

The Ninth Session of the Universal Periodic Review

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Report of
**Organization for Justice and Democracy in Iraq
(OJDI)**

With the participation of
**The International Organization for the Elimination of All Forms of
Racial Discrimination (EAFORD)**
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And

Arab Lawyers Union (ALU)

THE UNITED STATE OF AMERICA

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UNITED STATES

Report of The Organization for Justice and Democracy in Iraq (OJDI), the International Organization for the Elimination of All Forms of Racial Discrimination (EAFORD), and Arab Lawyers Union (ALU),

Summary:

This report is submitted to the Office of the High Commissioner for Human Rights in the context of the universal periodic review on the United States. The report stresses the responsibility of the United States as the occupying power in Iraq to fulfill its obligations deriving from both Human rights law and Humanitarian Law, and to be held accountable for the violations of several provisions of Human rights law and Humanitarian Law regarding the right to life, the right to personal safety and liberty and the impunity that prevails in Iraq. The report addresses key issues such as abuse of detainees and widespread systematic torture. It sheds light on the situation of impunity from punishment which leads to fundamental violations of the rights of victims. The report concludes with several recommendations to the High Commissioner and the Human Rights Council and other related bodies.

This report should be examined according to the following two fundamental issues:

1. The Invasion of Iraq in 2003

Under International Law, the use of military force by states against other states is permissible only in self-defense or when authorized by the United Nations Security Council. Therefore, waging a war of aggression constitutes a war crime under International Law, it is the supreme international crime. In the case of Iraq, none of the above conditions were fulfilled when in 2003, the United States launched a war of aggression against the territorial integrity of the Republic of Iraq, one of the founder states to the United Nations. Acting clearly in violation of the United Nations Charter, the United States did not only invade the territory of Iraq and destroy most of its vital infrastructure, but it also dissolved violently all the political and administrative apparatus creating a vacuum in which sectarian and state backed organizations will profit. It should be clearly stressed that the United States, by launching an illegal war against Iraq in 2003 and occupying the country, bears full responsibility for the humanitarian consequences that followed that invasion until now.

2. Duty and Responsibility of the United States as the Occupying Power in Iraq

The US forces, as the occupying power under International Law, have obligations to protect the Iraqi population, to maintain public order and safety¹, and to provide food, medical care and facilitate relief assistance.² As occupying powers, the United States (and the United Kingdom) are bound by the rules of international law on belligerent occupation, which are set out in the 1907 Hague Regulations and the Fourth Geneva Convention of 1949. The International Humanitarian Law requires any occupying power to respect the provisions of the human rights treaties to which the county whose territory is occupied is a party, especially when, as in the case of Iraq, such

1 Article 43 of the Hague Regulation

2 Article 55 of the fourth Geneva Convention

treaties are formally incorporated in the occupied country's legal system. The Human Rights Committee and other bodies have also stressed the fact that the provisions of human rights law extend to any territory in which a state exercises jurisdiction, including territories occupied as a result of military action. Therefore, in administering Iraq, the USA must respect their own international human rights obligations in addition to those under international humanitarian law. We would like to stress the fact that the law on occupation still applies if new civilian authorities are set up by the occupying power, as long as the occupying forces are still present in that territory and exercise final control over the acts of the local authorities, as it is the case in Iraq from 2003 until now.

As occupying powers in Iraq, the United States has failed to provide to the Iraqi population the minimum standard of a decent life, water and electricity supply is still underdeveloped due to the corruption of the whole administration³ as it is the case for food, medical care and relief assistance. Moreover, as shown by recent events, it did not respect several obligations deriving from International Humanitarian Law and it has failed to hold accountable the perpetrators of war crimes.

- **The Right to Life**

Since the US invasion in 2003, the right to life has been subjected to gross violations in Iraq. Military operations, and what has been described as security plans carried out by US occupation forces with the participation of units of the Iraqi authorities, have led to systematic, deliberate and wide violations against the right to life of the Iraqi people. The result was that thousands were killed as a direct consequence of those operations. Moreover, security companies, which operated with the knowledge and acceptance of the Iraqi authorities, were involved in the killing of dozens without being subjected to investigation or accountability. The United States occupying forces have continued to grant immunity for their troops and the security companies, using the term "collateral damage" as a pretext for their protection and consolidating their "impunity" whenever it has involved the death of Iraqi civilians.

