



# Caught in the Whirlwind

## Torture and Denial of Due Process by the Kurdistan Security Forces

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## I. Summary

*“They tied my hands and hit me with cables, sticks, and threw punches at me. It was two people. I do not know their names. I lost consciousness and woke up in solitary. I was later given a paper and a pen by the officer and told to write my confession. The officer told me ‘make it up if you need to,’ so I did, and I put my fingerprint on it.”*

-Kurdish detainee during interview with Human Rights Watch, Sulaimaniya, May 6, 2006

Security forces known as *Asayish* operate in the Kurdistan region of Iraq, attached to the two dominant political parties in the region, and outside the control of the regional government’s Ministry of Interior. The *Asayish* have held hundreds of detainees, particularly those arrested on suspicion of terrorism-related offenses, without due process, for up to five years in some cases. Detainees have reported that torture or other ill-treatment during the initial period of detention were routine and commonplace in facilities under *Asayish* authority.

This report details Human Rights Watch’s concerns regarding the right to due process and conditions of detention for persons held in the custody of the *Asayish*. The report is based on research conducted in the Kurdistan region from April to October 2006. During that time we held regular discussion with the Kurdish authorities, who took a number of steps toward fulfilling some of the recommendations we put to them. However, these efforts have not yet translated into any discernible improvement for most detainees in *Asayish* facilities.

The Kurdistan Democratic Party (KDP) and the Patriotic Union of Kurdistan (PUK) are the two principal parties in the Kurdistan region and dominate the political scene. Each maintains its own *Asayish* (literally, “security”).<sup>1</sup> The *Asayish* have primary responsibility for suspects held for security-related offenses and, in recent years, for persons suspected of membership in or links to opposition armed groups operating both in the Kurdistan region and elsewhere in Iraq. *Asayish* detainees include both

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<sup>1</sup> Each has traditionally placed the *Asayish* under the authority of their respective ministries of interior (see Section V).

persons whom the Kurdistan authorities arrested in governorates under their control, as well as scores of others arrested elsewhere in joint operations conducted by United States (US) forces and the Iraqi army, then transferred to the custody of the Kurdistan authorities. The *Asayish* also hold criminal suspects arrested for serious felonies, pending their referral to the courts.

Human Rights Watch found that in the vast majority of *Asayish* detainee cases the Kurdistan authorities did not charge detainees with offenses, allow them access to a lawyer, bring them before an investigative judge, provide a mechanism by which they could appeal their detentions, or bring them to trial within a reasonable time period. Of the detainees held on suspicion of having committed serious felonies, including premeditated murder, Human Rights Watch found several cases where courts had acquitted defendants but they remained in detention, or persons had already served their terms of imprisonment but continued to be held. Most had no knowledge of their legal status, how long they would continue to be held, or what was to become of them.

Detainees reported a wide range of abuse, including beatings using implements such as cables, hosepipes, wooden sticks, and metal rods. Detainees also described how *Asayish* agents put them in stress positions for prolonged periods, and kept them blindfolded and handcuffed continuously for several days at a stretch. The vast majority of detainees with whom Human Rights Watch spoke also reported that they were held in solitary confinement for extended periods. With some exceptions, Human Rights Watch found that conditions of detention at *Asayish* facilities were severely overcrowded and unhygienic, and many detainees complained that they were allowed out of their cells only to use the toilet.

Scores of detainees also complained that the authorities denied them access to relatives, and that in some cases their relatives were unaware of where they were being held. This related in particular to the initial months after arrest, when they were still undergoing interrogation. Others, mostly terrorism suspects, complained that once granted, the visits frequently lasted only minutes, and were always conducted in the presence of detaining officials.

In routinely ill-treating detainees and denying them basic due process rights, the Kurdistan authorities have violated both international human rights law and Iraqi law. Iraq is a state party to the International Covenant on Civil and Political Rights (ICCPR) and other treaties that prohibit torture and cruel, inhuman or degrading treatment or punishment, and which provide detainees with due process rights, including the right to be notified of charges at the time of arrest. Iraq's Code of Criminal Procedure (CCP), which applies to all persons in Iraq, including residents of Kurdistan, provides protections against arbitrary arrest and detention, such as requiring criminal suspects to be brought before an investigating judge within 24 hours of arrest. Amendments to the CCP enacted by the Kurdistan National Assembly provide detainees with further protections, including the right to engage legal counsel or have legal counsel appointed at the investigative stage.

During the months that Human Rights Watch conducted research for this report, it held regular discussions with the Kurdistan authorities, and acknowledges the cooperation it received from officials of both the KDP and the PUK. While the two parties formally unified in July 2006, they still maintain separate detention facilities. The Kurdistan authorities from both the KDP and PUK gave Human Rights Watch access to all *Asayish* detention facilities and allowed unannounced visits at times of our own choosing. With the exception of detainees undergoing interrogation or held in solitary confinement, Human Rights Watch received the full assistance of prison officials to interview any of the other inmates held at these facilities in conditions that allowed for confidential interviews. The Kurdistan authorities also facilitated the organization's access to *Asayish* officials, prison directors, legal advisers and other relevant actors. This cooperation was in stark contrast to the approach of the Iraqi Ministries of Interior and Defense, and to the US and United Kingdom (UK) military forces in Iraq, which since April 2003, have repeatedly denied Human Rights Watch's requests for access to their detention facilities.

Human Rights Watch also acknowledges the seriousness with which the Kurdistan authorities responded to the concerns now highlighted in this report, indicating a new willingness to address the issues at hand. Between April and October 2006 the Kurdistan authorities took a number of concrete steps towards fulfilling, at least in

part, some of the recommendations put forward by Human Rights Watch. *Asayish* officials initiated a partial review of detainee cases, accelerating the release of several hundred detainees, most of whom they had held without due process. In late September and early October, President Mas`ud Barzani, with whom the organization discussed its concerns in May 2006 and who had given a commitment to address the issues raised with him, instigated the creation of a committee representing the Ministries of Justice and Human Rights, the public prosecution, the *Asayish* forces, and the presidency of the Kurdistan region to carry out inspection visits to several *Asayish* detention facilities in Duhok and Arbil governorates. At this writing, the committee has reportedly prepared an initial report on these inspection visits, but has not made public its findings. Also in October the Kurdistan National Assembly undertook a separate initiative, charging a parliamentary group with conducting prison visits and reporting back on its findings. The group has reportedly finished its visits, but at this writing the Kurdistan National Assembly has not debated the parliamentary group's findings.

With regard to detainees whom US and Iraqi forces reportedly jointly arrested outside the Kurdistan region and then transferred to the custody of the PUK or KDP authorities, Human Rights Watch welcomed the cooperation of both *Asayish* officials and the General Command of Multi-National Force (MNF) Detainee Operations with whom it raised these cases. When Human Rights Watch interviewed the first of these detainees in April 2006, the Kurdistan authorities had given little if any consideration to their legal status. By December the Kurdistan authorities had released several hundred of these detainees, and *Asayish* officials—particularly from the KDP—had established direct contact with the US General Command to discuss these cases. At this writing, both sides were working towards finding an early resolution to these cases, either by releasing these detainees or granting them due process rights if they are to be charged and referred to trial.

While Human Rights Watch recognizes and welcomes the cooperation and efforts of the Kurdistan authorities, these efforts have not translated into any discernible improvement for most detainees in *Asayish* detention facilities. The measures taken by the Kurdistan authorities to address these issues—although concrete and constructive—fall well short of the independent and impartial judicial review of the

legal status of detainees that Human Rights Watch has recommended as a matter of urgency.

## Key recommendations

While the Kurdish authorities have made some progress, it has been incremental. Human Rights Watch urges Kurdistan authorities to implement as swiftly as possible the following recommendations in order to bring practice and law regarding the treatment of detainees into line with international standards and Iraqi law. (Detailed recommendations, to the Kurdistan authorities and to other relevant actors, are set out at the end of the report.)

- Appoint as a matter of urgency an independent judicial committee to review the legal status of detainees held in the custody of the *Asayish* forces. On the basis of the review's findings:
  - Immediately release or charge with cognizable criminal offenses all those currently held without charge.
  - Immediately release all convicted prisoners held in *Asayish* custody who have already served their sentences.
  - Transfer any convicted prisoners still serving time to a prison under the authority of the Ministry of Interior's police forces in accordance with legislation currently in force.
- Establish effective judicial mechanisms to enable all detainees to challenge the legal basis for their detention, and to provide all detainees with a prompt and fair trial on the charges against them.
- Publicly and unequivocally condemn the practice of torture and other ill-treatment. Suspend legal provisions that permit the use of confessions and other evidence obtained through torture or other coercive methods.
- Investigate promptly all allegations of torture and ill-treatment, and ensure that guards, interrogators, and other prison officials who are found responsible for the abuse of prisoners are subject to disciplinary measures or criminal prosecution as appropriate.

- To that end, authorize the establishment of a transparent and independent body to investigate allegations of torture by *Asayish* personnel.

## II. Methodology

This report focuses on the rights to due process and conditions of detention of persons held in the custody of the Kurdish security forces (*Asayish*) responsible for the arrest, detention and interrogation of security suspects and certain criminal suspects.<sup>2</sup> It is based on research carried out in the Kurdistan region of northern Iraq between April and October 2006, involving three field visits. Human Rights Watch obtained written authorization from the directors of the KDP and PUK *Asayish* forces to conduct unannounced visits to detention facilities under their jurisdiction, including repeat visits. For the most part, the organization conducted the interviews in private, without the presence of detaining officials (in some facilities, detaining officials made available to Human Rights Watch the use of a room or office where the organization conducted the interviews in privacy; in other places, Human Rights Watch conducted the interviews one-on-one but in the courtyard of the facility). Some detainees preferred being interviewed in their cells, which typically were large communal cells, housing some 50 or 60 detainees and providing a degree of anonymity, away from the eyes of detaining officials. In all facilities the detaining authorities did not permit Human Rights Watch to interview detainees being held in solitary confinement or still undergoing interrogation.<sup>3</sup>

Human Rights Watch visited 10 detention facilities operated by Kurdish security forces. Four of them were under KDP authority: *Asayish Gishti* (General Security) and *Asayish Arbil* (Arbil Security), both located in the city of Arbil; *Asayish Shaqlawa*, located in Arbil governorate; and *Asayish `Aqra*, located in Duhok governorate. Six were under PUK authority: *Asayish Gishti* (General Security) and *Asayish Sulaimaniya* (Sulaimaniya Security), both located in the city of Sulaimaniya; al-Salam Garrison, located west of Sulaimaniya city; *Asayish Hawler*, located in the town of Koisinjaq;

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<sup>2</sup> Both KDP and PUK officials also gave Human Rights Watch authorization to visit prisons and detention facilities operated by their respective interior ministries' police forces. As this was not the focus of its research, the organization did not conduct such visits at this time.

<sup>3</sup> In KDP facilities, detaining officials provided Human Rights Watch with lists of names of detainees being held there on the days of the visits, excluding those undergoing interrogation. During the second field visits, in August 2006, KDP officials also provided the names of detainees undergoing interrogation whom Human Rights Watch could not interview. The organization was not in a position to assess the accuracy of these lists. In PUK facilities, detaining officials declined to provide lists of names of detainees.



*Asayish Sharazur*, located near the town of Halabja; and *Asayish Chamchamal*, located in Sulaimaniya governorate.

In total, Human Rights Watch interviewed 158 detainees, 112 of whom were in KDP custody and 46 in PUK custody. The focus was on adult male detainees held in pretrial detention, although Human Rights Watch found several convicted prisoners held with untried detainees at the same facility.

No detainees are named in this report, nor other details published that would enable detaining officials to identify them. Some of those interviewed declined to give their names or other personal details, and many expressed fears that they would be subjected to punishment for agreeing to talk to Human Rights Watch. We have changed the names of all the detainees to conceal their true identities, and we have employed common Arabic first names rather than refer to them generically as “a detainee.” During repeat visits to two facilities, detainees reported that they had suffered no reprisals for talking with Human Rights Watch, but said that detaining officials had noted their names.

Outside of the prisons, Human Rights Watch also interviewed six former detainees held in detention without trial at various times between 2000 and 2006. Three had been in KDP custody and three in PUK custody. Human Rights Watch also conducted these interviews on condition of anonymity.

The detainees interviewed by Human Rights Watch fell into two categories based on where they were taken into custody. The first and largest category comprised persons arrested by Kurdish security forces within the Kurdistan region—the governorates of Arbil, Duhok, and Sulaimaniya. Most were Iraqi Kurds, with a small number of Iraqi Arabs and Turcomans.<sup>4</sup> There were also some foreign nationals, including from Iran, Afghanistan, Sudan, Saudi Arabia, Tunisia, Jordan, and the Comoros Islands. The second category comprised persons arrested in other governorates in Iraq. According to Kurdish officials, the arresting authority in these cases was the Iraqi armed forces or police, in some cases jointly with US military

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<sup>4</sup> Several of the Iraqi Kurdish detainees interviewed by Human Rights Watch held dual nationality: their other countries of nationality included the United States, Sweden, and Australia.

forces. Following preliminary investigation, the arresting authorities then transferred the detainees to the custody of the Kurdistan authorities, apparently for “safe keeping.” They included some Iraqi Kurds, but most were Iraqi Arabs from Mosul and Kirkuk. According to Kurdish officials, some were also arrested further away in the governorates of Salahuddin, Anbar, and Diyala, as well as Baghdad.

