committee for National Security<sup>26</sup> and the Iraqi National Intelligence Service.<sup>27</sup> At his first press conference on June 20, Prime Minister Ayad ‘Allawi announced a new strategy for national security, involving the reorganization of military and security forces, which would be coordinated through the Ministerial Committee for National Security and in consultation with U.S. and U.K. advisers. The planned changes included bringing the CPA-created Iraqi Civil Defense Corps under army control as part of the Iraqi National Guard and the creation of emergency response units for special operations. Special police units would also be created to be deployed “in the frontlines” of the battle against terrorism and sabotage, and a new directorate for national security established.<sup>28</sup> The Ministry of Interior

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<sup>23</sup> *Ibid.*

<sup>24</sup> The June 5, 2004 letter from Prime Minister Ayad ‘Allawi to the president of the Security Council refers to the creation “with the MNF coordination bodies at national, regional, and local levels, that will include Iraqi security forces commanders and civilian leadership, to ensure that Iraqi security forces will coordinate with the MNF on all security policy and operations issues ...,” as well as the sharing of intelligence, with Iraqi security forces assuming “progressively greater responsibility as Iraqi capabilities improve.”

<sup>25</sup> CPA/REG/9 June 2004/10 (Members of Designated Iraqi Interim Government).

<sup>26</sup> CPA/ORD/4 April 2004/68 (Ministerial Committee for National Security). The Order provided for the establishment of the Ministerial Committee for National Security (MCNS) “under the authority, direction and control of the Administrator of the CPA ... pending transfer of full governance authority to the Iraqi Interim Government.” Currently headed by the prime minister, its permanent members are the ministers of defense, interior, foreign affairs, justice and finance. The MCNS also has several permanent advisory members, with the multinational force commander invited to participate in its meetings as appropriate. With regard to its role, Order 68 only states that this is “to facilitate and coordinate national security policy among the Ministries and agencies of the Iraqi government tasked with national security issues” (Section 1(1)).

<sup>27</sup> CPA/ORD/1 April 2004/69 (Delegation of Authority to Establish the Iraqi National Intelligence Service).

<sup>28</sup> See “Text of the Prime Minister’s statement at the press conference on the future of Iraq’s defense and security”, *Al-Sabah Al-Jadeed*, June 22, 2004. See also Jim Krane, “Iraq’s interim leader plans security shake-up,” *Associated Press*, June 21, 2004; Tom Lasseter and Hannah Allam, “Iraqi leader outlines security overhaul; Iraqi Prime Minister Iyad Allawi announced an ambitious plan for reestablishing an Iraqi military, including an air force, coast guard and special forces,” *Knight Ridder News Service*, June 21, 2004; Sadeq Rahim and ‘Ali Khalil, “Allawi accuses external elements of involvement in carrying out terrorist operations and announces the establishment of a general directorate for national security,” *Azzaman*, June 21, 2004. Further statements regarding the creation of a new security agency were made by the prime minister at another press conference on July 16, when he announced the arrest of alleged key figures from *al-Qaeda*. See “Creation of a new security apparatus to crack down on terrorism and its accomplices: renewed clashes in al-Falluja and the retrieval of a second decapitated body from the Tigris River”, *Al-Mada*, July 17, 2004; and “Allawi announces

reportedly appointed a new security adviser to assist in the establishment of a new general security directorate modeled on the erstwhile General Security Directorate (*Mudiriyyat al-Amm al-'Amma*), one of the agencies of the Saddam Hussein government dissolved by the CPA in May 2003.<sup>29</sup>

On July 3, 2004, the Iraqi Interim Government passed the Order for Safeguarding National Security (No. 1 of 2004 – *Amr al-Difa' 'An al-Salama al-Wataniyya*), introducing emergency legislation to the statute books and enabling the prime minister to declare martial law for up to sixty days at a time, renewable with the approval of the Presidency Council.<sup>30</sup> The Order also provides for the imposition of curfews; the closure of roads, sea lanes and airspace; restrictions or bans on public gatherings; the disbanding or temporary suspension of associations, unions and other entities; surveillance on electronic and other communications; and wide powers to search property and to detain suspects. In announcing the Order at a press conference on July 7, Iraq's ministers of justice and human rights pointed to provisions requiring that persons may not be arrested except upon the issuance of arrest warrants by the judicial authorities,<sup>31</sup> and would be brought before an investigative judge within twenty-four hours of arrest.<sup>32</sup> The Order, however, does provide for arrests or searches without warrant in "extreme exigent circumstances."<sup>33</sup> While the prime minister's "decisions and procedures are subject to review by the Court of Cassation,"<sup>34</sup> the Order neither defines such circumstances nor attempts to place limits on their interpretation.<sup>35</sup> The human rights minister, Bakhtiar Amin, gave assurances that any violations or abuses in the

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the creation of a new security apparatus and confirms the arrest of key figures from al-Qaeda," *Baghdad*, July 17, 2004.

<sup>29</sup> CPA/ORD/23 May 2003/02 (Dissolution of Entities). The new security adviser to the Ministry of Interior was named as Major General 'Adnan Thabet al-Samarra'i ("Reconstitution of the General Security Directorate," *Al-Nahdhah*, June 21, 2004).

<sup>30</sup> Under Article 1 of the Order, 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."

<sup>31</sup> See, for example, Betsy Pisik, "Human rights a priority in Iraq; Official tried to allay fears on security law, hits U.N.," *The Washington Times*, July 9, 2004.

<sup>32</sup> Order for Safeguarding National Security, Article 4.

<sup>33</sup> *Ibid.*, Article 3 (First and Second).

<sup>34</sup> *Ibid.*, Article 9 (Second).

<sup>35</sup> Article 15(B) of the TAL, for example, states that "[E]xtreme exigent circumstances, as determined by a court of competent jurisdiction, may justify a warrantless search, but such exigencies shall be narrowly construed. In the event that a warrantless search is carried out in the absence of an extreme exigent circumstance, the evidence so seized, and any other evidence found derivatively from such search, shall be inadmissible in connection with a criminal charge, unless the court determines that the person who carried out the warrantless search believed reasonably and in good faith that the search was in accordance with the law."

implementation of emergency legislation would be investigated by his Ministry: “my office will have the full ability to investigate lapses.”<sup>36</sup>

Other measures adopted as part of the declared intention to crack down on violent crime included the reintroduction of the death penalty, which the CPA had suspended in June 2003.<sup>37</sup> Human Rights Watch opposes the death penalty in all circumstances because of its inherent cruelty and irreversibility. The Iraqi Interim Government passed Order 3 of 2004 on August 8; the Order reintroduced capital punishment for a range of offenses, including certain crimes affecting internal state security, public safety, premeditated murder, and drug trafficking.<sup>38</sup> It also introduced the death penalty for abduction.<sup>39</sup> Government officials argued that capital punishment would serve as a deterrent against such crimes, while its implementation would be “very limited and only in exceptional cases.”<sup>40</sup>

In August 2004, Prime Minister Ayad ‘Allawi announced an amnesty for a range of offenses connected with the possession of weapons and explosive devices, the failure to inform the 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 giving refuge to persons being sought by the judicial authorities for terrorist or violent crimes or in connection with crimes perpetrated by the former Iraqi government. Order 2 of 2004, passed on August 4,

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<sup>36</sup> Betsy Pisik, “Human rights a priority in Iraq,” *The Washington Times*, July 9, 2004. See also Muhammad ‘Abdul-Khaleq, “The government signs the Law for Safeguarding National Security,” *Al-Sabah Al-Jadeed*, July 8, 2004.

<sup>37</sup> CPA/ORD/9 June 2003/7 (Penal Code). Section 3 (1) of the CPA Order states: “Capital punishment is suspended. In each case where the death penalty is the only available penalty prescribed for an offense, the court may substitute the lesser penalty of life imprisonment, or such other lesser penalty as provided for in the Penal Code.”

<sup>38</sup> The death penalty was also reintroduced for two other crimes: the use of biological materials harmful to public health and resulting in deaths, and attacks on public means of transport and safety.

<sup>39</sup> Order for the Reintroduction of the Death Penalty, Number 3 of 2004, August 8, 2004. Order 3 of 2004 also provided for the commutation to life imprisonment of death sentences passed and upheld prior to the Order’s effectiveness (Article 7). Human Rights Watch knows of several death sentences passed prior to August 2004, most if not all for premeditated murder. On October 24, 2004, Iraq’s minister of justice said in a media interview that between 150 and 160 “Arab fighters” have been charged with carrying out acts of terrorism and may face the death penalty if convicted by the criminal courts. They were said to include Egyptian, Jordanian, Lebanese, Moroccan, Syrian and Yemeni nationals as well as Iranians. See “About 150 Arab fighters face death penalty in Iraq: minister,” *Agence France Presse*, October 24, 2004.

<sup>40</sup> Citing Iraq’s minister of human rights, Bakhtiar Amin, at a press conference in Baghdad on August 8, 2004. See Fu’ad Jassem Hammudi, “Reintroduction of the death penalty,” *Al-Nahdhah*, August 9, 2004, and “Safeguarding the security of Iraq, its people and human rights: reintroduction of the death penalty,” *Al-Sabah Al-Jadeed*, August 9, 2004.

excluded from the terms of the amnesty those found guilty of murder, abduction, rape, robbery, and harming or destroying public or private assets.<sup>41</sup>

The Iraqi Interim Government did not declare a state of emergency until November 7, 2004, on the eve of a U.S.-led military offensive on the town of al-Falluja. However, Iraqi security and intelligence forces carried out widespread arrests without judicial warrant of both suspected criminal offenders and members of political parties well before the emergency decree was promulgated. In that context, allegations of the torture and ill-treatment of detainees were rife.

The Iraqi Interim Government, as well as the successor Iraqi Transitional Government that will emerge after the January 30, 2005 elections, have legal obligations under human rights treaty law and customary law. All successor governments of Iraq are bound by earlier governments' treaty ratifications. Under the ICCPR, every person has the right: to protection against arbitrary arrest<sup>42</sup>; to be informed promptly of the charges against him or her; to be brought promptly before a judge and entitled to trial within a reasonable time or be released<sup>43</sup>; to be treated with dignity while in detention<sup>44</sup>; to protection from torture and cruel, inhuman or degrading treatment or punishment<sup>45</sup>; and to due process and fair trial,<sup>46</sup> including the right to counsel.<sup>47</sup>

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<sup>41</sup> Order for Amnesty, Number 2 of 2004, August 4, 2004. Order 2 of 2004 limited those benefiting from the terms of the amnesty to Iraqi nationals who committed the stipulated crimes between May 1, 2003 and the date of the law coming into force. Initially valid for a thirty-day period, the amnesty was extended for an additional month in mid-September 2004. It was not known how many people benefited.

<sup>42</sup> ICCPR, Article 9. To comply with Article 9, the state must specify in its legislation the grounds on which individuals may be deprived of their liberty and the procedures to be used in enforcing arrests and detentions. Only acts conducted in accordance with such rules are considered lawful, thus restricting the discretion of individual arresting officers. Moreover, the prohibition on arbitrariness means that the deprivation of liberty, even if provided for by law, must still be proportional to the reasons for arrest, as well as predictable. The arrests of persons for the exercise of their fundamental rights is considered arbitrary and in violation of international law. Article 9 also specifically requires that detainees be immediately informed of the reasons for their arrest and promptly be told of any charges against them, and that they be brought promptly before a judge empowered to rule upon the lawfulness of the detention.

<sup>43</sup> ICCPR's Article 9(3) states: "Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release."

<sup>44</sup> ICCPR, Article 10(1).

<sup>45</sup> ICCPR, Article 7.

<sup>46</sup> ICCPR, Article 14.

<sup>47</sup> ICCPR, Article 14(3)(b) (preparation of the defense). Human Rights Committee (HRC) General Comment 13 states that under the ICCPR, "the accused must have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing. ... this subparagraph requires counsel to communicate with the accused in conditions giving full respect for the confidentiality of their communications. Lawyers should be able to counsel and to represent their clients in accordance with their established professional standards and judgment without any restrictions, influences, pressures or undue interference from any quarter." U.N. Doc. HRI/GEN/1/Rev.6 at 135 (2003) para. 9. The U.N. Basic Principles on the Role of

The prohibition against torture and other cruel, inhuman or degrading treatment or punishment is among the most fundamental principles of international law. As the Human Rights Committee (HRC), the international body responsible for monitoring compliance with the ICCPR, has stated, the aim of the prohibition against torture and other mistreatment “is to protect both the dignity and the physical and mental integrity of the individual. It is the duty of the State party to afford everyone protection through legislative and other measures as may be necessary against [torture and other mistreatment], whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity.”<sup>48</sup> The Committee against Torture has expressed concern that deferral of notification of arrest coupled with deferral of access to counsel in the first forty-eight hours amounts to detention “incommunicado, thereby creating conditions which might lead to abuses of authority by agents of the State.”<sup>49</sup>

The HRC calls on states, among other things to put into effect the following to prevent torture:

Provisions should also be made against incommunicado detention. In that connection, States parties should ensure that any places of detention be free from any equipment liable to be used for inflicting torture or ill-treatment. The protection of the detainee also requires that prompt and regular access be given to doctors and lawyers and, under appropriate supervision when the investigation so requires, to family members. ... It is important for the discouragement of violations under article 7 [prohibition on torture] that the law must prohibit the use of admissibility in judicial proceedings of statements or confessions obtained through torture or other prohibited treatment.<sup>50</sup>

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Lawyers states that, “All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.” Basic Principles on the Role of Lawyers, A/CONF.144/28/Rev.1 at 118 (1990), Article 8.

<sup>48</sup> Human Rights Committee, General Comment 20, Article 7 (Forty-fourth session, 1992), U.N. Doc. HRI\GEN\1\Rev.1 at 30 (1994), para. 2.

<sup>49</sup> Committee against Torture, *Consideration of First Periodic Report of the United Kingdom and Northern Ireland*, CAT/C/SR.91, November 15, 1991. The CAT reiterated its concern about incommunicado interrogation in the United Kingdom's second periodic report. See Committee against Torture, *Consideration of Second Periodic Report of the United Kingdom of Great Britain and Northern Ireland*, para. 29

<sup>50</sup> Human Rights Committee, General Comment 20, Article 7 (Forty-fourth session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI\GEN\1\Rev.1 at 30 (1994), paras. 11 & 12.

The Human Rights Committee also called on states to ensure that those responsible for torture or other mistreatment “whether by encouraging, ordering, tolerating or perpetrating prohibited acts, must be held responsible. ... Complaints [of mistreatment] must be investigated promptly and impartially by competent authorities so as to make the remedy effective.”<sup>51</sup>

Iraq’s new government must adopt legislation that will bring its laws in line with international human rights standards. As it currently stands, Iraq’s CCP falls short of these standards in a number of significant ways, failing to address fundamental rights, such as the right of criminal suspects to remain silent, the right to be represented by legal counsel at all stages of the proceedings, the right not to have coerced confessions used in evidence against them in court, and the right to be presumed innocent until proven guilty before a court of law.

Nevertheless, there are a number of protections in the CCP that, if implemented, would contribute to the better protection of persons deprived of their liberty. Persons may not be arrested without a warrant (except in circumstances prescribed by law,<sup>52</sup> such as crimes committed *in flagrante delicto*).<sup>53</sup> Defendants must be brought before an investigating judge within twenty-four hours of arrest.<sup>54</sup> The judge may renew their period of detention for not more than fifteen days on each occasion, provided that the total period does not exceed six months. If the criminal investigation is not completed within six months, authorization for further extensions of the detention period must be obtained from the relevant criminal court.<sup>55</sup> Prohibited is the use of “any illegal method to influence the accused to extract a confession.”<sup>56</sup> Ill-treatment, threats to cause harm, enticement, promises, psychological influence, or the use of drugs or intoxicants are considered illegal methods.<sup>57</sup> Officials found guilty of torturing or ill-treating detainees in their custody are punishable by up to fifteen years’ imprisonment under the Penal Code.<sup>58</sup> Detainees have the right to submit a complaint regarding a threat or harm caused to them with a view to initiating criminal proceedings against the perpetrators.<sup>59</sup>

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<sup>51</sup> *Ibid.* paras. 13 & 14.

<sup>52</sup> CCP, Article 92.

<sup>53</sup> CCP, Article 102(a).

<sup>54</sup> CCP, Article 123.

<sup>55</sup> CCP, Article 109 (a) and (c).

<sup>56</sup> CCP, Article 127.

<sup>57</sup> Article 213(c) of the CCP states that the court may rely solely on a confession “if it is satisfied with it and if there is no other evidence which proves it to be a lie.”

<sup>58</sup> Article 333 of the Penal Code (No. 111 of 1969) states: “Any public official or agent who tortures or orders the torture of an accused, witness or informant in order to compel him to confess to the commission of an offense or

The CPA amended a number of articles in the CCP and the Penal Code after April 2003, some of which addressed the shortcomings of these laws, and which at this writing have the force of law, but which will need to be addressed by a new Iraqi government. Among these is the total prohibition on torture<sup>60</sup> and the amendment of Article 218 of the CCP, which had permitted the use of coerced confessions as evidence in certain circumstances.<sup>61</sup> The CPA also reaffirmed the right of criminal detainees to remain silent upon arrest, to consult legal counsel,<sup>62</sup> and to be promptly informed of the charges against them.<sup>63</sup> The right to silence and to legal counsel was also affirmed at the investigative stage.<sup>64</sup> Further, “[i]f the accused desires an attorney the examining magistrate or investigator shall not question the accused until he or she has retained an attorney or an attorney has been appointed by the Court.”<sup>65</sup>

The bill of rights contained in the TAL guaranteed a number of fundamental principles pertaining to persons deprived of their liberty. It affirmed the principles of equality before the law and the courts and guaranteed the following rights: the right to be arrested on the basis of a judicial warrant; the right to freedom from arbitrary arrest or detention; the right to a fair trial and public hearing by an independent and impartial tribunal; the right to be presumed innocent until proven guilty pursuant to law, to engage independent and counsel, to remain silent with no compulsion to testify, and to

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to make a statement or provide information about such an offense or to withhold information or to give a particular opinion in respect of it is punishable by imprisonment or by detention. Torture shall include the use of force or threats.” As defined under Articles 25 and 26 of the Code, “detention” is a period ranging from three months to five years, and “imprisonment” is a period ranging from five to fifteen years.

<sup>59</sup> CCP, Article 3(2).

<sup>60</sup> CPA/ORD/9 June 2003/07 (Penal Code). Section 3(2) of the Order states: “Torture and cruel, degrading or inhuman treatment or punishment is prohibited.”

<sup>61</sup> Prior to the amendment, Article 218 of the CCP read: “It is a condition of the acceptance of the confession that it is not given as a result of coercion, whether it be physical or moral, a promise or a threat. Nevertheless, if there is no causal link between the coercion and the confession or if the confession is corroborated by other evidence which convinces the court that it is true or which has led to uncovering a certain truth, then the court may accept it.” The Article now reads: “It is a condition of the acceptance of the confession that it is not given as a result of coercion.” (CPA/MEM/27 June 2004/03: Criminal Procedures, Section 3d (vii)). By virtue of the same Order, Article 213(c) of the CCP was also amended, allowing the court to accept confessions “if it is satisfied with it”, deleting “and if there is no other evidence which proves it to be a lie.” (Section 3d(vi)).

<sup>62</sup> CPA/MEM/27 June 2994/03 (Criminal Procedures). Section 4 reads: “At the time an Iraqi law enforcement officer arrests any person, the officer shall inform that person of his or her right to remain silent and to consult an attorney.”

<sup>63</sup> *Ibid.*, Section 5(c), which reads: “A criminal detainee shall be promptly informed, in writing, in a language which they [sic] understand, of the particulars of the charges preferred against them by the authority serving an arrest warrant.”

<sup>64</sup> *Ibid.*, Section 3(b), which reads: “Before questioning the accused the examining magistrate must inform the accused that i) he or she has the right to remain silent and no adverse inference may be drawn from the accused’s decision to exercise that right; ii) he or she has the right to be represented by an attorney, and if he or she is not able to afford representation, the Court will provide an attorney at no expense to the accused.”

<sup>65</sup> *Ibid.*, Section 3(c).

be informed of these rights upon arrest; the right to a fair, speedy and open trial; the right to challenge the legality of arrest or detention without delay; and the right to freedom from torture in all its forms. It prohibited the use of coerced confessions as evidence: “No confession made under compulsion, torture, or threat thereof shall be relied upon or admitted into evidence for any reason in any proceeding, whether criminal or otherwise.”<sup>66</sup>

## **V. Ministry of Interior Agencies and the Iraqi National Intelligence Service**

This report highlights cases of detainees held in the custody of several key agencies engaged in the arrest, detention and interrogation of state security and criminal suspects. All of the agencies act under the authority of the minister of interior except one, which reports directly to the prime minister. Following the U.S.-led war against Iraq in March 2003, the CPA authorities dissolved all security and intelligence agencies linked to the Saddam Hussein government.<sup>67</sup> In the ensuing months, they began the process of reconstituting the regular police force and other specialized law enforcement agencies, following a process of de-Ba’thification established by the CPA.<sup>68</sup> Some of these agencies were initially set up as units within the Ministry of Interior and subsequently expanded into directorates and their powers apparently widened. However, the CPA did not publicize its creation of these agencies or the extent of their authority and responsibilities in the Official Gazette, making it difficult to understand who was responsible for abuses and where accountability lay.<sup>69</sup> The Iraqi Interim Government set up the newest agencies following the transfer of sovereignty in late June 2004, some of which operate nationwide while others remain confined for the present time to Baghdad and its environs.

A number of the detainee cases highlighted in this report involve persons taken into custody solely because of their alleged affiliation with armed groups or opposition political parties or for state security reasons that may be connected to their political party affiliation. However, the majority are persons suspected of involvement in serious

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<sup>66</sup> TAL, March 8, 2004, Article 2(A).

<sup>67</sup> CPA/ORD/23 May 2003/02 (Dissolution of Entities).

<sup>68</sup> CPA/ORD/25 May 2003/05 (Establishment of the Iraqi De-Baathification Council). This Order was rescinded upon the transfer of sovereignty to the Iraqi Interim Government at the end of June 2004 (CPA/ORD/28 June 2004/100 (Transition of Laws, Regulations, Orders, and Directives Issued by the Provisional Coalition Authority)).

