

# IRAQ

## **Iraq's Brutal Decrees Amputation, Branding and the Death Penalty**

### SUMMARY

Beginning in June 1994, the government of Iraq issued at least nine decrees that establish severe penalties, including amputation, branding and the death penalty for criminal offenses such as theft, corruption, currency speculation and military desertion. These new decrees greatly impinge on individual human rights and constitute violations of several international human rights conventions and standards.

The government of Iraq attempts to deflect international criticism of this cruelty by maintaining that the decrees were enacted to combat rising crime which, it says, is due to the poverty and desperation brought on by international economic sanctions. By implying that if sanctions are lifted and the situation improves the decrees could be repealed, Iraq appears to use these abuses as leverage for the lifting of sanctions. While arguing that the decrees serve as a deterrent to crime, the government has offered no information that they are serving this purpose.

The government of Iraq also maintains that the decrees are based on *Sharia*, Islamic law. *Sharia*, however, is subject to various interpretations, and the Iraqi government's interpretation reflects its political agenda. The repressive political climate within Iraq prevents discussion by Iraqis about other interpretations. Moreover, Muslims outside Iraq hold views regarding the use of amputation under Islamic law that conflict with Iraq's interpretation.

The penalty of amputation is now applied to theft, forgery, currency speculation, military desertion and draft-dodging. Reports from Iraqi news media indicate that the sentence of amputation has been carried out on several individuals convicted of theft. One victim was displayed on Iraqi government television recuperating in the hospital after his hand had been cut off. For deserters and draft-dodgers the ear is amputated.

Under criticism from veterans' groups complaining that amputees convicted of criminal offenses would be confused with the large number of Iraqi veterans who lost limbs during military service, the government began branding the foreheads of amputation victims to distinguish them from war casualties. Often without anesthesia, the figure of a cross is burned into the victim's forehead. Nizar Hamdoon, Iraq's ambassador to the United Nations, told Human Rights Watch/Middle East that several hundred amputations and brandings had been carried out as of November 1994. There have been several reports that doctors have been imprisoned and even executed for refusing to perform punitive amputations and brandings. The government defends amputations as an improvement over its former policy of execution for military deserters. Human Rights Watch/Middle East challenges the suggestion that the only options are death or mutilation.

An individual found guilty of armed robbery or committing theft as a member of the military or as a state employee may be executed. Persons convicted of smuggling antiquities or organizing prostitution may also be sentenced to death. Any person who deserts military service three times may be executed. Since the most recent United Nations report about human rights in Iraq, in February 1995, the Iraqi government has sentenced to death at least a dozen persons in two separate proceedings. The Iraqi government tried these persons before specialized courts which tend to afford few due process guarantees, including a judiciary independent of influences by the government.

These penalties violate international human rights law in many respects. First, they are cruel and inhuman punishments, prohibited under the International Covenant on Civil and Political Rights, to which Iraq is a party. In addition, these punishments have been applied retroactively. Finally, the great expansion of offenses covered by the death penalty also eviscerates the spirit and principle of the International Covenant on Civil and Political Rights.

## RECOMMENDATIONS

Human Rights Watch/Middle East urges the Iraqi government to suspend the implementation of these decrees employing capital punishment, amputation and branding. All criminal defendants should receive adequate procedural safeguards at both the trial and appellate levels.

Human Rights Watch/Middle East calls on governments and private corporations seeking to renew diplomatic and commercial ties with the Iraqi government to advocate an end to these decrees independent of their position regarding economic sanctions.

The Iraqi government should permit Max Van der Stoep, the U.N. special rapporteur for human rights in Iraq, to enter the country so that he and his staff can perform their investigative work. It should also consent to the special rapporteur's proposal for the establishment of human rights monitors throughout the country to provide a safeguard for the general population.

## BACKGROUND

Since the Arab Ba'ath Socialist Party came to power in 1968, the Iraqi government has used terror through various levels of police, military and intelligence agencies to control and intimidate Iraqis. Two decades of oppression against Iraq's Kurds culminated in 1988 with a campaign of genocide, including the use of chemical weapons attacks, against Kurdish civilians. The Ba'athist Sunni Muslim minority has repressed the Shi'a population, including the Marsh Arabs in the south. After the Gulf War, the use of state terror to control the population intensified. For example, thousands of Marsh Arabs have fled to Iran because Iraq has drained the marsh regions and sent in the military with tanks to shell and burn villages. Given the history of a fundamental lack of respect of human rights in Iraq, Human Rights Watch/Middle East is concerned about both the severity of the decrees and the number of people victimized by them.<sup>1</sup>

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<sup>1</sup> For a detailed history of the Anfal campaign, see Human Rights Watch/Middle East, *Iraq's Crime of*

Compounding the abusiveness of the new decrees is the fact that the Iraqi legal system suffers from a lack of adequate due process and judicial review.<sup>2</sup> The Revolutionary Command Council (RCC) issued the decrees pursuant to its constitutional power to promulgate laws and decrees. Saddam Hussein presides over this body of nine members, which in turn selects both the president of the republic and the council of ministers. Currently, Saddam is both the president of the republic and its prime minister.

Although it is very difficult generally to obtain independent and first-hand information about the human rights situation in Iraq, the government has released a large amount of official information on this subject. The decrees were published in the *Official Gazette* as well as several state-controlled newspapers, and the government-controlled news media have publicized the carrying-out of sentences against specific individuals. Reports by journalists and opposition leaders corroborate stated official government policy.

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*Genocide: The Anfal Campaign against the Kurds* (New Haven: Yale University Press, 1995); and for additional information regarding the Marsh Arabs, see Human Rights Watch/Middle East, *Endless Torment: The 1991 Uprising in Iraq and its Aftermath* (New York: Human Rights Watch, 1992).

<sup>2</sup> In February 1994, the International Commission of Jurists called for broad reforms of the Iraqi constitution and legal systems, citing the total power of the Iraqi leadership and various institutional weaknesses contributing to human rights violations. See generally, International Commission of Jurists, *Iraq and the Rule of Law* (Chenôve: Imprimerie ABRAX, 1994).