Human Rights Watch did not have the opportunity to visit any of the women’s prisons in Arbil, Duhok, and Sulaimaniya governorates, where female detainees suspected of security-related offenses may have been held.<sup>5</sup> Nor did we visit any of the juvenile detention facilities, though we did interview two detainees at an adult facility in Sulaimaniya who stated that they were under age 18.

The majority of the detainees on whom this report focuses were terror suspects, apparently arrested for their alleged affiliation with armed groups that have claimed responsibility for attacks on civilians. In some cases the Kurdish authorities accused detainees of involvement in specific incidents, such as attacks on government officials or civilians. A smaller number of cases included persons whom Kurdish officials had arrested on suspicion of involvement in serious felonies, including murder and drug-trafficking.

Most detainees complained that *Asayish* agents subjected them to torture or other ill-treatment at various stages of their detention, particularly during the initial days or weeks following arrest when undergoing interrogation. The nature of the reported abuse was highly consistent at most detention facilities, and also with information regarding torture and ill-treatment of detainees in *Asayish* custody gathered by Human Rights Watch in the past. For this report, we did not independently verify detainees’ complaints; in most cases, any injuries sustained were alleged to have taken place several months or years earlier.

Human Rights Watch raised its concerns with regard to the legal status and treatment of detainees held in *Asayish* custody with a range of executive and

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<sup>5</sup> During a visit to the main *Asayish* facility in Sulaimaniya in May 2006, Human Rights Watch found six women being held in a separate section together with two of their children. Most had been transferred there from the women’s prison for a short period, and were suspected of various criminal offenses including murder, forgery, and illegal entry into the country. Human Rights Watch interviewed them, but their cases do not feature in this report.

legislative officials from both the KDP and the PUK administrations, including:<sup>6</sup> President of the Kurdistan Region Mas`ud Barzani; KDP Minister of Interior Karim Sinjari; Minister of Justice Faruq Jamil; KDP Minister of Justice Azad al-Mullah; Minister of Human Rights Dr. Yusif `Aziz and personnel of the KDP Ministry of Human Rights; Deputy Speaker of the Kurdistan National Assembly Kamal Kirkuki and members of the parliamentary Legal Affairs Committee; and President of the unified Kurdistan Court of Cassation Salah al-Ya`qubi. With regard to *Asayish* officials, Human Rights Watch held meetings on a number of occasions with the general director of the KDP's *Asayish Gishti*, Ismat Argushi, and with the general director of the PUK's *Asayish Gishti*, Saifuddin `Ali. Additionally, Human Rights Watch met with Abdullah `Ali, director of the KDP's *Asayish Arbil*, and, from the PUK, Col. Hassan Nuri, former head of the Political Unit of *Asayish Sulaimaniya* (now head of Sulaimaniya security), and Col. Nasser `Aziz Mawlud, head of the Political Unit of *Asayish Gishti*. During visits to the detention facilities, Human Rights Watch held separate meetings with the facilities' directors. Human Rights Watch also sought to discuss its concerns with the two investigative judges with responsibility for reviewing cases referred by the *Asayish*. The organization met with Judge Sirwan Ahmad Salih with regard to PUK-held detainees. On the KDP side, Judge Omar Bajalan declined to meet with Human Rights Watch, and the organization met instead with Col. Khalid Rojbayani, head of the Legal Affairs Unit of *Asayish Gishti*. Of the smaller political parties, Human Rights Watch met with Shaikh `Ali Bapir, emir of the Islamic Group in Iraqi Kurdistan, and several party officials.<sup>7</sup>

With regard to detainees who alleged that US and Iraqi military forces jointly arrested them outside the Kurdistan region and then transferred them to *Asayish* custody, Human Rights Watch also discussed its concerns in Baghdad with Maj. Gen. John D. Gardner, Commanding General of Multi-National Force Detainee Operations.

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<sup>6</sup> Human Rights Watch met with some of these officials before the unification of the PUK and KDP administrations in May 2006; it met with others after the Kurdistan Regional Government was announced, in their new capacities as ministers of state in the unified Council of Ministers.

<sup>7</sup> At the time, some 30 members of the Islamic Group in Iraqi Kurdistan were in the custody of the KDP's *Asayish*, and several others in the custody of the PUK's *Asayish*. By May, following a deal brokered with the Islamic Group, the KDP released most of the Islamic Group members it was holding. The Islamic Group is currently represented in the Kurdistan Regional Government, having been allocated the environment ministry.

Human Rights Watch sent a condensed version of this report to President Barzani's office asking for comments or a response to be incorporated into our final report. To date, President Barzani's office has not responded.

### III. Background

A mass uprising broke out in northern and southern Iraq in March 1991 in the wake of Iraq's defeat in the Gulf War. The Saddam Hussein government crushed the uprising, causing the exodus of some two million Kurds and Shi`a Muslims to Turkey and Iran. The following month the military forces of the United States, the United Kingdom, and France established a "safe haven" zone in the Kurdish region, followed by the imposition of an "air exclusion zone" forbidding Iraqi fixed-wing aircraft and helicopters from flying north of the 36<sup>th</sup> parallel.<sup>8</sup> Unable to provide air support to its troops, the Saddam Hussein government was forced to withdraw its civilian administration and military forces from the region. In the wake of this withdrawal, in October 1991, the governorates of Arbil, Duhok, and Sulaimaniya, as well as part of Kirkuk governorate, came under the de facto authority of Kurdish opposition forces.

Upon withdrawal from most of the Kurdish region, the Saddam Hussein government imposed an "internal frontline" and an economic blockade on the Kurdish population. Kurdish opposition forces established a joint administration and appointed a Council of Ministers, both dominated by the two principal political parties, the KDP and the PUK.<sup>9</sup> By mid-1994, however, fierce clashes had broken out between the forces of the KDP, the PUK and those of a third group, the Islamic Movement in Iraqi Kurdistan, heralding several years of fighting during which the joint administration was effectively dissolved.<sup>10</sup> It was not until September 1998 that the KDP and PUK signed the Washington Accord, a US-brokered peace agreement aimed at normalizing relations between the two sides and at the eventual reestablishment of a unified administration. Implementation was fraught with

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<sup>8</sup> The northern "air exclusion zone" was imposed on April 19, 1991.

<sup>9</sup> The joint administration was established in the name of the Iraqi Kurdistan Front, consisting of eight political parties.

<sup>10</sup> Efforts by the US to broker a ceasefire during this period and to negotiate a peace agreement failed. In the context of the inter-Kurdish conflict, the political parties' human rights record was appalling. The parties engaged in widespread arbitrary arrests, detention without trial, summary trials leading to executions, routine torture of both political suspects and common criminal suspects, the assassination of political activists and other perceived critics, and enforced disappearances. Those who were responsible for these crimes were never brought to account. Additionally, tens of thousands of civilians were displaced as they were forced to choose sides and place their loyalties with one or other of the political parties fighting each other.

complications, and both sides continued to maintain separate political, administrative, and executive institutions in areas under their effective control.<sup>11</sup> In August 2002 the two parties announced an agreement to reconvene a unified parliament and to hold elections for a new parliament. Neither event had taken place when US and other coalition forces invaded Iraq in March 2003, and the Saddam Hussein government fell the following month.

Kurdish political parties were represented in Iraq's Interim Governing Council appointed by the Coalition Provisional Authority (CPA) in July 2003,<sup>12</sup> and in the Iraqi Interim Government headed by Ayad `Allawi upon the declared transfer of sovereignty in June 2004. Kurdish political parties contested the January 2005 general elections on a joint platform, the Kurdistan Alliance, and were represented in the Iraqi Transitional Government headed by Ibrahim al-Ja`fari. The Kurdistan Alliance, with the KDP and PUK as its main political parties, also contested the December 2005 general elections. The Alliance won 53 seats out of 275 in Iraq's National Assembly (its members being elected for a four-year term), and were allocated six ministerial portfolios in Prime Minister Nuri al-Maliki's government. At the regional level, the KDP and the PUK dominated elections also held in January and December 2005 for the Kurdistan National Assembly.

The Iraqi Council of Representatives<sup>13</sup> elected PUK leader Jalal Talabani as president of Iraq in April 2005.<sup>14</sup> The Kurdistan National Assembly elected KDP leader Mas`ud Barzani as president of the Kurdistan Region in June 2005.<sup>15</sup>

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<sup>11</sup> After 1998 the region saw significant improvements in the human rights situation. Both the KDP and PUK closed many secret or unacknowledged places of detention run by the political parties and transferred the inmates to officially recognized prisons operated by the police and internal security forces under the jurisdiction of their respective interior ministries. They accorded all categories of detainees held in these prisons visitation rights. The KDP and PUK abolished the special courts and made efforts to reduce the length of time security authorities held suspects in pretrial detention before charging them with cognizable offenses and referring them to the criminal courts. The number of reported incidents involving the torture of detainees also decreased, as did incidents involving the targeted killing of political opponents.

<sup>12</sup> CPA/REG/13 July 2003/6 – Governing Council of Iraq.

<sup>13</sup> The Iraqi Council of Representatives is often referred to in English as the Iraqi National Assembly.

<sup>14</sup> Jalal Talabani also served as interim president, following his election in April 2005.

<sup>15</sup> Kurdistan National Assembly, Decision No. 3, June 6, 2005, *Kurdistan Gazette*, Vol. 55, July 10, 2005. The election took place in accordance with Law No. 1 of 2005: Law of the Presidency of the Kurdistan Region – Iraq, *Kurdistan Gazette*, Vol. 55, July 10, 2005.

The Law of Administration for the State of Iraq for the Transitional Period (Transitional Administrative Law or TAL), issued by the CPA on March 8, 2004, paved the way for the establishment of a federal system of governance in Iraq.<sup>16</sup> Article 53 of the TAL recognized the “Kurdistan Regional Government” as referring to the Kurdistan National Assembly, the Kurdistan Council of Ministers, and the regional judicial authority in the Kurdistan region.<sup>17</sup> The principles of federalism were also enshrined in the Iraqi constitution as adopted by national referendum on October 15, 2005, granting executive, legislative, and judicial powers to the federal regions.<sup>18</sup>

The KDP and the PUK administrations had not as yet unified when the TAL was promulgated and the constitutional referendum held. As part of the normalization of relations between the two parties, the Kurdistan National Assembly formally reconvened with the majority of its original members (as elected in May 1992)<sup>19</sup> for the first time in June 2005. However, until mid-2006 both the KDP and the PUK continued to maintain separate administrations in the territories under their military control, with parallel ministries, judiciary, and security and military forces.<sup>20</sup> On January 21, 2006, Jalal Talabani and Mas`ud Barzani signed the Kurdistan Regional Government Unification Agreement, establishing the principles of a unified regional government.<sup>21</sup> Formal unification took place in May when they announced a joint

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<sup>16</sup> The Transitional Administrative Law came into effect upon the dissolution of the CPA and the restoration of sovereignty to the Iraqis in June 2004.

<sup>17</sup> TAL article 53 states, “The Kurdistan Regional Government is recognized as the official government of the territories that were administered by that government on 19 March 2003 in the governorates of Dohuk, Arbil, Sulaimaniya, Kirkuk, Diyala and Neneveh.” The reference to Kirkuk, Diyala, and Nineveh (Mosul) denotes small areas of territory that were under the effective control of Kurdish opposition forces prior to the 2003 war rather than to those governorates as a whole.

<sup>18</sup> Constitution of the Republic of Iraq, Section Five, Powers of the Regions, Chapter One, arts. 116-121, as published in the Iraqi Gazette (*al-Waqa'i al-'Iraqiyya*), Vol. 4012, December 28, 2005.

<sup>19</sup> With KDP, PUK, and other political parties represented.

<sup>20</sup> The KDP controls the governorates of Arbil and Duhok, while the PUK controls the governorate of Sulaimaniya and part of Kirkuk governorate.