<sup>69</sup> The sole exception was a public notice regarding the Iraqi National Intelligence Service, set up under CPA Order Number 69 of April 1, 2004, and which falls outside the jurisdiction of the Ministry of Interior (See below).



criminal offenses. Those accused of serious criminal acts, including terrorism and organized crime, are referred to the Central Criminal Court in Baghdad, and in which the following principal agencies are involved:

- The Major Crimes Directorate (*Mudiriyyat al-Jara'im al-Kubra*): set up in August 2003, some four months after the fall of the Saddam Hussein government, by the CPA in coordination with Iraqi officials represented in the IGC. Initially the agency was established as a Unit (*Wibda*) within the Ministry of Interior, but was enlarged into an Office (*Maktab*) in early March 2004 and subsequently into a Directorate (*Mudiriyya*) in July 2004.<sup>70</sup> The directorate's work is organized within four main offices: the Anti-Terrorism Unit (*Maktab Mukafabat al-Irbab*); the Organized Crime Unit (*Maktab al-Jarima al-Munathama*); the Money Laundering Unit (*Maktab Ghasil al-Ammal*); and the Abduction and Murder Unit (*Maktab al-Khatf wal-Qutul*).

Initially, the Major Crimes Directorate was based in the al-'Amiriyya district of the al-Karkh sector (western Baghdad), in the premises of the former Crime Combat Office (*Maktab Mukafabat al-'Ijam*) that existed under the former Iraqi government. After July 2004, the directorate was expanded further to acquire a branch in the al-Rusafa sector (eastern Baghdad), which at this writing was operating from the Ministry of Interior (located in the Mal'ab al-Sha'ab district) pending a move to other premises.<sup>71</sup> In addition to these two branches, in September 2004 the Major Crimes Directorate acquired new headquarters – the premises of the notorious former General Intelligence Directorate (*Mudiriyyat al-Mukhabarat al-'Amma*). The building, known locally as *Hakimiyyat al-Mukhabarat*, is located in the al-Karrada district of Baghdad.<sup>72</sup> The Major Crimes Directorate is headed by Major General Hamid Faraj Daye' al-Samarra'i; the al-Karkh branch by Brigadier General Ra'ad Yas Khudayyir al-Dulaimi; and the al-Rusafa branch by Brigadier General Shallal Ibrahim Mahmoud al-Jibburi.

Currently the Major Crimes Directorate covers only the Baghdad area and its immediate vicinity, including areas deemed to be centers for organized crime as

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<sup>70</sup> For the purposes of this report, all references are to the Major Crimes Directorate, even though some of the torture cases highlighted relate to periods in which the Directorate had not been officially established and was still either a Unit or an Office within the Ministry of Interior.

<sup>71</sup> Human Rights Watch understands that the new premises for the al-Rusafa branch of the Major Crimes Directorate are likely to be located in the al-A'dhamiyya district of Baghdad.

<sup>72</sup> These headquarters were established by the Major Crimes Directorate following the expulsion from *Hakimiyyat al-Mukhabarat* of the *Hizbullah* Movement in Iraq in mid-August 2004 (See Section VI).

well as for extremist religious groups involved in attacks against government targets – areas such as al-Mahmudiyya, al-Latifiyya and al-Hussainiyya. The prime responsibility for the directorate’s branch in al-Karkh remains the investigation of organized crime, money laundering, terrorism and abduction, while that of the al-Rusafa branch reportedly focuses on criminal activity connected with the Shi’a neighborhood of al-Sadr City (*Madinat al-Sadr*).<sup>73</sup> The directorate’s personnel hold and interrogate suspects in detention facilities in both al-Karkh and al-Rusafa (the latter within the Ministry of Interior building). Human Rights Watch is not aware of what detention facilities currently exist at the Directorate’s recently established headquarters in al-Karrada.

- Criminal Intelligence Directorate (*Mudiriyyat Istikbharat al-Shurta al-Jina’iyya*): set up around April 2004 under CPA authority, the Directorate operates nationwide, and its headquarters are located at the Ministry of Interior. It is headed by Major General Hussein ‘Ali Kamal. As its name suggests, the Criminal Intelligence Directorate originally was intended as the agency with prime responsibility for the gathering of intelligence on certain criminal activity, but it is unclear what its official responsibilities are, what type of criminal activity falls within its jurisdiction, and what the limits to its powers are. In practice, its personnel carry out arrests of suspected criminals, detain and interrogate them and then refer them directly to the Central Criminal Court without going through any other agency. Based on the cases of detainees referred by this agency to the court and followed up by Human Rights Watch, there appears to be significant overlap between its activities and those of the Major Crimes Directorate. This was most apparent after the transfer of sovereignty to the Iraqi Interim Government in June 2004, when the Criminal Intelligence Directorate played a prominent role in the mass arrests of persons alleged to be involved in organized crime carried out in the al-Bataween and al-Kifah Street areas of Baghdad in late June and early July 2004 (see Section VII). Its personnel held those arrested in these raids and in other unrelated arrests for a time at a detention facility under the jurisdiction of the Criminal Intelligence Directorate, located in the Ministry of Interior compound, as well as in the main ministry building.
- Directorate of Ministry Security and Welfare (*Mudiriyyat Amn wa-Salamat al-Wazara*): set up in July 2004 shortly after the introduction of emergency

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<sup>73</sup> *Madinat al-Sadr*, a large neighborhood in north-eastern Baghdad, was so renamed following the fall of the Saddam Hussein government in April 2003. It was formerly known as *Madinat al-Thawra* [Revolution City] and subsequently as *Madinat Saddam* [Saddam City].

legislation.<sup>74</sup> To Human Rights Watch's knowledge, the Iraqi Interim Government originally set this agency up as the Ministry Security Unit (*Shu'bat Amn al-Wazara*) and apparently expanded it subsequently into a directorate. It was among the newest agencies the Iraqi Interim Government established after the transfer of sovereignty. Its role is said to be the safeguarding of premises and staff within the Ministry's compound, but its personnel carry out arrests, detention and interrogation of suspects apprehended on unrelated charges, holding them in their custody within the Interior Ministry's compound.<sup>75</sup>

- Internal Affairs Directorate (*Mudiriyyat al-Shu'un al-Dakbiliyya*): set up in August 2003 under CPA authority and covering the al-Rusafa and al-Karkh sectors of Baghdad, its headquarters are located at the Ministry of Interior. It is headed by Colonel Muhannad Husam al-Din. Officially, the prime responsibility of this directorate lies in the monitoring and investigation of offenses committed by police personnel, such as bribery and corruption, treatment of detainees and abuse of authority. However, as is the case with some of the other agencies, it is unclear what the limits to its powers are. Its personnel reportedly carry out investigations and interrogation of suspects, referring them to the Central Criminal Court where it maintains a permanent office. Some of these cases apparently are unrelated to offenses carried out by police personnel, and involve ordinary civilians accused of crimes such as forgery and armed robbery. The Internal Affairs Directorate holds detainees in its custody at the Ministry of Interior, but its principal detention facility is said to be located at the al-Qanat police station in al-Sadr City, a section of which falls under its jurisdiction.

In addition to these four directorates, the first two of which account for the bulk of referrals to the Central Criminal Court, occasionally other agencies of the Ministry of Interior established after June 2004 also reportedly refer detainees in their custody to this Court. However, Human Rights Watch did not have the opportunity verify this information or to interview such detainees.<sup>76</sup> To the organization's knowledge, several

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<sup>74</sup> Order for Safeguarding National Security, No. 1 of 2004 (See Section IV).

<sup>75</sup> One investigative judge told Human Rights Watch that such cases included a defendant referred to the Central Criminal Court on charges relating to the illegal sale of antiquities.

<sup>76</sup> These are said to include the Important Crimes Directorate (*Mudiriyyat al-Jara'im al-Muhimma*), set up by the Iraqi Interim Government after July 2004 and headed by Major General Tareq al-Baldawi. It is headquartered at the Ministry of Interior and initially had two branches, one located in the al-Mansour district (al-Karkh sector) and the other in al-Karrada (al-Rusafa sector), but the latter is said to be no longer functioning. It is unclear what types of crimes fall within this directorate's jurisdiction, but the cases it has referred to the Central Criminal Court reportedly include persons accused of car theft. Occasionally, the Minister of Interior's Office is said to refer directly individual cases to this Court, including a case involving an abduction, but Human Rights Watch was not able to independently verify this.

of the above-mentioned agencies are based at the Ministry of Interior compound, using either separate detention facilities within the compound or the main Ministry building.<sup>77</sup>

Outside of the framework of the Ministry of Interior, the principal agency currently involved in the arrest, detention and interrogation of suspects is the Iraqi National Intelligence Service (INIS) (*Jihaz al-Mukhabarat al-Watani al-Iraqi*). The CPA created the INIS in April 2004; Major General Muhammad ‘Abdullah al-Shahwani currently heads it.<sup>78</sup> CPA Order 69 provided that the Director General of the INIS would report directly to the then CPA administrator, Paul Bremer, and to the head of government upon transfer of sovereignty.<sup>79</sup> Although Article 12 of this order stipulates that the INIS “shall have no power to arrest or detain persons,” and limits its authority to intelligence gathering on “serious violation of Iraqi criminal law” (including matters relating to internal state security), it has held scores of detainees in its custody without formal charges, having arrested them in the first place without judicial warrant.<sup>80</sup> Human Rights Watch interviewed several detainees held in INIS custody following their release in October 2004 (see Section VI). They had been held at the Major Crimes Directorate in al-‘Amiriyya (al-Karkh branch), separately from other detainees who were held there under that directorate’s jurisdiction. To Human Rights Watch’s knowledge, the Iraqi Interim Government has made no amendments to CPA Order 69 to expand the powers of this agency.

## **VI. Torture and ill-treatment of members of political and armed groups**

Over the course of several months beginning in July 2004, Human Rights Watch received numerous reports of the torture and ill-treatment of persons apprehended because they were suspected members or supporters of Shi’a cleric Muqtada al-Sadr or armed militiamen belonging to the Mahdi Army. Most of the arrests took place in the context of armed clashes that erupted in the city of al-Najaf at the beginning of August between Iraqi government and Multinational Force troops on the one hand, and armed militiamen loyal to Muqtada al-Sadr on the other. Under international humanitarian law,

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<sup>77</sup> Two floors within the main Ministry building are reportedly used to hold suspects incommunicado. Several detainees interviewed by Human Rights Watch mentioned the seventh floor as being one of them.

<sup>78</sup> CPA/ORD/1 April 2004/69 (Delegation of Authority to Establish the Iraqi National Intelligence Service). The Charter of the INIS is annexed to CPA Order 69.

<sup>79</sup> *Ibid.*, Section 1(3).

<sup>80</sup> Article 27(D) of the TAL also states that the Iraqi Intelligence Service “shall collect information, assess threats to national security, and advise the Iraqi government. This Service shall be under civilian control, shall be subject to legislative oversight, and shall operate pursuant to law and in accordance with recognized principles of human rights.”

persons taking up arms against government forces can be prosecuted under the state's criminal law. This is different from an international armed conflict between governments, where captured members of the enemy armed forces may be detained as prisoners of war, but may not be prosecuted for taking up arms.

Hundreds of people were said to have been arrested in the city, both during the clashes and following the declared cessation of hostilities at the end of August 2004, when Muqtada al-Sadr and the Iraqi Interim Government reached a political settlement. During the same period, arrests of other suspected members or sympathizers also took place in Baghdad, some of whom said they were accused of aiding Shi'a militiamen in al-Najaf. It was unclear in many cases which forces carried out the arrests. Those detained during the clashes reported that several forces were involved, including police forces (both uniformed and in civilian clothes), Emergency Response Units of the Ministry of Defense, Iraqi National Guard, as well as U.S. Marines. The police held at least scores of those detained at various locations in al-Najaf, from where the allegations of torture and ill-treatment emanated. Those detained in Baghdad reported that the police arrested them and then held them in the custody of one of the Ministry of Interior's specialized agencies.

Human Rights Watch interviewed ten people arrested in this context following their release in August and September 2004. Those arrested in al-Najaf included both residents of the city as well as others from Baghdad who were in al-Najaf during the armed clashes. In four of these cases, Human Rights Watch conducted interviews with the detainees within a few days of their release, when injuries allegedly sustained under torture were still clearly visible on the victims. Police forces in al-Najaf had released all of them without referring them to court or charging them with a cognizable offense. In five other separate cases where police carried out the arrests in Baghdad before the outbreak of the fighting in al-Najaf, the Interior Ministry's Major Crimes Directorate held the detainees and subsequently referred them to the Central Criminal Court, where Human Rights Watch was able to speak to them. All of the interviewees who were residents of Baghdad were from the Shi'a district of al-Sadr City.

Among the detainees referred to the Central Criminal Court was a group of five men arrested together in July 2004 in the al-Karrada district of Baghdad. They told Human Rights Watch that the police picked them up after shooting broke out in the vicinity. All were from the al-Sadr City district of Baghdad. One of them, 24-year-old Murtadha Mahdi, said:

It happened on July 11, between midnight and one o'clock in the morning. The police rounded us up and took us to [Criminal] Intelligence headquarters. They took us upstairs and put us in a small cell that had no air conditioning. There were other detainees there, altogether fifteen or seventeen people. We stayed there eight days. They blindfolded us during interrogation, and accused us of having blown up a shop that sells alcohol. They said we belonged to the Mahdi Army. I was beaten with cables. They threw water over my face and then attached electric wires to my ears. Then we were taken to the Major Crimes [Directorate], where we were interrogated again.<sup>81</sup>

One of the others in the same group, 21-year-old 'Ali Rashid 'Abbadi, said the police first took them to al-'Alwiyya police station, where they kept them for one hour or so before taking them to the Criminal Intelligence Directorate:

The police came and started hitting us. They shouted at us to confess to being members of the Mahdi Army. The owner of the alcohol shop had told them that he didn't know us, but they arrested us anyway. First of all they took us to al-'Alwiyya police station, where we stayed for an hour or less. From there we went to Intelligence. We were blindfolded and our hands were tied behind our backs. They put us in a small room where there were other detainees, altogether seventeen people. Then they took us one by one for interrogation. They made me sit on the floor. When I tried to speak, they said "Are you here to talk? Shut up, you are a terrorist. Just confess to being one of the Mahdi Army." Then they poured cold water over me and applied electric shocks to my genitals. I was also beaten by several people with cables on my arms and back. Sometimes they would come in with sacks over their heads so that I wouldn't be able to identify them. During the eight days we stayed there, I was taken twice to Ibn al-Nafis Hospital for Heart Diseases, close to al-Andalus Square. I have an artificial heart valve and have had a catheterization operation, and they did not let me have any medication. As a result of the beatings, my blood pressure went up and I had difficulty breathing, so they took me to the hospital for emergency treatment. Then we were transferred to the Major Crimes Directorate. We were interrogated again but not tortured. There was a secret informant who told them we were not the ones involved in the crime.<sup>82</sup>

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<sup>81</sup> Human Rights Watch interview with Murtadha Mahdi, Central Criminal Court, Baghdad, August 3, 2004.

<sup>82</sup> Human Rights Watch interview with 'Ali Rashid 'Abbadi, Central Criminal Court, Baghdad, August 3, 2004.

Two of the other defendants in the same group gave Human Rights Watch similar accounts of their treatment. Both said interrogators had kicked and beaten them with cables and subjected them to electric shocks, one of them to his genitals and the other to his spine.<sup>83</sup> Having spent twenty-three days in detention before being referred to court, they said very few traces of the torture remained. One showed Human Rights Watch scarring to the left side of his forehead, which he said was the result of being hit with metal handcuffs, and another displayed a series of long scars to the inside of his left arm apparently caused by beatings with cables. Both injuries appeared recent.

Following the interviews, Human Rights Watch attended the hearings of all five detainees before the investigative judge, who ordered them released for lack of evidence. Two of them stated that they had been forced to sign “confessions” under torture. During their period of detention, their families remained ignorant of their whereabouts and they had no means of contacting a lawyer. The defendants told Human Rights Watch that they had engaged a lawyer who happened to visit the Major Crimes Directorate on behalf of another detainee, but he did not turn up in court on August 3, the day they were due to appear before the investigative judge. They were represented by court-appointed lawyers.

Widespread arrests of persons suspected of belonging to the Mahdi Army, or of being supporters of Muqtada al-Sadr, accompanied the fighting in al-Najaf. At a press conference on August 12, Prime Minister ‘Allawi announced that Iraqi and U.S. forces in al-Najaf had “captured about 1,200 individuals.”<sup>84</sup> Residents of al-Najaf and Iraqis from al-Sadr City district of Baghdad who were in al-Najaf in early August spoke of random arrests at checkpoints in the city. They told Human Rights Watch that the arresting forces targeted residents of towns and cities where clashes with Iraqi or U.S. forces had taken place, including al-Nasiriyya, al-‘Amara, Basra, al-Kut and al-Sadr City.

In the second week of August 2004, Human Rights Watch interviewed four Shi’a men from al-Sadr City who said that the police had tortured them six days earlier in al-Najaf. They were stopped on August 6 at a checkpoint located on Hay al-Naft, opposite the Wadi al-Salam cemetery, the site of fighting at the time. All four said they came to al-Najaf to pray for relatives buried there and for a funeral ceremony. They were taken to the nearby headquarters of the Emergency Response Units (*Afwaj al-Tadakhul al-Sari*),

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<sup>83</sup> Human Rights Watch interviews with Asil ‘Abbas Hussain and Yusuf Shakir ‘Ufi, Central Criminal Court, Baghdad, August 3, 2004.

<sup>84</sup> “Falah al-Nakib Holds a News Conference on Najaf”, Federal Document Clearing House, Political Transcripts, August 12, 2004.

also located on Hay al-Naft. They said the forces they saw there comprised Iraqi police, Iraqi National Guard, Emergency Response Units, and U.S. Marines.

The four men all displayed clear traces of recent external trauma to their bodies consistent with the accounts they had given Human Rights Watch, including deep purple and blue bruising and lacerations to the limbs, stomach, posterior, and face. One of them, 'Ali [full name withheld], the 29-year-old driver of the vehicle stopped at the checkpoint, told Human Rights Watch:

When we entered the headquarters, the [Iraqi] officer told us to kneel before him. We were hit on the back of our necks with a rifle butt. Then they took us upstairs to the first floor and told us to face the wall and began beating us severely. The Americans were there, standing some five or six meters away. They just stood and watched. I was beaten with a wooden stick on my forehead, and all of us were beaten all over the body with cables and hosepipes. That happened even before interrogation had begun.

Then they put us in a cell measuring three by four meters. Altogether we were sixty-three in that room, all crammed together. Some of the others in the cell had also been tortured. One of them, a farmer from al-Najaf called Khalid, had had his fingernails extracted and one of his arms broken. Most were adults but there were also several children, between fifteen and seventeen [years old]. We were given no food for the first day and a half. The guards told us if we wanted to eat we would have to buy our own food.

I was interrogated three times. Each time I told them I had nothing to do with the Mahdi Army, that I was a member of *al-Da'wa al-Islamiyya* [Islamic Call] and even showed them my party ID card. They paid no attention to that. The only special treatment I got was that they did not blindfold me or tie my hands during interrogation. We were beaten during interrogation, which was mainly to force us to insult Muqtada al-Sadr and our holy places. We were released four days later.

The three others interviewed by Human Rights Watch, who also said they had no association with the Mahdi Army, described similar treatment, adding that the police had



blindfolded them during interrogation. They also said that under torture, they were forced to insult Muqtada al-Sadr and the Shi'a faith.<sup>85</sup>

In another case, police and Iraqi National Guard forces arrested three men who said they were trying to deliver humanitarian aid supplies to the civilian population in al-Najaf and accused them of being Mahdi Army supporters. Dhia' Fawzi Shahid, aged thirty from Baghdad, told Human Rights Watch he and two other colleagues were volunteers who were delivering supplies on behalf of the Ministry of Trade when they were arrested in early August:

There were three of us, traveling in an ordinary car. As we approached a checkpoint, the police and army fired in the air and motioned us to stop. When I got out of the car they blindfolded me and tied my hands behind my back. At al-Najaf Police Directorate, they removed the blindfolds and I could see four electric wires and various implements used for beatings in the room. During interrogation, we were accused of belonging to the al-Sadr group. Personally, I was beaten with cables and suspended by my hands, which were tied behind my back. One of my shoulders was dislocated as a result. But I saw young men held there who were lying on the floor while the police were treading on their heads with their boots. It was worse than Saddam's regime. The police in al-Najaf extort money from the people because they regard them as the spoils of war.

They told me the charge against me was weapons smuggling, but that they would release me if I paid them six papers.<sup>86</sup> They said I should contact my family to arrange for the payment, which I refused. I was detained for thirteen days. In the hall where I was held, there were over 300 of us, including elderly men and juveniles. We had to pay for our own food, although every three or four days the Ministry of Health distributed packets of biscuits.<sup>87</sup>

Further arrests of persons suspected of having taken part in the clashes in al-Najaf continued after the announcement of an agreement to end the fighting between Iraqi

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<sup>85</sup> Human Rights Watch interviews with Jabbar, 'Ali, Sadiq and 'Adnan [full names withheld], Baghdad, August 12, 2004.

<sup>86</sup> In colloquial Iraqi dialect, a "paper" (*waraq*) commonly refers to a \$100 bill in U.S. currency, while a "notebook" (*daftar*) denotes \$10,000.

<sup>87</sup> Human Rights Watch interview with Dhia' Fawzi Shahid, Baghdad, September 5, 2004.

government forces and those loyal to Muqtada al-Sadr. Police and Iraqi National Guard forces reportedly arrested scores of men and youth, including children, following raids on their homes, apparently on the basis of tip-offs or intelligence provided by secret informants. They arrested others in the street, apparently because they thought them suspicious. Some of those detained were held at al-Najaf Police Directorate and others at the Crime Combat Office, located opposite al-Najaf Tourist Hotel on the al-Kufa Road in the city.

Other former detainees held in police custody in al-Najaf during August 2004 told Human Rights Watch that they were unaware of the reasons for their arrest, but assumed that like in many other cases, the police targeted them because they suspected them of having links with the Mahdi Army. Some also said that they believed they were falsely accused of having such links, but that the real motive for their arrest was extortion. Two such former detainees, who spoke to Human Rights Watch on condition of anonymity, were held in the first half of August. One of them said the police arrested him and held him for several hours at a police station in the city<sup>88</sup> and that during interrogation they accused him of being a member of the Mahdi Army. He stated that they released him after he agreed under duress to make a payment of 250,000 Iraqi dinars. He was told that 50,000 dinars was for his arresting officer and the remainder for the police chief. He added that initially they had demanded 750,000 dinars, but that they brought the price down through a process of negotiation. In the cell where they held him, he estimated that there were some ninety other detainees, many of them arrested ostensibly for their alleged links to the Mahdi Army.<sup>89</sup>

The second case of arrest for extortion was that of a businessman aged forty, who told Human Rights Watch that the police held him for ten days at the Crime Combat Office on the main al-Kufa Road in al-Najaf. He said that both uniformed and plainclothes policemen raided his home at six o'clock in the morning while he and his family were asleep:

They went up to the roof, where I was sleeping with my wife and children because of the heat, and fired shots in the air. They were very rough with us, and didn't give my wife the chance to wear her *'abaya* [traditional black cloak worn by women]. One of the officers hit me and took me downstairs and began searching the house. I asked what they were looking for, but I got no response. I asked to see an arrest warrant

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<sup>88</sup> The name of police station has been withheld at his request.