The RCC has explained that these decrees are based on Islamic law and intended to combat rising crime in Iraq.<sup>3</sup> Despite the government's arguments that the decrees are based on religious law and necessitated by rampant crime, Iraq is bound by its international obligations not to institute cruel, inhuman, or degrading treatment or punishment. Ambassador Hamdoon said that "the measures were not human rights abuses. . . . They are temporary measures that have to do with the current circumstances. . . . When the economic sanctions are lifted (by the United Nations), there will be no need for such measures."<sup>4</sup> The Iraqi permanent mission to the United Nations in Geneva issued a reply to Special Rapporteur Van der Stoel's November report. The mission maintained that "the absence of any deterrent punishments . . . even the severest punishment of the death penalty was no longer adequate or a deterrent. It was these circumstances that prompted the search for deterrent punishments of a purely preventive and protective nature, which will be abolished when the time is appropriate."<sup>5</sup> Difficult economic conditions that have caused a rise in crime and military desertion cannot justify Iraq's violation of its citizens' basic human rights.

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<sup>3</sup> The question of whether amputation for theft is permissible under Islamic law is controversial. Islamic scholars have widely divergent opinions and interpretations. While Human Rights Watch/Middle East does not take a stance in this debate regarding the correct interpretation of Islamic law in Iraq, it does expect Iraq to honor its obligations under the International Covenant of Civil and Political Rights.

<sup>4</sup> "Iraq Says Punishments Are Justified," United Press International, Feb. 28, 1995. See also "Crime Rising, Iraq Brands Offenders," *New York Times*, March 2, 1995, p. A3.

The stage for these decrees was set with Iraq's longstanding denial of fundamental civil liberties and the more recent domestic turmoil following the Gulf War. In April 1991, the U.N. Security Council passed Resolution 687, which reconfirmed the embargo and sanctions established after Iraq's invasion of Kuwait. The sanctions prohibited all trade with Iraq, except humanitarian materials such as medical supplies and food. These sanctions, which are binding on the international community, prevent Iraq from selling its oil on the world market. The Security Council resolution requires that the sanctions remain in place until Iraq complies with demands by the Security Council for cooperation with weapons monitoring and recognition of Kuwaiti sovereignty and boundaries. United Nations Security Council, Resolution 687 (New York: United Nations, 1991), S/RES/687.

Iraq maintains that the sanctions are starving its citizens and, therefore, constitute a violation of human rights. In February 1994, Nizar Hamdoon, the Iraqi ambassador to the U.N., responding to a report on human rights in Iraq by Special Rapporteur Max Van der Stoel, stated that "the Special Rapporteur would be better advised to cooperate with the Iraqi Government in the promotion and protection of human rights in Iraq rather than to resort to incitement and denunciation." United Nations General Assembly, "Human Rights Questions: Human Rights Situations and Reports Of Special Rapporteurs And Representatives," (New York: United Nations, 1994) A/48/875, ¶ 2(e). Deputy Prime Minister Tariq Aziz said, "The application of sanctions and the embargo in the manner described against Iraq is a process of vengeance, a process aimed at depriving the people of Iraq, a nation with a great history, a nation which has contributed immensely to human civilization . . . of the simplest constituents of human life." CNN, "Kuwait's Information Minister Concerned About Iraq," October 7, 1994, Transcript #530-3.

Because of the economic hardships on ordinary Iraqi citizens, the sanctions have also had an impact on the crime rate throughout the country. It was reported that people steal in order to provide food for their families; Iraq's state-run newspapers reported that 36,000 cars were stolen last year. Theodoulou, "Iraq introduces Islamic law," *The Times*. In October 1994, a bus of journalists accompanied by officials from the Ministry of Information was hijacked by armed bandits.

The Security Council, through resolutions 706 and 712, authorized Iraq to sell \$1.6 billion of its oil on a one-time and restricted basis. Money from this sale would be deposited into an escrow account under the Secretary General's control and used to pay for food, medical relief and the costs associated with the U.N. operations in Iraq. See United Nations Security Council, Resolution 706, (New York: United Nations, 1991) S/RES/706; United Nations Security Council, Resolution 712, (New York: United Nations, 1991) S/RES/712 (1991). Claiming that the conditions attached to the oil sale are an infringement on its sovereignty, Iraq refused the offer.

<sup>5</sup> Commission on Human Rights, "Note Verbale dated 19 January 1995 from the Permanent Mission of Iraq to the United Nations Office at Geneva addressed to the Centre for Human Rights" (Geneva: United Nations, 1995) E/CN.4/1995/138, p. 8.

Both legal and human rights observers decry Iraq's lack of due process of law and compromised judicial procedures. The ICCPR requires that "everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal."<sup>6</sup> These standards are routinely ignored in Iraq. For example, a doctor who fled to northern Iraq told journalists, "Deserters are sent to us [for amputation] by a military court, they go to jail and are tried afterwards."<sup>7</sup>

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<sup>6</sup> International Covenant on Civil and Political Rights (ICCPR), 999 U.N.T.S. 171 (1967) art. 14(1), Dec. 16, 1966.

<sup>7</sup> Suna Erdem, "Iraq Army Deserters Go North To Escape Mutilation," Reuters World Service, October 31, 1994.

In February 1994, Special Rapporteur Van der Stoel issued a report on human rights in Iraq in which he criticized the lack of due process guarantees, including an independent judiciary. He reported that "as a matter of both law and policy, the judiciary is wholly subservient to and dependent upon an unaccountable executive in the institutions of the Revolution[ary] Command Council and the President of the Republic."<sup>8</sup> He cited several examples of interference by the executive branch in judicial functions, including three separate decrees suspending "legal proceedings against persons accused of major offences (including murder) and order[ing] their release without giving any specific reasons."<sup>9</sup> The International Commission of Jurists stated, "The overwhelming majority of these administrative decrees, which even frequently contradict the principles contained in the Iraqi Constitution itself, in effect erode the notion of the Rule of Law."<sup>10</sup>

Special Rapporteur Van der Stoel was also extremely critical of special and emergency courts. According to his report, these "tribunals usually consist of military officers or civil servants with no legal training; the trials are normally conducted *in camera*, rather than in open court, and the defendants are not permitted free and unsupervised contacts with their lawyers."<sup>11</sup> A fair trial requires access to counsel of one's own choosing and ample facilities to make the service of counsel effective.<sup>12</sup> Human Rights Watch maintains that special and emergency courts are a violation of due process in any and all circumstances, because they violate the independence and impartiality of the court, which is the most basic due process requirement.