Thus, the right to life of every Iraqi, wherever he or she is, has become subject to grave and massive violations. It came as no surprise when the United Nations Office of the Coordination of Humanitarian Affairs in December 2007 described the situation as one of the most complex and violent in the world, characterized by grave violations of human rights and international humanitarian law. It added that "the right to life has become the main concern of the Iraqi civilians" as people were being killed by the Iraqi and occupying forces under the continuous excuse of "counter-terrorism." There is no doubt that terrorism is a gross violation of human rights, and there is no question regarding the direct responsibility of governments to combat and eradicate terrorism. But this responsibility does not justify in any way the violation of human rights under the pretext of combating terrorism. Unfortunately, the path taken by the war against terrorism has become an essential source of violation of dozens of rights, in a manner that undermines the human rights system as a whole.

Estimates vary on the number of Iraqis who lost their lives due to these operations and other acts of violence. The United States is criticized for, in addition to committing such crimes, its failure to record and document deaths. On the contrary, it has begun hunting for anyone who tries to talk about the death toll. It has prevented providing United Nations Assistance Mission for Iraq [UNAMI] statistics on the number of deaths on many occasions. In 2006, the British medical journal 'The Lancet' published a solid study that estimated the number of Iraqi deaths since the invasion in 2003 to be more than 650,000 people. In January 2008, Britain's Opinion Research Business (ORB), after conducting field surveys, announced that the number of Iraqis killed since

³ Iraq is the third most corrupted country in the world, according to Transparency International.

the 2003 invasion is around 1,030,000 people.

Examples drawn from official reports (in 2007 as an average for the last four years) show the extent of disrespect for people's right to life:

- The International Red Cross announced in August 2007, that the Institute of Forensic Medicine in Baghdad had received more than 10 thousands of unidentified bodies during the period between August 2006 and August 2007.
- UN mission [UNAMI] in its reports documented the following: During the year 2007, there were 1990 civilians killed in January, 1646 killed in February, 1872 in March, 1501 in April, 1949 in May, 1227 in June, 1653 in July, 1773 in August, 844 in September, 758 in October, 2000 in November, and 481 in December. These statistics are from official reports, which often attempt to minimize losses.

Other documented examples of violations of the right to life, from 2007 only, are as follows:

- On 4th November 2007, US occupation forces killed "Sheikh Ahmed Ghidan al-Dulaimi" and his family, which consisted of six members. They demolished their house in Kubaisa city, west of Ramadi city, during a bombardment of Bawi area in Madaen District.
 - On 23rd October 2007, a US helicopter launched a strike north of Baghdad that killed 16 people including 4 women and 8 children. The American occupation forces claimed that the raid was aimed at men planting roadside bombs.
- On 14th October 2007, US occupation forces committed a massacre in Lake Thar Thar region that claimed the lives of 34 Iraqi civilians, including six women and nine children.
- On 21st September 2007, US occupation forces shot dead a family of seven people north of Hilla, including women and children for allegedly belonging to a militia in the Alexandria area. The US forces booby-trapped the house and blew it up later. Followed were clashes between US troops and gunmen in the city that resulted in the deaths of 12 civilians.
- In August 2007, US occupation forces shelled a house in the city of Samarra while hunting for gunmen, killing a number of civilians, including five children and two women.
- In the same month, during the so-called "Operation Phantom Strike," claiming the eradication of terrorism and draining its resources, US soldiers committed a new massacre in Diyala after they bombed the house of "Thaer Salem Dawood al-Majmaei", killing 34 people during their sleep.
- On July 23rd 2007, US Marines opened fire on a civilian car carrying a family of five people, including three children, in the area of Mahmudiyah, south of Baghdad, resulting in the death of all its passengers, especially after denying ambulances access, claiming the car was booby trapped.
- On March 12th 2006, five United States army soldiers of the 502nd Infantry Regiment committed the Mahmudiyah killing and rape of a 14 years old girl, together with her six year old sister and her mother and father. The US soldiers told the Iraqi forces that the crime had been committed by sunni insurgent.⁴
- In July 2007, US occupation forces committed a terrible massacre in the Khatoon district in Diyala, as part of "Operation Penetrating Arrow", where US helicopters bombarded more than 20 houses and bringing them down on the heads of their inhabitants. The US move was apparently in retaliation for the fleeing of some men in the area who feared arbitrary arrest campaigns. The US strikes killed more than 350 civilians, mostly women and children.
- During the Fallujah offensive in November 2004, The United States conducted a military operation with the total knowledge of the Iraqi authorities against the city of Fallujah. The US army used internationally banned weapons such as depleted uranium and white phosphorus and used indiscriminate violence against civilians.⁵ Almost 80% of the city was destroyed.