<sup>89</sup> Human Rights Watch interview with a former detainee from al-Najaf [name and details withheld by Human Rights Watch], Baghdad, September 21, 2004.

and was told there was one, but they didn't show it to me. As I was getting into their car, one of them hit me with the butt of his rifle.

As soon as I entered the Crime Combat Office, they blindfolded me and bound my hands very tightly with a piece of cloth. Then God's mercy descended on me. They began hitting me in the captain's room. There was more than one of them. They didn't ask me any questions, but kept beating me for about ten minutes. I was especially hit on my back with what I thought were rifle butts, and they were insulting me and swearing all the while. I fell to the ground, so they took me and put me in another room for about two hours, keeping me blindfolded and handcuffed. Then they took me to the torture room where I was beaten again with cables and *falaqa* [beating on the soles of the feet]. I couldn't tell from which direction the blows would come. I could tell from their voices that there were four or five of them.

After about eight days they began negotiating with me over the price for my release. Of course here everything is with money. If you want to get word to your family, you have to pay. If you want to eat, you have to pay. I was told that the captain was asking for one million dinars for my release. I said that was a lot of money, and they said, "You can afford it: you have a house, a car and a good business." We finally settled for 350,000 dinars, and they released me. The following day, a policeman was sent to pick up the money, and he told me they were keeping an eye on me.

The businessman also recounted to Human Rights Watch what he had seen in the cell where he had been held:

There were over seventy people in the cell. It was so crowded that there was no room to lie down. About a third of the detainees were Mahdi Army people, so I was told. They were kept to one side. The torture that I suffered was nothing compared to theirs. Some of them had had their fingernails extracted. I saw electric wires in the cell, and a ceiling fan from which wires were dangling. One of them told me they had tied his feet together and suspended him upside down from the ceiling. I saw that his body was covered with blue bruises from the severity of the beating. Each day the guards would come and take out ten or fifteen of them, and they never brought them back. I don't know where they were

taken. The asking price for their release was enormous, going up to a million and a half dinars. This is much worse than in Saddam's days. Then, it was only the security forces doing it, but now it is also the police. Two others I spoke to said they had come from Baghdad to look for their brother, but were arrested and accused of bringing money for the Mahdi Army with them. There was supposed to be an amnesty for Mahdi Army members, but they didn't release anyone from here.<sup>90</sup>

On August 16, 2004, representatives of political parties and their supporters held a demonstration in the city of al-Kut in the governorate of al-Waset to protest the ongoing fighting in the nearby city of al-Najaf. Spokespersons for the demonstrators described it as a peaceful event, triggered by the reported killing of scores of people, including women and children, as a result of aerial bombardment by U.S. forces of the al-Sharqiyya district of al-Kut, as the fighting in al-Najaf spread to nearby areas.<sup>91</sup> The demonstrators gathered outside al-Waset governorate building to present a list of demands to the governor, which included the payment of compensation to the families of those killed. One of the representatives of the demonstrators' committee was Shaikh 'Ammar 'Ata al-Hamdani, preacher at the Abi Turab mosque and a member of the Islamic Da'wa Party (*Hizb al-Da'wa al-Islamiyya*). He told Human Rights Watch that the committee failed to meet with the governor, but that the demonstrators agreed to return the following day in order to receive a response to their demands. However, the police instead arrested him in the early hours of August 17 and tortured him:

At about three o'clock in the morning our home was raided. There was loud banging on the front door and two people entered. They wore National Guard uniforms. Others, some of them masked, surrounded the house. I asked them to show me an arrest warrant, to which they responded by pointing a rifle at my wife and a gun at me. They said, "You are coming with us," while I kept saying I had not committed a crime. I got into their car and they took me to the headquarters of al-Waset police force. As soon as I entered the building, they started beating me. I couldn't see because they had put a sack over my head, and my hands were bound with metal handcuffs. They tortured me

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<sup>90</sup> Human Rights Watch interview with a businessman from al-Najaf [name and details withheld by Human Rights Watch], Baghdad, September 21, 2004.

<sup>91</sup> See, for example, Michael Howard, "Armed clashes claim 172 Iraqi lives", *The Guardian*, August 13, 2004 and "US bombing of Iraq city of Kut kills 75, wounds 148: official", *Agence France Presse*, August 12, 2004. Human Rights Watch was unable to verify how many people were killed during the aerial bombardment of al-Kut. One person from al-Najaf interviewed by the organization put the number of those killed at forty-five, and those wounded at 150.

without even asking me my name or any other question. I received a blow to my throat and was hit hard with cables on my head, which started bleeding. The torture lasted about forty-five minutes, with about four or five people beating me. They asked me no questions and did not talk to each other, so I do not know their names. It appears that they have learned that lesson. I was kicked and dragged on the floor, and beaten severely on my back and stomach. Then they threw me in a cell and removed the sack from my head. The cell had about seventy-five people in it. Two of them appeared to be juveniles. I stayed there until about noon the next day, when I was taken to see the deputy police chief. He asked me why I was here, and I replied that I did not know. They brought me breakfast, and an hour later I was released.<sup>92</sup>

Shaikh 'Ammar al-Hamdani told Human Rights Watch that upon his release he went to al-Zahra' Hospital in al-Waset for a medical examination and obtained a medical report attesting to his condition. Human Rights Watch did not have the opportunity to examine the medical report, but was given photographs of Shaikh 'Ammar's injuries taken on the same day. They showed deep purple and red bruising and lacerations across his back, shoulders and upper arms, consistent with being whipped or lashed with cables or other implements. He showed Human Rights Watch scarring around his wrists, which he said the metal handcuffs caused. He said he believed the police released him quickly with his wounds still fresh and visible as a way of sending a message to others to desist from any activity frowned upon by the authorities. The norm, he added, was to keep detainees in custody until all traces of torture or ill-treatment had disappeared, and that he was aware of over twenty recent cases of this kind. Following his release, he submitted an official complaint against the police chief, his deputy, and the governor of al-Waset at a local court about his arrest without judicial warrant and his treatment in detention, but at this writing Human Rights Watch did not know what the outcome was.

Human Rights Watch is also aware of other cases involving the arrest without warrant, illegal detention and ill-treatment of members of several political parties in Baghdad. Such arrests violate the right to due process under international human rights law, but also infringe upon the rights to freedom of association and expression. In all of these cases, the detaining authority was the Iraqi National Intelligence Service (INIS), which reports directly to Prime Minister 'Allawi and which by law possesses no arresting or detaining powers (see Section V). However, in at least one case, the INIS and personnel of the Interior Ministry's Major Crimes Directorate jointly carried out the arrests, with

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<sup>92</sup> Human Rights Watch interview with Shaikh 'Ammar 'Ata al-Hamdani, Baghdad, September 20, 2004.

the INIS taking the lead. The INIS also uses the Major Crimes Directorate's detention facility in al-'Amiriyya to hold detainees in its custody, though they are held separately from other detainees there.

Human Rights Watch received credible information, which it did not have the opportunity to independently verify, that the INIS held some ninety-six detainees at the al-'Amiriyya facility as of mid-October 2004. They were said to include people linked to two Shi'a political parties, the Islamic Da'wa Party, and the Supreme Council for the Islamic Revolution in Iraq (SCIRI) (*al-Majlis al-'A'la lil-Thawra al-Islamiyya fil-'Iraq*). Human Rights Watch was not aware of the reasons for the arrests, but some of the cases were reportedly linked to attempts by the INIS to claim property said to have belonged to the former Iraqi intelligence service and occupied since the 2003 war by these two political parties. Guards employed by these parties at these premises were said to have been arrested as part of that process and held in INIS custody with no legal basis. All of the arrests were said to have been carried out without warrants from a judicial authority. The INIS held the detainees incommunicado, without access to family members or legal counsel, and detained them for between three to four weeks without referral to court.

The ninety-six detainees were also said to include three journalists working for a local newspaper, *al-Shira'* [The Sail]. The reasons for their arrest were equally unclear, but may have been connected with the publication in *al-Shira'* of an article on the INIS, detailing the alleged connections of some of its personnel with the former intelligence services of the Saddam Hussein government.<sup>93</sup> Following the publication of this article, the newspaper editor-in-chief, Sattar Ghanem, was reportedly arrested. Human Rights Watch did not know whether he was among the three *al-Shira'* journalists held by the INIS at the al-'Amiriyya facility, and at this writing, could not confirm whether any of the ninety-six detainees continued to be held or released.

The most widely publicized arrests took place on August 16, 2004, when the INIS, together with personnel of the Major Crimes Directorate, raided the headquarters of the *Hizbullah* Movement in Iraq. Soon after the fall of the Hussein government, *Hizbullah* had occupied the headquarters of the former General Intelligence Service, a building known locally as *Hakimiyyat al-Mukhabarat*, located in the al-'Alwiyya district of Baghdad.<sup>94</sup> Human Rights Watch received conflicting reports about which other forces

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<sup>93</sup> Human Rights Watch did not know the date on which this article was first published in *al-Shira'*, but it was reproduced by the *Hizbullah* Movement in Iraq in its weekly newspaper, *al-Bayyina* (Issue No. 99, last week of October 2004), under the title "What do you know about our new intelligence service?"

<sup>94</sup> *Hizbullah* party officials told Human Rights Watch that their occupation of the premises had been authorized by the CPA at the time, and showed the organization documents to that effect.

provided backup support to INIS and Interior Ministry personnel during the raid: some said that it was soldiers of the Iraqi National Guard, “wearing clothes similar to those of the U.S. army,” while others said U.S. forces took part but did not enter the premises. Altogether, fifty-nine people were arrested, among them the Secretary General of *Hizbullah*, Hassan al-Sari, and tens of party members and employees, as well as six people who happened to be on the premises as guests. Iraqi forces searched the premises and removed property. They kept those arrested there for twelve hours before taking them in two buses to the Major Crimes Directorate facility in al-‘Amiriyya.

The arrests sparked an outcry by a number of Iraqi political parties. The pressure generated contributed to the release of the party’s leader, Hassan al-Sari, the following day. He told Human Rights Watch that arresting officials used violence against them at the time of arrest and ill-treated them, including by handcuffing them and making them lie down on the ground face down for over twelve hours, barring them from talking and depriving them of food and water. He added that he had lodged an official complaint against their illegal arrest and treatment at the Central Criminal Court, where Human Rights Watch spoke to him.<sup>95</sup>

INIS personnel carried out the arrests without judicial warrants and, with the exception of Hassan al-Sari, held the detainees for periods ranging from ten days to two months without referral to an investigative judge or formally charging them. In early October 2004, Human Rights Watch interviewed five of them following their release. Najj Mawla Ni’ma, one of Hassan al-Sari’s personal bodyguards, described the raid and their treatment:

It was about 2.30 in the morning, and we were asleep. We were awakened by the sounds of gunshots and ran to see what was happening. One of the guards told us that there were American forces outside, together with other groups wearing National Guard uniforms, many of whom wore hoods. Al-Haj Hassan al-Sari asked them what was happening and did they represent the government, and they replied “Yes, we are from the government.” But they had no official papers with them. They simply raided the Movement’s headquarters, and then ordered us to lie down on the ground. There were twenty of us at first, including Hojatoleslam al-Sayyid Hashem al-Shawki, a member of the Supreme Council of the Islamic Revolution. They pulled his *‘amama* [turban] off his head and it fell to the ground. Then they proceeded to

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<sup>95</sup> Human Rights Watch discussion with Hassan al-Sari, Secretary General of *Hizbullah*, Baghdad, August 25, 2004.

tie his hands behind his back with his *jubba* [cloak worn by Muslim clerics] and ordered him to lie down on the ground too. When everyone was lying face down, they placed metal handcuffs on our wrists. They also used al-Sayyid Hashem al-Shawki's *jubba*, which they tore into strips, to tie the hands of others, and also used the strips and other cloth to blindfold us. We stayed in that position from about 2.30 in the morning until 3.00 in the afternoon. They gave us no food or water. They did not question us, and we were not allowed to talk to each other. If anyone tried to speak or ask a question, they would come and kick us in the back and swear at us.<sup>96</sup>

At the Major Crimes Directorate, INIS personnel held the detainees in a room that Naji said measured five by six square meters, causing severe overcrowding: "We would take turns to sleep since there was no space for all of us to sleep at the same time, and even then we had to sleep in a crouched position as there was no room to lie down on our back."<sup>97</sup> Another of those detained described the condition of their detention:

In the cell there was one split unit [air conditioning] and a ceiling fan. The weather was extremely hot. They cut off the electricity supply from eleven o'clock at night until three o'clock in the afternoon of the following day. Three among us fainted from the extreme heat. They gave us no food or water on the first day, and said that we would have to pay for food, water, and cigarettes at double the usual price. They did not allow us to contact our families or to engage a lawyer. We could not even ask our families to bring us something to sleep on, and had to sleep on the bare floor.<sup>98</sup>

According to the accounts of those interviewed by Human Rights Watch, the INIS initially interrogated the detainees, focusing their questions on *Hiżbullah's* alleged links with Iran:

During interrogation, they accused us of serving Iranian interests and of being agents of the Iranian government. Then they said we were a terrorist organization. They also claimed to have concrete information proving that we had bought weapons and explosives. None of us was

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<sup>96</sup> Human Rights Watch interview with Naji Mawla Ni'ma, Baghdad, October 3, 2004.

<sup>97</sup> *Ibid.*

<sup>98</sup> Human Rights Watch interview with Abu Mustafa al-Sa'idi, Baghdad, October 3, 2004.



tortured during interrogation, but they waged a war of nerves against us, sometimes telling us they would release us, and at other times that they would transfer us to the custody of the Major Crimes Directorate to prolong our detention.<sup>99</sup>

Once initial interrogation had ended, personnel of the Major Crimes Directorate's Anti-Terrorism Unit then apparently interrogated the detainees. Neither agency brought any of them before an investigative judge or filed formal charges against them. They then released them in stages: ten were released on August 26, thirty-nine others on September 20, and the remaining four on October 13. The Major Crimes Directorate subsequently took over the premises at *Hakimiyyat al-Mukhabarat*, from which *Hizbullah* was evicted, as its main headquarters. On the basis of the formal complaint lodged on August 25, 2004, by *Hizbullah*'s leader, Hassan al-Sari, the Central Criminal Court's chief investigative judge at the time, Zuhair al-Maliki, issued a series of summons requiring several officials to appear in court to answer questions relating to the arrests. Brigadier General Ra'ad Yas Khudayyir al-Dulaimi, head of the al-'Amiriyya facility, sent a representative in response to the summons he received. The representative reportedly stated that the INIS held the *Hizbullah* detainees at the Major Crimes Directorate facility of al-'Amiriyya under its jurisdiction. The Ministry of Interior's legal spokesperson, the Minister of Interior Falah al-Naqib, and the INIS director, Major General Muhammad 'Abdullah al-Shahwani, did not answer summons issued to them. On October 18, 2004, Judge Zuhair al-Maliki was removed from his post as the Central Criminal Court's chief investigative judge and transferred to another post.

## VII. Arbitrary Arrest, torture and ill-treatment of criminal suspects

At the Central Criminal Court, Human Rights Watch spoke to fifty-four detainees who police officials had accused of a variety of serious crimes, including murder, abduction and kidnapping, money laundering, drug trafficking, weapon smuggling, and acts of terrorism. The vast majority were in court for the first time to have their statements taken down by a judicial investigator and have their first investigative hearing, having already been detained for several weeks, well beyond what is permissible under Iraqi law. Only in a handful of cases had they reached the trial stage. Human Rights Watch observed numerous investigative hearings and several trials in connection with such cases.<sup>100</sup>

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<sup>99</sup> Human Rights Watch interview with Muhammad Muhammad al-Mas'udi, Baghdad, October 3, 2004.

<sup>100</sup> Detaining officials brought some of the defendants to court from the Transfer Prison in al-Rusafa. Others had come directly from police stations in the Baghdad area, and the rest from facilities under the authority of the Major Crimes Directorate or the Criminal Intelligence Directorate. Upon arrival in court, they initially kept the

At least twenty detainees seen by Human Rights Watch in the Major Crimes Room were blindfolded, and remained so until police led them before the investigative judge's door, and removed the blindfolds. Police officials assigned to the court told Human Rights Watch that this was to prevent suspected members of criminal gangs from identifying the officers responsible for their arrest and to protect them from retaliatory attacks in the future. In two such cases, the detainees were allowed to remove the blindfolds prior to being interviewed by Human Rights Watch, provided they remained facing the wall. They said that the police had blindfolded them continuously since their arrest several days earlier.

The majority of the detainees to whom Human Rights Watch spoke said that torture and ill-treatment under interrogation was routine. Some also said that the police also used violence against them at the time of arrest. The accounts of their treatment at the hands of the police were consistent to a high degree. Typically, detainees reported being blindfolded with their hands tied behind their back while undergoing interrogation.<sup>101</sup> They said their interrogators or guards kicked, slapped and punched them, and beat them all over the body using hosepipes, wooden sticks, iron rods, and cables. Some of them bore visible traces of external trauma to the head, neck, arms, legs, and back when examined by Human Rights Watch. These traces appeared consistent with their accounts of having been repeatedly beaten. Several bore fresh bruises and lacerations, while others had scarring that appeared recent. In some cases, detainees also reported that their interrogators had subjected them to electric shocks, most commonly by having electric wires attached to their ears or genitals.

One detainee who was tried on an abduction charge and acquitted showed Human Rights Watch his dislocated shoulder, consistent with his account of interrogators suspending him for prolonged periods from a door handle by his hands, which they tied

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defendants in holding cells and then brought them up to what was known as the 'Major Crimes Room,' where they awaited their turn before the judge. Having obtained authorization from judicial officials to speak to the detainees, Human Rights Watch also had the full cooperation of police officials permanently assigned to the court to coordinate logistics for the hearings. They gave Human Rights Watch free access to all detainees, but there was no opportunity to talk confidentially to them. The detainees usually sat on the floor facing the wall and were told not to talk to anyone or to each other. Through early September 2004, most of the interviews or discussions with the detainees conducted by Human Rights Watch took place in the Major Crimes Room, within sight of police officials who had escorted them from their places of detention, but in most cases out of earshot. The president of the Central Criminal Court changed the system on September 7, ordering that all detainees be kept in the holding cells until the judges or judicial investigators were ready to receive them, and closing down the Major Crimes Room. Thereafter, Human Rights Watch conducted its interviews at the holding cells, which afforded more opportunity for confidential discussions with the detainees, without the presence of any detaining officials.

<sup>101</sup> In some cases, detainees gave Human Rights Watch the first names and ranks of police officials who they alleged had tortured them or ordered their torture under interrogation.

together behind his back.<sup>102</sup> Another detainee, one of five people brought to court on a murder charge, appeared unable to walk unassisted. Two of his co-defendants brought him to the door of the holding cell at the Central Criminal Court, where Human Rights Watch spoke to him. He said he had sustained a strong blow to the head while being held at al-Bayya' police station following his arrest on August 13, 2003, affecting his central nervous system. He had lost partial use of his legs, and his speech was partially impaired. He said detaining officials took him to the Neurosurgical Center Hospital in the Bab al-Shaikh district of Baghdad on one occasion. He also showed Human Rights Watch a broken front tooth, which he said had resulted from a punch in the face.<sup>103</sup>

Human Rights Watch interviewed two of three detainees brought to the Central Criminal Court by personnel of the Directorate of Ministry Security and Welfare. All three appeared to be in poor physical condition. One of them, aged twenty-five, wore a white *dishdasha* [traditional long robe] soiled in a number of places with large red stains that appeared to be blood. His right eye had dark bruising around it, and there were contusions on his forehead. Also visible was a wound to the left side of his head, from which blood had flowed down the side and into his ear, and looked very recently dried. He told Human Rights Watch that the police had arrested him and the other two detainees the previous evening, August 17, in the vicinity of the Interior Ministry in the al-Sha'ab district, beaten him badly and brought him to court the following day.<sup>104</sup> He was unaware of any charges against him.<sup>105</sup> Human Rights Watch sought to attend his investigative hearing, but upon checking with the judges in court, none was aware of his case and said the case had not been assigned to them. Human Rights Watch subsequently tried to obtain further information on the defendant through Ministry of Interior officials assigned to the court, but none was provided and the organization was unable to establish what happened to him.

Human Rights Watch also was informed about, but did not interview, a detainee referred to the Central Criminal Court in the second week of October 2004. According to one of the court's investigative judges, the detainee was brought in a wheelchair, having

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<sup>102</sup> Human Rights Watch interview with Haidar Ahmad Mirza Ahmad al-Nu'aimi, Central Criminal Court, Baghdad, July 31, 2004.

<sup>103</sup> Human Rights Watch interview with Ra'ed 'Abdul-Salam Hamid, Central Criminal Court, Baghdad, September 11, 2004. Hamid said he also had spent some two months at the Major Crimes Directorate, and has been subsequently transferred to the Iraqi Correctional Service section located in Abu Ghraib prison. He and his four co-defendants told Human Rights Watch that their trial had been postponed four times because of the failure of the police to bring a sixth defendant charged in the same case. On that day too, only five of them had been brought to court, and the trial was postponed again.

<sup>104</sup> Human Rights Watch interview with 'Amer Rahim Dhari, Central Criminal Court, Baghdad, August 18, 2004.

<sup>105</sup> A police official present in the Major Crimes Room suggested to Human Rights Watch that the three were arrested because they may have been "loitering suspiciously" near the Ministry.

suffered partial paralysis as a result of torture. Personnel of the Major Crimes Directorate held him, accusing him of having planted an explosive device at the headquarters of a political party, although that party's officials reportedly denied this. During interrogation, the detainee was hit on his spine with a metal pipe, damaging several of his vertebrae and causing the paralysis.<sup>106</sup>

The majority of detainees held in the custody of the Criminal Intelligence Directorate and the Major Crimes Directorate spoke of dire conditions of detention when interviewed by Human Rights Watch. In particular, they complained of severe overcrowding with no room to lie down to sleep at night. Some detainees said they took turns sleeping, while others said they sometimes slept while standing, as there was standing room only in the cell. Not surprisingly, under such conditions, hygiene was extremely poor – as attested by the physical appearance of most detainees Human Rights Watch saw in court. Such detainees complained of lack of washing and toilet facilities, a constant and overpowering stench of urine in the cells, and lack of basic medical care, including for a range of skin afflictions such as lice. Another complaint was lack of food or water. Most detainees reported that police officials in charge of these detention facilities rarely provided food, which detainees had to buy themselves if they happened to be carrying cash when arrested and if police did not take this money from them upon searching them. Although the police did not allow any family visits in these facilities, they reportedly allowed family members who were able to find out where the detainees were being held to bring food to the facility, which detainees then sometimes shared with their cellmates.