<sup>21</sup> The Unification Agreement provided for, among other things: the creation of the post of vice-president of the Kurdistan region, allocated to the PUK and with the incumbent also serving as deputy commander-in-chief of the *peshmerga* forces; the positions of speaker and deputy speaker of the Kurdistan National Assembly to be allocated to the PUK and the KDP respectively pending parliamentary elections in late 2007; and the creation of a joint cabinet with the KDP and the PUK allocated 11 ministerial portfolios each. The KDP's share includes the Ministries of Finance, *Peshmerga* Affairs, Agriculture, and Natural Resources, while that of the PUK includes the Ministries of Interior, Justice, Social Affairs, and Human Rights. The remaining ministries are to be allocated to other political parties in the Kurdistan region. The Agreement provided for the immediate unification of all parallel executive and legislative institutions, with the exception of four key ministries—Finance, *Peshmerga* Affairs, Justice, and Interior—which would unite within one year. In the interim period, “[t]hese four ministries, until they unite, will have both a cabinet minister and a minister of the region for the affairs of the concerned ministry. Each minister will have responsibility for the part of the ministry which is under their control” (Unification Agreement, art. 5(d)).

cabinet, headed by Nechirvan Barzani.<sup>22</sup> Both the regional government and the parliament are based in the city of Arbil, capital of the Kurdistan region.

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<sup>22</sup> The Kurdistan Regional Government comprises 42 ministers, nine of them without portfolio.



## IV. Legal Framework

Following the May 1992 parliamentary elections and the formation of a Council of Ministers in the Kurdistan region, the Kurdistan National Assembly as one of its first acts issued a decree pertaining to the status and implementation of legislation promulgated by the Iraqi government in Baghdad. The decree required ministries to “examine the laws, decrees, regulations and directives issued by the central authorities to identify what is not compatible with the welfare of the people of Kurdistan and [to] submit these to the National Assembly for a decision on the legitimacy or otherwise of their enforceability in the Region.”<sup>23</sup> Further, “[n]o laws, decrees, regulations and directives which were issued or which will be issued by the central government authorities after the withdrawal of the government administration from the Kurdistan region on 23/10/1991 shall be enforced except after the legitimacy of their enforceability has been confirmed by the Kurdistan National Assembly.”<sup>24</sup>

In practice, the Kurdish authorities did not implement legislation promulgated in Baghdad after October 23, 1991, choosing instead to issue separate legislation. In the latter half of 1992 and in 1993 in particular, they passed a number of laws establishing the interior, justice and other ministries that constituted the Council of Ministers, as well as laws regulating political, social, and security matters in the region.<sup>25</sup> These laws, as amended, remain in force today. The continued validity of these laws, as well as other decrees, directives, and regulations passed by the Kurdish legislature, was reaffirmed in the Iraqi constitution adopted in October 2005: “Legislation enacted in the region of Kurdistan since 1992 shall remain in force, and decisions issued by the government of the region of Kurdistan, including court decisions and contracts, shall be considered valid unless they are amended or

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<sup>23</sup> Kurdistan National Assembly, Decree No. 11 of 31 August 1991 (art. 1), published in *Perleman*, Vol. 1, September 15, 1991. *Perleman* was the official gazette in the Kurdistan region, later renamed the *Kurdistan Gazette*.

<sup>24</sup> *Ibid.*, art. 2.

<sup>25</sup> The latter, for example, included the Law on Publications for the Iraqi Kurdistan Region (No. 10 of 1993), the Law on Associations for the Iraqi Kurdistan Region (No. 18 of 1993), and the Law on Parties for the Iraqi Kurdistan Region (No. 17 of 1993). The Kurdistan National Assembly also passed the Weapons Law (No. 16 of 1993) in an effort to curb the distribution of weaponry in the Kurdistan region and to regulate their use through licensing under the authority of the Ministry of Interior.

annulled pursuant to the laws of the region of Kurdistan by the competent entity in the region, provided that they do not contradict the Constitution.”<sup>26</sup>

The Kurdish authorities’ review of legislation passed by the Iraqi government prior to October 23, 1991, led to the suspension of several laws and various decrees passed by the then Revolutionary Command Council (RCC).<sup>27</sup> None was formally rescinded since Iraqi law requires the issuance of a presidential decree authorizing repeal, but in some instances the Kurdish National Assembly promulgated alternative laws. Among them was the 1992 Judicial Authority Law, regulating the courts in the Kurdistan region,<sup>28</sup> and replacing Iraq’s 1979 Judicial Organization Law.<sup>29</sup> Criminal legislation applicable in the Kurdistan region remained largely intact, in particular the Code of Criminal Procedure (CCP)<sup>30</sup> and the Penal Code,<sup>31</sup> in line with the rest of the country.

The Iraqi government has legal obligations under international human rights treaty law and customary law, to which all regional federal authorities must also adhere.<sup>32</sup> International human rights agreements to which Iraq is a party, most notably the International Covenant on Civil and Political Rights (ICCPR), ensure basic protections

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<sup>26</sup> Constitution of the Republic of Iraq, art. 141. After the collapse of the joint Kurdish administration as a result of the inter-Kurdish conflict in the mid-1990s, the KDP and the PUK set up two parallel administrations, which promulgated legislation through different means. In KDP-controlled areas, the Kurdistan National Assembly resumed its functions in late-1996 without its PUK members. In PUK-controlled areas, with no parliamentary body to act as the legislative authority, the PUK’s Council of Ministers issued decrees and decisions.

<sup>27</sup> *Laws and Decrees Suspended in the Iraqi Kurdistan Region*, published by the Kurdistan National Assembly, Vol. 1, 2002.

<sup>28</sup> Law No. 14 of 1992, passed by Decree No. 44 of December 28, 1992, published in *Perleman*, Vol. 7, January 1993. The promulgation of this law enabled the establishment of a court of cassation, based in Arbil. Prior to the withdrawal of the Iraqi government’s administration from the Kurdish region in October 1991, Iraq had one court of cassation, which sat in Baghdad. A second court became necessary after unsuccessful attempts by the Kurdish authorities to have the Baghdad Court review rulings of the criminal courts in the Kurdistan region. The PUK then established a third court of cassation for the Sulaimaniya region, citing undue delays by the Arbil Court of Cassation in reviewing cases referred by the Sulaimaniya courts. Following the unification of the KDP and the PUK administrations in May 2006, the two courts were merged into the Kurdistan Court of Cassation, which sits in Arbil.

<sup>29</sup> No. 160 of 1979.

<sup>30</sup> Code of Criminal Procedure (CCP), No 23 of 1971, as amended.

<sup>31</sup> Penal Code, No. 111 of 1969, as amended. The Kurdish authorities suspended several of the RCC decrees amending the Penal Code, but these are not discussed here as they are not relevant to this report.

<sup>32</sup> See, for example, International Covenant on Civil and Political Rights (ICCPR), art. 50 (“The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.”). ICCPR, adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976. Iraq ratified the ICCPR in 1971.

for persons even in the midst of emergencies now faced by Iraq.<sup>33</sup> All successor governments of Iraq are bound by earlier governments' treaty ratifications.<sup>34</sup>

Under the ICCPR, every person has the right to protection against arbitrary arrest;<sup>35</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>36</sup> to be treated with dignity while in detention;<sup>37</sup> to protection from torture and cruel, inhuman or degrading treatment or punishment;<sup>38</sup> and to due process and fair trial,<sup>39</sup> including the right to counsel.<sup>40</sup>

As it currently stands, Iraq's CCP falls short of international human rights standards in a number of significant ways, failing to address fundamental rights such as the

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<sup>33</sup> The Iraqi government introduced emergency legislation in July 2004, declaring a state of emergency four months later, which has been extended every two months since (Law No. 1 of 2004: Order for Safeguarding National Security, published in the *Iraqi Gazette*, Vol. 3987, September 2004). This is not applicable to the Kurdistan Region, where the Kurdish National Assembly declared a state of emergency on March 19, 2003, on the eve of the war in Iraq. It lifted the state of emergency on April 20, 2003, following the fall of the Saddam Hussein government, and has not reimposed it since (Decrees No 34 and 35 respectively, *Kurdistan Gazette*, Vols. 41 and 42).

<sup>34</sup> A successor government remains party to previously ratified treaties unless it "invokes either a defect in its consent to be bound by a treaty or a ground for impeaching the validity of a treaty, terminating it, withdrawing from it or suspending its operation, [and it] must notify the other parties of its claim." See Vienna Convention on the Law of Treaties, done at Vienna on May 23, 1969, entered into force on January 27, 1980, 1155 UNTS 331, art. 65.

<sup>35</sup> ICCPR, art. 9. To comply with this prohibition against arbitrary detention, the state must specify in its legislation the grounds on which it may deprive individuals of their liberty and the procedures it will use in enforcing arrests and detentions. Only acts conducted in accordance with such procedures 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 arresting officials to immediately inform detainees of the reasons for their arrest, to tell them promptly of any charges against them, and to bring them promptly before a judge empowered to rule upon the lawfulness of the detention.

<sup>36</sup> ICCPR 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>37</sup> ICCPR, art. 10(1).

<sup>38</sup> *Ibid.*, art. 7.

<sup>39</sup> *Ibid.*, art. 14.

<sup>40</sup> *Ibid.*, art. 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 ... [T]his 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." UN Doc. HRI/GEN/1/Rev.6 at 135 (2003), para. 9. The UN Basic Principles on the Role of Lawyers states, "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), art. 8.

right of criminal suspects against self-incrimination, 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.

Under the CCP, security officials may not arrest a person without a warrant (except in circumstances prescribed by law,<sup>41</sup> such as arrests carried out while a crime is taking place (*in flagrant delicto*)).<sup>42</sup> They must bring defendants before an investigating judge within 24 hours of arrest.<sup>43</sup> The judge may renew the period of detention for not more than 15 days on each occasion, provided that the total period does not exceed six months. If security officials do not complete their criminal investigation within six months, they must obtain authorization through the investigative judge for further extensions of the detention period from the relevant criminal court.<sup>44</sup>

The CCP prohibits the use of “any illegal method to influence the accused to extract a confession,”<sup>45</sup> such as ill-treatment, threats to cause harm, enticement, promises, psychological influence, or the use of drugs or intoxicants.<sup>46</sup> While there is no prohibition against using such evidence in court, 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>47</sup> Iraq’s Penal Code provides a further measure of accountability, making officials found guilty of torturing or ill-treating detainees in their custody punishable by up to 15 years’ imprisonment.<sup>48</sup>

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<sup>41</sup> CCP, art. 92.

<sup>42</sup> *Ibid.*, art. 102(a).

<sup>43</sup> *Ibid.*, art. 123.

<sup>44</sup> *Ibid.*, art. 109 (a) and (c).

<sup>45</sup> *Ibid.*, art. 127.

<sup>46</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>47</sup> CCP, art. 3(2).

<sup>48</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 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

The Coalition Provisional Authority promulgated a number of amendments to the CCP and the Penal Code after April 2003, some of which addressed the shortcomings of these laws. The amendments included a prohibition on torture<sup>49</sup> and on the use of coerced confessions as evidence in certain circumstances.<sup>50</sup> The CPA also affirmed the right of criminal detainees to remain silent upon arrest, to consult legal counsel,<sup>51</sup> and to be promptly informed of the charges against them.<sup>52</sup> It affirmed the right to remain silent and to legal counsel at the investigative stage.<sup>53</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>54</sup>

These amendments no longer have the force of law except to the extent that domestic legislation subsequently incorporated them.<sup>55</sup> In September 2003 the Kurdistan National Assembly incorporated into regional legislation the CPA amendments to the Penal Code and the CCP, but did so selectively, excluding several provisions that protected fundamental rights and principles. With regard to the Penal Code, the Kurdish legislature went further than the CPA by suspending altogether the majority of provisions criminalizing offenses against the internal and external

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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 15 years.

<sup>49</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>50</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)).

<sup>51</sup> CPA/MEM/27 June 2004/03 (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>52</sup> *Ibid.*, Section 5(c) reads, “A criminal detainee shall be promptly informed, in writing, in a language which they understand, of the particulars of the charges preferred against them by the authority serving an arrest warrant.”

<sup>53</sup> *Ibid.*, Section 3(b) 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>54</sup> *Ibid.*, Section 3(c).

<sup>55</sup> Article 62 of the TAL states, “This law shall remain in effect until the permanent constitution is issued and the new Iraqi government is formed in accordance with it.” A draft permanent constitution was adopted by national referendum in October 2005. Constitutional amendments remain subject to negotiations between Iraq’s various political parties at this writing.

security of the state, as well as offenses against state or official institutions, many of which carried the death penalty or long custodial sentences.<sup>56</sup> It did not incorporate other amendments, including two articles suspending capital punishment and reaffirming the total prohibition on torture, although amendments to the CCP partially addressed these issues.<sup>57</sup> With regard to the CCP, the Kurdish legislature incorporated key amendments that guaranteed better protection for suspects at the investigative stage,<sup>58</sup> including the right to be questioned in a language they understand or have an interpreter appointed to them,<sup>59</sup> and the right to engage legal counsel or have legal counsel appointed to them.<sup>60</sup> However, the Kurdish legislature did not incorporate the right of criminal detainees to remain silent upon arrest,<sup>61</sup> or the right to be promptly informed of the charges against them.<sup>62</sup> With regard to admissible evidence, the Kurdish legislature incorporated a CPA amendment guaranteeing detainees the right not to have coerced confessions used as evidence against them in certain circumstances,<sup>63</sup> but it did not incorporate a related amendment that prohibited reliance solely on a confession if the court “is satisfied with it and if there is no other evidence which proves it to be a lie.”<sup>64</sup>

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<sup>56</sup> Law No. 21 of 2003, passed by the Kurdistan National Assembly on September 27, 2003 (*Kurdistan Gazette*, Vol. 45, October 10, 2003). The law suspended articles 157-189 (offenses against external state security), articles 190-195 and articles 198-219 (offenses against internal state security), and articles 223, 225, 227 and 228 (offenses against official or state institutions). The CPA amendment stated that legal proceedings with respect to these and other offenses could only be brought with the written permission of the CPA Administrator (CPA/ORD/10 June 2003/07, Penal Code, Section 2, article 2).