4 A Soldier's Shame, Time Magazine, July 9 2006

5 Peter Popham, *US forces used chemical weapons during assault on city of Fallujah*, The Independent 8 November 2005

- **Disappearance:**

The policy of ambiguity followed by US occupation forces and the growing phenomenon of secret US prisons of America, which even international organizations have failed to locate, add to that the large number of Iraq's secret prisons, which one member of the current Iraqi parliament estimated to have exceeded 420 secret prisons, have led to a large number of reported and unreported cases of forced disappearances. Indeed, fear damages the lives of thousands of Iraqi families inside and outside Iraq. For years they have been searching for sons and relatives that had disappeared after being arrested by the United States or the Iraqi authorities while at home or in the workplace or in the market. But the United States and the current authorities refuse to recognize the existence of these detainees. This type of violation is a prominent feature in the lives of Iraqis, particularly in the years 2005-2007, where security or military units, acting always with US knowledge or support, would often come and arrest all youth in a certain area and then later deny that they have them in their hold. There are no accurate figures for those who disappeared but civil society organizations in Iraq assert that they are in the thousands.

The United States does not provide any mechanism in order for Iraqis to obtain information about disappeared relatives, and Iraqi authorities do not allow families of those who had disappeared to properly search for them. They often provide vague answers and try to stick the blame on gangs or terrorist organizations, even though it was their apparatus which made the arrests. The authorities also do not carry out thorough investigations or inquiries.

Meanwhile, the report issued by the International Red Cross during year 2009, notes that the number of missing in Iraq has reached one million people, based on government sources and reports. The report pointed to the breakdown of efforts for the search for those missing and investigating their fate due to the deteriorating security situation. The report criticized the policy of secrecy pursued by the occupation forces and that of the Iraqi government over the number of detainees and missing persons.

- **Ill-treatment and Abuse of Detainees:**

The situation of Iraqi detainees is so intolerable that it is difficult to even begin to describe. Arrests are made without warrants, detainees are not allowed access to counsel during interrogations, which are often conducted by the same units that made the arrests and could involve various forms of humiliation and torture. Only a few of them appear before a judge during the period of detention, which may last for years. The reported involvement of the security services in dozens of cases of murder as a result of torture continues. Despite the difficulty of determining actual figures, it can be argued that the torture-murder phenomenon is worsening day after day in the country. Hundreds of dead bodies are scattered around the country bearing signs of torture, but the difficulty lies in determining the responsibility of these deaths, which are committed by US occupation forces, Iraqi security forces, death squads and dozens of militias.

Camps and detention centers run by the United States and the Iraqi authorities have witnessed continuous deterioration in the conditions and ill-treatment of detainees. The situation is becoming even worse with the accumulation of large numbers of detainees beyond the capacity of these places as a result of large-scale arrests that accompanied the so-called security plans that have been implemented during the year. In addition to the lack of health care and the absence of a system of prison administration, there is a delay in presenting the detainees' cases and the detention of the majority of detainees is extended after the first review of their cases. This is also confirmed by UNAMI in their periodic reports, as well as the Iraqi Human Rights Minister, and a number of Iraqi MPs of the current parliament.

Increasing the number of judicial authorities and personnel did not have an effect in facilitating the completion of cases of thousands of detainees. Although there are now scores of investigative commissions, it did not contribute to resolving the problem because the Iraqi authorities continue to make arrests almost daily.

The number of Iraqi prisoners held by occupation and Iraqi forces remains unknown. Although both parties are announcing their own figures, evidence shows that these "official" figures do not represent in any way the real number of detainees. Observers familiar with prison conditions say that there are likely to be nearly two million Iraqis who were subjected to detention in one form or another over the past years, taking into account the security plans that continue to be implemented by occupation forces in cooperation with the Iraqi government under the pretext of controlling the violence gripping the country.