### **Mass arrests**

Starting in late June 2004 the Iraqi Interim Government carried out several large-scale and high-profile raids on districts of Baghdad said to be strongholds of a number of organized criminal gangs. This report highlights two such raids conducted in late June and early July 2004 by Ministry of Interior personnel, with backup provided by Multinational Force personnel (see also Section X). Immediately after the raids, Ministry of Interior officials publicly claimed that they had broken up a number of criminal gangs as a result, and that they had carried out the arrests on the basis of good intelligence and weeks of surveillance of the targeted suspects. They invited selected international, local, and Arab journalists to photograph the detainees and observe them being interrogated, portraying the raid as a successful police operation.<sup>107</sup> Local newspapers amply covered

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<sup>106</sup> Human Rights Watch discussion with an investigative judge, Central Criminal Court, October 24, 2004.

<sup>107</sup> See Ann Barnard, "Setting a tough tone in Baghdad roundup," *Boston Globe*, July 17, 2004. According to the article, Barnard was contacted by "a high-ranking official in Iraq's Interior Ministry," who told her, "We've arrested 500 criminals. Come to the ministry now. And bring your camera. You can take their pictures."

the raids in the ensuing days, creating the impression that the Iraqi authorities were making significant inroads in their fight against organized crime. In both examples detailed below, the police released the majority of the suspects within a day or two after the raids, though that received little press attention. Human Rights Watch followed the remaining cases through the court system, and found that in many of those, investigative judges ordered the suspects released because of insufficient evidence once they were brought before them. The police appear to have arrested a large number of them randomly during the operations, either because they happened to be in the wrong place at the wrong time, or on the basis of unverified tip-offs from locals. By the time of the release of these detainees, the police had held them for weeks or months without bringing them to court, and in some cases certainly tortured or otherwise ill-treated them.

### ***The al-Bataween arrests, June 27, 2004***

On June 27, 2004, squads of the Ministry of Interior's Criminal Intelligence Directorate carried out widespread arrests in the neighborhood of al-Bataween in Baghdad's al-Rusafa sector, located near the al-Sa'doun district on the east bank of the Tigris River. The neighborhood is reputed to be frequented by alleged criminal groups involved in drug trafficking, in particular. Iraqi authorities said the raid was aimed at apprehending such gangs. According to official sources, 149 arrests were made, among them one woman and an unknown number of Arab nationals. Investigative judges at the Central Criminal Court told Human Rights Watch that the raid was conducted without warrants, apparently on the direct order of the Minister of Interior. The following day, local newspapers quoted Ministry officials as saying that the police raid broke up fifteen criminal gangs, some of which they said were involved in murder, abduction, robbery, drug trafficking, and prostitution. The arrests, according to Major General Hussain 'Ali Kamal, undersecretary for Criminal Intelligence Affairs at the Ministry of Interior, were conducted on the basis of information obtained through surveillance and the use of satellite imagery to monitor the movements of suspected criminal gangs.<sup>108</sup> He said that specially selected forces from other agencies, including the Interior Ministry's Internal Affairs Directorate and SWAT teams, took part in the raid, with backup provided by U.S. Military Police forces.<sup>109</sup>

Criminal Intelligence personnel initially held the detainees at the Ministry of Interior's compound, located in the al-Sha'ab district of eastern Baghdad, close to the al-Sha'ab football stadium. According to accounts received by Human Rights Watch, they

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<sup>108</sup> See, for example, "Satellite images contribute to the arrest of 13 gangs," *Al-Sabah*, June 28, 2004.

<sup>109</sup> See Jamal Hashem 'Ali, "Breakup of fifteen criminal gangs on the eve of sovereignty transfer: the Interior raid al-Bataween dens," *Azzaman*, June 28, 2004.

tortured and abused them at various stages of their detention, particularly during the first few days following their arrest, and deprived them of food and water for at least two days.

On June 29, the third day after the police carried out the arrests, U.S. soldiers from an Oregon Army National Guard unit on patrol in the area close to the Ministry of Interior's compound witnessed Iraqi police abusing the detainees and made a decision to intervene. It was the only known case in which U.S. forces intervened to stop detainee abuse following the official transfer of sovereignty from the CPA to the Iraqi Interim Government. One of the battalion's scouts took photographs of the scene through his rifle scope, showing at least two dozen detainees sitting on the ground, with their hands tied behind their back and blindfolded. Several of them were semi-clad, bearing what appeared to be "fresh welts and bruises" on their backs and legs. One was thought to be aged fourteen (see Section VIII).<sup>110</sup>

The following is an extract from a written account made available to Human Rights Watch by Captain Jarrell Southall, a U.S. soldier serving with the Oregon Army National Guard's 2<sup>nd</sup> Battalion, 162<sup>nd</sup> Infantry Regiment, of what he witnessed on that day:<sup>111</sup>

As we entered the compound basically un-challenged I could see apparent prisoners bound by nylon ropes and rags. The prisoners were mostly all sitting, some writhing in pain as we approached the questioning or holding area. This holding area was completely outdoors and there was a desk with an IP [Iraqi Police] sitting by the desk overlooking this holding area. The prisoners tried to explain that they have had very little water and no food for three days. Many of these prisoners had bruises and cuts and belt or hose marks all over ...

We passed out water bottles to them and staged the prisoners near the back wall of this compound to relieve them from direct sunlight. At the same time CPT [Captain] Seth Morgulas, an Armor Officer, who is assigned as a company commander of a MP [Military Police] company, arrived and commenced to disarm and segregate the Iraqi Policemen.

According to Captain Southall's account, his battalion commander, Lt. Colonel Hendrickson, then asked to speak to the person in charge. One Iraqi official told him

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<sup>110</sup> Some of these photographs can be viewed on <http://tinyurl.com/4uze6>.

<sup>111</sup> Accounts of the incident were first published by Mike Francis in, "Ordered to just walk away," *The Oregonian* August 11, 2004.

“that there was no prisoner abuse and that everything was under control and they were trying to conduct about 150 investigations as soon as possible.” Another Iraqi police official “made sure to place blame for any misdoings to those who worked inside this facility. Whereas, he was only in charge of the ‘outer security!’”:

All the while soldiers were applying aid to those prisoners who seemed that they would expire and started distributing water to those in need and carting the non-ambulatory patients away by stretcher. I witnessed prisoners who were barely able to walk and many of those wore soiled clothes.

Upon searching the premises, U.S. soldiers found some seventy-eight other detainees in a room measuring about 20 x 20 sq. feet. Captain Southall said most were Sudanese, arrested “because they had no identification.” According to his account:

When we entered the office space adjacent to the crowded room there were several men in civilian clothes sitting around a conference room table. There was a tightly bound and gagged prisoner crumpled at the foot of these men sitting around this conference table smoking cigarettes... This room was heavily air-conditioned, which was a stark contrast to the rooms that contained prisoners. The IPs told me that these prisoners were all dangerous criminals and most were thieves, users of marijuana, and other types of bad people. No IPs there admitted to beating or abusing the prisoners. However, the abuse and neglect was quite apparent. As we traveled from room to room prisoners were bound, blinded, and gagged. Many had terrible bruises and burns. One room contained hoses, broken lamps (electric shock), and chemicals of some variety.<sup>112</sup>

Accounts by other U.S. soldiers who were present at the Ministry of Interior compound at the time have since been made public. They included that of Staff Sergeant Kevin Maries who, according to *The Oregonian*:

reported that one prisoner lying facedown on the ground was struck repeatedly on the back with a rubber hose. Later, Marines watched another extended beating of a prisoner and took pictures through his

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<sup>112</sup> Extracts from a statement written by Captain Jarrell Southall, 2<sup>nd</sup> Battalion, 162<sup>nd</sup> Infantry Division, Oregon Army National Guard. The statement is dated June 29, 2004.

spotting scope. A uniformed Iraqi policeman and civilian delivered a beating that was “more vicious and prolonged than previously observed,” Maries’ statement said. At one point, the prisoner’s bare feet were tied to a bar and elevated, and the guards beat his bare feet with a rubber hose.<sup>113</sup>

According to press reports based on interviews with several of the U.S. soldiers on the scene, Lieutenant Colonel Dan Hendrickson, the battalion commander, then “radioed up the chain of command in the Army’s 1<sup>st</sup> Cavalry Division, relaying what he had seen and asking for instructions . . . It wasn’t long before the order came: Stand Down. Return the prisoners to the Iraqi authorities and leave the detention yard.”<sup>114</sup> It was unclear whether the order came from the division or elsewhere within the U.S. Army’s Central Command or that of the Multinational Force (see Section X). Commenting on the incident some two months later, General Richard Myers, chairman of the U.S. Joint Chiefs of Staff, was reported as saying “it is critically important to our success in Iraq that we reinforce, whenever possible, the authority and responsibility of the Iraqi government to handle its internal affairs.”<sup>115</sup> At the time, some of the local newspapers portrayed the incident as an attempt by U.S. forces to secure the release of criminal gangs.<sup>116</sup>

Ministry of Interior officials released an estimated eighty of the detainees within days of their arrest. They continued to hold the remaining sixty-nine detainees for at least two months without bringing them before an investigative judge, and denied them access to legal counsel and to family members until their move to the Transfer Prison.<sup>117</sup> Human Rights Watch saw the relatives of several of the detainees who came to the court regularly in the hope that the detainees would be brought before a judge, and were

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<sup>113</sup> Mike Francis, “Abuse by Iraqis ‘astonished’ guardsman,” *The Oregonian*, October 9, 2004.

<sup>114</sup> Mike Francis, “Ordered to just walk away,” *The Oregonian*, August 11, 2004.

<sup>115</sup> Mike Francis, “Joint Chiefs of Staff Chairman praises Oregon soldiers’ action,” *The Oregonian*, October 9, 2004. General Myers’ comment was said to have been made in a letter to Senator Ron Wyden (D-Ore.), in response to his call for an investigation into the incident.

<sup>116</sup> See, for example, “Failed American attempt to release members of the al-Bataween gangs,” *Al-Sabah*, June 30, 2004. Other newspapers reported that U.S. forces had arrested Iraqi police officers. See, for example Jamal Hashem ‘Ali, “American force detains police officers questioning the al-Bataween gangs,” *Azzaman*, June 30, 2004.

<sup>117</sup> Under the penitentiary system established by the previous Iraqi government, detainees being referred to court or destined for transfer to another prison within cities or between different governorates would usually pass through a Detention and Transfer Prison or *Tasfirat* for short (*Sijn al-Mawqif wal-Tasfirat*). In Baghdad, there were two such prisons, one in al-Karkh covering western Baghdad, and another in al-Rusafa, covering eastern Baghdad. At this writing, only the al-Rusafa *Tasfirat* was in use. The prison is located in the al-Sha’ab district, close to the football stadium and opposite the Baghdad Police Academy.



invariably disappointed. On August 23, the wife of one such detainee told Human Rights Watch:

They arrested my husband in an overnight car park at around eleven o'clock on the morning of 27 June. Until now, he has not been brought before the judge. About twelve or thirteen days after his arrest, he was transferred to the *Tasfirat* [Transfer Prison]. At first I didn't know where he had been taken, but then through someone in the police I found out he was being held by Criminal Intelligence. That was about three or four days after his arrest. I tried to see him, but they wouldn't let me. Now I can visit him once a week, on Sundays which are the visiting days for women. He told me he had been beaten while held by Criminal Intelligence. One of his fingers was broken, and he had been beaten on his right leg with an iron rod. They wanted him to confess to one of his relatives' involvement in a crime.<sup>118</sup>

At the beginning of September 2004, one of the employees of the Transfer Prison responsible for escorting detainees to the Central Criminal Court told Human Rights Watch that sixty-one detainees from the al-Bataween group were still being held there and had not been summoned before an investigative judge. By September 15, on the basis of information provided by several of the judges, Human Rights Watch was able to account for forty-one of them: eight were released for lack of evidence, twenty-eight were released on bail, and in five other cases there was sufficient evidence to authorize their continued detention on abduction charges.<sup>119</sup> In the third week of October 2004, Human Rights Watch interviewed four detainees from the al-Bataween group that were still being held. They had been brought to court for the first time since their arrest almost four months earlier, and were facing charges related to possession of drugs. Three of them were brothers originally from the city of al-Kut but were living in Baghdad doing casual labor. One of them, Hassan Ghadhban Tu'ma, aged forty, was working in a bakery at the time. He told Human Rights Watch:

I was in the bakery, and my brothers were selling fruit outside. A large group of police arrived, some of them in civilian clothes, and others in police or military uniform. Some of them also wore masks. It was sometime between 11:30 and noon. They took everyone who was in the

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<sup>118</sup> Human Rights Watch interview with the wife of one of the al-Bataween detainees [name withheld by Human Rights Watch], Central Criminal Court, Baghdad, August 23, 2004.

<sup>119</sup> Human Rights Watch discussions with Zuhair al-Maliki, Salem Radwan al-Musawi and Haqqi Isma'il al-Shummari, investigative judges, Central Criminal Court, September 15, 2004.

bakery and those who were working on the street. Altogether they arrested about 160 people, and took us to the [Criminal] Intelligence headquarters. We were blindfolded, and our hands were tied behind our backs. They began hitting us right away, and this lasted into the night. During the first three days, there was continuous torture. I was beaten with an aluminum rod and with cables. They also tortured me with *falaga*. Then I was told to sign a statement with my hands tied behind my back, so I didn't even see the paper and I don't know what I signed. On the third day, the Americans came. They took us out of the cells and gave us water and treated us for the injuries caused by the torture. They also punished the [Iraqi] officials by disarming them, taking them outside under the sun and confronting them sharply about their behavior towards us.<sup>120</sup>

The eldest of the three brothers, Jaber, aged forty-six, told Human Rights Watch that the police forced him to crouch down with his knees and forehead touching the ground and tied his hands behind his back, and that he remained in this position almost continuously for four days.<sup>121</sup> The youngest, Jassem, aged thirty-two, said that "they gave us no food or water for three days except for an onion and a tomato, and if it had not been for the intervention of the Americans, we would have been finished." He added that on the following day, "the Americans returned. We didn't see them but could see the tops of their vehicles through the window of our cell. But they did not intervene again."<sup>122</sup> All three remained in the custody of Criminal Intelligence for fifteen days before their move to the Transfer Prison. During that time, their families were unable to gain access to them. The three brothers confirmed that on the second day, Criminal Intelligence personnel had released a large group among them, most of whom were elderly. They saw no female detainees among those arrested, but said three of the males were children. At the Transfer Prison, they were able to engage a lawyer, who was in court representing them on the day Human Rights Watch met them. When asked about other detainees arrested in the same raid, they said that upon moving them to the Transfer Prison, the police divided the al-Bataween group into three groups, denoted by A, B and C. The three brothers belonged to group C, but only four of them had come to court that day. The police had already released all of those in group B, they said.

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<sup>120</sup> Human Rights Watch interview with Hassan Ghadhban Tu'ma, Central Criminal Court, Baghdad, October 23, 2004.

<sup>121</sup> Human Rights Watch interview with Jaber Ghadhban Tu'ma, Central Criminal Court, Baghdad, October 23, 2004.

<sup>122</sup> Human Rights Watch interview with Jassem Ghadhban Tu'ma, Central Criminal Court, Baghdad, October 23, 2004.

The fourth detainee in this group interviewed by Human Rights Watch that day was a Sudanese national living and working in Iraq since 1988. 'Ubaid al-Sayyid Makki Muhammad, aged forty-four, said that on the day police arrested him, he was selling secondhand clothes off a street stall, and had just gone into a coffee shop when the police arrived:

The police came into the coffee shop and told everyone to put their hands up and face the wall. Then they tied our hands behind our backs with rope and blindfolded us with pieces of cloth, and told us to walk towards the vehicles while crouching... At the Ministry of Interior, they began interrogating us individually. I was the second person called for interrogation, and they beat me and tortured me while still blindfolded and with my hands tied. They hit me with cables and with metals rods, though I could not be absolutely sure since I couldn't see. The torture lasted about half an hour, and there were several of them hitting me at the same time, about five of them. Then they ordered me to put my fingerprint on a piece of paper, or sign it, with my hands tied and while blindfolded... They only gave us water and food on the third day. Each person got a small piece of bread with a tomato, and even then they kept us blindfolded and our hands tied, and fed us themselves. When the Americans arrived, they untied our hands and removed the blindfolds, and took a group of the detainees outside and gave them food and water. They also moved other detainees who had been kept outside under the sun to a shady area, and gave us medical treatment.<sup>123</sup>

'Ubaid told Human Rights Watch that that was the only time police had "interrogated" him during the four months he spent in detention. He said they kept him at the Criminal Intelligence facility for thirteen days and then took him to the Transfer Prison, where they were holding a total of sixty-one detainees from the al-Bataween group. He said the police divided them into groups and distributed them among the various cells that already housed fifty-five detainees each. He described conditions there as better, with food and water provided to inmates and with family visits allowed. In court, the same lawyer engaged by the three Tu'ma brothers represented him, also on the same charge of possession of drugs. Human Rights Watch attended the investigative hearing of the four detainees on October 23. The judge adjourned the hearing for several days to give him more time to study their files.

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<sup>123</sup> Human Rights Watch interview with 'Ubaid al-Sayyid Makki Muhammad, Central Criminal Court, Baghdad, October 23, 2004.

'Ubaid estimated that as of the third week of October, the police continued to hold some forty detainees from the al-Bataween group at the Transfer Prison, having released the rest at different times. Among those still held were nine Sudanese nationals, he added. A defense lawyer representing several of the al-Bataween suspects told Human Rights Watch that some twenty of them faced drug-related charges.

### ***The al-Kifah Street arrests, July 11, 2004***

In a raid similar to that conducted on the al-Bataween neighborhood, forces of the Ministry of Interior's Criminal Intelligence Directorate carried out widespread arrests on July 11, 2004, in the al-Kifah Street neighborhood located near al-Andalus Square in the Bab al-Shaikh district of Baghdad. Other arrests were also conducted in the neighboring areas of al-Fadhil, al-Sadriyya and al-Siba'. Iraqi police arrested 527 people, said by officials to comprise members of criminal gangs involved in serious crimes.

As in the al-Bataween case, Ministry of Interior officials announced that the sweeps on al-Kifah and neighboring districts had resulted in the breakup of sixteen criminal gangs involved in a variety of criminal activity, including murder, robbery, abduction, and drug trafficking. The local press quoted the Ministry's undersecretary for Criminal Intelligence Affairs, Major General Hussain 'Ali Kamal, as saying that the arrests were carried out "in cooperation with the judicial authorities to provide the legal framework for the arrest and interrogation of the suspects."<sup>124</sup> Human Rights Watch later learned from the judicial authorities that the police carried out the arrests without recourse to the courts and that judges had not issued any arrest warrants. Rather, the order was understood to have come directly from the minister of interior. Furthermore, the police denied the detainees access to family members or defense counsel for at least two weeks following their arrest.

Criminal Intelligence personnel reportedly released over 400 of them later the same day, while continuing to hold 118, some for over seven weeks, before bringing them before an investigative judge. It was unclear on what basis they took the decision to immediately release some of them and detain others. At the Central Criminal Court, Human Rights Watch spoke to seventeen of the detainees arrested in the raid and who were among those brought before investigative judges during August 2004. One of them, Muhammad Fateh Nameq, a thirty-year-old employee of a car windscreen repair shop, said:

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<sup>124</sup> Jamal Hashem 'Ali, "Organized gangs' dens raided in al-Fadhil, al-Kifah and al-Sadriyya," *Azzaman*, July 14, 2004.

We were arrested at around six o'clock in the evening. A police patrol came, and they forced us into pickup trucks and took us to the Ministry of Interior. When we arrived at the compound, they divided us into two groups. The bigger group was released almost immediately, and the rest of us were kept there. We were still not blindfolded at that point, and I saw five or six masked informers who came and gave information to the police about some of those in my group. They pointed to several people who they said were involved in abductions, and they were taken upstairs to a different place, and the rest of us were put in a large hall where they registered our names.<sup>125</sup>

Muhammad said Criminal Intelligence personnel held him there for two weeks, during which time they frequently and individually interrogated him and the others about a variety of crimes, including abductions and robberies. He said they beat him during interrogation, particularly on his back and chest. Another detainee who was with him in court, Arkan Rahim Lafta, a taxi driver aged twenty-seven, told Human Rights Watch that interrogators slapped, kicked and punched him, and beat him all over the body with a wooden stick.<sup>126</sup> Both were then transferred to al-Kadhimiyya police station, where they were held for a further two weeks before being brought to court. They said detaining officials did not allow them family visits either at the Criminal Intelligence facility or at the police station.

Three other detainees arrested in the al-Kifah Street raid but only brought to court on August 21, six weeks after their arrest, gave similar accounts to Human Rights Watch. They included Sa'ad Hassun Kadhim, a twenty-nine-year-old man from al-Najaf who was working in a bakery in Baghdad at the time:

I was inside the bakery when the police arrived, at about 7:15 in the evening. They searched me and two others and then took us to Criminal Intelligence. I stayed there seventeen days. We were put in a hall together with others from the al-Kifah group. One of them was a young boy aged fourteen or fifteen. A smaller group of those arrested were taken up to the seventh floor [in the main Ministry building], where I heard that twenty-five people arrested in the al-Bataween raid were also being kept. We were not given any food and had to buy it ourselves. We were not allowed any family visits there. Even now, after

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<sup>125</sup> Human Rights Watch interview with Muhammad Fateh Nameq, Central Criminal Court, Baghdad, August 7, 2004.

<sup>126</sup> Human Rights Watch interview with Arkan Rahim Lafta, Central Criminal Court, Baghdad, August 7, 2004.

my transfer to al-Khadra' police station, I have no visits and my family does not know where I am. To tell the truth, I was beaten by the officer during interrogation. In the end I was made to sign a paper, but I don't know what it said because I was blindfolded at the time. One person held with us, called Hazem Hamid, who is about twenty-seven years old and had a tattoo on his forehead, was badly beaten and tortured with electricity.<sup>127</sup>

Sa'ad told Human Rights Watch that the reason Criminal Intelligence personnel transferred the detainees to the various police station was because there had been a mortar attack against the Ministry of Interior building. He added that at the al-Khadra' police station, where he was held in a cell with thirty-two others, the police forced detainees to buy their own food, and did not permit him and some of the others any family visits. Two other detainees, a twenty-six-year-old employee of the Ministry of Oil and an eighteen-year-old blacksmith, who were transferred to the Baghdad al-Jadida police station described similar treatment while held by Criminal Intelligence, including being beaten and signing statements under duress.<sup>128</sup>

The accounts given by these four detainees were consistent with those of others interviewed by Human Rights Watch in connection with the al-Kifah Street arrests. Most appear to have been held on average for two weeks at the Criminal Intelligence facility in the Ministry of Interior compound before being transferred to various police stations across Baghdad. Several of the detainees interviewed also told Human Rights Watch that Criminal Intelligence continued to hold forty-eight of those arrested in the raid on July 11, beyond the initial two weeks, and that they were still there as of early August 2004, but the organization could not independently verify this. Those transferred to police stations described conditions of detention there as generally better, including being allowed family visits in most cases, and not being ill-treated. Several told Human Rights Watch that interrogators had not tortured them at the Criminal Intelligence facility "because there was no evidence against us." Others, however, said they had been beaten and otherwise ill-treated to force them into confessing to various crimes, including robberies.