Human Rights Watch/Middle East finds the procedural safeguards wholly inadequate and, therefore, violative of human rights. Human Rights Watch/Middle East has obtained records of trials from two criminal cases involving theft, but has no evidence that any trials for those individuals punished for desertion or draft-dodging have taken place. For example, ear amputations were conducted at Baghdad's Adnan Kheirallah Hospital one day after the statute's enactment, which suggests that either there were no trials or trials were held in extreme haste. Furthermore, international law requires that any criminal sentence be subject to judicial review by a higher court.<sup>13</sup> Even the best legal systems that promote the rule of law inevitably make mistakes, but the Iraqi judiciary—riddled with institutional flaws—provides few legitimate procedural safeguards. Amputation, branding and death are inherently irreversible; mistakes which inevitably occur given the lack of due process, cannot be remedied.

## AMPUTATION

Amputation, never before featured in Iraqi law, is now the penalty for robbery, desertion, and corruption.

### The Decrees

On June 4, 1994, the RCC issued Decree Number 59 introducing amputation as a punishment for robbery or theft. First-time offenders convicted of stealing cars and other property valued over 5,000 dinars (approximately \$15 on

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<sup>8</sup> Commission on Human Rights, "Report on the situation of human rights in Iraq, submitted by Mr. Max van der Stoel, Special Rapporteur of the Commission on the Human Rights, in accordance with Commission resolution 1993/74" (Geneva: United Nations 1994), E/CN.4/1994/58, p. 16.

<sup>9</sup> *Ibid.*

<sup>10</sup> International Commission of Jurists, *Iraq and the Rule of Law*, p. 9.

<sup>11</sup> E/CN.4/1994/58, p. 17.

<sup>12</sup> ICCPR, Art. 14(3)(b,d).

<sup>13</sup> *Ibid.*, Art. 14(5).

the open market) are punished by having their right hand amputated. Under Decree Number 59, a second conviction for theft may result in the amputation of the left foot.<sup>14</sup>

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<sup>14</sup> Republic of Iraq Radio, Foreign Broadcast Information Service (FBIS), Near East and South Asia, June 7, 1994.

Soon afterwards, Iraq added corruption and currency speculation to the list of crimes to be punished by amputation. On July 21, 1994, the RCC issued Decree Number 92, which states: "Whoever forges an official document, whereby this forgery leads to gaining an illegal benefit for himself or preventing others from enjoying their rights, shall be punished by life imprisonment or amputation of the right hand."<sup>15</sup>

Appealing to Koranic language and Islamic law, President Hussein proclaimed: "Unauthorized money-changers, farmers who hoard grain and trading speculators 'should be considered as thieves' and have their hands chopped off if caught."<sup>16</sup> Decree Number 74 authorized the state to take several actions against moneychangers. The most significant is the "amputation of the right hand from the wrist and amputation of the left foot from the joint in the case of repetition."<sup>17</sup> If a moneychanger's acts constitute "an act of sabotage against the national economy, which is extremely harmful to the public interest, they [government officials] may refer the accused to the competent court so it can take the measures against him according to the law."<sup>18</sup> In addition to imposing a punishment that clearly violates international human rights laws against torture and cruel punishment, this decree's language is overbroad and ambiguous, permitting the government to take action against almost any moneychanger.

Since the end of the Iran-Iraq war and through the Gulf War, Iraqi troops have become increasingly discontented. Currently, a soldier's salary is insufficient to cover his basic expenses, and army units often lack enough food to feed their troops.<sup>19</sup> As a result, desertion and absenteeism had become chronic problems, which the government hoped to resolve by imposing extreme penalties, including amputation.<sup>20</sup>

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<sup>15</sup> *Al-Thawrah*, Foreign Broadcast Information Service (FBIS), Near East and South Asia, August 2, 1994.

<sup>16</sup> "Unauthorized moneychangers should have hands cut off: Saddam Hussein," Agence France Presse, June 13, 1994.

<sup>17</sup> *Al-Thawrah*, Foreign Broadcast Information Service (FBIS), Near East and South Asia, July 8, 1994. In September, the RCC amended Decree Number 74 with Decree Number 125. See also *Al-Thawrah*, Foreign Broadcast Information Service (FBIS), Near East and South Asia, September 7, 1994.

<sup>18</sup> *Al-Thawrah*, Foreign Broadcast Information Service (FBIS), Near East and South Asia, July 8, 1994.

<sup>19</sup> Human Rights Watch/Middle East interview with Ghanim Jawad, head of the human rights office at the Iraqi National Congress, London, January 26, 1995.

<sup>20</sup> In June, the RCC issued Decree Number 69 amending a previous decree that made desertion and absenteeism "crimes against honor [which] the court shall so note in the verdict." *Babil*, Foreign Broadcast Information Service (FBIS), Near East and South Asia, June 30, 1994. See also Republic of Iraq Radio, BBC Summary of World Broadcasts, Near East and South Asia, September 13, 1994.