<sup>57</sup> CPA/ORD/10 June 2003/07, Section 3, arts. 1 and 2.

<sup>58</sup> Law No. 22 of 2003 (Suspending Implementation of Articles of the Iraqi Code of Criminal Procedure No. 23 of 1971), passed by the Kurdistan National Assembly on September 27, 2003 (*Kurdistan Gazette*, Vol. 45, October 10, 2003).

<sup>59</sup> CCP, art. 61 (c), amended by CPA/MEM/27 June 2004/03, Criminal Procedures, Section 3 (a).

<sup>60</sup> CCP, art. 123, amended by CPA/MEM/27 June 2004/03, Criminal Procedures, Section 3 (b).

<sup>61</sup> *Ibid.* Article 3 of Law No. 22 of 2003 adopted by the Kurdistan National Assembly incorporated part of the CPA’s amendment to article 123 of the CCP, but excluded a paragraph that 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” (Section 3(b)). International human rights law provides for a right against self-incrimination but does not provide for a right to remain silent, a protection common to common law legal systems, but not civil law systems.

<sup>62</sup> CPA/MEM/27 June 2004/03, Criminal Procedures, Section 5(c).

<sup>63</sup> CCP, art. 218. See footnote 51, above.

<sup>64</sup> CCP, art. 213 (c). The CPA amendment deleted “and if there is no other evidence which proves it to be a lie.” (CPA/MEM/27 June 2004/3, Section 3d(vi)).

In July 2006 the Kurdistan National Assembly adopted the Law on the Combat of Terrorism in the Iraq Kurdistan Region (Anti-Terrorism Law),<sup>65</sup> valid for two years from the date of its coming into force.<sup>66</sup> The law criminalizes a wide range of offenses deemed to constitute terrorism. Article 2 introduced the death penalty as a mandatory punishment for eight offenses:

1. establishing, directing or organizing a group or gang with the intention of committing acts punishable under the law;
2. ideologically or politically motivated assassinations;
3. the use of explosive devices or other materials to further terrorist ends if such acts result in the death of one or more persons;
4. the holding of persons as hostages with the intention of influencing the actions of the regional authorities or other governmental or nongovernmental institutions in the region, or creating a climate of fear;
5. the killing of persons enjoying international or diplomatic protection, and personnel working for foreign companies or governmental and nongovernmental organizations, with terrorist motives;<sup>67</sup>
6. receiving military training from, or becoming a member of, groups that commit terrorist acts;<sup>68</sup>
7. cooperating with a foreign state or with groups outside the region in order to commit terrorist acts punishable under the law; and
8. facilitating the entry or exit of terrorists to and from the region, or harboring or assisting them, or knowingly providing them with information for use in planning terrorist acts.

Article 3 prescribes life imprisonment for eight other offenses,<sup>69</sup> and article 4 provides for custodial sentences not exceeding 15 years for another six offenses.<sup>70</sup>

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<sup>65</sup> Law No. 3 of 2006, *Kurdistan Gazette*, Vol. 61, July 16, 2006. This law is separate from counterterrorism legislation passed by the central government in Baghdad in November 2005, and which is not addressed in this report (Law on the Combat of Terrorism, No. 13 of 2005, *Iraqi Gazette*, Vol. 4009, November 9, 2005).

<sup>66</sup> Law No. 3 of 2006, art. 17.

<sup>67</sup> *Ibid.*, art. 2(5). Where such acts do not lead to the death of a person, capital punishment is replaced with life imprisonment.

<sup>68</sup> *Ibid.*, art. 2(6). This provision is only applicable to members of the Kurdish internal security forces and to the *peshmerga* forces.

<sup>69</sup> Offenses punishable by life imprisonment include: the destruction of public and private property and installations; abduction of persons for political or financial gain; the training of persons in military warfare with the intention of carrying out

One key provision of the Anti-Terrorism Law, which takes precedence over the CCP and the Penal Code,<sup>71</sup> is inconsistent with an amendment to the CCP that the Kurdish authorities adopted in September 2003 regarding the admissibility of coerced confessions.<sup>72</sup> Article 13 of the Anti-Terrorism Law, while providing for the “legal and fair treatment” of an accused at all stages of an investigation, including provision of defense counsel, also permits the reliance on confessions extracted under duress, threats, or torture if corroborated by other evidence.<sup>73</sup> By permitting reliance on such confessions, the law might well encourage detaining officials to torture or otherwise ill-treat detainees. The law limits the redress available to detainees to litigation against investigating officers in their private capacity, although it also provides for detainees found not guilty to seek compensation for damages in accordance with the constitution and the laws.<sup>74</sup>

The policies of the KDP and PUK administrations with respect to capital punishment have been at variance. In 2002 the PUK administration suspended the application of the death penalty indefinitely, commuting some 40 death sentences pending at the time to life imprisonment or less.<sup>75</sup> The KDP administration continued to apply the

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terrorist acts; membership of terrorist groups; and the manufacture or possession of explosive devices for use in terrorist acts. The hijacking of civilian aircraft is also punishable by life imprisonment, but the death penalty is imposed if such acts result in the death of one or more persons.

<sup>70</sup> Offenses punishable by terms of imprisonment not exceeding 15 years include: possession of, with terrorist motives, literature or audiovisual materials containing incitement to commit acts of terrorism; having knowledge of a terrorist act punishable under the law and failing to notify the authorities accordingly; and deliberately spreading information through literature or audiovisual or electronic mediums that encourages the commissions of acts of terrorism and leads to the undermining of public safety, the spread of fear, or threatens regional political institutions.

<sup>71</sup> Law No. 3 of 2006, art. 16.

<sup>72</sup> The Human Rights Committee (HRC), the international body responsible for monitoring compliance with the ICCPR, has stated, “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.” 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*, UN Doc. HRI/GEN/1/Rev.1 at 30 (1994), para. 11.

<sup>73</sup> Article 13 of Law No. 3 of 2006 reads,

A person accused under this law must be accorded legal and fair treatment at all stages of the investigation, including the provision of defense counsel. It is not permitted to use physical or psychological methods of torture, or inhuman treatment, against him. A confession extracted from him under duress, threat or torture is not admissible unless it is corroborated by other legal evidence. The accused has the right to litigate against persons charged with investigating him, in their private capacity, for any serious material damage he may have suffered as a result of one of the aforementioned methods.

<sup>74</sup> Law No. 3 of 2006, art. 14.

<sup>75</sup> This was largely the result of a directive issued by PUK leader Jalal Talabani, which was supported by then prime minister of the PUK administration Barham Salih. Both have publicly stated their opposition to the death penalty on various occasions.



death penalty, albeit restrictively, to serious felonies such as premeditated murder. While the Kurdistan National Assembly did not incorporate into regional legislation the CPA amendment to the Penal Code that suspended the death penalty (as noted above), it did incorporate an amendment to the CCP that suspended all articles regulating its implementation, thereby effectively suspending its use.<sup>76</sup> The Kurdistan legislature did not rescind the suspension of these articles when it passed counterterrorism legislation in July 2006. However, in September 2006 the Kurdistan National Assembly passed a decree reestablishing capital punishment for certain offenses.<sup>77</sup> Human Rights Watch opposes the death penalty in all circumstances because of its inherent cruelty and irreversibility.

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<sup>76</sup> Arts. 285-293, suspended by CPA/MEM//27 June 2004/3, Section 3(d)(ix).

<sup>77</sup> Law No. 6 of 2006, issued on 11 September 2006.

## V. The Kurdish Security Forces (*Asayish*)

The de facto Kurdish authorities gave the *Asayish* official legal recognition in March 1993,<sup>78</sup> placing them under the authority of the Kurdish Ministry of Interior and giving them jurisdiction over economic crimes, such as smuggling, and political crimes, including espionage and acts of sabotage and terrorism. Organizationally, the *Asayish* were divided into four directorates, covering the governorates of Duhok, Arbil, Sulaimaniya, and part of Kirkuk, each comprising a Political Unit (*al-Shu`ba al-Siyasiyya*), an Economic Unit (*al-Shu`ba al-Iqtisadiyya*), and a Legal Unit (*al-Shu`ba al-Qanuniyya*).<sup>79</sup> A General Security Directorate was established to oversee and coordinate their functions. Traditionally, the heads of the various directorates have been civilians.

While *Asayish* personnel had clear party affiliations, Kurdish political leaders made genuine efforts in the early 1990s, under the first joint administration, to achieve partial unification of their security and police forces. In addition, the Council of Ministers at that time introduced measures to increase the transparency and accountability of the law enforcement institutions. Part of the basic training of *Asayish* personnel was aimed at enhancing awareness of the provisions of the Iraqi Code of Criminal Procedure and the Penal Code, as well as knowledge of international standards pertaining to law enforcement.<sup>80</sup> There was no sustained follow up, however, and the political will to hold *Asayish* personnel accountable for the abuse of detainees in their custody was weak, encouraging a climate of impunity that remains prevalent today.

Following the collapse of the joint administration as inter-Kurdish armed clashes reached a peak in the mid-1990s, the KDP and the PUK operated separate *Asayish*

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<sup>78</sup> Law of the Ministry of Interior, No. 9 of 1993, passed by Decree No. 21 of 27 March 1993, published in *Perleman*, Vol. 10, April 1993. The Kurdish authorities actually set up the *Asayish* five months earlier, in October 1992, and the *Asayish* became operational in January 1993.

<sup>79</sup> Other units within the *Asayish* include a Residence and Travel Unit (*Shu`bat al-Iqama wal-Safar*).

<sup>80</sup> These included the UN Code of Conduct for Law Enforcement Officials and the UN Standard Minimum Rules for the Treatment of Prisoners.

forces in territory under their control. Until late 2004 these forces remained under the authority of the two parties' respective ministries of interior, with few changes to their organizational structures or areas of competence. On each side, the *Asayish* also continued to work closely with the intelligence agencies of their respective political parties. The KDP's principal agency is the *Parastin*, headed by Masrur Barzani,<sup>81</sup> and that of the PUK is *Dazgay Zanyari*, headed by Khasrow Gul Muhammad.<sup>82</sup> The primary function of these two agencies is intelligence gathering on matters relating to both the internal and external security of the Kurdistan region. Officially, they do not have power to arrest or detain, nor the authority to operate any of the recognized detention facilities. Both agencies coordinate and share intelligence with the respective *Asayish* forces in the governorates under their control. In some instances the *Asayish* will retain physical custody over detainees who were arrested by, and remain the responsibility of, one or other of the intelligence agencies.<sup>83</sup> In the lead up to the US-led invasion of Iraq in March 2003 and since, with the increased threat of militant attacks and deteriorating security conditions, the level of cooperation and coordination between the intelligence agencies of the KDP and PUK, and the respective *Asayish* forces, has remained high.

In late 2004 and early 2005, both the KDP and the PUK took steps to remove their *Asayish* forces from under the control of their respective ministries of interior. The two parties did not coordinate in this regard; they carried out the processes independently of each other using different mechanisms. For its part, the KDP created a new authority, the General Committee for the Security of the Iraqi Kurdistan Region (*al-Hay'a al-`amma li-Amn Iqlim Kurdistan-al-`Iraq*, General Security Committee), established by Law 46 of 2004 (December 2004).<sup>84</sup> The stated reasons behind its creation are the "organization and unification of all security agencies within a unified framework ... for the purpose of establishing a mechanism for the coordination and exchange of information, and consolidating security efforts and

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<sup>81</sup> The official name of the *Parastin* (literally, "protection") is *Rêkxhistini Taybeti* (The Special Organization, *al-Tanzim al-Khass* in Arabic), established in 1968 and ultimately answerable to KDP leader Mas'ud Barzani. It was reconstituted and restructured after 1991 and placed under a new leadership.

<sup>82</sup> *Dazgay Zanyari* (The Information Apparatus, *Jihaz al-Ma`lumat* in Arabic) was reconstituted and restructured in 1991 from the PUK's previous intelligence and security agencies. It is ultimately answerable to PUK leader Jalal Talabani.