According to the press releases of the US military, only 10% of the detainees are actually accused of specific acts and practices, and are referred to Iraqi judicial investigators to examine the allegations. If there is evidence, then they would be referred to the courts for trial, and if convicted, would serve their sentences under the authority of the Iraqi government. However the remaining 90% are not being charged with anything and their cases are examined by the occupation forces themselves.

One of the issues that made matters worse, is that the American forces kept handing many of the detainees to Iraqi authorities. These detainees had spent several years in prisons run by the occupation forces, and they had been interrogated in the ugliest ways, yet the occupation forces could not charge most of them with anything. But now they will enter another cycle of suffering after becoming under Iraqi control: another cycle of inhuman treatment and torture.

Even those who were released by US forces after years spent in jails without any charge, are now being arrested by the Iraqi authorities. So once again they become subjected to torture. The families of these detainees have reported their complaints to humanitarian organizations and to the International Committee of the Red Cross, but despite their efforts nothing changed on the ground.

- **Torture in Iraqi Prisons**

The systematic and illegal abuse of detainees including torture and degrading treatment by US interrogators and guards at Abu Ghraib, which was revealed for the first time in April 2004 by the New Yorker Magazine was only the first example of a growing and widespread phenomenon. Many reports since then have established the US mistreatment of Iraqi prisoners. These reports, some produced by the Pentagon, have exposed the widespread abuse and torture of detainees and an alarming number of deaths under detention and interrogations, as well as the hiding of prisoners from International Committee of the Red Cross Inspectors. The United States did not hold seriously accountable mid or high-level military officers or civilian officials, even though these people had established policies and issued orders that led directly to the abuses. By doing so, the United States encouraged the use of those illegal means both by the US army and by the Iraqi forces.

UNAMI reports that forms of torture range from beatings with hoses, cables and sharp tools, to burning and pouring petrol on the bodies of detainees to forcing detainees to sit on sharp objects to using electric drills to sexual assault.

There is an escalation of systematic torture of detainees in prisons run by the authorities in the provinces of Erbil, Sulaymaniyah and Dehok. According to interviews conducted with citizens of these provinces, the detainees face terrible forms of abuse and torture. This was confirmed by

UNAMI in its reports in 2007-2009, which support the claim that detainees were abused particularly during the investigation stages, while being prevented from access to legal advice during investigation and trial periods. In a report issued in July 2007, UNAMI said that about 48 of the 66 detainees have said in their testimonies that they had been tortured. One of the judges said that detainees who appeared before them show injuries of torture. The testimonies of former inmates we met match those of UNAMI in its March 2009 report, which states that torture was conducted by masked men, sometimes after blindfolding of the detainees being tortured.

- **Impunity:**

Impunity remains a dominant feature, as perpetrators of the above-mentioned crimes often received immunity in advance, by official US or Iraqi procedures that adopt and carryout a variety of methods. Such procedures include the decisions of US Administrator in Iraq Paul Bremer in 2003, which granted absolute immunity to American soldiers and security companies. These laws remained in force. The Iraqi government now bears the primary responsibility for such immunity because although it protested them it did nothing to change these laws. Practical evidence shows that the government did not take appropriate legal action to try all of those who were responsible for these crimes. As for the US accountability procedures, it is clear that they have been devised to absorb the public anger only, then either dropping charges or handing extremely light sentences that do not match the atrocity of the crime committed.

In late July 2007, the US Marine Corps dropped all charges directed against Captain "Randy Stone" due to failure to investigate impartially the death of 24 Iraqi civilians by US soldiers fire in one of the worst American massacres known as "the Haditha massacre". Charges were also dropped against "Justin Sharratt" who took part in murdering three Iraqi brothers after the explosion of a roadside bomb targeting US occupation forces on a road.

In April 2010, WikiLeaks issued a video which clearly shows the unprovoked slaying of a wounded Reuters employee and his rescuers. The US soldiers in the Apache Helicopter repeatedly opened the fire on civilians as well as on a van coming to rescue them. However, as US Central Command spokesman said, there is no plans to reopen an investigation into the case.

Recommendations:

- The Human Rights Council should create an independent body to investigate alleged cases of human rights violations occurring in Iraq under US occupation.
- The Special Rapporteur on torture must be given the right to visit Iraq and United states mainly to examine and report on the torture and ill-treatment of Iraqi and other detainees since 2003.
- Ending the state of impunity by creating an international criminal court and bringing all those responsible to justice.