Initially, the government decreed that the punishment for desertion would be the amputation of the hand, but war veterans protested, pointing out that veterans who lost limbs during military service could be mistaken for deserters. Conceding to the veterans' protests, the government instituted branding of the forehead in order to set criminals apart. As a further concession, the government decided to amputate the deserter's ear instead of his hand. Decree Number 115, issued on August 25, 1994, established "that the outer ear will be cut off of anyone found in the criminal act of shirking or deserting military service, or anyone providing shelter for the shirker or deserter, and that the other ear will be cut off of those who commit these crimes again."<sup>21</sup> Emergency forces conduct raids to arrest deserters, after which they are sent to special detention camps where the mutilations often take place.<sup>22</sup>

Decree Number 115 is vague as to how much of the ear doctors should amputate. Many doctors have taken advantage of this ambiguity and have cut off as little as possible. Some doctors have surgically reattached ears and disguised the brandings on foreheads.<sup>23</sup> Determined to thwart these humanitarian efforts, the RCC issued Decree Number 117 on August 25, making it illegal for doctors to perform plastic or corrective surgery on victims in order to ameliorate the amputation or branding.<sup>24</sup>

### Cases

Reliable information about the human rights situation in Iraq is extremely difficult to obtain, since the government does not allow national human rights groups to operate in Iraq and refuses to permit access to outside human rights monitors. While these restrictions have hampered the collection of detailed information, the existence of the decrees and their implementation have never been disputed. The Government of Iraq has not only published the decrees and acknowledged that these punishments are occurring, it has publicized them in the state-controlled media in an apparent attempt to instill fear and send warnings. An article in the state-run newspaper *Al-Thawrah* reported that two soldiers' ears were cut off and their foreheads branded for desertion in early September.<sup>25</sup> On September 7, 1994, the state-run newspaper *Al-Jumhuriyah* reported that a man's hand was amputated in the Babil Governorate after he was convicted of robbing a house.<sup>26</sup>

In November 1994, Ambassador Hamdoon told Human Rights Watch/Middle East that several hundred persons had been subjected to amputations and brandings. He also stated that the Iraqi government maintains that amputating ears and branding foreheads of deserters is more humane than the previous policy of executing them.<sup>27</sup>

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<sup>21</sup> *Al-Jumhuriyah*, Foreign Broadcast Information Service (FBIS), Near East and South Asia, September 16, 1994. For a translated copy of the official decree, see Secretary-General, "Human Rights Questions: Human Rights Situations and Reports of Special Rapporteurs and Representatives," (New York: United Nations, 1994) A/49/651, p. 32.

<sup>22</sup> Iraqi National Congress, Information Brief, "Wide Searching Raid in al-Mosul."

<sup>23</sup> Ayad Rahim, "An Iraqi Brand of Punishment," *The Guardian* (London), November 5, 1994, p. 16.

<sup>24</sup> A/49/651, p. 33.

<sup>25</sup> *Al-Thawrah*, Foreign Broadcast Information Service (FBIS), Near East and South Asia, September 14, 1994.

<sup>26</sup> *Al-Jumhuriyah*, Foreign Broadcast Information Service (FBIS) Near East and South Asia, September 14, 1994.

<sup>27</sup> On March 1, 1988, the RCC issued Decree Number 10 which stated, "The death sentence shall be carried out by the Party organization, after that examination, on every deserter or draft dodger who is captured if the duration of his desertion or draft evasion exceeds one year or if he has committed the crime of desertion more than once." Human Rights Watch/Middle East, *Bureaucracy of Repression: The Iraqi Government in Its Own Words* (New York: Human Rights Watch, 1994), p. 89. Nevertheless, the Iraqi government did not execute all of these

Listed below are five cases from a variety of different sources illustrating Iraq's use of amputation.

- In June 1994, Aziz Sa'd Dahash and Nadir Ali Fulayyih were convicted of stealing carpets from the Bahriz al-Kabir mosque northeast of Baghdad on January 20, 1994 and sentenced by the criminal court in Diyala to have their hands amputated.<sup>28</sup> According to Amnesty International, the amputations were carried out in July.<sup>29</sup>
- Hassan Abdul Allah Hassan discussed the details surrounding his ear amputation in an interview with the Iraqi Broadcast Corporation. According to Hassan, the Iraqi authorities imprisoned him and other deserters in a cramped hall that was too small to hold all of them. As they waited for the procedure, some persons went insane, others committed suicide. Hassan received anesthesia before a doctor performed the ear amputation. Afterwards, his wound began to bleed profusely, but the doctor did not give him any medicine to control or stop the bleeding. When all the amputations had been performed the victims were returned to prison. During the interview, Mr. Hassan removed his hat to show that the fleshy top portion of the ear had been cut in a forty-five-degree angle.<sup>30</sup>
- A physician who worked in a Baghdad military hospital before fleeing to Iraqi Kurdistan in October 1994, estimated that 1,700 amputations had been performed for desertion between August and mid-September 1994.<sup>31</sup> This doctor reported that the procedures were often performed without anesthesia and that the risk of infection was very high because of the poor hygienic conditions.<sup>32</sup>
- An Iraqi soldier arrested with five others and taken from Kirkuk to Mosul told the Iraqi National Congress the group spent five days in a prison where they were beaten and tortured before being taken to a hospital where he was tied to the bed and given anesthesia before the doctors amputated his ear. According to this man, the amount of anesthesia an individual receives varies inversely to the amount of trouble that the person caused the government. Therefore, a person who escaped more often and remained absent for longer periods received less anesthesia.<sup>33</sup>
- On October 8, 1994, a number of persons in Baghdad had their ears amputated for desertion, including Ali Hussein Lefta Ashoov, Tariq Audah, and Mohammed Hassaballah.<sup>34</sup>

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<sup>28</sup> Republic of Iraq Radio, Foreign Broadcast Information Service (FBIS), Near East and South Asia, June 23, 1994.

<sup>29</sup> Amnesty International, Urgent Action Letter, UA 319/94, September 1, 1994.

<sup>30</sup> Iraqi Broadcasting Corporation television interview from Salahaddin in Iraqi Kurdistan.

<sup>31</sup> Amberin Zaman, "Iraqi Deserters Defy Surgeon's Saw," *Daily Telegraph* (London), November 1, 1994, p. 21. See also Iraqi National Congress, Information Brief, "An Increase in Group Deserters."

<sup>32</sup> Zaman, "Iraqi Deserters Defy Surgeon's Saw," *Daily Telegraph*. Reports of poor medical conditions are confirmed by Special Rapporteur Van der Stoep's report: "the conditions are also said to be poor and the risks of infection high; doctors are prohibited from providing follow-up care." A/49/651, p. 18. See also Erdem, "Iraq Army Deserters Go North To Escape Mutilation," Reuters World Service; Iraqi National Congress, Information Brief, "An Increase in Group Deserters."

<sup>33</sup> Iraqi National Congress, Information Brief, "The First Picture of An Iraqi Soldier Whose Ear Was Cut."