<sup>83</sup> During our visits to KDP detention facilities, Human Rights Watch interviewed several detainees who stated that the *Parastin* had arrested them.

<sup>84</sup> Law No. 46 of 2004, published in the *Kurdistan Gazette*, Vol. 53, December 19, 2004.

achieving the common goals between the federal and regional security agencies.”<sup>85</sup> According to article 6 of the law, the General Security Committee’s areas of competence include combating drug trafficking, terrorism, and espionage; gathering intelligence and assessing threats to Iraq’s national security, and liaising with the relevant national intelligence authorities in this regard; and the exchange of criminal suspects between the federal and regional security agencies and the referral of their cases in accordance with mechanisms established by law.<sup>86</sup> The General Security Committee is “financially and administratively independent,” with its own budget.<sup>87</sup> Masrur Barzani currently heads the committee and, according to the law, has the rank of minister.<sup>88</sup>

The disengagement of the *Asayish* forces from the PUK’s Ministry of Interior was less clear, and Human Rights Watch is not aware of any decree issued by the PUK leadership in this regard. Jalal Talabani, to whom the party’s security and intelligence agencies ultimately answer, appears to have taken the decision in early 2005.<sup>89</sup> Under the new arrangement, the *Asayish* formally reports to `Umar Fattah, member of the PUK Political Bureau.<sup>90</sup> The change effectively places the *Asayish* outside of any governmental control and oversight, reaffirming its position as a political party agency rather than a branch of the government’s executive authorities.

Similar concerns, particularly lack of oversight, arise with regard to the KDP’s General Security Committee. While created in more transparent fashion and established by law, the General Security Committee answers to the party and not the government,

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<sup>85</sup> Ibid.

<sup>86</sup> Ibid., art. 6, paras. 2, 3, 4 and 5. Article 6 (1) of the law states that the General Security Committee will seek to protect the fundamental principles on which the “federal, democratic, parliamentary and pluralist system of the federal state of Iraq” is based, including through: a) seeking to protect the welfare and properties of the citizens of the Kurdistan region; b) providing security and stability in the Kurdistan region and protecting public property; and c) safeguarding general and individual freedoms and the creation of appropriate and necessary conditions for citizens to exercise their rights in accordance with international human rights instruments.

<sup>87</sup> Ibid., arts. 2 and 3.

<sup>88</sup> Ibid., art. 4.

<sup>89</sup> In addition to *Dazgay Zanyari* (Information Apparatus), the PUK’s other agencies include Military Intelligence, known as *Dazga*, as well as the recently formed Counter-Terrorism Group (CTG), headed by Bavel Talabani.

<sup>90</sup> `Umar Fattah was appointed deputy prime minister in the joint cabinet announced on May 6, 2006, following the declared unification of the KDP and the PUK administrations.

which has little if any control or oversight over the committee.<sup>91</sup> Article 4 of the law that established the General Security Committee provides for the prime minister of the Kurdistan Regional Government to assume the responsibilities of the appointed head of the committee in the latter's absence. This, however, hardly constitutes governmental oversight, and the law itself provides no mechanisms to hold accountable the head of the General Security Committee or any of its members.

Since the unification of the KDP and PUK administrations in May 2006, the *Asayish* forces of both political parties have continued to function as separate and parallel agencies. Human Rights Watch understands that the future of these forces is under discussion, and includes the option of placing them once more under the authority of the Ministry of Interior. As noted above, the Ministry of Interior is one of four key ministries within the Kurdistan Regional Government where unification was not expected to be implemented for a period of one year—in other words, by mid-2007. In August 2006, Kurdish officials also told Human Rights Watch that a draft law amending the existing Law of the Ministry of Justice for the Iraqi Kurdistan region<sup>92</sup> contained a proposal to place all detention facilities, including those operated by the *Asayish*, under the authority of the Ministry of Justice (see Section IX, below). At this writing, these issues were still pending.

As noted above, the detention facilities that the *Asayish* forces currently operate are principally used to hold detainees suspected of security and terror-related offenses, as well as serious felonies. These facilities are only meant to hold suspects in pre-trial detention, pending the completion of criminal investigations and referral to a court of law. *Asayish* agents must then transfer convicted prisoners, under existing law, to a Ministry of Interior prison operated by the police forces, to serve out their terms.<sup>93</sup>

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<sup>91</sup> Other KDP agencies include General Intelligence (*Rekkhistin*) and Military Intelligence (*Hawalgr*).

<sup>92</sup> Law No. 12 of 1992, issued in accordance with Decree No. 38 of November 21, 1992, published in *Perleman*, Vol. 6, second half of December 1992.

<sup>93</sup> In a few cases, however, *Asayish* personnel continued to hold in their custody convicted prisoners whom they never transferred to a police prison, or who had already served their custodial sentence but remained in detention—see Section VI, below.

The organizational structure of the *Asayish* forces and their detention facilities under KDP and PUK control are similar. The KDP's General Security Directorate (*Asayish Gishti*) is located in the city of Arbil, and covers the governorates of Arbil and Duhok. It is currently headed by Ismat Argushi. Additionally, there are directorates at the level of the governorates—*Asayish Duhok*, headed by Sa`id Sinjari, and *Asayish Arbil*, headed by Abdullah `Ali. They have branches in several towns, such as Zakho, `Aqra and Shaqlawa. The PUK's General Security Directorate (*Asayish Gishti*) is located in the city of Sulaimaniya, and covers that governorate and part of Kirkuk. It is headed by Saifuddin `Ali. The directorate at the level of the governorate is *Asayish Sulaimaniya*, also based in the city, which was headed by Sarkawt Kubba at the time of our trips to the Kurdistan region (it is currently headed by Col. Hassan Nuri). Other branches include *Asayish Hawler*, based in the town of Koisanjaq, *Asayish Garmian*, based in the town of Kalar, *Asayish Kirkuk*, based in the town of Qara Hanjir, and *Asayish Sharazur*, based near the town of Halabja. As a general rule, the detention facilities at the governorate level only hold detainees from that governorate, while the General Security Directorate facilities hold detainees from other governorates, including those outside the Kurdistan region, as well as non-Iraqi nationals. In practice there is some overlap, with both categories of detainees being held in the same facility on a temporary basis, often to ease overcrowding problems.

## VI. *Asayish* Violations of Due Process

The *Asayish* routinely violate the due process rights of terror and ordinary criminal suspects in their detention facilities. These violations transgress both Iraqi domestic and international law, and include: failure to inform detainees of the grounds for arrest, failure to bring detainees before an investigative judge in a timely fashion, failure to provide a mechanism by which suspects can appeal their detention, failure to provide a trial without undue delay, failure to provide access to legal representation, holding suspects for prolonged periods of pretrial detention, and extracting confessions through coercion.

By far the most common complaint encountered by Human Rights Watch during its discussions with detainees held in *Asayish* custody was the absence of information on their legal status and when their cases might be resolved. Human Rights Watch found that Kurdish authorities had been holding the majority of terror suspects in *Asayish* detention without trial for periods ranging from one to five years. These detainees had not been informed of the charges against them, or given the opportunity to appeal their detention. Of the persons arrested on suspicion of serious felonies, some had been acquitted by the criminal courts or had already served their sentences but remained in *Asayish* detention.

Amir, who had been arrested by the *Asayish* in October 2001 when he went to get a security authorization to stay in Sulaimaniya, told Human Rights Watch,

My main problem is why don't they judge me. I have asked for a trial and I want to understand the law. There was an investigation—but I do not know where I am. I did not get any answers from them when I asked them. I was tortured during the investigation. I was also placed in solitary detention at times. They brought papers before me and I signed under coercion ... I have not yet seen a judge.<sup>94</sup>

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<sup>94</sup> Human Rights Watch interview with detainee “Amir,” held in *Asayish Gishti*, Sulaimaniya, May 6, 2006. As stated in the methodology section, we have changed the names of the detainees to conceal their true identities.

Fadil, held by the *Asayish* in Arbil since August 2005, expressed a similar frustration: “If there is nothing on me, why am I arrested? And if I have done something, why don’t I get judged? They have destroyed me.”<sup>95</sup>

The vast majority of detainees held in *Asayish* custody in both KDP and PUK facilities were individuals suspected of acts of terrorism, sabotage, espionage, drug trafficking, and murder. The biggest group interviewed by Human Rights Watch comprised Iraqi Kurds arrested in the Kurdistan region, many of whom were suspected of alleged membership in armed groups that have carried out or claimed responsibility for acts of violence in the region. Such groups include Ansar al-Islam, Ansar al-Sunna, Jama`at al-Tawhid wal-Jihad and al-Qaeda. According to Kurdish officials, security forces carried out many of the arrests on the basis of intelligence information and surveillance of suspects over a period of time, while they apprehended others on the basis of “confessions” extracted from detainees already in the custody of *Asayish* forces.

Some of those with whom Human Rights Watch spoke stated that indeed they had had links with such groups, or that they had been apprehended after carrying out, or attempting to carry out, armed attacks against chosen targets. This was rare, however. The majority of detainees claimed not to know why they were arrested, and said they had simply been labeled as “Islamists.”

Jamal, who was arrested by the *Asayish* in May 2004, told us,

The *Asayish* came and took me to the old *Asayish* building. They accused me of being in the Ansar [al-Islam] party. I told them that for the last year-and-a-half I have no longer been part of Ansar. They investigated with me on the first day. Since then, there were no follow-up investigations ... I have not seen an investigative judge ... They left me here as if I did not exist. No investigation, no judge. As if I was not actually in their detention.<sup>96</sup>

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<sup>95</sup> Human Rights Watch interview with detainee “Fadil,” held in *Asayish Gishti*, Arbil, May 2, 2006.

<sup>96</sup> Human Rights Watch interview with detainee “Jamal,” held in *Asayish Arbil*, Arbil, April 30, 2006.



Hadi, who had been held by the *Asayish* since May 2005, told Human Rights Watch, “my only accusation is that I know friends that are accused of being Islamists ... Since 1991, I have no contact with them. And the Islamic group that I belonged to has been dissolved.”<sup>97</sup>

Others said they were being held effectively as hostages in lieu of relatives being sought by the authorities. An 18-year-old detainee told Human Rights Watch that he had been held for over 19 months by the *Asayish* in Arbil in lieu of his father.<sup>98</sup> Two other detainees reported being held in lieu of their brothers. One of them, Fu’ad, told Human Rights Watch,

I was arrested on June 24, 2005 ... as *badil* [replacement] for my brother. No investigation was conducted with me. They took my picture and I filled out a form. In the form, they asked me where my brother was. They have nothing on me. I am only a *badil*... My brother has been out of the house for four or five years. He is accused of terrorism.”<sup>99</sup>

Detainees seemed unaware of what their rights were under the law. Most had not lodged a request for access to defense counsel: detainees were frequently not in a position to seek to engage counsel either due to lack of financial means, or because during the initial months they were held incommunicado, or because they were apparently unaware that it was in their interest or right to do so (not one detainee interviewed by Human Rights Watch had been informed by prison authorities of his right to counsel). In addition, the vast majority of detainees stated that they had not been brought before a judge within 24 hours of arrest,<sup>100</sup> had not had any access to a judge at any point after their arrest, and were not aware that any of the officials they encountered at the detention facility was a judge.

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<sup>97</sup> Human Rights Watch interview with detainee “Hadi,” held in *Asayish Arbil*, Arbil, April 29, 2006.

<sup>98</sup> Human Rights Watch interview with detainee “Hassan,” held in *Asayish Arbil*, Arbil, April 29, 2006.

<sup>99</sup> Human Rights Watch interview with detainee “Fu’ad,” held in *Asayish Arbil*, Arbil, April 29, 2006.

<sup>100</sup> Iraqi law requires that authorities bring a suspect before an investigative judge within 24 hours of arrest. CCP, art. 123.

*Asayish* officials denied these allegations, and told Human Rights Watch that all persons in their custody are routinely brought before an investigative judge within a short period following arrest, their statements taken down, and their continued detention extended in accordance with Iraqi criminal procedure.<sup>101</sup> By contrast, detainees described lengthy periods of solitary confinement, during which prison officials subjected them to physical abuse and forced them to sign confessions that they had not read (physical abuse of detainees is discussed in detail in Section VII, below). Ibrahim told Human Rights Watch that he spent “seven months in solitary detention with my hands and eyes tied. This was in the old *Asayish Arbil*. After seven months, they let me out of solitary detention. After eight months, they allowed my family to visit me.”<sup>102</sup>

The few detainees who confirmed that a judge had questioned them said the session typically lasted a few minutes, during which the judge asked them to confirm what they had stated in their “confession.” Thereafter the judge ordered them returned to their cells and they remained ignorant as to what would happen next. Invariably, this was continued detention without further legal process of any kind.