Human Rights Watch attended several of the hearings and spoke to the judges about the evidence gathered by the police. The judges concurred, saying that with the exception of

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<sup>127</sup> Human Rights Watch interview with Sa'ad Hassun Kadhim, Central Criminal Court, Baghdad, August 21, 2004.

<sup>128</sup> Human Rights Watch interviews with Hussain 'Adel Karim Khan and Amjad Sa'di Muhammad, Central Criminal Court, Baghdad, August 21, 2004.

a handful of cases, there was very little of substance to justify an extension of their detention and that they had no choice but to order the release of the detainees. At one session observed in mid-August, for example, an investigative judge released sixteen detainees after questioning them for only a few minutes, saying that “there was nothing in their files.”<sup>129</sup> Human Rights Watch had spoken to five of these detainees before the hearing. Criminal Intelligence had held them for sixteen days before transferring them to the al-Rashad police station. They said they were not aware of what the charges against them were, and had been held for forty-one days before seeing a judge. In another case, a detainee brought to court on August 30 2004 told Human Rights Watch that Criminal Intelligence held him for fifteen days before his transfer to the al-Dora police station. He had been detained for a total of fifty days before seeing an investigative judge.<sup>130</sup> Like many of his co-defendants, the judge ordered him released that day for lack of evidence.

Investigative judges ordered the release of the majority of the detainees arrested in connection with the al-Kifah Street raid and referred to the Central Criminal Court. They told Human Rights Watch in mid-September 2004 that although cases were still being processed through the court, only in ten cases did the available evidence against them warrant an extension of their detention period to allow for the completion of the criminal investigations.

### ***Other cases***

Human Rights Watch also interviewed thirty-three detainees arrested outside the context of mass roundups, on suspicion of involvement in a variety of crimes including abduction, murder, and money laundering. Most had been referred to the Central Criminal Court by the Major Crimes Directorate, Criminal Intelligence Directorate, and the Directorate of Ministry Security and Welfare. The majority were in court for the first time for questioning by an investigative judge, but in a small number their cases had reached the trial stage. Their accounts of their treatment at the hands of their interrogators, and of conditions of detention generally, were highly consistent. In several of the cases, the detainees bore visible injuries that appeared recent and consistent with their description of the treatment they said they had suffered in detention.

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<sup>129</sup> Human Rights Watch discussion with an investigative judge [name withheld by Human Rights Watch], Central Criminal Court, Baghdad, August 21, 2004.

<sup>130</sup> Human Rights Watch interview with ‘Ammar Rashid ‘Amid, Central Criminal Court, Baghdad, August 30, 2004.

Only in six cases examined by Human Rights Watch at the Central Criminal Court had detaining officials brought the defendants before an investigative judge within twenty-four hours of their arrest. Typically detainees were held for periods ranging from one to eight weeks.<sup>131</sup> In the majority of cases, the detainees had no access to defense counsel before being brought to court, and were represented by court-appointed lawyers who lacked any knowledge of their clients' cases and had no prior access to the evidence against them. Below are details of six cases where Human Rights Watch interviewed the defendants or attended their investigative hearings, or both:

### **Case 1**

Tahsin Khalil Ibrahim: aged thirty-three from the al-Waset governorate, living in Baghdad. The police arrested him on August 5, 2004, at his home in the Hay al-Hussain area in the al-Rusafa sector the city, accusing him of facilitating the commission of an abduction that took place one month earlier. They held and interrogated him at the Major Crimes Directorate for five days before his referral to the Central Criminal Court. One of the many detainees who said police had attempted to extort money from him in exchange for his release, he told Human Rights Watch:

Our house was raided by a squad of people wearing civilian clothes and carrying police badges. It was about seven o'clock in the morning. They took my identity card and took me to the Major Crimes [Directorate]. They tied my hands in the car and then blindfolded me for about five hours after we got to the prison. I was beaten during interrogation and tortured with electric shocks. I kept asking the officer to tell me what the charge against me was so I could answer him, but he said I was not allowed to speak, and the torture just continued. In the interrogation sessions, there was one chief officer and one or two others who were beating me. Sometimes this would last for five hours continuously, usually at night. I heard that there were Americans at the prison but I never saw any of them. I was held in a room measuring four by five square meters, and today there were fifty-eight of us in there. We were not allowed family visits or to contact a lawyer. I was asked to pay two million dinars in return for my release, but I don't have that kind of money. Others were also asked for money in return for

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<sup>131</sup> In some cases, police officials told Human Rights Watch that although they had not brought defendants to the Central Criminal Court in person within twenty-four hours as stipulated by the CCP, defendants' files had been referred to the investigative judges within a few days of arrest. In response to this, the judges told the organization that they did not regard this as compliant with the law, and that the defendants must appear before them in person.



their release, particularly those who are involved in abductions who are asked to pay \$10,000.<sup>132</sup>

## Case 2

Firas ‘Imad Sadeq al-Dulaimi: age unknown, living in the al-Sha’ab district of Baghdad, one of three detainees referred to the Central Criminal Court on August 18, 2004, accused of involvement in several crimes involving theft, abduction, and murder. Criminal Intelligence Directorate personnel arrested him on June 23, 2004, and held him for eight weeks before his referral to an investigative judge. When Human Rights Watch saw him on August 18, Firas was in poor physical condition: he was limping as a result of an apparent injury to his left foot, his left arm was in a makeshift sling, and on the outer side of his upper left arm there were clear and reddish lacerations which appeared very recent. He appeared to have difficulty in focusing and to be in obvious pain.

Upon questioning during his investigative hearing, which Human Rights Watch attended, Firas admitted to involvement in the abduction of two individuals for which a ransom of 1,150,000 Iraqi dinars was demanded and obtained. He denied other charges leveled against him. When asked about his injuries, he told the judge that he had sustained the injuries to his left arm (broken bones and a wound on the upper arm) when his car overturned as he was being chased by police on the day of his arrest. He said that while in detention, he received no medical treatment for his broken arm, and that police beat him with a wooden stick on the wound sustained to his upper left arm while interrogating him. Additionally, he said they had beaten him on his left foot where he had had an operation in the past, causing him to limp from the pain.

The investigative judge hearing the case ordered that Firas be referred for medical examination to verify the torture allegations he had made. At the Medico-Legal Institute, where such referrals are usually made, Human Rights Watch found no records indicating that detaining officials had implemented the judge’s referral order in the four weeks following Firas’s appearance in court on August 18.

## Case 3

Khalid Muhammad ‘Atiyya ‘Abbas al-Budairi: a thirty-six-year-old father of two from Baghdad who was accused of having stolen a large amount of money from the Central Bank of Iraq following the fall of the Saddam Hussein government. He told Human

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<sup>132</sup> Human Rights Watch interview with Tahsin Khalil Ibrahim, Central Criminal Court, Baghdad, August 10, 2004.

Rights Watch that he had been arrested three times on the same charge, and was held in U.S. custody on one of those occasions. His last arrest took place on August 20, 2004, when police held him at the Major Crimes Directorate in al-Rusafa. He told Human Rights Watch:

I was arrested on the basis of information from a secret informant. They took me at lunchtime, just before noon prayers, from a car park in the al-Iskan district. There were eight of them, dressed in plainclothes and driving two civilian cars. They tied my hands and blindfolded me, and pointed a weapon at me to force me to get into the car. Once we arrived at the Major Crimes [Directorate], I was hit hard across my back without even being asked a single question. Then I was put in a small room with over fifty people in it. It was so crowded that it was difficult to breathe. Later that afternoon, I was taken to another room where Captain [name withheld] accused me of having stolen from the bank 1,300,000,000 dinars. I replied that if I had that kind of money I wouldn't have stayed in Iraq. He left the room, and suddenly I was being beaten from all directions. They used a metal pipe on my back and the marks are still there...

They left my hands bound with metal handcuffs for two days. Then they took me to another room where there were about seventy-five or eighty detainees. There was no room even to squat. Everyone seemed to have lice. On the third day, I was interrogated again. This time they untied my hands and removed the blindfolds. The captain said, "We have intelligence on you, but if you don't talk we won't let you go." He threatened me with electric shocks, and said he would bring my parents and torture them in front of me. So I was obliged to agree, and signed a statement confessing to having stolen a lesser amount of 350 million dinars.<sup>133</sup>

Khalid also told Human Rights Watch that police had arrested his two brothers, Ra'ed, aged thirty, and Ra'ad, aged twenty-six, five months earlier in the same bank theft case. Police tortured both while they were held at the Balat al-Shuhada' police station, which he said he learned about after their mother visited them there. Human Rights Watch independently interviewed Ra'ed some six weeks later during a visit to al-Karrada Criminal Court (see Appendix, Case D).

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<sup>133</sup> Human Rights Watch interview with Khalid Muhammad 'Atiyya, Central Criminal Court, Baghdad, August 25, 2004.

#### Case 4

Muhammad Hassan al-Sayyid Mulla Hassan: a forty-one-year-old Kurd from Sulaimaniyya who was arrested on August 20 or 21, 2004, by personnel of the Directorate of Ministry Security and Welfare. He was among seven people arrested in a raid on a hotel in the al-Bataween district of Baghdad, five of them guests and the other two employees. He told Human Rights Watch when referred to court one week later that he had come down to Baghdad from Sulaimaniyya for an operation on his leg, and which he had not yet undergone when he was arrested. According to his account:

There were a large number of them, dressed in civilian clothes and armed. It was about ten o'clock in the evening. I was in my room at the time, and they took me as well as a friend of mine. They blindfolded me and didn't give a reason for the arrest. I don't know where they took me, and I remained blindfolded for three days and without questioning. When they interrogated me, they asked about a booby-trapped car that they accused me of having brought from al-Falluja to Baghdad. I said I didn't know anything about it. During interrogation, I was blindfolded the whole time, and in the end I was made to sign a paper while blindfolded also. I was beaten with cables and hoses on my back and legs. The same thing happened to my friend Haidar. They told us before we came to court that if we didn't confess before the investigative judge, we would get the same treatment when we returned to the cell. We had no family visits and no possibility of contacting a lawyer.<sup>134</sup>

Human Rights Watch also spoke to the two hotel employees arrested in the same raid, one of whom worked as a receptionist and the other as a cleaner.<sup>135</sup> They gave similar accounts of the raid and their subsequent detention. When Human Rights Watch saw the group in court, several of them were half-dressed, some only in trousers and others with under-vests but no shirts. One of those who wore a shirt lent it to the others in turn when they appeared before the investigative judge. They explained to him that upon arrest, the police did not give them the chance to get dressed and arrested them in whatever clothes they happened to be wearing at that moment.

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<sup>134</sup> Human Rights Watch interview with Muhammad Hassan al-Sayyid Mulla Hassan, Central Criminal Court, Baghdad, August 28, 2004.

<sup>135</sup> Human Rights Watch interviews with Sawa Efraim and Shimon Musa Odisho, Central Criminal Court, Baghdad, August 28, 2004.

At the end of the investigative hearing, which Human Rights Watch attended, the judge renewed their period of detention for two days to enable him to question the secret informant on the basis of whose information the arrests were carried out. An official of the Directorate of Ministry Security and Welfare, who had accompanied the defendants to court, requested that they be transferred to the custody of the Major Crimes Directorate pending their next court appearance. He told the judge, while Human Rights Watch was present, that there was no room to continue holding them at the Ministry and that the Directorate's personnel were keeping the defendants in an officer's room. The judge questioned the secret informant the following day, August 29, after which he ordered the release of the seven defendants for lack of evidence.

### Case 5

Saif Sa'ad Ilyas: a thirty-one-year-old Iraqi man living in the United Arab Emirates who was visiting Baghdad when he was arrested on February 5, 2004. He told Human Rights Watch he was at home in the al-'Alwiyya district of the city when police arrived:

They began hitting me as they searched the house, but they didn't find anything. Then they took me to a branch of the al-Rashid Bank, where I later understood there was a secret informant. I was accused of having stolen money from the bank during the events [the fall of the Saddam Hussein government in April 2003]. But I was in Diyala at that time. I was taken to the Baghdad al-Jadida police station, where I stayed for eight days. They slapped and punched me and beat me with wooden sticks while blindfolded. Then I was transferred to the Major Crimes [Directorate], where I got the same treatment. They blindfolded me and tied my hands, and hit me with sticks and metal rods to make me confess to the theft. I stayed there for over a month and was then taken to al-'Alwiyya police station, then to the *Tasfîrat* [Transfer Prison] for three months. After that I spent two months in Abu Ghraib, then back to the *Tasfîrat*. So far, my father has paid the police twenty to twenty-five *waraqqa* [U.S. \$2,000-2,500] in exchange for my release, but they still haven't let me go. They are asking for three *dafater* [U.S. \$30,000].<sup>136</sup>

After his court appearance on September 18, 2004, Saif returned to the Major Crimes Directorate. Police officials told Human Rights Watch the Money Laundering Unit at the Directorate wanted him for further questioning.

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<sup>136</sup> Human Rights Watch interview with Saif Sa'ad Ilyas, Central Criminal Court, Baghdad, September 18, 2004.

## Case 6

Yasser ‘Abdul-Hamid ‘Abdul-Razzaq, ‘Ammar Abdul-Hamid ‘Abdul-Razzaq, and Faruq Karim Muhyi Zamel: two brothers and their maternal uncle who were arrested in late January and early February 2004, and held at the Major Crimes Directorate facility in al-‘Amiriyya. Interrogators questioned them about several crimes involving robbery and abduction. Human Rights Watch interviewed them in early September 2004 at the al-Karrada criminal court, where police had brought them in as witnesses in another case. The uncle, Faruq Karim Muhyi Zamel, aged 39, told Human Rights Watch that he was arrested with one of his nephews, ‘Ammar, on February 4, 2004:

During interrogation, they hit me with their fists and kicked me. I was tortured with electric shocks to my ears and genitals. They also beat me with plastic bottles filled with water, which was very painful, particularly on an area on my left arm where I had had an operation in the past to correct a deformity. As a result, my arm swelled and the wound became infected, but I did not receive any medical treatment for that. The interrogation continued for four days continuously, with beatings and torture. On 23 February the investigative judge [at the Central Criminal Court] issued an order to send me to the Medico-Legal [Institute] after my nephew Yasser told him about how they were torturing me. But I was never sent there. Instead, they tortured me again, and on 12 March I was transferred to the *Tasfirat* [Transfer Prison] in al-Rusafa. No one tortured or threatened us there, but we are still there and only came to court today as witnesses in another case.<sup>137</sup>

Faruq’s nephew Yasser, aged thirty-one, told Human Rights Watch that police had arrested him eight days before the arrest of his uncle and brother, on January 27, 2004. According to his account, he had gone to al-Sa’doun police station to answer charges brought against him by a police officer there, and was taken into custody. He believed the real reason for his arrest was that he had testified against one of the police officers in a corruption case involving extortion of money from detainees in exchange for release, and that the officer in question had then brought trumped up charges against him:

On the first day and a half they beat me during interrogation, especially with *falaqa*. I was blindfolded, and my hands were tied behind my back, and three of them kicked me all over the body. They also used

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<sup>137</sup> Human Rights Watch interview with Faruq Karim Muhyi Zamel, al-Karrada Criminal Court, Baghdad, September 9, 2004.

electricity by attaching wires to my ears. On seven occasions various people were brought to the police station to see whether they could identify me in connection with various robberies and abductions, but none of them did. On 29 January they referred me to the judicial investigator, and in mid-February I was transferred to the Major Crimes [Directorate]. On 23 February I was brought before the investigative judge. I told him that my uncle Faruq was being tortured, and others too. The judge ordered that my uncle be referred to the Medico-Legal [Institute]. He summoned the police liaison officer at the court and gave him the written order, and told him, if he failed to obey the order he would have him arrested. After the hearing, I returned to the Major Crimes [Directorate]. They didn't touch me, but they took Faruq and tortured him once more with *falaqa* and electricity for six days. They asked him why he had complained, through me, about being tortured, and that if he did so again, they would bring other charges against him. Anyway, they never took him for the medical examination. The only reason they treated us in that way was because we had no money, but they took lots of money from others who were then released.<sup>138</sup>

On March 12, Faruq and his two nephews were moved to the Transfer Prison in al-Rusafa, where they remained until May. They were then transferred to Abu Ghraib Prison for some forty days, and returned to the Transfer Prison in early June 2004. When Human Rights Watch interviewed them, all three had already spent nearly eight months in pre-trial detention.

During several of the trials observed by Human Rights Watch involving serious criminal offenses, the defendants told the panel of judges that the police had tortured them during interrogation. The ICCPR provides that a defendant may not be compelled to confess guilt.<sup>139</sup> The Human Rights Committee has ruled that the burden of proof is on the state to provide that a confession has been detained without duress.<sup>140</sup> In the following three cases, it is not clear whether the judges based their verdicts on confessions allegedly gathered through torture.

In a trial held on July 31, 2004, three defendants accused of theft each said they had been beaten and otherwise tortured since their arrest on September 28, 2003. One of

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<sup>138</sup> Human Rights Watch interview with Yasser 'Abdul-Hamid 'Abdul-Razzaq, al-Karrada Criminal Court, Baghdad, September 9, 2004.

<sup>139</sup> ICCPR, Art. 14(3)(g).

<sup>140</sup> See HRC, Concluding Comments on Romania, UN doc. CCPR/C/79/Add. 111 (1999).

them told the judge that the interrogating officer had dictated the “confession” to him. He also said he had sustained a bullet wound to his left leg during arrest, for which he received no timely medical treatment, resulting in the subsequent amputation of the limb below the knee. The three defendants in this case were also among seven defendants accused in another case involving the abduction of a seven-year-old girl for ransom. Their trial also took place on the same day. During deliberations, Human Rights Watch interviewed the seven defendants. All said interrogators of the Major Crimes Directorate had tortured them while holding them for some three weeks after their arrest in September 2003. The methods cited included suspension from door handles for prolonged periods with the hands tied behind the back; electric shocks applied to the earlobes; extraction of finger and toe nails; and severe beatings using wooden sticks, cables and belts.<sup>141</sup>

Although the defendants showed Human Rights Watch scar tissue on various parts of their bodies, which they said they had sustained under torture, ten months had elapsed since the alleged abuse had taken place. There were no medical reports attesting to the nature of the injuries they described, suggesting that they had either not made statements to that effect when first brought before an investigating judge, or that no decision had been taken to refer them for medical examination. In the first trial, the judge sentenced each defendant to six years’ imprisonment.<sup>142</sup> In the second trial, he sentenced six of the defendants to life imprisonment and acquitted the seventh for lack of evidence.<sup>143</sup>

In a separate case, Human Rights Watch interviewed two defendants on trial on August 1, 2004 for an armed robbery committed on November 15, 2003. Both told the panel of judges that the police had tortured them to extract confessions while holding them at the Major Crimes Directorate. Sabah ‘Ali Hammadi, one of the defendants, told Human Rights Watch:

They tortured me by putting wires to my genitals and electrocuting me to force me to confess. I was also beaten on my left ankle, where I had had a platinum rod inserted during an operation in the past. They hit me there with cables and wooden sticks, which caused enormous pain. My hands were tied behind my back by the wrists and I was suspended for a long period of time, causing dislocation in one of my shoulder

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<sup>141</sup> Human Rights Watch interviews with ‘Adnan Talib Dayikh, Riad Muhammad Hamid, Fa’iz Fadhil ‘Alwan al-Janabi, Ahmad Na’im ‘Abbas al-Zaidi, Muhammad Hatem ‘Abd al-Jabbar al-Tamimi, Haidar Ahmad Mirza al-Nu’aimi, and Shahrazad Dakhil Muhsin, Central Criminal Court, Baghdad, July 31, 2004.

<sup>142</sup> Under Article 443 (2, 3 and 5) of the Penal Code.

<sup>143</sup> Under Articles 421 and 422 of the Penal Code, as amended.

joints. They tried to force me to sit on a broken bottle neck but I didn't do it. We were held in a communal cell, about 170 detainees all packed together. We could not contact a lawyer, and we had no family visits. The torture usually took place after five o'clock in the afternoon, when the Americans left. They blindfolded us and took us in a vehicle to a nearby building a few minutes' drive away, usually at night, for interrogation and torture. I stayed at the Major Crimes Directorate for two months until my transfer to Abu Ghraib in mid-January 2004.<sup>144</sup>

His co-defendant, 'Issa 'Abbud Sardar, gave Human Rights Watch a similar account of his treatment in detention. He said his interrogators usually tortured him while blindfolded and with his hands tied behind his back, and that on one occasion they interrogated him for seven hours at a stretch. Upon transfer to Abu Ghraib, he said conditions improved: "Our treatment by the Americans was much better. While there, I needed an appendix operation, and they arranged it for me. If it had been the Iraqis, they would not have done it. Treatment by the Iraqis is terrible. Saddam is still here with us."<sup>145</sup> As in the cases of other defendants whose trials Human Rights Watch observed, the chief judge informed them that any torture allegations would need to be backed up by medical reports. There were none in this case, and taking into account the available evidence against them, the court sentenced each defendant to eight years' imprisonment.<sup>146</sup>

### **VIII. Torture and ill-treatment of children held in adult facilities**

Human Rights Watch continues to receive reports of children being held together with adults in detention facilities under the jurisdiction of the Ministry of Interior. The children include both criminal suspects and others suspected of having taken part in clashes against government forces, including those suspected of links with the Mahdi Army. Several of the adult detainees arrested in the context of the clashes in al-Najaf in August 2004 told Human Rights Watch they had seen young detainees held with them in the same cell, whose ages they estimated to be between fifteen and seventeen. Adult detainees suspected of having committed serious criminal offenses likewise said several children were being held with them at the Major Crimes Directorate facility in al-'Amiriyya. The Directorate's police officials also told Human Rights Watch that they held children in their custody.

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<sup>144</sup> Human Rights Watch interview with Sabah 'Ali Hammadi, Central Criminal Court, Baghdad, August 1, 2004.

<sup>145</sup> Human Rights Watch interview with 'Issa 'Abbud Sardar, Central Criminal Court, Baghdad, August 1, 2004.