<sup>34</sup> Iraqi National Congress, Information Brief, "Report on the Mutilation of Limbs by the Iraqi Regime."

Although it is difficult to estimate the total number of persons who have suffered, Iraq has implemented these penalties throughout the country. Agence France Presse reported in September 1994 that at least 780 soldiers allegedly had their earlobes amputated and their foreheads branded as a punishment for desertion and draft-dodging.<sup>35</sup> On August 24, 1994, Mohammad Hassan and Salam al-Elebawi were among several victims whose ears were amputated in the southern city of Amarah.<sup>36</sup> On August 26, 1994, twelve individuals suffered amputation of their ears at the Adnan Kheirallah Hospital in Baghdad.<sup>37</sup>

The government maintains that the economic sanctions have forced Iraq to ration medical supplies and require victims to pay for anesthesia, when it is available, before amputating their limbs. A number of people have died following amputations.

- Max Van der Stoel, special rapporteur on Iraq for the U.N. Commission on Human Rights, reported that in southern Iraq two men, "Hassan Ali Kadhim and Khaz'al Abid Mansour, both of the city of Nasiriya, died after 10 days of head and chest inflammation that followed the amputation of their ears," and a man from the northern city of Mosul died from severe blood loss after the amputation.<sup>38</sup>
- In October, British Member of Parliament Emma Nicholson returned from Iraq's southern marsh region and reported that at least one person bled to death immediately as a result of an ear amputation, because he suffered from hemophilia.<sup>39</sup> Other persons developed infections after the procedure and became ill or died, due in part to lack of medication.<sup>40</sup>

In addition to these fatalities, some victims committed suicide after suffering amputations. One man allegedly committed suicide outside the hospital in Mosul after his ear was amputated. A group of ten soldiers incarcerated at Mansoryat al-Jabal prison in Diyala Governorate reportedly committed suicide after their ears were amputated and foreheads branded. Their wounds had become infected, and they could not obtain medical care.<sup>41</sup>

Amputations and branding, by requiring the participation of a physician, have created a serious ethical dilemma for Iraq's medical community. Reports indicate that many Iraqi doctors refuse to perform amputations in spite of government warnings to comply. The government threatened to imprison doctors who planned to protest against the use of amputation and branding. Doctors in Baghdad, Kirkuk, and Basra, and elsewhere have been arrested for refusing to perform the amputations.<sup>42</sup>

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<sup>35</sup> Agence France Presse, Foreign Broadcast Information Service (FBIS), Near East and South Asia, September 20, 1994. *See also* A/49/651, p. 34.

<sup>36</sup> Iraqi National Congress, Information Brief, "Ear Amputations."

<sup>37</sup> Iraqi National Congress, Information Brief, "The Regime Continues to Cut Ears and Threaten Doctors."

<sup>38</sup> A/49/651, pp. 17-18; Iraqi National Congress, Information Brief, "Ear Amputations."

<sup>39</sup> Emma Nicholson, "Baghdad drives Shia Muslims into arid exile," *The Times* (London), October 14, 1994.

<sup>40</sup> *Ibid.* The special rapporteur confirmed reports of deaths in southern Iraq after ear amputations: "Some victims were said to have died because of infections, while some others were said to have committed suicide." A/49/651, p. 18.

<sup>41</sup> Iraqi National Congress, Information Brief, "Soldiers' Group Suicide."

<sup>42</sup> Iraqi National Congress, Information Brief, "Execution of Doctors."

- "Two well-known Baghdad doctors, Abbas Qalander and Hahreen Yousif [of the Baghdad Health Department], disobeyed the order and were detained."<sup>43</sup>

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<sup>43</sup> Rahim, "An Iraqi Brand of Punishment," *The Guardian*; Iraqi National Congress, Information Brief, "The Regime Continues to Cut Ears and Threaten Doctors."

- In December 1994, local authorities arrested Dr. Rabih Abdul Haddi, Dr. Yahya Rejab al- Khafaji and Dr. Issam from the southern town of al-Nasiriyah, as well as sixty medical students from Basra, for their stance against amputation.<sup>44</sup>
- Amnesty International reports that nine doctors were arrested after they refused to perform amputations.<sup>45</sup>
- In September 1994 in Baghdad, Dr. Amjad al-Timimy and Dr. Hatim Abdul Waheed of al-Kadimia Hospital and Dr. Sami Hashim al-Jawmaly of Ali Hospital were arrested for performing cosmetic surgery on amputation victims.<sup>46</sup>

A journalist reporting from northern Iraq stated that some doctors had even been executed for refusing to perform amputations.<sup>47</sup> Other reports indicate that a doctor in Nasiriyah at Saddam Hospital and the director of al-Basra Military Hospital were executed for refusing to perform the procedures.<sup>48</sup>

Protest has spread beyond doctors, however. According to the *The Times*, riots broke out in the southern city of Amarah on September 12, 1994 when a crowd gathered to protest the new punishments. An angry mob attacked several Ba'ath Party officials and cut off their ears.<sup>49</sup>

### **Violations of International Human Rights Law**

The punitive use of amputation violates human rights law prohibiting torture and cruel punishment. Iraq acceded to the International Covenant on Civil and Political Rights (ICCPR) in January 1971. Article 7 of the covenant states: "No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment."<sup>50</sup>

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<sup>44</sup> Iraqi National Congress, Information Brief, "Report on the Mutilation of Limbs by the Iraqi Regime."

<sup>45</sup> Amnesty International, Medical Concern, *Amputation and Branding Detention of Health Professionals*, MDE 14/13/94, October 20, 1994.

<sup>46</sup> Iraqi National Congress, Information Brief, "Report on the Mutilation of Limbs by the Iraqi Regime."

<sup>47</sup> Erdem, "Iraq Army Deserters Go North To Escape Mutilation," Reuters World Service.

<sup>48</sup> Iraqi National Congress, Information Brief, "Execution of Doctors."

<sup>49</sup> Theodoulou, "Iraq Riot Mob Cuts Officials' Ears Off," *The Times*.