It was unclear on what legal basis investigative judges were renewing the detention periods of persons held on suspicion of acts of terrorism, particularly as the authorities also argued that legislation currently in force did not enable them to prosecute such offenses. Furthermore, Human Rights Watch could find no evidence suggesting that the relevant criminal courts were authorizing further extensions beyond the initial six months for untried detainees. The *Asayish* agencies of both the KDP and the PUK have one dedicated investigative judge each.<sup>103</sup> Other investigative judges not linked to the *Asayish* do not review these detentions. In the past, some investigative judges told Human Rights Watch that were such cases to come before them, they would in all likelihood order the release of the detainees because there would be no legal basis to authorize continued detention.

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<sup>101</sup> The director of *Asayish Arbil*, Abdullah `Ali, told Human rights Watch in August 2006 that we could have access to some detainee files to ascertain whether they had been referred to an investigative judge in accordance with the law. The offer came on the last day of the Human Rights Watch visit, and so the organization did not have the opportunity to examine the files in question. Interview with Abdullah `Ali, director, *Asayish Arbil*, August 14, 2006.

<sup>102</sup> Human Rights Watch interview with detainee “Ibrahim,” held in *Asayish Arbil*, Arbil, April 29, 2006.

<sup>103</sup> Several judicial investigators, who are assigned solely to *Asayish* cases, assist these two judges.

The investigative judge assigned to review detainee cases for the KDP's *Asayish* declined to meet with Human Rights Watch and referred the organization to the Legal Affairs Unit of *Asayish Gishtî*. The head of that unit, whose principal role is to act as legal advisor to *Asayish* personnel, claimed that an investigative judge reviews all detentions, albeit after "unavoidable delays in some cases."<sup>104</sup> The director of *Asayish Arbil*, Abdullah `Ali, made similar assertions, telling Human Rights Watch that the *Asayish* held "only a small number of detainees" illegally. He agreed to give us access to the files of detainees held under his authority for purposes of verification.<sup>105</sup> Human Rights Watch welcomed his willingness to do so, but at this writing had not had the opportunity to examine the files.

In a meeting on August 8, 2006, Judge Sirwan Ahmad Salih, the investigative judge responsible for reviewing detentions for the PUK's *Asayish*, told Human Rights Watch that detainees accused of offenses punishable under the Penal Code regularly come before him for review of their cases. Such offenses include murder, drug-trafficking, forgery, espionage, and the smuggling of antiquities. The judge admitted that while he implemented the provisions of the CCP, he was unable to question suspects within the 24 hours stipulated by law: "The number of cases is high, at least 20 on a daily basis. For 10 months, I was the only person dealing with this. Now I have two judicial investigators to assist me, assigned about two or three months ago. But we still face on average a 12-day delay before the suspects' statements are taken down." With regard to terror suspects, Judge Salih said, "All those accused of offenses under the anti-terror law would come before me, but not the others. Why would I see them if I can't do anything for them? I only review the cases referred to me by the *Asayish* ... I'm not saying it's not my responsibility, but it's a political decision."<sup>106</sup>

His statement was consistent with comments made by Col. Hassan Nuri, head of the Political Unit of the PUK's *Asayish Sulaimaniya*, three months earlier. Colonel Nuri had told Human Rights Watch,

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<sup>104</sup> Human Rights Watch interview with Col. Khaled Rojbayani, *Asayish Gishtî*, Arbil, August 14, 2006.

<sup>105</sup> Human Rights Watch interview with Abdullah `Ali, August 14, 2006.

<sup>106</sup> Human Rights Watch interview with Judge Sirwan Ahmad Salih, *Asayish* investigative judge, Sulaimaniya, August 8, 2006.

Judge Salih only reviews the cases that are covered by law, such as premeditated murder, espionage, and other crimes. In these cases, we inform him of the arrests, and he decides whether to keep the suspects in detention. The suspects' statements are first taken down by the investigating officer, then by the judicial investigator, and then they go before the investigative judge. These procedures do not apply to terrorists.<sup>107</sup>

In a meeting on August 8, 2006, Minister of Justice Faruq Jamil disputed Human Rights Watch's assessment that the *Asayish* had not brought the majority of detainees in their custody before an investigative judge after arrest. He estimated that with regard to those in PUK custody, "only about 7 percent" of detainees were in this category, the rest having had access to a judge.<sup>108</sup> However, data provided by Col. Hassan Nuri two days later contradicted the minister's assertions. Colonel Nuri said that of the 244 detainees held at *Asayish Sulaimaniya* on August 10, "about 50 or 60 of them are held in preventive detention without access to a judge." He added that at al-Salam Garrison, another PUK facility located west of Sulaimaniya city, the *Asayish* was holding all of the detainees there in preventive detention without access to a judge.<sup>109</sup> Human Rights Watch visited al-Salam Garrison on August 9 and 10. The number of detainees held there, according to prison officials, was 111 on August 9 and 124 on August 10.<sup>110</sup>

### **Alleged US involvement in transfers to *Asayish* custody**

During our visits to PUK and KDP detention facilities, Human Rights Watch interviewed 12 Iraqi detainees who stated that Iraqi army personnel and US military personnel had arrested them during joint operations outside the Kurdistan region

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<sup>107</sup> Human Rights Watch interview with Col. Hassan Nuri, *Asayish Sulaimaniya*, Sulaimaniya, May 7, 2006.

<sup>108</sup> Human Rights Watch interview with Faruq Jamil, Sulaimaniya, August 8, 2006.

<sup>109</sup> Human Rights Watch interview with Col. Hassan Nuri, August 10, 2006.

<sup>110</sup> The majority of detainees at this facility were under the authority of *Asayish Sulaimaniya*, and the remainder under the authority of *Asayish Gishiti*. Human Rights Watch interviewed 10 of the detainees over the two days.

and subsequently transferred them to the custody of the Kurdish authorities.<sup>111</sup> Most were Sunni Muslims arrested in the governorates of Mosul and Kirkuk between October 2004 and April 2005.<sup>112</sup> Seven of them said that US military personnel had interrogated them before their transfer. None specified the reasons for their arrest. Two said that US forces and Iraqi army personnel arrested them in wider sweeps involving the arrest of scores of others in their neighborhood, and then interrogated them in connection with attacks involving the use of explosives. In most of the cases the detainees were not able to give more precise information about who had arrested them, and appeared to confuse Kurdish *peshmerga* forces with Iraqi armed forces personnel. Similarly, with regard to the involvement of the US military, the detainees were unable to provide any details regarding the units that may have been involved. They were simply “the Americans.” (Human Rights Watch also interviewed three other detainees who said that US forces were not involved in their arrest or detention, but that prior to their transfer to Kurdish authorities’ custody, US personnel had interrogated them.<sup>113</sup>)

*Asayish* officials confirmed to Human Rights Watch that these 12 detainees were among a larger group who had come into their custody in this manner. PUK officials declined to provide us with further information about such cases or their numbers, limiting themselves to confirming that such detainee transfers have taken place. In mid-May 2006 the director of the KDP’s *Asayish Gishti*, Ismat Argushi, told Human Rights Watch that US and Iraqi military personnel had arrested these detainees as part of a larger group of “about 300 or 400 people” in joint operations, most of them in Mosul governorate, and then transferred them to the KDP’s custody in late 2004 and early 2005. When pressed for the reasons behind these transfers, Argushi said he presumed that neither the US military nor Iraqi army personnel had any faith that the Mosul police would keep them in detention, and therefore handed them over to the Kurdistan regional authorities.

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<sup>111</sup> One of the detainees told Human Rights Watch that US military personnel arrested him in Mosul governorate, held him at a US base in Qayyara (formerly the Saddam military base) for five days, and interrogated him. He said they then handed him over to the Kurdish security forces in the town of Makhmour. Human Rights Watch interview with a detainee, *Asayish Shaqlawa*, Arbil governorate, May 3, 2006.

<sup>112</sup> At the time of the interviews, four of them were in PUK custody and the remaining five in KDP custody.

<sup>113</sup> Kurdish security forces arrested two of them in the summer of 2002 in PUK-controlled territory. The third said that Badr militiamen dressed in Iraqi army uniforms arrested him in April 2005 in Mosul. Human Rights Watch interviews with three detainees, *Asayish Gishti*, Sulaimaniya, May 6, and *Asayish Aqra*, May 9, 2006.

He added that these transfers had caused problems for the KDP's *Asayish*, not only by exacerbating already overcrowded detention facilities but also by increasing the number of detainees with an uncertain legal status. The US military had provided no details regarding the alleged offenses these detainees had committed, he said. "They were dumped on us without any information, and the Americans did not share any intelligence with us concerning them, and never came back to interrogate them." Argushi said the KDP had released the majority of them at intervals, and were still holding only "some 30 or 40." He told Human Rights Watch, "We want to hand them back legally through the courts that have jurisdiction in the areas where the crimes were committed," and expressed optimism that the matter would be resolved "within one month." He also noted that while there was currently no mechanism to enable these transfers, the KDP had nevertheless handed back a small group of detainees from Mosul to that city's police force two weeks earlier; he did not know what had happened to them subsequently. If the remaining detainees could not be similarly transferred, the KDP would release them "without further reference to the Americans," he stated.<sup>114</sup>

The director of the PUK's *Asayish Gishti*, Saifuddin `Ali, told Human Rights Watch that "we have good relations with the Americans with regard to terrorism. It is probable that we have detainees in our custody who are of interest to them and vice versa. We do not carry out joint interrogation of suspects with them, but we do exchange information. Sometimes they hand over people to us from areas outside the Kurdistan region, such as Kirkuk. Sometimes we hand over detainees to them too." Saifuddin `Ali was not specific about the numbers of detainees involved in such transfers.<sup>115</sup>

In late May 2006, Human Rights Watch discussed the issue of detainee transfers with Maj. Gen. John D. Gardner, Commanding General of MNF Detainee Operations, and submitted case details of the 12 above-mentioned detainees. Major General Gardner told Human Rights Watch that he had no knowledge of any detainees being held by the Kurdistan authorities at the behest of the US military. He requested additional information on the military units that were allegedly involved in the

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<sup>114</sup> Human Rights Watch interview with Ismat Argushi, director, *Asayish Gishti*, Arbil, May 11, 2006.

<sup>115</sup> Human Rights Watch interview with Saifuddin `Ali, director, *Asayish Gishti*, Sulaimaniya, May 5, 2006.

arrests and transfers,<sup>116</sup> and undertook to follow up on the cases we submitted. He added that the Kurdistan authorities should not be holding any detainees on behalf of the MNF, and that they should try or release any such detainees in their custody in accordance with Iraqi law.<sup>117</sup>

In mid-August 2006, Gardner told Human Rights Watch that no records had come to light indicating that US military personnel had been involved in the arrest, interrogation, or transfer of the 12 detainees. Further, he stated that in cases where suspects are arrested in joint operations with the Iraqi armed forces, the US military was unlikely to keep records of such arrests, except where the suspects are transferred to the custody of Detainee Operations.<sup>118</sup> On August 17, Human Rights Watch submitted to Major General Gardner a list of 25 other Iraqi detainees held in KDP custody. The director of the KDP's *Asayish Gishti*, Ismat Argushi, had provided the list at the organization's request several days earlier.<sup>119</sup> As in the previous cases, almost all of the 25 detainees on the list were Sunni Arabs from the Mosul region reportedly arrested between late 2004 and early 2005 in joint US-Iraqi operations and then transferred to the Kurdistan region.

On the basis of this and other information provided, Major General Gardner told Human Rights Watch that he would follow up the matter directly with the Kurdistan authorities. Accordingly, he met with Ismat Argushi in Arbil on September 1 and with Saifuddin `Ali in Sulaimaniya on September 11, 2006. In regard to both meetings, Gardner told Human Rights Watch that he had requested further information on all cases where US forces were allegedly involved in the transfer of detainees to the custody of either the KDP or the PUK. He stated that he had made it clear in both meetings that the MNF did not want any such detainees to be held "at our

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<sup>116</sup> Human Rights Watch was unable to provide such information: neither the detainees concerned nor the Kurdish authorities could specify which US military units were involved.

<sup>117</sup> Human Rights Watch interview with Maj. Gen. John D. Gardner, Commanding General, MNF Detainee Operations (Task Force 134), Baghdad, May 20, 2006.

<sup>118</sup> Human Rights Watch interview with Maj. Gen. John D. Gardner, Baghdad, August 16, 2006.