<sup>146</sup> Under Article 443 (1, 3 and 4) of the Penal Code.



Iraq acceded to the Convention on the Rights of the Child (CRC)<sup>147</sup> in 1994. The CRC requires children deprived of their liberty to be separated from adults “unless it is in the child’s best interest not to do so”; the ICCPR prohibition on separating children from adults in custody has no such exception.<sup>148</sup>

The right of child detainees to be held separately from adults is also provided for under Iraq’s Juveniles Welfare Law.<sup>149</sup> Article 52(2) of this law stipulates that in areas where separate detention facilities are not available, measures must be taken to prevent children from mixing with adult detainees. Orders promulgated by the CPA on the management of detention facilities also specified that “Young untried prisoners shall be kept separate from adults and shall where possible be detained in separate institutions.”<sup>150</sup>

The requirement for the separation of child detainees has not been followed in some cases. Human Rights Watch found that such cases sometimes arose when police apprehended children as part of a large sweep in a given area, where they arrested scores and sometimes several hundred people as part of the government’s efforts to crack down on violent crime. Police invariably conduct such sweeps without warrants, and children are sometimes caught up.<sup>151</sup> Among the 149 people arrested in the district of al-Bataween on June 27, for example, U.S. soldiers of the Oregon Army National Guard reported having seen a young boy, identified as fourteen years old, among the detainees abused at the grounds of the Ministry of Interior.<sup>152</sup> At the Central Criminal Court, Human Rights Watch spoke to the wife of one of the detainees picked up in the al-

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<sup>147</sup> See Convention on the Rights of the Child, adopted November 20, 1989, G.A. Res. 44/25, U.N. Doc. A/RES/44/25 (entered into force September 2, 1990), Article 37(c); and the ICCPR, adopted December 16, 1966, G.A. Res. 2200A (XXI), 999 U.N.T.S. 171 (entered into force March 23, 1976), Article 10(b).

<sup>148</sup> ICCPR, Article 10(3).

<sup>149</sup> Law No. 76 of 1983, as amended. Under Article 3(2) of this law, a juvenile is defined as someone above the age of nine and below the age of eighteen. Article 10 specifies the types of facilities where juveniles may be held, depending on their age. Article 48 stipulates that upon arrest, juveniles must be handed over immediately to the juveniles police force, responsible for referring them to an investigative judge or the juvenile courts. Article 52(2) stipulates that in areas where separate detention facilities are not available, measures must be taken to prevent juveniles from mixing with adult detainees.

<sup>150</sup> CPA/MEM/8 June 2003/02 (Management of Detention and Prison Facilities), Section 30(5). Until the fall the former Iraqi government in April 2003, juveniles were held in prisons or detention facilities under the authority of the Ministry of Labor and Social Affairs. Under CPA authority, the Directorate of Juvenile Prisons was placed under the jurisdiction of the Ministry of Justice (CPA/ORD/8 June 2003/10: Management of Detention and Prison Facilities, Section 1).

<sup>151</sup> Article 63 of the Juveniles Welfare Law stipulates that the names of juvenile detainees, their addresses and the names of their schools may not be publicly divulged, or their photographs taken or other measures adopted that would result in their identities being revealed. Among the suspects rounded up in the al-Bataween raid of June 27, 2004, and who were photographed or filmed by journalists at the invitation of Ministry of Interior officials, there were reportedly four juveniles.

<sup>152</sup> Mike Francis, “Ordered to just walk away,” *The Oregonian*, August 11, 2004.

Bataween raid. She said that in addition to her husband, police arrested her fourteen-year-old brother-in-law [name withheld by Human Rights Watch] on June 27:

I tried to have him moved from Criminal Intelligence to the *Tasfirat* [Transfer Prison], but they would not accept him there because he was a juvenile, and they said he should be taken to the Juveniles Prison. At the Juveniles Prison, he was not accepted either because his papers were not complete, so his case remained with Intelligence. He stayed there for over one month. Then he was brought here to the Central [Criminal] Court, and the judge ordered his release. When he was brought to court, the judicial investigator told him that according to his file, he had confessed to possessing drugs at the time of his arrest. But he replied that he had made no confession, that he had been made to sign a statement while blindfolded, and that he was beaten on his back and with *falaqa*.<sup>153</sup>

Four detainees interviewed by Human Rights Watch from the al-Bataween group in October 2004 reported that three children were among those arrested (see above). One of those interviewed, a Sudanese national, said the children “were brought to the interior ministry’s detention facility with us and were tortured and beaten just like us. They were kept there for fifteen days, and when we were moved to the *Tasfirat* [Transfer Prison], the officials there refused to accept them. We don’t know what happened to them after that, but we heard that they were released.”<sup>154</sup>

In such cases, where the police do not find any identification documents attesting to the juvenile’s date of birth, they will usually hold him with adult co-detainees and subject him to the same treatment. This is particularly so in cases where children are just short of their eighteenth birthday and their physical appearance may not suggest that they are in fact children. Human Rights Watch came across several such cases at the Central Criminal Court, where Ministry of Interior agencies had held detainees for several days or weeks before bringing them before an investigative judge. Given that they were denied contact either with family members or defense counsel, their appearance before the investigative judge represents the first opportunity to inform officials other than those detaining or interrogating them that they are children. No efforts appear to be made by officials of the Major Crimes Directorate to establish the ages of such detainees

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<sup>153</sup> Human Rights Watch interview with the sister-in-law of a juvenile from the al-Bataween group [name withheld by Human Rights Watch at her request], Central Criminal Court, Baghdad, August 23, 2004.

<sup>154</sup> Human Rights Watch interview with 'Ubaid al-Sayyid Makki Muhammad, Central Criminal Court, Baghdad, October 23, 2004.

beforehand. Several investigative judges told Human Rights Watch that in such cases, they would normally order the police authorities to make contact with the detainees' families in order to obtain the necessary identification, or ask the detainees to do so.

However there was usually no follow-up to ensure that the police authorities implemented the judges' decisions in a prompt and timely manner. The detainees themselves were not, as a rule, in a position to follow up the matter themselves until their transfer to a facility where authorities permit family visits, such as police stations or the Transfer Prison, and which may take several days or weeks. They generally could not depend on their legal counsel to act on their behalf in this regard. Court-appointed lawyers who regard their role as confined to the courtroom, and who in practice carry out little or no work on behalf of their clients outside of the investigative hearing or trial session, represent the vast majority of detainees whom Human Rights Watch interviewed.

Where official identification documents were not available, investigative judges sometimes would refer the detainees to the Medico-Legal Institute in Baghdad to undergo tests to estimate their age.<sup>155</sup> In practice, such referrals rarely took place. One investigative judge told Human Rights Watch that often it was "not in the interest" of the detainee to have his age estimated, since it was only an estimate and the detainee may be judged as over eighteen.<sup>156</sup> An examination of external trauma records at the Medico-Legal Institute by Human Rights Watch showed that investigative judges made no such referrals in the period June 1 to September 14, 2004, even though several such cases had passed through the court system in the same period. According to some of the judges, detainees sometimes claimed to be children in the hope of being transferred to a juvenile facility where conditions of detention are better, and in the hope of being treated more leniently.

While acknowledging the wisdom of giving such detainees the benefit of the doubt and ensuring their transfer to juvenile facilities until their age is established, both judicial and police officials told Human Rights Watch that juvenile facilities do not as a rule take any

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<sup>155</sup> As provided for under Article 4 of the Juveniles Welfare Law No. 76 of 1983, as amended.

<sup>156</sup> At the Medico-Legal Institute, a forensic doctor told Human Rights Watch that the principal method used for estimating the age of persons to establish whether or not they are juveniles is through an examination of bone development, based on x-ray images taken of the joints such as the hips, elbows, wrists and knees. In some cases, an examination of dental development is also taken into account. The doctor added that "we have developed sufficient expertise whereby, based on the x-ray examination and our assessment of the person's general appearance, the margin of error in this regard is negligible," (Human Rights Watch discussion with a forensic doctor [name withheld by Human Rights Watch], Medico-Legal Institute, Baghdad, September 14, 2004).

detainee into their custody without the necessary identification papers that prove that they are *bona fide* children. Police officials at the Central Criminal Court also said that at the Major Crimes Directorate, they had insufficient facilities to allow for children to be held separately from adult detainees. Whichever option is followed in trying to establish the age of detainees who state that they are children, all entail continuing delays during which time the detainees continue to be held in adult facilities. They also suffer the same treatment, including being subjected to torture.

One of the juvenile detainees interviewed by Human Rights Watch was Faisal [full name withheld by Human Rights Watch], a school student living in the Abu Ghraib district of Baghdad and who gave his age as fifteen. Police arrested him with his maternal cousin on July 25, 2004, after accusing them of involvement in the abduction of a Lebanese national a week earlier. He told Human Rights Watch:

I remember it was a Sunday. I was arrested by Criminal Intelligence and taken to the Interior [Ministry]. They held me on the seventh floor, in a cell with twenty-two adults. During interrogation they blindfolded me and tied my hands behind my back, and then beat me with cables and *falaqa*. I kept saying I had nothing to say about the abduction, that I had nothing to do with it. They treated us very badly in that place. They did not give us any food, and we had to buy our own.<sup>157</sup>

Criminal Intelligence personnel transferred Faisal to the al-Qanat police station shortly before his appearance in court.<sup>158</sup> At his investigative hearing later that day, observed by Human Rights Watch, he described the treatment he had received in detention.<sup>159</sup> When asked by the judge to verify his age, he said that he had no means of producing identification since he was not permitted contact with the outside world and had no family visits. He offered to give the name of his school, where his teachers could attest to the fact that he was still a student and could give his age. The judge in this case decided that in order to avoid further delays, and to avoid a situation where an

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<sup>157</sup> Human Rights Watch interview with Faisal [full name withheld], Central Criminal Court, Baghdad, August 18, 2004.

<sup>158</sup> His cousin Hassan, aged twenty, told Human Rights Watch that Criminal Intelligence personnel had also repeatedly beaten, boxed, slapped, and kicked him during interrogation, and made him sign a statement while blindfolded. Two weeks after his arrest, they transferred him to the same police station, where he said treatment was better, although he was not permitted family visits there either. (Human Rights Watch interview with Hassan [full name withheld], Central Criminal Court, Baghdad, August 18, 2004).

<sup>159</sup> The hearing took place in the presence of a Criminal Intelligence official, who motioned Faisal to keep quiet when he began telling the judge that two other people arrested in the same case had already testified that he had nothing to do with the abduction.

assessment of his age by doctors at the Medico-Legal Institute could conclude that he was over eighteen years of age, the detaining authorities should make contact with his family in order to obtain the necessary identification document. Six days later, in the course of following up this case, the investigative judge told Human Rights Watch that no identification document had been produced as yet. On the same day, Human Rights Watch interviewed three detainees held in the custody of Criminal Intelligence, who said that in the room where they were being held, there were “two or three juveniles,” one of whom was accused of involvement in the abduction of a Lebanese national.<sup>160</sup> Police officials eventually transferred Faisal to the Juveniles Prison in early September when, according to the investigative judge dealing with his case, his relatives appeared in court with identification documents confirming his age. He had been held by Criminal Intelligence with adult detainees for at least one month, and a further two weeks at a police station, before reaching a juvenile facility.

In several other cases seen by Human Rights Watch, the detainees appeared not to know their exact age, or could only cite their year of birth. One such case was that of ‘Ali [full name withheld by Human Rights Watch], a school student who said he was born in 1986. Upon being asked by Human Rights Watch for a more precise date of birth, he replied that he was unsure of the day but that he was born in the month of December, making him some four months short of his eighteenth birthday. The police had arrested him two days earlier, August 26, 2004, in the street near his home located in a housing complex close to the Lunapark (*Madinat al-Al’ab*) in the al-Rusafa sector of Baghdad. He said he was unsure of the charges against him, but that a length of cable was found near the spot where the police had arrested him, and which they suspected he had stolen for use in some illegal activity. He added that another person who was with him at the time, whose name he gave as Haidar [full name withheld by Human Rights Watch], managed to flee from the police:

It happened last Thursday. A group of policemen arrived and made me get into their car. It was about six o’clock in the evening. They blindfolded me and tied my hands behind my back before I sat in the car. I remained blindfolded until this morning when they brought me to court. I was kept in a room with seven other people. On the first day they took me for interrogation. They asked me questions about the Mahdi Army and about various mortar attacks that had taken place, and whether I knew Haidar. They beat me with cables and a metal pipe and

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<sup>160</sup> The three detainees declined to give their names when Human Rights Watch interviewed them at the Central Criminal Court on August 24, 2004. They said they were themselves accused of the illegal possession of weapons and had been arrested fifteen days earlier. They said they had received “the usual treatment” under interrogation, namely repeated beating with cables, hosepipes and other implements.

with their hands. They also beat me at around three o'clock in the morning after I had been taken back to the cell. Mostly I was tortured by *falaqa*. My parents don't know where I am now. On the first day, I spent what money I had on food. On the second day, some of the guards gave us money to buy the food.<sup>161</sup>

'Ali showed Human Rights Watch four scars on his lower left arm, measuring some ten to fifteen centimeters long, which he said were the result of beatings with cables. He also said he had other marks on his back but declined to show these to Human Rights Watch since the interview was being conducted in the Major Crimes Room where police officials were present. Human Rights Watch attended his hearing later that day before the investigative judge, who asked him to remove his shirt and show him his back. This revealed what appeared to be fresh lacerations and welts to his upper back. The judge asked the detainee how he came to have these injuries or who had beaten him. 'Ali replied, "I don't know because I was blindfolded the whole time." He appeared reluctant to repeat what he had told Human Rights Watch about his treatment in detention, and the judge did not refer him for a medical examination. He was ordered detained for a further week, apparently to give the police more time to apprehend the second suspect in the case. His file showed that he was being held in the custody of the Directorate of Ministry Security and Welfare.

Among the detainees arrested in the context of the August 2004 clashes in al-Najaf and interviewed following their release (see Section VI) was a child, Hassan Muhan 'Abbud, aged seventeen, from Baghdad. He told Human Rights Watch that he had been visiting al-Najaf with a group of friends when they were arrested at a checkpoint manned by plainclothes police in mid-August 2004:

It was a Wednesday, at around nine in the morning. There were seven of us, including the driver. After the police fired in the air, we stopped the car at the checkpoint, which was on Nisan Street close to al-Hakim Hospital. They handcuffed us, put us in two cars and took us to a school. I don't know which school it was. Although we were not blindfolded, all of us were from Baghdad and did not know our way around al-Najaf well. When we arrived at the school, there were more police there in plainclothes. They took us into a classroom and accused us of being members of the Mahdi Army. One of them pulled out a bayonet and threatened us with it, and slapped and punched us. We

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<sup>161</sup> Human Rights Watch interview with 'Ali [full name withheld by Human Rights Watch], Central Criminal Court, Baghdad, August 28, 2004.

stayed there for about an hour, and then they took us to the Police Directorate. This time, we were both blindfolded and handcuffed. When we entered, they immediately started hitting us. As we stood in the doorway, any policeman who happened to pass by would either punch or hit us. After that, they took us to a large hall, where we were also beaten. We were interrogated individually. Sometimes thirty or more of them would come into the hall and start beating us randomly. I was released ten days later.<sup>162</sup>

One of the others arrested with Hassan Muhan ‘Abbud told Human Rights Watch that he had been wearing a black shirt at the time of his arrest, which he said made the police suspect that he was a member of the Mahdi Army. He described similar treatment in detention.<sup>163</sup>

## **IX. Medical examinations and investigation of torture complaints**

In August and September 2004, Human Rights Watch visited the Medico-Legal Institute in Baghdad and studied archive records relating to detainees referred there for medical examination in connection with torture allegations.<sup>164</sup> The organization looked through records for the period June 1 to September 14, 2004, focusing on the period following the appointment of the Iraqi Interim Government. For comparison, Human Rights Watch also examined records for the first three months of 2004.

An investigative authority, which may be either a judicial authority or a police authority acting on the basis of a court order, refers all cases involving external trauma to the Medico-Legal Institute. A panel of three doctors examines each individual referred, and the institute’s director, Dr. Fa’iq Amin Bakr, conducts an additional examination. They determine whether there are visible traces of external trauma, whether these were inflicted by another person or more likely to be self-induced, the probable cause of such injuries, and their approximate age. Dr. Bakr told Human Rights Watch that such referrals, particularly from the criminal courts and police stations, were made to the institute on a regular basis each month, but said he could not indicate the numbers of such referrals in an average month.<sup>165</sup>

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<sup>162</sup> Human Rights Watch interview with Hassan Muhan ‘Abbud, Baghdad, September 5, 2004.

<sup>163</sup> Human Rights Watch interview with Hussain ‘Ali Kadhim, Baghdad, September 5, 2004.

<sup>164</sup> Authorization for access to these archives was obtained from judicial officials at the Central Criminal Court.

<sup>165</sup> Human Rights Watch discussion with Dr. Fa’iq Amin Baker, Medico-Legal Institute, Baghdad, August 10, 2004.

Medical records for male detainees covering the period beginning June to mid-September 2004, showed that authorities had made sixteen such referrals,<sup>166</sup> fourteen of them on the basis of court orders from the criminal courts or from judicial investigators based at police stations, and two from the Major Crimes Directorate.<sup>167</sup> The medical reports for ten of those cases, one of which involved a child, concluded there was evidence of external trauma, such as recent scar tissue, abrasions, contusions, bruising, discoloration of the skin, or internal bleeding.<sup>168</sup> These injuries most commonly related to the face, limbs, and back. While the medical files examined by Human Rights Watch did not contain information relating to the date of arrest of the detainees in question, in half of the cases (five in all), the medical examiners assessed the injuries as having occurred within a range of twenty-four hours to two weeks prior to the medical examination taking place.<sup>169</sup> Medical records for female detainees covering the same period beginning June to mid-September 2004 indicated three referrals to the Medico-Legal Institute.<sup>170</sup> In two of the cases, the medical reports concluded that there was evidence of recent external trauma in the form of contusions and bruising. The Office of the Undersecretary for Intelligence Affairs at the Interior Ministry referred one of these cases in which the medical examiners assessed the injuries as having occurred some seven to ten days prior to the medical examination.<sup>171</sup>

For the earlier period of January to March 2004, Iraqi authorities referred a total of eighteen cases,<sup>172</sup> five of which involved detainees held at the Major Crimes Directorate

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<sup>166</sup> The breakdown per month was as follows: June – 11; July – 4; August – 1. There were no cases registered for the period September 1 through 14.

<sup>167</sup> The police stations from which the fourteen detainees were referred were the following: al-Bayya', al-Rashad, al-Dora, Bab al-Shaikh, Hay al-'Amel, Baghdad al-Jadida, Abu Ghraib, al-Sha'ab and al-Karkh Juveniles Police Directorate. One of the cases connected to the Major Crimes Directorate was a referral from the Money Laundering Unit, and the other was on the basis of an order from an investigative judge at the Central Criminal Court.

<sup>168</sup> For the remaining six cases, the medical reports concluded that in four of them, there was no evidence of external trauma, and in a fifth case, that the scarred tissue was "old." The sixth case involved a child referred for medical examination to verify allegations of sodomy, though it was unclear from the records whether the allegations related to a co-detainee or to a police official. In this case, the medical report concluded that sodomy could not be ruled out as having occurred, although there was no visible external evidence to that effect. The doctors estimated the boy's age to be between sixteen and seventeen.

<sup>169</sup> In the remaining five cases, the injuries were assessed as having occurred within a range of two weeks to two months (in one case the range given was two to four months) prior to the medical examination.

<sup>170</sup> There was one case in each of June, July, and August 2004.

<sup>171</sup> The second case was a referral from the Hay al-'Amel police station, in which medical examiners assessed the injuries as having occurred within two to four weeks prior to the medical examination. The third case, a referral from the al-A'dhamiyya police station, involved verification of allegations of sodomy and other sexual acts. It was unclear from the records whether the allegations involved a police official.

<sup>172</sup> The monthly breakdown was as follows: January – 7; February – 2; March – 9.



and the remainder at various police stations.<sup>173</sup> Medical examiners found evidence of recent injuries, including scarring, abrasions, and contusions in eight of them, and concluded that the injuries sustained in six of them had occurred within a range of two to fourteen days prior to the medical examinations.<sup>174</sup> The lack of any marked differences in the number and types of cases involving males detainees referred to the Medico-Legal Institute during the two periods in question accorded with what most investigative judges had told Human Rights Watch. They concurred that since July 1, 2004, the level and nature of allegations of abuse by detainees had not altered significantly. One judge, however, did point to an increased level of allegations by detainees of electric shocks under interrogation, which he said police interrogators appeared to be increasingly using “since it leaves few traces except perhaps tiny burn marks on the earlobes or other places.”<sup>175</sup>

Human Rights Watch noted that although medical reports at the Medico-Legal Institute included a description of the evidence of physical trauma, based on an eye examination, they also stated that it was not possible to identify the kinds of instruments likely to have caused the injuries. Although investigative judges that Human Rights Watch spoke to said they relied fully on the institute’s assessments, one expressed the view that medical staff there were few in number and lacked the necessary means to carry out effective and timely examinations. “The lack of resources also means that medical reports come back ambiguous, such that it is unclear whether the injuries detected are in fact torture or self-inflicted.”<sup>176</sup>

When asked about this, one forensic doctor at the Medico-Legal Institute said that “the reliability of a medical report depends on the speed with which the person concerned is referred for examination.”<sup>177</sup> Only two of the letters of referral from the police contained in the medical records examined by Human Rights Watch mentioned the date on which investigative judges or judicial investigators had referred the detainees in

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<sup>173</sup> Three of the five cases emanating from the Major Crimes Directorate were connected to the Abduction and Murder Unit, the fourth to the Money Laundering Unit and the fifth to the Organized Crime Unit. The other referrals emanated from the following police stations: al-Jamila, Hay al-‘Amel, al-Dora, al-Quds, al-Ma’mun and al-Karkh Juveniles Police Directorate. In the latter case, an assessment of the age of the detainee determined that he was between nineteen and twenty years old.

<sup>174</sup> Human Rights Watch did not have the opportunity to examine records involving female detainees for the same period.

<sup>175</sup> Human Rights Watch discussion with an investigative judge [name withheld by Human Rights Watch], Central Criminal Court, Baghdad, August 22, 2004.

<sup>176</sup> Human Rights Watch discussion with Zuhair al-Maliki, then chief investigative judge, Central Criminal Court, Baghdad, August 30, 2004.