<sup>50</sup> ICCPR, art. 7. *See also* Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 3452, 30 GAOR Supp. 34, U.N. Doc. A/10034, p. 91 (1975); Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Annex G.A. Res. 46 (XXXIX 1984). Although Iraq is not a party to the torture convention, it is significant in that it provides another example how the protections under the convention have become part of customary international law.

The U.N. General Assembly has defined torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed."<sup>51</sup> With General Assembly Resolution 3452, international legal scholar Robert Lillich maintains, "The United Nations not only condemned but for the first time authoritatively defined both 'torture' and 'cruel, inhuman or degrading treatment or punishment.' Thus it would be difficult today to contend that torture, at the very least, does not constitute a violation of customary international law."<sup>52</sup>

This extends the definition of torture to include acts such as amputation, because it is an act that causes severe pain and is inflicted by a government official with the intent to punish. The disfigurement it inflicts is a violation of physical integrity, as well as becoming a source of mental suffering inasmuch as the victims are permanently stigmatized in society. These penalties, therefore, constitute torture under the General Assembly's definition. Reports that some amputation victims have committed suicide underscore the severe and long-term cruelty of the punishment. Since some of the crimes that result in branding or amputation are relatively minor offenses, these penalties are also grossly disproportionate in relation to the crime.

The ICCPR permits states to derogate from their obligations under the covenant during "time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed."<sup>53</sup> Ambassador Hamdoun's arguments, however, that are intended to justify the decrees as a necessary step to deal with criminal activity allegedly resulting from U.N. economic sanctions fail on several grounds. First, a country cannot legitimately characterize a rise in crime as a threat to "the life of the nation." Moreover, any punishment established under emergency measures cannot, according to the ICCPR, be such that its effect lasts beyond the end of the emergency. Amputating a person's hand will invariably outlast the situation that the punishment is ostensibly designed to address. More important, while Article 4 of the ICCPR allows derogation from some obligations, it does not, under any circumstances, permit derogation of Article 6 regarding torture or cruel punishment.

According to reports from Republic of Iraq Radio in Baghdad, in June 1994, the criminal court passed the hand-amputation sentence on two men accused of stealing carpets from a mosque in January 1994, almost five months before the enactment of Decree Number 59 (see above). The ICCPR emphatically prohibits such retroactive punishment: under Article 15(1), "No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed."<sup>54</sup>

Special Rapporteur Van der Stoep reported that several hundred persons had been punished retroactively under the decrees for desertion and draft-dodging.<sup>55</sup> The Iraqi government enacted Decree Number 115 establishing ear amputations for desertion on August 25, 1994. On the very next day at Adnan Kheirallah Hospital, twelve persons had their ears amputated, although their act of desertion occurred before the enactment of the penalty.

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<sup>51</sup> Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 3452, 30 GAOR Supp. 34, UN Doc. A/10034 at 91 (1975).

<sup>52</sup> Robert Lillich, "Civil Rights," in Theodor Meron, ed., *Human Rights In International Law: Legal and Policy Issues* (Oxford: Clarendon Press, 1985), p. 127.

<sup>53</sup> ICCPR, Art. 4.

<sup>54</sup> ICCPR, Art. 15(1). The exception contemplated in Article 15(2) states that a new law must be applied to previously committed offenses only when the new penalty is a lesser punishment.

<sup>55</sup> A/49/651, p. 18.

Doctors, who have performed these procedures, also violated human rights standards. In 1982, the United Nations General Assembly adopted Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>56</sup> The document states, "It is a gross contravention of medical ethics, . . . for health personnel, particularly physicians, to engage actively or passively, in acts which constitute participation in, complicity in, incitement to or attempts to commit torture or other cruel, inhuman or degrading treatment or punishment."<sup>57</sup> In 1975, the World Medical Association issued a statement which declared that a "doctor shall not countenance, condone or participate in the practice of torture or other forms of cruel, inhuman or degrading procedures, whatever the offense of which the victim of such procedures is suspected, accused or guilty."<sup>58</sup> Special Rapporteur Van der Stoep reports that the Iraqi government enacted Decree Number 117 in order to coerce doctors to perform the amputations and brandings. Military doctors have the added burden of being subjected to military orders and discipline.<sup>59</sup>

## BRANDING

Branding was added to the new decrees as an accompanying punishment with the purpose of marking the victims as convicted criminals.<sup>60</sup>

### The Decrees

The government first introduced branding as an additional punishment to amputation on August 18, 1994, with Decree Number 109, which stated, "Every person legally punished by amputation of the hand for a crime punishable by amputation of the hand shall be tattooed with a cross between the eyebrows. Each intersecting line of the cross shall be 1 centimetre in length and 1 millimetre thick."<sup>61</sup> The law requires that this procedure be done at the same general hospital where the amputation takes place and that the hospital "prepare the technical and medical requirements to facilitate the performance of the tattooing procedure."<sup>62</sup>

Decree Number 115 requires that a person whose ear is amputated for desertion will also have his forehead branded with a line of three to five centimeters.<sup>63</sup>

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<sup>56</sup> UNGA Resolution 37/194 Dec. 18, 1982.

<sup>57</sup> UNGA Res. 37/194, Principle 2.

<sup>58</sup> Declaration of Tokyo of the World Medical Association, ¶ 1 republished in British Medical Association, *Medicine Betrayed* (1992), pp. 210-11. See generally Amnesty International, Medical Concern, *Amputation and Branding Detention of Health Professionals*, MDE 14/13/94, Oct. 20, 1994.

<sup>59</sup> A/49/651, p. 18.

<sup>60</sup> In its decrees and official newspapers, the Iraqi government uses the Arabic word *wasam* to describe the procedure. This word is often incorrectly translated into English as "tattoo," defined as an "act or practice of marking the skin with indelible patterns, pictures, legends, etc. by making punctures in it and inserting pigments." Jess Stein, ed., *The Random House Dictionary of the English Language* (New York: Random House, 1983), p. 1456. Brand is defined as "a mark formerly put upon criminals with a hot iron." Ibid, p. 179. The procedure performed by the Iraqi government sears a mark into the flesh with a hot instrument. Therefore, "brand", the accurate translation, is used instead of "tattoo." See also A/49/651, pp. 18-19.