<sup>119</sup> Human Rights Watch interview with Ismat Argushi, Arbil, August 13, 2006. On this occasion, Ismat Argushi told Human Rights Watch that of those detainees allegedly transferred to KDP custody by US and Iraqi military personnel, some 100 remained in detention. Earlier, in May, he had indicated that only some 30 or 40 of them were still being held. Human Rights Watch requested the names and details of all detainees in this category, but only received information on 25 of them.

request.”<sup>120</sup> The PUK did not provide Gardner with details on such cases, but the KDP did: Ismat Argushi told Human Rights Watch during a meeting several days later that he had provided the complete list of names and details. He did not indicate how many names were on the list, but added that he had sent the same information to the Ministry of Interior in Baghdad. Of those listed, Argushi said he considered there was sufficient evidence to refer some 40 or 50 of the detainees to trial. For the rest, he would await feedback from the Ministry of Interior and from MNF Detainee Operations. If no feedback was forthcoming, he said he would order their release.<sup>121</sup>

In mid-October, Major General Gardner told Human Rights Watch that an investigative team from Detainee Operations would conduct interviews with as many of the detainees listed by the KDP as possible, in an effort to obtain information regarding possible US involvement in their transfer to the custody of the Kurdistan authorities. Some of those interviews took place several days later.<sup>122</sup> With detainee names and other information provided by the KDP, the US investigative team also made contact with Iraqi army personnel in Mosul who were reportedly involved in the handover of the detainees. Follow up on these cases was ongoing at this writing. Ultimately, Gardner told Human Rights Watch, he would communicate the results of the investigation he had ordered into these cases to the Ministries of Justice in Baghdad and Arbil, and urge Kurdistan authorities to try or release the detainees in accordance with Iraqi law.<sup>123</sup>

On November 12, 2006, Major General Gardner informed Human Rights Watch that he had written to KRG Minister of Justice Faruq Jamil informing him of the completion of the MNF investigations into the cases of detainees held in KDP custody following their transfer from Mosul. He stated that the MNF was unable to fully identify which detainees might have been initially detained by US forces, but that he had determined that further detention of these individuals was not in the security interests of either the United States or Iraq. Gardner requested the minister of

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<sup>120</sup> Human Rights Watch interviews with Maj. Gen. John D. Gardner, Baghdad, September 30 and October 14, 2006.

<sup>121</sup> Human Rights Watch interview with Ismat Argushi, Arbil, October 18, 2006.

<sup>122</sup> *Ibid.* Argushi confirmed that personnel from MNF Detainee Operations had begun interviewing detainees in KDP custody on October 16.

<sup>123</sup> Human Rights Watch interview with Maj. Gen. John D. Gardner, Baghdad, October 14, 2006.



justice's assistance in securing the prompt and safe release of the detainees to their family members unless an investigative judge, in reviewing cases, found evidence to justify extending a particular individual's detention in accordance with the law. Gardner further requested that the minister of justice notify him promptly of the releases.

## VII. Torture and Ill-treatment of Detainees, and Poor Conditions

Human Rights Watch received allegations of torture and ill-treatment at nearly all *Asayish* detention facilities it visited in April, May and August 2006. The majority of detainees with whom we spoke said that detention facility authorities had tortured or otherwise ill-treated them at some point since their arrest, particularly during the initial weeks when they were being interrogated for the purpose of providing “confessions.” One detainee, `Isam, told Human Rights Watch,

On the first day of detention by the *Asayish*, I was called in for interrogation around 10 p.m. The investigation took place in a nearby building. It looked new. They told me that I had rockets in my house and that they had witnesses for this. However, there are no weapons in my house and I refused to confess to something that did not exist. They tied my hands and hit me with cables, sticks, and threw punches at me. It was two people. I do not know their names. I lost consciousness and woke up in solitary. I was later given a paper and a pen by the officer and told to write my confession. The officer told me ‘make it up if you need to,’ so I did, and I put my fingerprint on it.<sup>124</sup>

Jawad reported being tortured including by electric shock: “The police and the *Asayish* came to take us from our homes. They then began torturing us and hitting us. I did not know where I was. They tortured me using electricity, cables, hanging me, and also by hitting me. I was blindfolded. They told me, you have to confess to attacking the police, the national guard, the *peshmerga*, and the Americans. Under torture, I confessed that I attacked the Americans. I said that I attacked them by firing five Katyushas [rockets].”<sup>125</sup>

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<sup>124</sup> Human Rights Watch interview with detainee “`Isam,” held in *Asayish Gishti*, Sulaimaniya, May, 6, 2006.

<sup>125</sup> Human Rights Watch interview with detainee “Jawad,” held in *Asayish Shaqlawa*, Shaqlawa, May, 4, 2006

In a few other cases, detainees said that the *Asayish* subjected them to electric shocks to sensitive parts of the body, such as the earlobes. In one case, a detainee said he had suffered sexual abuse.

Other detainees described being ill-treated as punishment for allegedly infringing regulations at the detention facility in which they were held. Human Rights Watch was not able to independently verify these allegations. While some detainees displayed scars or injuries that they said they had sustained under torture, in most cases several months or years had elapsed since the reported abuse, making verification difficult.

Nevertheless, Human Rights Watch believes that the abuse allegations are credible. The accounts of the torture or ill-treatment alleged, and the methods used, were highly consistent at all the facilities. They were also consistent with the types of allegations received in Kurdistan by the organization in the past. The methods most frequently cited included beatings to the body using a variety of implements such as cables, hosepipes, wooden sticks, or metal rods. Detainees reported that *Asayish* officials beat them at the time of their arrest or upon arrival at the detention facility, before any interrogation had taken place. They described how *Asayish* officials kicked or punched them, and kept them blindfolded and handcuffed continuously for several days at a stretch.

The use of “stress positions” was very common. Detainees reported that *Asayish* officials tied their arms in contorted and painful positions, with one arm raised above the head then bent behind their back and the other arm lowered to the waist then bent upwards behind the back. They then kept the detainees’ two arms tied together by the wrists for prolonged periods.

Many detainees were kept handcuffed and blindfolded for long periods. Jibril stated, “For 10 months following my arrest, I was handcuffed and blindfolded. The first week, my hands were tied behind my back. Every time I would be taken to the bathroom, I would be beaten up.”<sup>126</sup> Hadi and Kamal described similarly long periods (nine

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<sup>126</sup> Human Rights Watch interview with detainee “Jibril,” held in *Asayish Arbil*, Arbil, April 30, 2006.

months and seven-and-a-half months, respectively) in which they had been handcuffed and blindfolded.<sup>127</sup>

The majority of detainees with whom Human Rights Watch spoke said that the *Asayish* held them in solitary confinement as part of the interrogation process, and sometimes as punishment. Such interrogation lasted two to three months in some cases. Officials from the *Asayish* facilities showed us some of the cells used for solitary confinement that were empty at the time. Typically they were very small, measuring some 2 x 1.5 meters, with no access to natural light or ventilation. Some detainees reported that *Asayish* officials had beaten them while they were held in solitary confinement, or that they had heard the sounds of others apparently being beaten in nearby cells. They also said that during that period the *Asayish* gave them meager quantities of food, or none for several days at a stretch. Under international law, long-term or indefinite solitary detention can rise to the level of torture.<sup>128</sup>

In addition to physical abuse, some detainees also alleged that detaining authorities had subjected them to psychological pressures sometimes amounting to torture, including threatening to hold them indefinitely, to execute them, or torture one of their family members. A number of detainees told us that they were threatened with sexual assault during interrogation. Two brothers, Karim and Khalid, who were detained at the same time, reported to Human Rights Watch that “one of the *Asayish* officials told us that if our parents ever ask about us, they will not tell them that we are here.”<sup>129</sup>

The conditions in which the *Asayish* kept detainees varied, but were generally poor.<sup>130</sup> The principal problem at most major facilities was overcrowding, which was

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<sup>127</sup> Human Rights Watch interviews with detainees “Hadi” and “Kamal,” held in *Asayish Arbil*, Arbil, April 29, 2006.

<sup>128</sup> In interpreting ICCPR article 7 on torture and other mistreatment, the UN Human Rights Committee stated that “prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7.” UN Human Rights Committee, General Comment 20, Article 7, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.1 at 30 (1994), para. 6.

<sup>129</sup> Human Rights Watch interviews with detainees “Karim” and “Khalid,” held in *Asayish Arbil*, Arbil, April 29, 2006.

<sup>130</sup> There were no marked differences between KDP and PUK facilities. The notable exception was the KDP’s *Asayish Arbil*, a large and newly constructed facility comprising nine communal cells holding on average some 28 to 30 detainees. In comparison with other places visited, this facility was spacious and clean and had a large courtyard and adequate natural light.

sometimes severe. At the *Asayish Gishti* facility in Arbil, the communal cells measured on average 6 x 5 meters and held in some cases up to 60 detainees. The detainees complained that there was very little room for lying down to sleep, and that in order to accommodate everyone they were obliged to sleep on their side rather than on their back.<sup>131</sup> Human Rights Watch found similar conditions at the main detention facility in Sulaimaniya, which the PUK's *Asayish Sulaimaniya* and *Asayish Gishti* share. The overcrowded cells were also often dark and damp, with little or no natural light, and conditions of hygiene were very poor.

Human Rights Watch spent several hours at a time in these cells while conducting interviews. Many if not all of the detainees appeared to be suffering from lice and other skin ailments. The organization also found a number of detainees who appeared ashen and sickly. They told Human Rights Watch that detaining officials did not permit them to leave their cells at all except to use the toilet, and had denied them a daily exercise period in the facility's courtyard for prolonged periods lasting several months at a stretch, during which time they had little or no exposure to sunlight.<sup>132</sup>

### **Impunity for torture and ill-treatment**

Despite claims by officials of the KDP and PUK to the contrary, it was apparent that torture and ill-treatment of detainees did occur, and that the *Asayish* made minimal effort to punish guards who engaged in such practices.

The general director of the KDP's *Asayish Gishti*, Ismat Argushi, told Human Rights Watch, "We give clear-cut instructions to our investigating officers. If torture does take place, then it is certainly without my knowledge."<sup>133</sup> In such cases, an investigative board is supposed to examine the accusations against officials accused of torture. The investigative board is composed of three members, all

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<sup>131</sup> At the time of Human Rights Watch's visits to *Asayish Arbil* in April and May 2006, the largest communal cell housed some 65 detainees transferred from the nearby *Asayish Gishti* facility to relieve severe overcrowding there.

<sup>132</sup> Several of the detainees told Human Rights Watch that this was a form of punishment used by detaining officials, which made the subjects resemble ghosts. Deprived of sunlight, the detainees in these circumstances referred to themselves as the "night bats."

<sup>133</sup> Human Rights Watch interview with Ismat Argushi, Arbil, August 13, 2006.

*Asayish* personnel: a representative of the Legal Affairs Unit, an administrative officer, and an investigative officer. If the Board substantiates the accusations, it makes a recommendation with regard to appropriate disciplinary action.<sup>134</sup> A KDP official told Human Rights Watch that no such cases had arisen to date.<sup>135</sup>

The PUK's *Asayish* claims to follow similar procedures in such cases. Saifuddin `Ali, general director of the PUK's *Asayish Gishti*, told us,

We tell the detainee, "Don't be afraid, we will not beat you." There are cases where beatings do happen, but I would say that in 95 percent of cases we don't beat detainees. The procedure we use is referral to an investigative board. The accused officer is reprimanded, and he may be removed from the *Asayish* and transferred to the police force. This would be a harsh punishment for him since *Asayish* members are ambitious. Sometimes the board may recommend demoting the guilty officer to a lower rank. I am the last person to see the file. I look at the recommendations of the board, whose members take into account whether the abuse was premeditated or not. I usually concur with the recommendations.<sup>136</sup>

In one case, Saifuddin `Ali said, a prison official was ordered detained for having beaten one of the inmates: "This happened when, after prayers, the detainee cursed the Kurdish government and prayed for its downfall. The official confessed to me that he had hit the detainee. We formed a three-member investigative board, and the punishment was nine days' imprisonment. This is a recent case. He is probably still being held now."<sup>137</sup>

In general, *Asayish* officials were dismissive of the allegations of torture or ill-treatment made by detainees, deeming them fabrications in many instances. Saifuddin `Ali remarked, "Some detainees claim that they were beaten. I will be

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<sup>134</sup> Human Rights Watch interview with Col. Khalid Rojbayani, Arbil, August 14, 2006.

<sup>135</sup> Ibid.

<sup>136</sup> Human Rights Watch interview with Saifuddin `Ali, Arbil, May 5, 2006.

<sup>137</sup> Human Rights Watch interview with Saifuddin `Ali, Arbil, October 21, 2006.

honest and say that this does happen in some cases, but they also make up stories, alleging that they were tied with their hands behind their back in painful positions, and other such methods.”<sup>138</sup> Argushi, the general director of the KDP’s *Asayish Gishti*, claimed that more “senior” detainees either pressured or instructed recent arrivals to make such allegations.<sup>139</sup>

However, even in cases where an investigative board finds that torture allegations are substantiated, officials remain reluctant to apply the provisions of the CCP and the Penal Code by referring the accused officers to the proper judicial authorities to begin the process of criminal investigation. In the case of the PUK, Saifuddin `Ali told Human Rights Watch that these laws were not applicable since the security forces, both the police and the *Asayish*, are considered military personnel, and therefore subject to disciplinary punishments in accordance with the Military Penal Code and the Code of Military Procedure. “That is the law we have today and I apply it. It is difficult to change laws overnight. If the law is changed, I shall apply that also,” he said.<sup>140</sup>

This is inconsistent with the interpretation of the law applied in a handful of cases in the past where Kurdish officials referred security forces personnel charged with the abuse of detainees to the ordinary criminal courts in Kurdistan and tried them in accordance with the CCP. It is also inconsistent with the interpretation of the law as applied in the rest of Iraq, where Ministry of Interior security forces are also subject to the CCP rather than military law reserved for members of the armed forces.