<sup>177</sup> Human Rights Watch discussion with a forensic doctor [name withheld by Human Rights Watch], Medico-Legal Institute, Baghdad, September 14, 2004.

question for medical examination, making it difficult to estimate the time lag involved in implementing these orders.<sup>178</sup> The forensic doctor told Human Rights Watch that this was often deliberate, and that there was on average a twenty-day delay between the issuance and implementation of a referral order, by which time much of the physical evidence of torture will have disappeared. “Sometimes the detainees themselves tell us when they are brought in that there is no point in having a medical examination since they were tortured two months previously,” he added.<sup>179</sup> This statement was supported by another staff member at the institute. The doctor told Human Rights Watch:

The most common kind of cases we see here involve beatings with cables, pipes and sticks, causing injuries such as abrasions and contusions, which disappear within a maximum period of some twenty-one days. Because of the delays by the police in implementing the decisions of the courts, it makes it difficult if not impossible for us to identify the tools used in torture, particularly as these types of injuries could have been caused in any number of ways. Sometimes the police deliberately cause delays. For example, they bring in detainees without the required stamp on their left wrist and without their photographs being stamped. They know that we will have to reject these cases until proper procedures are followed, so causing further delays before a medical examination takes place. But there are also other types of torture that can be used, such as electric shocks, which leave no physical trace except for tiny burn marks on the skin and are not easily detected.<sup>180</sup>

Human Rights Watch’s examination of the medical archives showed that relative to the many such reports it had received and the number of cases it documented, the level of referrals to the Medico-Legal Institute for verification or otherwise of torture allegations was very low.<sup>181</sup> Of the detainees that the organization had interviewed from July

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<sup>178</sup> One of the two cases involved the referral by a Central Criminal Court judge of a detainee held by the Major Crimes Directorate in al-Rusafa. His records at the Medico-Legal Institute showed that the judge referred him for a medical examination on July 8, 2004, but detaining officials did not implement the referral until July 17, ten days later. The medical examination was carried out on July 18, and in this instance the report stated that no evidence of external trauma could be found.

<sup>179</sup> Human Rights Watch discussion with a forensic doctor [name withheld by Human Rights Watch], Medico-Legal Institute, Baghdad, September 14, 2004.

<sup>180</sup> *Ibid.*

<sup>181</sup> Investigative judges at the Central Criminal Court told Human Rights Watch that occasionally detainees alleging torture or ill-treatment are referred to a hospital rather than the Medico-Legal Institute for a preliminary medical examination, but the organization did not have the opportunity to check hospital records for details of such cases. The judges concurred, however, that they only regarded medical reports issued by the Medico-Legal Institute as ultimately reliable. At the institute, one of the doctors told Human Rights Watch that such

through mid-September 2004, only one person appeared to have been referred for medical examination, despite the presence of visible external trauma in some of the cases suggesting torture or ill-treatment.<sup>182</sup>

The practice of holding detainees for several weeks, and in some cases for several months, before bringing them to court for the first time appears to have been a major factor contributing to the non-referral of alleged torture victims for medical examination. The problem is compounded by the fact that in many cases, police apprehended the suspects without presenting them before a judge in the requisite twenty-four hours. This practice is facilitated by the failure to obtain arrest warrants in the first place, which meant that no judicial authority was aware of their detention. While the Central Criminal Court's investigative judges are authorized to carry out inspection visits of the Major Crime Directorate's detention facilities, in practice this rarely happened. The judges cited current security conditions and a large caseload as the prime reasons for the failure to conduct these inspections.<sup>183</sup> Human Rights Watch sought to discuss this issue with the representative of the Public Prosecution to the Central Criminal Court's investigative court, who is also authorized to carry out such inspections, but he declined to meet with the organization. Human Rights Watch is not aware of any steps taken by the Ministry of Interior's inspector general to assess the extent to which the conduct of law enforcement personnel and those involved in detentions is in compliance with legislation currently in force, nor whether any complaints regarding the illegal detention or abuse of detainees have reached the Inspector General's Office.<sup>184</sup> A police official attached to the Major Crimes Directorate

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preliminary examinations at hospitals are carried out by doctors on shift duty who were not specialists in the field of forensic medicine, and therefore unqualified to give a reliable assessment. Referring cases there would only cause "unnecessary delays."

<sup>182</sup> In the case of Firas 'Imad Sadeq al-Dulaimi (See Section VII, Case 2), Human Rights Watch verified that the investigative judge did refer him for medical examination, but found no records at the Medico-Legal Institute showing that detaining officials had implemented the referral order during the four subsequent weeks.

<sup>183</sup> The same reasons were cited by investigative judges at four other criminal courts (al-Bayya', al-Karrada, al-Rusafa and al-Thawra) with whom Human Rights Watch discussed inspection visits to police stations.

<sup>184</sup> In February 2004 the CPA authorized the establishment of an Office of Inspector General within each Iraqi Ministry, headed by an Inspector General appointed for a five-year term (CPA/ORD/5 February 2004/57: Iraqi Inspectors General). Section 5 of Order 57 sets out the functions of the Inspector General, which include receiving and assessing complaints of abuse of authority and forwarding these to the appropriate investigative authority; providing information and evidence regarding potentially criminal acts to appropriate law enforcement officials; referring matters for further civil, criminal and administrative action to appropriate administrative and prosecutorial agencies; and cooperating fully in assisting the work of law enforcement agencies, investigators and courts. Section 6 grants the Inspector General full and unrestricted access to the ministry's records, the power to subpoena witnesses, and the authority to require a Ministry's employees to report to the Office of Inspector General information regarding fraud, waste, abuse, corruption, and illegal acts. Section 9 requires the inspector general to "report the findings and recommendations of the Office's work to the respective minister, to appropriate elected and appointed leadership, and, except for law enforcement sensitive or confidential information, to the public." At this writing, the Ministry of Interior's inspector general was Major General Hassan al-Saray.

told Human Rights Watch that within the Ministry's Office of Inspector General, a body known as the Interior Security Forces Inspection Commission (*Hay'at Taftish Qiwa Amn al-Dakhiliyya*) is tasked, among other things, with examining relevant records to ensure that detentions are authorized by the judicial authorities, but that "in practice no one comes to verify this".<sup>185</sup>

Torture most commonly takes place during the immediate period following arrest, when detainees are held incommunicado while undergoing interrogation, and are at their most vulnerable. By the time they are brought before an investigative judge, much if not all of the physical evidence of torture will have disappeared. At that point, unless physical injuries are still visible, investigative judges see little purpose in ordering a referral to the Medico-Legal Institute even if the detainees have alleged that police extracted their statements or confessions under duress. In the absence of physical evidence, it is unlikely that the judges will initiate a criminal investigation into the conduct of the offending officials. They can initiate legal proceedings against police officials for failures or delays in the implementation of orders issued by the judicial authorities,<sup>186</sup> such as an order to refer a detainee for medical examination, which carries a lesser penalty than the crime of torture under the Penal Code.<sup>187</sup> While investigative judges have initiated proceedings against police officials for delays in implementing court orders, Human Rights Watch did not have information on the status of these cases at this writing.

In other instances, detainees themselves requested that they not be referred for medical examination, fearing that this would prolong their pre-trial detention and delay an earlier resolution of their cases. Several investigative judges told Human Rights Watch that they would generally comply with such requests. Other detainees feared the consequences of talking about any torture that they may have endured before coming to court. Among those interviewed by Human Rights Watch, several said that police officials threatened that they would receive the same treatment if they stated before the judge that they had been ill-treated or tortured. Once the initial appearance before an investigative judge takes place, detainees are supposed to be taken to the Transfer Prison under the jurisdiction of the Iraqi Correctional Service. In practice, detainees held by one or another of the Ministry of Interior's agencies often continued to be held by that same authority even after their appearance in court. In other words, they remained in the custody of the same authority that was responsible for their torture or ill-treatment.

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<sup>185</sup> Human Rights Watch discussion with a police official of the Major Crimes Directorate [name withheld by Human Rights Watch], Baghdad, August 7, 2004.

<sup>186</sup> Article 329 of the Penal Code. The penalty for this offense is imprisonment for periods ranging from three months to five years, or a fine.

<sup>187</sup> Under Article 333 of the Penal Code, the crime of torture is punishable by up to fifteen years' imprisonment.

Investigative judges with whom Human Rights Watch discussed this problem said it was not so much a question of where the detainees were being held as opposed to which officials were responsible for investigating the alleged crimes. Several recommended that a separation of powers between the arresting and detaining authority on the one hand, and the investigative authority on the other, would afford better protection for detainees from physical abuse. At the same time, they expressed doubt as to whether this could be achieved in the foreseeable future. One judge added:

Only the judicial authorities should have the power to carry out criminal investigations, as is the case in some European countries. Only then will torture stop, otherwise it will continue. It is one of the reasons why defendants don't talk when they come before me, although I can see that they have been beaten up.<sup>188</sup>

In instances where there are grounds to believe that police have tortured a detainee, the investigative judge will nevertheless proceed with the case provided other evidence is available indicative of the crime having been committed. According to one judge, detainees usually retract their initial confessions, saying that they gave them under torture or threats. But unless there remains physical evidence of such abuse, the judge will not initiate any criminal investigation against the alleged perpetrators. In such cases, a criminal investigation can only be initiated on the basis of a formal complaint submitted by the detainee concerned.<sup>189</sup> This is a rare occurrence, given that the detainee remains for a time in the custody of the officials against whom he is submitting a complaint.<sup>190</sup> Human Rights Watch is not aware of the existence of any other mechanism whereby such complaints could be made. On the eve of sovereignty transfer, the CPA authorized the appointment of an ombudsman for penal and detention matters, allowing detainees to submit complaints relating to the behavior of a detaining authority. To Human Rights Watch's knowledge, no such appointment had been made at this writing.<sup>191</sup>

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<sup>188</sup> Human Rights Watch discussion with an investigative judge [name withheld by Human Rights Watch], Central Criminal Court, Baghdad, August 22, 2004.

<sup>189</sup> Under Article 3 of the CCP (Law 23 of 1971 as amended).

<sup>190</sup> Human Rights Watch discussion an investigative judge [name withheld by Human Rights Watch], Central Criminal Court, Baghdad, September 15, 2004.

<sup>191</sup> CPA/ORD/27 June 2004/98 (Iraqi Ombudsman for Penal and Detention Matters). The detaining authority, according to the Order, included Iraqi, Multinational Force or contracted personnel. The ombudsman, appointed by the prime minister on the recommendation of the minister of justice, is authorized to investigate complaints received after the entry into force of the Order (Section 4(1); to enter and inspect detention facilities and documents at any time "subject only to the limitation that the Multinational Force Commander or his delegate may deny access for reasons of imperative military necessity as an exceptional and temporary measure, or prevent the inspection of operationally classified documents" (Section 11); and to submit

Human Rights Watch learned that, as of late October 2004, investigative judges had initiated investigations into the conduct of twenty police officers, some of them on the basis of information that they had abused detainees in their custody. Of these, five or six had resulted in the conviction of the police officers, who received non-custodial sentences, such as fines. The rest were still pending at this writing, and in their efforts to secure compliance by the officers under investigation to obey court summons, judicial officials said they had received little cooperation from ministry officials. One judge said: “On one occasion, I saw one of these police officers walking around in court. I went to inform the Internal Affairs officials, who keep an office at the court. I pointed out the officer and asked why no action was being taken. They told me this would require approval from a higher authority”.<sup>192</sup>

## **X. Multinational Force advisers and reform efforts**

In the context of the role of Multinational Force in contributing to the maintenance of security and stability in Iraq, under the terms of U.N. Security Council Resolution No. 1546,<sup>193</sup> one of the responsibilities of the Multinational Force is to build the capability of Iraqi security forces, including the police. This was envisaged through a program of recruitment, training, mentoring, and monitoring, involving the assistance of a network of both civilian and military international advisers working with the relevant Iraqi Ministries, in particular Defense, Interior, and Justice. The United States government has taken the lead in designing, funding and supervising this program. For the purposes of this report, Human Rights Watch spoke to six advisers assisting both the Ministries of Interior and Justice on issues relating to policing and detentions. Two of them agreed to be identified in this report.

As of this writing, the areas of responsibility of senior advisers working with the Ministry of Interior at the level of policing include the following: planning and business management; counter-terrorism and operations; the Major Crimes Directorate (related to

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appropriate recommendations to the prime minister, minister of justice, and the relevant head of the detaining authority (Section 14(4). In cases of “serious misconduct,” such recommendations may include “dismissal, removal or punishment” of the detaining authority under investigation (Section 15). Additionally, Article 50 of the TAL, which provided for the establishment of a National Commission for Human Rights, stipulated that the Commission “shall include an Office of the Ombudsman to inquire into complaints. This office shall have the power to investigate, on its own initiative or on the basis of a complaint submitted to it, any allegation that the conduct of the governmental authorities is arbitrary or contrary to law.” To Human Rights Watch’s knowledge, no steps were taken following sovereignty transfer to set up the National Commission for Human Rights.

<sup>192</sup> Human Rights Watch discussion with an investigative judge [name withheld by Human Rights Watch], Central Criminal Court, October 24, 2004.

<sup>193</sup> S/RES/1546 (2004).

crimes such as kidnapping, extortion, and money laundering); the Internal Affairs Directorate; intelligence; and highway patrol and traffic. Below the senior police advisers is another layer of police advisers, some of whom work at the level of the detention facilities rather than the ministry itself. Overseeing this network is the senior adviser to the Minister of Interior, covering policing and other matters.<sup>194</sup>

In addition to specialized training, details of which are not covered in this report, international advisers working with the Iraqi Interim Government devised two basic training programs for the Iraqi police, one for new recruits and another for members of the former Iraqi police force. Both are run by the Civilian Police Assistance Training Team (CPATT), commanded until late September 2004 by British Brigadier General Andrew Mackay. The Iraq Basic Training Curriculum for new recruits, an eight-week program conducted at a purpose-built training academy in Jordan, consists of various lessons divided into eight blocks and totaling 320 hours. Block 1 includes topics such as democratic policing principles, policing in a democratic society, human rights, and the prohibition against torture.<sup>195</sup> Block 2 includes topics on international law basics, pre-trial police behavior and potential violations of human rights, police ethics and values, and international standards for police use of force.<sup>196</sup> Block 3 includes such topics as interviewing victims, witnesses and suspects and taking statements, as well as patrol procedures and preliminary investigations.<sup>197</sup> Each of these topics is allocated between two to four hours of the total curriculum. Block 4 focuses on Iraqi criminal law and procedure (consisting of forty hours),<sup>198</sup> while blocks 5-8 deal with firearms and other practical training.

Training for members of the former Iraqi police force, known as the Iraqi Police Transition Integration Program (IPTIP or TIP), consists of a three-week training program totaling 126 hours and run at the police academy in Baghdad.<sup>199</sup> Covering in shortened form many of the topics covered in the training for new recruits, its stated aim is “to change the philosophy, behaviors, actions, and activities of all Iraqi police regardless of assignment,” through the introduction and improved acquisition of

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<sup>194</sup> Since the transfer of sovereignty, Steven W. Casteel, a U.S. national and former Assistant Administrator for Intelligence with the U.S. Drug Enforcement Administration, has held this post.

<sup>195</sup> Other topics covered in Block 1 include the right to life, trafficking of persons, rights of children and juveniles, and freedom of assembly and association.

<sup>196</sup> Other topics covered in Block 2 include the right to liberty and security, gender issues, community policing, and policing in a multi-ethnic society,

<sup>197</sup> Other topics covered in Block 3 include women in law enforcement, domestic violence, report writing and mine awareness.

<sup>198</sup> This part of the curriculum covers an overview of the Iraqi criminal justice system, laws of arrest, search and seizure laws, role of the courts, and human rights.

<sup>199</sup> The length of the course was augmented from a shorter version covering 108 hours.

“human rights knowledge, democratic policing principles, modern policing techniques, applicable Iraqi criminal laws and procedures, laws of arrest and detention, and firearms proficiency.”<sup>200</sup>

Brigadier General Mackay told Human Rights Watch that the training programs had undergone some changes “to reflect current needs, and therefore now contain more operational policing due to counter-insurgency,” but that the “core human rights content” had been retained as part of the curriculum. He said that as of mid-September 2004, some 27,000-28,000 “former regime police officers” had been trained, together with 35,000-37,000 new recruits. Although the size of the Iraqi police force at the time was estimated at 88,000, Brigadier General Mackay said that the “the difference between the two [some 23,000-26,000] are untrained from our perspective.” A review of all police recruitment underway could result in making redundant 20,000-30,000 police officers previously recruited by the CPA and since deemed “unsuitable,” having failed “to subscribe to democratic or decent policing.”<sup>201</sup> The Minister of Interior was said to be cooperating fully with the review.<sup>202</sup>

By mid-September 2004, the Multinational Force deployed 465 international police advisers, most from the United States, in thirty-seven locations across Iraq, with their numbers set to rise to 500 in the near future. With regard to their role in the monitoring of possible abuse of detainees by police officers, Brigadier General Mackay told Human Rights Watch:

It is their job to enter police stations and advise and check on detainees. They have discovered instances in police stations where detainees were clearly beaten up. In such situations, they prepare a report, with photographs where possible, and present it to the police chief to determine why this is so. I have not personally kept records of where this has happened. These cases emerge depending on the reaction of the international police advisers where they feel strongly about it. No one underestimates the difficulties we are facing, and the situation is exacerbated by a brutal insurgency campaign, which has to be beaten in

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<sup>200</sup> “Iraqi Police Transition Integration Program (REVISED),” provided to Human Rights Watch by Brigadier General Andrew Mackay, commander of CPATT, September 19, 2004. Brigadier General Mackay also made available documents pertaining to human rights issues used by trainers in some of lessons covered in the curriculum, and Human Rights Watch obtained similar documents on additional topics from other sources.

<sup>201</sup> See Gethin Chamberlaine, “Critics warn plan to sack 30,000 Iraqi police will create enemies”, *The Scotsman*, August 23, 2004.

<sup>202</sup> Human Rights Watch discussion with Brigadier General Andrew Mackay, CPATT, Baghdad, September 19, 2004.



order to bring stability to the country. In this fight, the police are in the frontlines.<sup>203</sup>

Human Rights Watch believes that the system currently in place for the reporting of police abuses remains woefully inadequate and is given low priority, judging by the apparent lack of follow-up and even knowledge of such abuses. Among the locations where international police advisers are deployed is the Major Crimes Directorate facility in al-‘Amiriyya, where many of the allegations of torture or ill-treatment of detainees received by Human Rights Watch emanated. Brigadier General Mackay told Human Rights Watch that none of the international police advisers “had alerted me to any prisoner abuse” there. Yet one of investigative judges at the Central Criminal Court, who visited the al-‘Amiriyya facility on a number of occasions, said he had fully apprised the chief police adviser there of the detainee abuse taking place, but that the adviser apparently took no action.<sup>204</sup> With regard to torture allegations emanating from the Criminal Intelligence Directorate, Brigadier General Mackay said that to his knowledge, there were no advisers placed within the intelligence agencies. Human Rights Watch also raised with him the issue of general conditions of detention in such facilities, giving as one of several examples the failure to provide food to the detainees, who were obliged to buy their own. “I won’t deny that this is occurring. Until we get proper security and stability to the country, we cannot tackle that issue,” he responded.<sup>205</sup>

Two Iraqi police officials attached to the Major Crimes Directorate, to whom Human Rights Watch spoke on a confidential basis in August and September 2004, freely admitted that Iraqi police used torture to extract information from detainees under interrogation. One said that until such time as adequate means for “normal criminal investigation” became available, including having a sufficient number of cells to hold suspects in the same case separately so that they did not concoct a story together, torture will continue to be used as the only sure means to obtain the necessary information from detainees. He commented that the presence of international police advisers had not changed anything: “We were using these interrogation methods long before the Americans came, and we will continue to use them long after the Americans are gone.”<sup>206</sup>

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<sup>203</sup> *Ibid.*

<sup>204</sup> Human Rights Watch discussion with an investigative judge [name withheld by Human Rights Watch], Central Criminal Court, Baghdad, August 22, 2004.

<sup>205</sup> Human Rights Watch discussion with Brigadier General Andrew Mackay, Baghdad, September 19, 2004.

<sup>206</sup> One reported incident where a Baghdad-based journalist said that he witnessed police abuse of criminal suspects exemplifies this attitude. See Patrice Claude, “*Les droits de l’homme, on n’obtient rien avec ça!*” *Le Monde*, August 10, 2004. In the article, one of the police officers on the scene is quoted as saying: “*Les Américains nous expliquent qu’il faut respecter les droits de l’homme maintenant. Mais on n’obtient rien avec*

The second official cited an additional factor which, in his view, led to the torture of detainees. He told Human Rights Watch that investigating officers at the Major Crimes Directorate were too few for the number of cases each had to handle. Within each of the directorate's four main units, there were some ten police investigators, each of which had "at least twenty-five to thirty detainee cases to handle, in addition to a further 150 unregistered cases." As such, police investigators did not have the luxury to spend the amount of time involved in carrying out normal criminal investigation, and found it more time-efficient to beat the information out of the detainees. The practice of extracting information under duress was also alluded to by Brigadier General Mackay: "I am aware that a lot of information is extracted through confessions, but it is difficult to assess how extensive that is."<sup>207</sup>

The Ministry of Justice's Iraqi Correctional Service (ICS – *Da'irat al-Islah al-Iraqiyya*) conducts a physical examination of detainees who are transferred to facilities under its control; this serves as a partial assessment of the extent to which Ministry of Interior agencies torture or abuse detainees before they are transferred. International advisers working with the ICS told Human Rights Watch that they have "uncovered instances where this has occurred." If authorities followed procedures, then "once defendants appear before the investigative judge, they must be turned over to the ICS immediately, but this does not happen."<sup>208</sup> Human Rights Watch's own research similarly showed that defendants referred to the Central Criminal Court by the Ministry of Interior's specialized agencies frequently remained under their jurisdiction after their appearance before an investigative judge, increasing their vulnerability to further abuse should they speak out before the judge about their treatment in detention. Not infrequently, detainees who told Human Rights Watch they were tortured, and whose investigative hearings the organization attended, refrained from repeating the same allegations before the judge, even in cases where evidence of external trauma was still clearly visible. According to one adviser, once such detainees are transferred to the ICS, they undergo a physical examination as a matter of procedure and a report is prepared, together with photographs where relevant, detailing any identifiable injuries they may have sustained prior to their arrival. He told Human Rights Watch that the ICS then sends such reports to Ministry of Interior officials: "We don't know what happens to these reports after that; it's out of our hands."<sup>209</sup>

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*ça. La bonne vieille méthode irakienne, ça, ça marche.*" [The Americans tell us that we must now respect human rights. But we don't achieve anything by that. The old and trusted Iraqi method, now that works].

<sup>207</sup> Human Rights Watch discussion with Brigadier General Andrew Mackay, Baghdad, September 19, 2004.

<sup>208</sup> Human Rights Watch discussion with advisers to the ICS [names withheld by Human Rights Watch], Baghdad, September 9, 2004.