<sup>61</sup> A/49/651, p. 31. See also *Al-Thawrah*, Foreign Broadcast Information Service (FBIS), Near East and South Asia, September 8, 1994.

<sup>62</sup> A/49/651, p. 31. *Al-Thawrah*, FBIS, September 8, 1994.

<sup>63</sup> *Al-Jumhuriyah*, Foreign Broadcast Information Service (FBIS), Near East and South Asia, September 16,



In reaction to measures taken to remove brands or minimize their mark, Decree Number 117, issued on August 25, 1994, makes it illegal "to remove the tattoo [brand] placed as a result of the commission of a crime punishable by amputation of the hand or the ear. Anyone who removes, or helps to remove, the tattoo or carries out cosmetic surgery of the amputated hand or ear shall be punished by amputation of the hand or the ear, together with a tattoo, as appropriate."<sup>64</sup>

## Cases

Human Rights Watch/Middle East believes large numbers of people have suffered brandings. Iraqi authorities and state-run media have been just as candid about using branding as a method of punishment as they have been regarding amputation.

- Ali Ubaid Abed Ali from Diyala Governorate had his right hand amputated and his forehead branded for stealing a television and money.<sup>65</sup> An Iraqi television broadcast showed pictures of him under anesthesia in the hospital just after the operations. The images showed his branded forehead and his arm in a bandage.<sup>66</sup> The newscaster commenting on Mr. Ali's condition said "his case should be 'a lesson to all who might think of violating the rights of others.'"<sup>67</sup>
- Mussa Inad, an Iraqi soldier, suffered a branding on his forehead for desertion. After escaping to Kuwait, he reported that "Iraqi intelligence officers tortured him by tearing a hole in his ear."<sup>68</sup>
- A man convicted of stealing from a factory and another convicted separately for auto theft were sentenced to have their hands amputated and their foreheads branded. Amnesty International stated it had unconfirmed reports that this sentence was carried out.<sup>69</sup>

## Violations of International Human Rights Law

As with amputation, branding constitutes torture and cruel and inhuman punishment. Branding is the searing of the flesh with a hot metal instrument, an intentional state action causing torture and cruel punishment. A scarred mark on the forehead stigmatizes the victim, adding long-term psychological abuse to physical suffering. Moreover, despite the economic sanctions and a rise in crime, Iraq cannot derogate from its obligations under Article 6 of the ICCPR. Therefore, this punishment of branding violates Iraq's international obligations to uphold and protect its citizens' human rights.

## DEATH PENALTY

### The Decrees

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<sup>64</sup> A/49/651, p. 33.

<sup>65</sup> *Al-Thawrah*, FBIS, September 14, 1994. See also Amnesty International, Urgent Action Letter, October 6, 1994, MDE 14/12/94.

<sup>66</sup> Amnesty International, Urgent Action Letter, Oct. 6, 1994, MDE 14/12/94.

<sup>67</sup> Rahim, "An Iraqi Brand of Punishment," *The Guardian*.

<sup>68</sup> "Iraqi Soldier Under Death Sentence Flees To Kuwait," Agence France Presse, February 13, 1995.

<sup>69</sup> Amnesty International, Urgent Action Appeal Letter, September 1, 1994, UA 319/94, MDE 14/5/94.

In Decree Number 59, referred to above, the RCC ruled, "The penalty shall be execution instead of amputation if the robbery crime is committed by a person carrying a visible or a hidden weapon or if the crime results in the death of a person."<sup>70</sup> On August 25, 1994, the RCC issued Decree Number 114, which amended this clause to extend the death penalty not just to those offenses committed while carrying weapons, but to any theft perpetrated by an individual "affiliated with the Armed Forces, the Security Forces, or a state employee."<sup>71</sup> The death penalty, however, can be commuted to life in prison if the court finds that the circumstances warrant such mercy.

In July 1994, the RCC issued decrees, including some to be enforced with the death penalty, aimed at curbing corruption among government officials. Decree Number 91 established heightened penalties for any "state worker or Armed Forces member using his post to deliberately commit or take part in committing a crime." Thus, for crimes which an ordinary civilian would receive fifteen years' imprisonment, a person in these categories would receive life imprisonment. The decree, however, calls for the death penalty be administered "if the perpetrator is an employee of the Internal Security Forces or the Special Security Organ."<sup>72</sup>

The new laws also have targeted smugglers of Iraqi antiquities. In July, Iraqi radio reported that the RCC decreed, "The punishment shall be ... life imprisonment or the death penalty against he who is actually convicted of smuggling archaeological findings [*sic*] that contribute to seriously affecting the national economy."<sup>73</sup> This decree was issued immediately prior to the Iraqi government condemnation of the auction sale of an Assyrian antiquity.<sup>74</sup> Human Rights Watch/Middle East does not know whether anyone has been sentenced under this decree.

On August 27, 1994, the RCC issued Decree Number 118, which established the death penalty for organizing prostitution. "Anyone found organizing a group for the purposes of solicitation ... is punishable by execution."<sup>75</sup> Human Rights Watch/Middle East does not know whether anyone has been sentenced under this decree.

Under Decree Number 115, persons convicted three times of deserting or providing assistance to deserters will be executed.<sup>76</sup>

#### Cases

- The government-controlled newspaper *Al-Jumhuriyah* announced that a "specialised court of the ministry of interior has sentenced criminals Hussein Jassim, Ali Fakhri and Qassim Jawad to death by hanging" for car theft.<sup>77</sup>

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<sup>70</sup> Republic of Iraq Radio, FBIS, June 7, 1994.

<sup>71</sup> *Al-Qadisiyah*, Foreign Broadcast Information Service (FBIS), Near East and South Asia, September 7, 1994. See also Iraqi National Congress, Information Brief, "Death Penalty Instead of Hand Amputation For Those Who Commit Theft."

<sup>72</sup> *Al-Iraq*, Foreign Broadcast Information Service (FBIS), Near East and South Asia, August 2, 1994.

<sup>73</sup> Iraq News Agency, Foreign Broadcast Information Service (FBIS), Near East and South Asia, July 7, 1994.