Human Rights Watch has long urged political leaders and officials of both the KDP and PUK administrations to allow criminal prosecution of law enforcement officials accused of abusing detainees. In practice, criminal prosecutions of this kind in the Kurdistan region have been the exception rather than the rule, and the absence of political will in this regard has encouraged a climate of impunity in which security forces are able to commit abuses without accountability. They are secure in the knowledge that ultimately their superiors will protect them, and, in the instances

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<sup>138</sup> Ibid.

<sup>139</sup> Human Rights Watch interview with Ismat Argushi, Arbil, August 13, 2006.

<sup>140</sup> Human Rights Watch interview with Saifuddin `Ali, Arbil, May 5, 2006.

where administrative penalties are imposed, they are not commensurate with the crimes in question. Despite the Kurdistan authorities' stated policy banning torture and other ill-treatment, the few measures they have taken have not served as an effective deterrent against abuse.



## VIII. Denial of Family Visits

The majority of detainees who spoke to Human Rights Watch said that detention facility officials frequently denied them family visits, or adequate time during visits.

The authorities routinely denied security suspects access to family members during the initial period following arrest, when prison officials hold detainees incommunicado while conducting interrogations. Such periods sometimes lasted several months. However, the denial of family visits sometimes lasted far longer, even after interrogation had ended. Scores of detainees interviewed said that prison officials had deprived them of contact with their families since their arrest, a period lasting up to two years. Fu'ad stated that since his arrest 10 months before our interview he had had no meetings or access to his family and that the *Asayish* "did not explain to me why I have no visits."<sup>141</sup> Detained seven months prior to our interview with them, brothers Karim and Khalid stated, "We have not been allowed any family access and our family does not know we are here."<sup>142</sup>

Detainees who did receive family visits complained that the visits often lasted only a few minutes, and were conducted in the office of the director of the detention facility, in the presence of officials. Nabil stated that the *Asayish* had allowed him only one family visit during his year of detention: "I was allowed to see my wife and sister for three minutes on April 20, 2006.... Since then, I am back in solitary status."<sup>143</sup> Isam stated that after three months in detention, prison officials allowed him one family visit lasting one to two minutes.<sup>144</sup> Nasir stated: "After nine months, I had a meeting with my mother for five minutes. They had someone monitoring the meeting. This was on February 9, 2006."<sup>145</sup>

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<sup>141</sup> Human Rights Watch interview with detainee "Fu'ad," held in *Asayish Arbil*, Arbil, April 29, 2006.

<sup>142</sup> Human Rights Watch interviews with detainees "Karim" and "Khalid," held in *Asayish Arbil*, Arbil, April 29, 2006. Several detainees gave Human Rights Watch the telephone numbers of relatives or defense counsel, requesting that the organization contact them to inform them of their whereabouts.

<sup>143</sup> Human Rights Watch interview with detainee "Nabil," held in *Asayish Arbil*, Arbil, April 30, 2006.

<sup>144</sup> Human Rights Watch interview with detainee "Isam," held in *Asayish Sulaimaniya*, Sulaimaniya, May 6, 2006.

<sup>145</sup> Human Rights Watch interview with detainee "Nasir," held in *Asayish Arbil*, Arbil, April 30, 2006.

## IX. Prospects of Improvement

In April 2006, Karim Sinjari, the KDP minister of interior, said that once in force, the draft anti-terror law, which the Kurdistan National Assembly had just adopted and which criminalizes a host of terrorism and terror-related offenses, would clarify the legal status of terror suspects. He noted, however, that the law would have no retroactive application, and, accordingly, would not affect the legal status of those already in detention.<sup>146</sup> If terror suspects arrested before ratification of the anti-terror law “were to be referred to the criminal courts, they would not be convicted,” Sinjari stated. “They would have to be released in accordance with the Penal Code and the Code of Criminal Procedure.” He stressed the “dangerous” nature of the offenses in question, and the difficult predicament facing the Kurdistan authorities, who could neither refer these suspected terrorists to the courts nor release them. “We are looking for ways to resolve this matter,” Sinjari stated. “Give us a realistic solution.”<sup>147</sup>

In this and other official meetings, Human Rights Watch stressed the need to adhere to both domestic and international human rights standards with regard to due process for all persons deprived of their liberty. The organization recommended, as an interim measure, the appointment of a judicial committee independent of the *Asayish* agencies to conduct an urgent review of the cases of detainees held in pretrial and long-term detention without trial. Minister of Justice Faruq Jamil was non-committal about the creation of such a judicial committee, observing that the legal authorities were about to launch a review of legislation currently in force and promulgate new laws in conjunction with the unification of the KDP and PUK administrations. The minister also told Human Rights Watch that a draft Ministry of Justice law contained a proposal for the creation of a general directorate of prisons under Ministry of Justice authority, with responsibility for all detainees in the

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<sup>146</sup> Human Rights Watch understood that some Kurdish officials were in favor of requesting a special decree from the Kurdistan National Assembly sanctioning the retroactive application of the anti-terror law. The law came into force in July with no such provision, though. In any case, such a decree would have violated international law, specifically article 15(1) of the ICCPR, which prohibits charging suspects with crimes that were not crimes at the time they were committed.

<sup>147</sup> Human Rights Watch interview with Karim Sinjari, KDP minister of interior, Arbil, April 23, 2006.

Kurdistan region.<sup>148</sup> He hoped that if adopted, this law would address some of our concerns.<sup>149</sup>

On May 10, 2006, after having conducted visits to major *Asayish* detention facilities in the governorates of Duhok, Arbil, and Sulaimaniya, Human Rights Watch met with President Mas`ud Barzani. The organization presented its findings, focusing on the following key concerns: long-term detention without trial of terror suspects and others suspected of serious felonies; failure to refer detainees to an investigative judge in accordance with the law; the detention of persons apparently in lieu of relatives being sought by the authorities for terror-related offenses; failure to implement court decisions, namely the non-release of both acquitted defendants and convicted prisoners who had already served their terms of imprisonment; poor conditions of imprisonment; and the ill-treatment of detainees, including lengthy periods of solitary confinement.<sup>150</sup>

Human Rights Watch reiterated the urgent need for an independent judicial review of all detainee cases under *Asayish* authority. Such an independent review would help the authorities to make determinations regarding the possible release of the following: a) detainees no longer deemed to be security threats or constituting a lesser threat; b) detainees who had been tried and convicted and had already served their sentences; and c) detainees who had simply been forgotten or overlooked.

Following this discussion, President Barzani agreed that the Kurdistan authorities needed to address these concerns if indeed the situation with regard to *Asayish* detention practices were as Human Rights Watch had depicted. He proposed convening a meeting in the near future, attended by the minister of interior and the directors of the *Asayish* agencies, to allow Human Rights Watch to present its findings and recommendations before it released its report.<sup>151</sup>

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<sup>148</sup> The minister of state for legal affairs, Azad al-Mullah, whom Human Rights Watch met during its April 2006 mission in Arbil, confirmed this. The organization did not have the opportunity to examine the draft law.

<sup>149</sup> Human Rights Watch interview with Faruq Jamil, minister of justice, Sulaimaniya, August 8, 2006.

<sup>150</sup> Human Rights Watch interview with Mas`ud Barzani, president of the Kurdistan Region, Sari Rash, May 10, 2006.

<sup>151</sup> *Ibid.*

While the proposed meeting did not, for practical reasons, take place in the ensuing months, Human Rights Watch maintained its dialogue with relevant officials. The day after its meeting with President Barzani, we met with the general director of the KDP's *Asayish Gishtî*, Ismat Argushi, who said that "yesterday we, together with the prison directors, met and formed a committee to review the cases of all those detainees who have not been referred to trial." He said the committee would review cases over the next five days and carry out visits to the detention facilities.<sup>152</sup> However, he did not specify who the committee members were, nor the terms of reference of the review, or clarify what steps they would take once they completed their review. Several days earlier, the general director of the PUK's *Asayish Gishtî*, Saifuddin `Ali, also told Human Rights Watch that he had ordered a review of detainee cases, to commence over the coming days. He added that an earlier review had recommended the release of some 60 detainees, but Human Rights Watch could not confirm that those releases had taken place.<sup>153</sup>

Human Rights Watch welcomed the reviews that KDP and PUK *Asayish* officials said they were conducting into the cases of untried detainees in their custody. Between May and December, the *Asayish* released several hundred detainees (although Human Rights Watch could not determine how many of those were the result of the reviews). In our estimation, however, these positive measures do not obviate the need for an independent judicial committee, unconnected to the *Asayish* agencies, to conduct a thorough and transparent review of detainee cases, submit recommendations to the appropriate judicial authorities, and make public its findings.

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<sup>152</sup> Human Rights Watch interview with Ismat Argushi, *Asayish Gishtî*, Arbil, May 11, 2006.

<sup>153</sup> Human Rights Watch interview with Saifuddin `Ali, *Asayish Gishtî*, Sulaimaniya, May 5, 2006.

## X. Recommendations

### To the Kurdistan Regional Government

#### *On Arbitrary Arrest and Detention*

- Appoint as a matter of urgency an independent judicial committee to review the legal status of detainees held in the custody of the *Asayish* forces.
- Immediately release or charge with cognizable criminal offenses all those currently held without charge.
- Immediately release all convicted prisoners held in *Asayish* custody who have already served their sentences. Transfer any convicted prisoners still serving time to a prison under the authority of the Ministry of Interior's police forces in accordance with legislation currently in force.
- Ensure that persons taken into custody are brought before an investigative judge within 24 hours of arrest, in conformity with Iraq's Code of Criminal Procedure.
- Establish effective judicial mechanisms to enable all detainees to challenge the legal basis for their detention.
- Establish effective judicial mechanisms to provide all detainees with a prompt and fair trial on the charges against them.
- Ensure that family members and legal counsel have prompt access to detainees.
- Limit the use of confessions as a basis for pretrial detention or conviction to confessions freely made in the presence of counsel and ratified within 24 hours before a judge and the defendant's counsel. Suspend those provisions of the CCP that permit the use of confessions and other evidence obtained through torture or other coercive methods.
- Ensure that the *Asayish* forces comply with domestic legislation that requires the issuance of arrest warrants from a judicial authority before arrests, except those in *flagrante delicto*.

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

- Publicly condemn the practice of torture and other ill-treatment and declare unequivocally that such abuses will not be tolerated.
- Investigate promptly all allegations of torture and ill-treatment, and ensure that guards, interrogators, and other prison officials who are found responsible for the abuse of prisoners are subject to disciplinary measures or criminal prosecution as appropriate. To that end, authorize the establishment of a transparent and independent body to investigate allegations of torture by *Asayish* personnel.
- Conduct an immediate medical examination of any detainee alleging abuse.
- Ensure that prisoners have access to medical care on a regular basis.
- Compensate victims of torture, ill-treatment, and arbitrary detention adequately and speedily.

### *On Providing Greater Access and Transparency*

- Ensure that all detainees are held in recognizable places of detention that are accessible to government inspection, independent monitors, relatives, and defense counsel, such access being regular and unimpeded. The Ministry of Human Rights should regularly visit all detention facilities, assess treatment of detainees and conditions of detention, and make public its findings.
- Ensure regular access to detention facilities under the authority of the *Asayish* forces by independent domestic and international monitoring organizations.

### *On Meeting International Standards*

- Ensure that conditions in detention centers conform to international standards, including the UN 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.

- Work with the Iraqi government to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture). Work with the Iraqi government to become 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 states 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 UN 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**

- Assist the Kurdistan regional authorities in establishing a mechanism for the prompt investigation of allegations of torture or ill-treatment at the hands of law enforcement officials, including the *Asayish* forces.
- Ensure that assistance to the Kurdistan Regional Government is not used to contribute to human rights violations.
- In the context of assistance provided to the Kurdistan Regional Government, send a clear and consistent message that respect for human rights is integral and essential to the success of any security policy, including counterterrorism operations.
- Follow up the cases of all detainees arrested in joint operations of Iraqi and US military forces and reportedly subsequently transferred to the custody of Kurdistan authorities, to ensure that Kurdistan authorities release such detainees or promptly try them in accordance with Iraqi law.

## **To the international donor community**

- Closely monitor any police, security, and counterterrorism assistance to the Kurdistan Regional 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 as 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.



## **XI. Acknowledgements**

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