<sup>209</sup> *Ibid.*

David Hamilton, an international police adviser to the Ministry of Interior, said that part of the problem was the lack of effective monitoring of police behavior in the post-training phase:

The ministry says prisoners will not be tortured, but this is Iraq and it happens. Human rights should be an integral part of the training, and new recruits do get human rights training, but only initially at the academy, without further follow-up or monitoring. The problem is that once the new recruits are deployed to the police stations, the older ones tell them “forget what you’ve learned, this is how we do things here.” You can’t simply say “don’t torture,” you have to provide an alternative, which includes training in good investigative skills.<sup>210</sup>

Hamilton told Human Rights Watch that in an effort to improve and increase the level of monitoring of police conduct and of detainee treatment, one of the ideas advisers were considering was to start “an independent lay visitors’ scheme.” This would involve “a group of people selected to represent the community, who would carry out unannounced inspections of police stations, having permission to speak to the detainees and to assess conditions in custody.” They would then report to the Ministry of Interior on their findings. Other ideas that he said should be considered included setting up a legal aid system to improve detainees’ access to defense counsel, although he expressed some doubt as to whether “this government is prepared to pay for lawyers to defend dangerous criminals.” Hamilton advocated an increased presence of international monitors at police stations. He also stressed the necessity for a national policing plan that would encompass tackling issues such as police corruption in order to increase public confidence in the system; establishing a promotion system for the police that is both transparent and based on performance; and a selection system for training courses based on an assessment of what the candidates “could bring back to policing rather than who they knew.”<sup>211</sup>

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<sup>210</sup> Human Rights Watch discussion with David Hamilton, senior police adviser to the Ministry of Interior on planning and business management, Baghdad, September 7, 2004. Hamilton said that scene-of-crime officer training was already taking place at thirty-five locations nationwide, including training in methods for gathering physical evidence for scientific analysis. However, until such time as effective laboratory facilities become available, the usefulness of such training remains limited: “There are facilities available to police investigators for analysis of blood type but not subtype, and none for DNA analysis or fiber matching.” An experiment was underway with a “model police station equipped to Western standards,” but for the time being this was only within the Green Zone, he added.

<sup>211</sup> *Ibid.*

Other international advisers working closely with the Ministry of Interior on policing and other matters sought to explain the difficulties of reorganizing, training, and equipping a police force, particularly under current security conditions in Iraq, difficulties which Human Rights Watch recognizes. One of them told the organization:

We are trying to turn the Iraqi police into a Western style police force while at the same time trying not to raise people's expectations too much. They are neither properly trained nor equipped, and we have to contend with the negative way in which the police was regarded before the war. Now the police are expected to be engaged in a guerilla war, something which would not be expected of them anywhere in the world.<sup>212</sup>

The adviser also referred to problems related to police recruitment and training inherited from the CPA by current advisers to the Ministry of Interior: "We are trying to weed out the folks who are unsuitable, going for quality rather than quantity and with better vetting procedures." He confirmed that the Ministry of Interior was currently reviewing past police recruitment, and that in the course of the review, it discovered that some of the police recruited under the CPA were illiterate, while others had no basic policing skills. "There was even an instance where the CPA hired an entire tribe," he said, in order to get more police onto the streets.<sup>213</sup> Another adviser with the ministry told Human Rights Watch that a four-person committee within the ministry, involving representatives of the police, Internal Affairs, finance and administration, has been holding "four-hour meetings three times a week for the last three months to set up the [review] system." The aim was to establish criteria for current police officers to "re-qualify" for their posts, taking into account factors as wide-ranging as physical fitness to allegations of corruption, as well as to define "the baseline for future recruitment." He said four international advisers were assisting the review committee in its work, but in "an advisory capacity only and without decision-making powers."<sup>214</sup>

Both advisers stressed that the Ministry of Interior was taking the issue of police corruption seriously and making efforts to investigate all such allegations.<sup>215</sup> They said

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<sup>212</sup> Human Rights Watch discussion with an adviser to the Ministry of Interior [name withheld by Human Rights Watch], Baghdad, September 21, 2004.

<sup>213</sup> *Ibid.*

<sup>214</sup> Human Rights Watch discussion with an adviser to the Ministry of Interior [name withheld by Human Rights Watch], Baghdad, September 21, 2004.

<sup>215</sup> One example given was the introduction of "data sheets" to account for each individual officer, following the discovery that salaries were being paid to some 120,000 police whereas the actual number was in the range of 88,000-90,000.

the Internal Affairs Directorate, responsible for investigating police conduct and malpractice, had investigated some forty-two cases with the assistance of “two coalition mentors.”<sup>216</sup> Human Rights Watch was told that these were “mostly corruption cases.” When asked whether they had investigated any allegations of abuse of detainees by police officers, one adviser said he was not aware of such cases but would make enquiries. During these discussions, the advisers assured the organization that both they and Ministry officials were making efforts to monitor police behavior, giving the example of the introduction of a thirty-point code of conduct introduced in late May or early June 2004, and which was “signed by some police officers.”<sup>217</sup> They told Human Rights Watch that they would make the code of conduct available to it. At this writing, they had provided the organization neither the code of conduct nor information regarding any detainee abuse investigations that may have taken place.

When Human Rights Watch gave examples of the instances of torture and ill-treatment it had recorded with regard to detainees held at the Major Crimes Directorate facility in al-‘Amiriyya, one adviser replied that international advisers at the detention facility “don’t meet with the detainees, and therefore don’t see any abuse.” Detainees interviewed by Human Rights Watch confirmed the absence of direct contact between them and advisers. When asked, none said they had had any such contact, which the organization believes raises questions about the effectiveness of the role of advisers aiming, according to their own statements, to bring law enforcement in Iraq up to standards that comply with international human rights protections. The adviser told Human Rights Watch that the current focus is on “building the capability and effectiveness of the police, and we are increasing that now.” In discussing the two cases of mass arrests highlighted in this report (the al-Bataween and the al-Kifah Street raids – see Section VII), he said:

What MOI is aiming to do is to make sure that they are able to pinpoint where these people [the suspects] live, and to avoid mass roundups. We try to provide GPS coordinates for their homes. But trying to collect evidence beforehand – this is still a luxury for us. We will continue to press the MOI.<sup>218</sup>

When asked whether he was aware that the majority of the suspects police arrested in the al-Kifah Street and al-Bataween raids and referred to court were eventually released

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<sup>216</sup> Human Rights Watch did not know the outcome of these investigations at this writing.

<sup>217</sup> The interior minister at the time was Samir al-Sumaida'i, who is currently Iraq's representative at the United Nations in New York.

<sup>218</sup> Human Rights Watch discussion with an adviser to the Ministry of Interior, Baghdad, September 21, 2004.

due to insufficient evidence, thereby calling into question the effectiveness of the police in these two instances, the adviser said he had not followed up on the cases after arrest and was not aware that that had been the outcome. When asked about Ministry of Interior agencies – such as the Criminal Intelligence Directorate – acting outside their areas of competence by carrying out arrests, he said: “As far as I know, Criminal Intelligence has no arresting or detaining powers.”<sup>219</sup>

Perhaps more telling of the priority being given to portraying the Iraqi government as taking firm and decisive action on violent crime at the expense of protecting basic human rights and even effective policing are remarks made by the Ministry of Interior’s senior international adviser, Steven Casteel. When interviewed on police operations for the *Boston Globe* in July 2004, he said:

There’s always a pendulum between freedom and security, and in Middle Eastern culture they’ve always allowed that pendulum to swing more towards security. The Iraqi people are looking for this government to take a strong stance ... Obviously, we support human rights. And the Iraqi police understand they’re not supposed to do anything outside the Iraqi legal framework. But that legal framework is not the US legal framework.<sup>220</sup>

The *Boston Globe* journalist also interviewed officials on the al-Bataween raid in which U.S. soldiers had intervened to stop the abuse of suspects by the Iraqi police:

Interior Ministry officials were outraged by what they saw as a violation of their sovereignty. They called in Casteel, who said he spent three or four hours to smooth out the problem. In the end, the MPs agreed that the Iraqis were in charge of the prisoners. “Some soldiers think they’re still the occupation forces and behave that way,” Interior Ministry spokesman Sabah al-Anbaqi said. But at the Interior Ministry, Brigadier General Hussein Ali Kamal said the incident built morale because Iraqi control had prevailed.<sup>221</sup>

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<sup>219</sup> *Ibid.*

<sup>220</sup> Ann Barnard, “Iraqis to give security forces a freer hand, government stops short of martial law,” *Boston Globe*, July 4, 2004.

<sup>221</sup> *Ibid.*

For his part, Casteel cited the al-Bataween raid as “an example of US-Iraqi cooperation, in which US troops shared satellite images of the neighborhood and backed up the police with Humvees.” Both he and an Iraqi police official said that:

Interior Ministry officials emphasized human rights and ethics as they prepared more than eighty agents to take part. They brought twenty-five internal affairs police with them to monitor the operation. Casteel said only one theft occurred of a case of beer and that the policeman who stole it is being disciplined.<sup>222</sup>

During the course of its research for this report, Human Rights Watch was hard pressed to find evidence suggesting that Iraqi officials had conducted serious investigations into the abuse of detainees by the police, taken adequate disciplinary action or criminal proceedings against those found guilty of such abuse, or appropriately conveyed that message to act as a deterrent for others.

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<sup>222</sup> *Ibid.*

## Appendix

The following are extracts from the accounts of five detainees whom Human Rights Watch interviewed at the al-Karrada Criminal Court in Baghdad in September and October 2004. They were among fifteen detainees interviewed upon their referral on various criminal charges, including theft and murder, and were in court for their investigative hearing or trial. All were being held at police stations in Baghdad, including al-Sa'doun, al-Masbah, Baghdad al-Jadida, Balat al-Shudada', and al-Muthanna. Their accounts regarding treatment in detention at the hands of the Iraqi police were largely consistent with those obtained by Human Rights Watch from detainees held in the custody of the Ministry of Interior's specialized police agencies and referred to the Central Criminal Court.

### Case A

'Ali Bargouth 'Alwan: a thirty-year-old man living in the neighborhood of al-Saydiyya in Baghdad, employed as a guard in a car showroom. He told Human Rights Watch that the police arrested him in June 2004, [he could not remember the exact day], upon finding a hand grenade in his possession. He said he had bought it for 1,500 dinars from a group of men outside a restaurant in al-Bataween, who were insistent and said it was a cheap deal:

A few minutes later a car drew up, and four policemen got out after seeing the hand grenade in my hand. They bound my hands behind my back with metal handcuffs, blindfolded me with a piece of cloth and began hitting me in front of passers-by. They punched me and kicked me and hit me with the butts of their rifles on my head and all over my body. While in the car on the way to the police station, one of them said if I gave him 50,000 dinars he would let me go before reaching the station, but I refused.

At al-Sa'doun police station, I was taken up to the interrogating officer's room. They removed the blindfold but left me handcuffed. There were six of them altogether. The first lieutenant started asking me questions as the others punched me, kicked me and used cables and pipes on my back and head. One of them said I must say that the grenade was mine and reveal where I had got it from. They continued beating me, with insults and verbal abuse, which lasted until two o'clock in the morning with a few minutes' break in between. At the end of the interrogation



session they asked me to sign a statement, although I can neither read nor write, but no one read it out to me and I was obliged to sign it.

I was not allowed to contact my family to let them know I was detained, so no one visited me. When I first got to the police station, there were about sixty or seventy people held there. There was nowhere for me to sleep or rest, so I slept on the floor of the toilet. The police gave us no food, and I ate from the food that the families of other detainees brought them. There were no beds, and everyone had to sleep on their side because there was no room.

A week later I was brought before the investigative judge at the court in al-Karrada. I had no lawyer and the court did not appoint one for me for the hearing. I told the judge I was beaten while being questioned at the police station, but he did not respond to what I said. He just asked me whether I had anything to add, and said my case would be referred to the misdemeanors court.<sup>223</sup>

‘Ali told Human Rights Watch that twenty days after his arrest, the police transferred him to Abu Ghraib Prison. His case was later referred to the felony court, and on the day the organization met him, his trial was adjourned because the judge was absent.

### **Case B**

Tahsin Dar’am Balasem: a twenty-five-old man from the governorate of al-‘Amara living and working in Baghdad, who told Human Rights Watch he belonged to the Badr Organization.<sup>224</sup> On November 6, 2003, a U.S. military patrol arrested him and his brother on the 7 April Bridge in Baghdad and took them to al-Muthanna police station in the district of al-Zayyouna. Tahsin said he was attempting to find and apprehend an individual whom he believed was responsible for killing his maternal cousin:

As soon as we entered the police station the Iraqi police blindfolded me and tied my hands behind my back, and took me into the interrogation

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<sup>223</sup> Human Rights Watch interview with ‘Ali Bargouth ‘Alwan, al-Karrada Criminal Court, Baghdad, October 12, 2004.

<sup>224</sup> The Badr Organization was formerly known as the Badr Brigades, the armed wing of the Supreme Council of the Islamic Revolution in Iraq (SCIRI), a Shi’a political party. It was renamed in compliance with regulations introduced by the CPA in June 2004 banning party militias (CPA/ORD/02 June 2004/91: Regulation of Armed Forces and Militias Within Iraq).

room. The interrogating officer began questioning me and told me to confess to having committed robberies and abductions. I denied this. So they started beating me with cables. They also used electric shocks by tying wires to my ears and to my penis. After that I confessed. The next day I was taken before the investigative judge, and I denied the charges, saying I had confessed under torture. He did not refer me to the Medico-Legal [Institute] even though I showed him my body and the traces of torture. I told the judge I was not a criminal, and that I had come to resolve a tribal case. I said someone had killed my maternal cousin and I wanted revenge. So they opened another case against me, but did not drop the first charges.

After I was taken back to al-Muthanna police station, the police hit me again and used electric shocks by applying it to my ears and penis. The torture lasted about four hours. They asked why I had denied the charges before the judge, and why I had said my case was of a tribal kind. Ten days later they brought a group of people whose car had been stolen, and one of them identified me as the person who stole it. So they opened another case against me. But even though they tortured me again for another two hours to confess to this crime, I did not confess either to them or before the investigative judge. After a long time I was brought to criminal court in al-Karrada and was acquitted of this last charge, but I am still in prison because of the other two charges.<sup>225</sup>

### **Case C**

Nasir Ghani Muhsin: a twenty-one-year old guard employed by the Ministry of Health, whom the police arrested on August 12, 2004, in the al-Bab al-Sharqi district of Baghdad. He told Human Rights Watch that on that day, a gang robbed him in the street, stealing his watch, a bag containing clothes, and U.S. \$120. He said he asked a passerby for 500 dinars to enable him to get home, and that the passerby pointed to a police car nearby and said they may be able to help him:

I went towards the car, and the man whom I had asked for money came up behind me. When we got there, the man accused me of having tried to rob him. The two policemen were wearing ordinary police uniforms, but they were not armed and did not wear badges proving that they were

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<sup>225</sup> Human Rights Watch interview with Tahsin Dar'am Balasem, al-Karrada Criminal Court, Baghdad, September 15, 2004.

from the police. Their car was a black BMW. After they heard the complaint against me, they started hitting me with a wooden stick in front of passersby, then they put me in the boot of the car and took me to al-Sa'doun police station. It was a Thursday, at about one o'clock in the afternoon.

As soon as I got to the police station, they took me up to the second floor. The interrogating officer asked me what my case was, and I told him I didn't know. All I had done was to ask someone for 500 dinars, who then made a complaint against me to the police. The officer ordered that I be beaten in order to tell the truth, so one of the others punched me in the back and stomach, on my head and face. He hit me on the mouth with the butt of his rifle, which caused my lips to bleed. After that, I told them I was guilty and had tried to rob the man who made the complaint. I had been tortured for a few minutes, but as soon as I confessed the torture stopped. The officer took down my statement and asked me to sign it, which I did.

After that they took me to the detention cell at the station. There were twenty of us in the room. The police did not give us any food or water. We drank water from the toilet, and shared the food that some of the detainees received from their families. They did not allow me to contact my family to tell them I was at al-Sa'doun police station, but five days later I got word to them after one of the detainees was released. I gave him my family's address and asked him to contact them.

On August 20 they brought me before the investigative judge at al-Karrada. There was another man in the room. I didn't know whether he was a defense lawyer appointed by the court for me, since he didn't speak to me at all. He just told the judge that the complainant had not turned up and his address was unknown. So the judge postponed the hearing until the complainant was found. I was taken back to the police station for another week, then to the *Tasfirat* [Transfer Prison] for a month, and then to Abu Ghraib for almost two weeks. Today I was acquitted and the complainant never turned up, but I have another charge pending against me, relating to the possession of an unlicensed

handgun. The same lawyer who defended me on the first charge, who was engaged by my parents, will defend me again.<sup>226</sup>

Nasir added at the end of the interview that once his parents learned where he was being held, they were able to visit him. However, he said that on each occasion they were obliged to pay the police 5,000 dinars to secure the visit, which usually lasted between fifteen to thirty minutes.

### **Case D**

Ra'ed Muhammad 'Atiyya 'Abbas al-Budairi: a thirty-year-old lorry driver living and working in Baghdad, who the police accused of stealing a car and an amount of gold from the Central Bank of Iraq in the immediate aftermath of the fall of the Saddam Hussein government.<sup>227</sup> He told Human Rights Watch that the police arrested him and his brother Ra'ad on March 24, 2004, at their home in the Hay al-Atibba' neighborhood of Baghdad, at around seven o'clock in the morning. Upon searching their home, he said police removed gold jewelry from his mother's bedroom and took two cars parked in the garage, one of which he said belonged to his brother's Lebanese business partner. They took them to Balat al-Shuhada' police station in the district of al-Dora:

Upon reaching the police station they put me and my brother in the detention cell and untied our hands. Half an hour later I was summoned for interrogation. They tied my hands behind my back with metal handcuffs. Four of them questioned me, and told me to confess to having stolen the two cars. They also accused me of having stolen the gold, and told me to confess to that. I said I had nothing to do with it. Two of them held me from behind, and Lieutenant Colonel [name withheld] used a wooden stick to beat me on the soles of my feet. He also hit me on my back and other parts of my body, all the while telling me to confess to having stolen the cars and the gold. This continued, with insults and foul language, for a whole hour.

After that they took me back to the cell and immediately summoned my brother. He was interrogated in the same way, with torture and

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<sup>226</sup> Human Rights Watch interview with Nasir Ghani Muhsin, al-Karrada Criminal Court, Baghdad, October 10, 2004.

<sup>227</sup> A third brother, Khalid, was also implicated in the bank theft. Human Rights Watch independently had interviewed him upon his referral to the Central Criminal Court more than six weeks earlier (See Section VII, Case 3).

beatings. They did not allow us family visits, and did not give us any food. Other detainees bought food by giving the police money to buy it for them, and shared it with us. We drank water from the tap in the toilet, which we also used to wash ourselves. When we first arrived at Balat al-Shuhada' police station, there were thirty-five detainees. There were bunk beds for everyone, but after a while they were taken away and we had to sleep on the floor.

The interrogation continued for about a week. Each time they took me or my brother and tortured us for an hour or so, usually at around midday. Then a lawyer arrived and said my parents had engaged him to defend us. We talked for ten minutes. The next day they referred me and my brother to the judicial investigator at the police station. The torture stopped and they allowed us family visits.<sup>228</sup>

According to Ra'ed's account, two and half months later detaining officials brought him and his brother before an investigative judge at al-Bayya' criminal court, who told them that the car theft charge would be dropped. Three days later they were transferred to Bab al-Shaikh police station, where they spent seventeen days without questioning. The police subsequently moved them to the Transfer Prison to await their court appearance on charges of having stolen gold from the Central Bank of Iraq. Ra'ed told Human Rights Watch that the police had brought him to al-Karrada criminal court by mistake, caused by the similarity between his name and that of another detainee. He said they were taking him back to the Transfer Prison, and wondered what was to become of him and his brother.

### **Case E**

Hamid Farhan Salman: a thirty-five-year-old casual laborer living in the district of al-Za'faraniyya in Baghdad, who the police arrested on March 15, 2004, on a murder charge. He told Human Rights Watch:

A sharp dispute broke out between me and a lorry driver in traffic, so we started firing at each other with our guns, as a result of which a passerby was killed. At the same time, a group of people from the nearby headquarters of the Da'wa Party also started firing, as well as a number of policemen. The group from the Da'wa Party captured the

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<sup>228</sup> Human Rights Watch interview with Ra'ed Muhammad 'Atiyya 'Abbas al-Budairi, al-Karrada Criminal Court, Baghdad, October 11, 2004.

lorry driver and handed him over to al-Za'faraniyya police station, and I ran away. Half an hour later I went to the police station to turn myself in. It was about 7.30 in the evening.

I confessed to my part in the dispute, and wasn't certain whether anyone had been killed. I was arrested immediately, and fifteen minutes later they took me and the lorry driver to the interrogating officer's room. They questioned us without hitting us. The lorry driver denied knowing me or that he was involved in a dispute with me, which was not true. A week later, I was brought before the investigative judge. I didn't have a lawyer, so the court appointed one for me, but he didn't say a word to me and I never saw him again after that. I returned to al-Za'faraniyya police station, and a week later I was interrogated again.

I was blindfolded, and my hands were tied behind my back. The lieutenant colonel accused me of having bribed the investigating officer in my case, and started hitting me with a cable on my back to make me confess. This continued for about ten minutes. Then two of them held me back, and I was punched all over the body. The following day I made a complaint against the interrogating officer to the head of the police station, and the officer was transferred to another station. I stayed there for about a month and a half, and then they transferred me and the lorry driver to al-Masbah police station. The police there treated us well, but they never gave us food. My family visited me every Thursday, and on the other days the police allowed them to visit after three o'clock in the afternoon for ten minutes each time, in exchange for a sum of money. After about two months, the lorry driver was released on bail, and two weeks later I was moved to the *Tasfiyat* [Transfer Prison]. The following day I was sent to Abu Ghraib.<sup>229</sup>

Hamid described the treatment at Abu Ghraib as good. He said he received three meals a day, had family visits once a week, was allowed to go outdoors for exercise without chains once every two weeks, and was seen by the ICRC. At the time of the interview, he was still being held in Abu Ghraib. He told Human Rights Watch that he had resolved the case with the family of the passerby who was killed in the traditional tribal manner [*fasl 'asha'ir*]. In exchange for a payment of five million dinars, the family had agreed to drop the murder charge against him. Despite that, he said, he had not been

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<sup>229</sup> Human Rights Watch interview with Hamid Farhan Salman, al-Karrada Criminal Court, Baghdad, October 13, 2004.

released. He was due to be tried on the day Human Rights Watch met him, but the judge postponed the session until October 30, 2004.

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