<sup>74</sup> Iraq News Agency, BBC Summary of World Broadcasts, July 9, 1994.

<sup>75</sup> *Al-Thawrah*, Foreign Broadcast Information Service (FBIS), Near East and South Asia, September 16, 1994.

<sup>76</sup> *Al-Jumhuriyah*, Foreign Broadcast Information Service (FBIS), Near East and South Asia, September 16, 1994. For a translated copy of the official decree, see A/49/651, p. 32.

<sup>77</sup> "Iraqi Court Sentences Car Thieves To Death," Reuters News Service, March 5, 1995.

- *Al-Jumhuriyah* reported that eight persons—Tijani Hussein, Haydar Falaki, Hamad al-Sheikh, Ahmad Mohammed, Sharif Aziz, Hassan Mahmoud, Suad Abdullah and Azad Bakr—were sentenced to death by a ministry of interior specialized court for stealing two trucks, "raising to 13 the number of criminals sentenced to die in less than one month."<sup>78</sup>
- Special Rapporteur Van der Stoel reported that military doctors who refused to perform amputations and brandings on draft-dodgers and deserters were subject to possible imprisonment and execution.<sup>79</sup>

### Violations of International Human Rights Law

The enactment of the death penalty for so many nonviolent offenses violates Article 6 of the International Covenant on Civil and Political Rights requiring countries implementing the death penalty do so only for the most serious offenses. In these decrees, Iraq established the death penalty for desertion and draft-dodging, smuggling antiquities and organizing prostitution. Human Rights Watch opposes the use of the death penalty in all circumstances.

This increased use of the death penalty for nonviolent crimes and crimes not previously punished by death, not only violates the principle that the implementation of the death penalty should be restricted to the most serious offenses (crimes that involve physical violence leading to fatalities), but eviscerates "the inherent right to life" that the covenant affords to everyone.<sup>80</sup>

Such proliferation of capital punishment offenses violates United Nations General Assembly Resolution 32/61, which states that "the main objective to be pursued in the field of capital punishment is that of progressively reducing the number of offenses for which the death penalty may be imposed, with a view to the desirability of abolishing this punishment."<sup>81</sup> Although this resolution is non-binding, it illustrates a trend in the international community toward limiting the death penalty. The ICCPR emphasizes this trend by declaring "nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party."<sup>82</sup>

While it is understandable that Iraq wishes to preserve its cultural heritage, the death penalty is extremely severe for smuggling antiquities and therefore constitutes a cruel and inhuman punishment. Similarly, the use of the death penalty to combat organized prostitution creates a situation in which the severity of the punishment greatly exceeds the severity of the crime.<sup>83</sup> Article 4 of the ICCPR does not, under any circumstances, permit derogation of Article 6 regarding the death penalty. Moreover, Iraq offers no evidence that the punishments have been effective in reducing crime, the purpose of their imposition.

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<sup>78</sup> "Iraq Sentences Eight Car Thieves To Death," Reuters World Service, March 7, 1995.

<sup>79</sup> A/49/651, p. 18.

<sup>80</sup> ICCPR Art. 6

<sup>81</sup> UNGA Resolution 32/61 Dec. 8, 1977.

<sup>82</sup> ICCPR Art. 6(6). *See also* Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty, A/Res/44/128, July 11, 1991. Iraq is not a party to this Optional Protocol but it still provides further evidence of this trend.

<sup>83</sup> Islamic scholars disagree regarding the appropriate punishment for crimes, involving illicit sexual relations, including prostitution. *See* Mohamed S. El-Awa, *Punishment in Islamic Law: A Comparative Study* (Indianapolis: American Trust Publications, 1982), pp. 13-15, 108-09. *See also* Amnesty International, *Tears of Orphans*, pp. 39, 43.

Iraq has a history of using special courts to address political opposition. Although it has abolished both the State Security Court and the Revolutionary Court, the government still establishes special provisional courts to hear certain political offenses.<sup>84</sup> For example, before it was abolished in 1991, the Revolutionary Court conducted trials *in camera*, and defendants had very restricted access to their attorneys. The decisions were final and could not be appealed. Sentences were carried out immediately, except death sentences which required presidential approval.<sup>85</sup> As stated above, Human Rights Watch objects to the use of special or military courts for all crimes.

When capital punishment is imposed for offenses deemed to have a political nature, the government has determined that the jurisdiction for such crimes is in the temporary special courts or the military courts. These courts operate *in camera* without legal safeguards such as the right to legal representation. The decisions are binding and afford no judicial review, with the exception of a direct appeal for review by President Hussein.<sup>86</sup> Article 14 of the ICCPR forbids these practices as a denial of fundamental rights. In addition, since the decrees describe the offenses, such as smuggling or currency speculation, in terms of sabotage against the national economy or harm to the public interest, these cases receive only limited review. In situations when the death penalty is administered, individuals are executed without any serious review of their cases. Although capital punishment sentences are often immediately referred to the Court of Cassation, the highest appellate court, most of the death sentences are still carried out.<sup>87</sup>

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*Iraq's Brutal Decrees* was researched and written by Brian Owsley, the 1994/95 Leonard Sandler Fellow for Human Rights Watch.

#### *Human Rights Watch/Middle East*

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Ann S. Johnson is the development director; Gara LaMarche is the associate director; Juan E. Méndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Middle East division was established in 1989 to monitor and promote the observance of internationally recognized human rights in the Middle East and North Africa. Christopher George is the executive director; Eric Goldstein is the research director; Aziz Abu Hamad and Virginia N. Sherry are associate directors; Awali Samara is the associate; Brian Owsley is the Leonard Sandler Fellow. Gary Sick is the chair of the advisory committee and Lisa Anderson and Bruce Rabb are vice chairs.

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<sup>84</sup> International Commission of Jurists, *Iraq and the Rule of Law*, pp. 113-14.

<sup>85</sup> *Ibid*, p. 112.

<sup>86</sup> Middle East Watch, *Human Rights in Iraq* (New Haven: Yale Press, 1990), p. 25.

<sup>87</sup> *See* International Commission of Jurists, *Iraq and the Rule of Law*, p. 114.