

HOPE AND FEAR

HUMAN RIGHTS IN
THE KURDISTAN
REGION OF IRAQ

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Cover photo: Dohuk province in the Kurdistan Region.

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4 HOPE AND FEAR
Human rights in the Kurdistan Region of Iraq

1. INTRODUCTION

The Kurdistan Region of Iraq,¹ unlike the rest of the country, has generally been stable since the 2003 US-led invasion. It has witnessed growing prosperity and an expansion of civil society, including the establishment of numerous non-governmental organizations (NGOs) active in the promotion and protection of human rights. The Kurdistan Regional Government (KRG) has made progress in the field of human rights. In mid-2008 it released hundreds of political detainees, many of whom had been held for years without charge or trial. It has improved Iraqi legislation; the Press Law of September 2008, for example, expanded freedom of expression, and amendments to the Personal Status Law passed in October 2008 strengthened women's rights. The authorities have also established several bodies to monitor and prevent violence against women, including specialized police directorates and shelters. Platforms have been established to foster dialogue between the authorities, particularly the Ministry of Human Rights, and civil society organizations on human rights concerns, including violence against women.

Despite these positive and encouraging steps, however, serious human rights violations persist and still need to be addressed. In particular, urgent action by the government is required to ensure that the KRG's internal security service, the *Asayish*, is made fully accountable under the law and in practice, to investigate allegations of torture, enforced disappearances and other serious human rights violations by the *Asayish* and other security and intelligence forces. As well, more needs to be done to end violence and discrimination against women, building on the progress achieved so far, and to enhance the standing in society and life choices available to women and girls. Thirdly, the KRG must take steps to protect and promote the right to freedom of expression, including media freedom, taking into account the vital role of the media in informing the public and acting as a public watchdog.

It is these three areas which form the focus of this report.

Since 2000, thousands of people have been detained arbitrarily and held without charge or trial in the Kurdistan Region of Iraq, in some cases for more than seven years. The vast majority were suspected members or supporters of local Islamist organizations, including both armed groups and legal political parties that do not use or advocate violence as part of their political platform. Some were tortured or otherwise ill-treated in detention.

Invariably, detentions were carried out by members of the *Asayish*, without producing an arrest warrant, and those detained were then denied access to legal representation or the opportunity to challenge their continuing detention before a court of law or an independent judicial body, throughout their incarceration. Some detainees were subjected to enforced disappearance, including some whose fate and whereabouts have yet to be disclosed – typically, following their arrest by the *Asayish* or the intelligence services of the two main Kurdish parties, their families were unaware of their fate and whereabouts and were unable to

obtain information about them, or confirmation of their detention from the authorities. Dozens of other prisoners, meanwhile, are under sentence of death having been convicted in unfair trials.

Despite welcome government efforts to address “honour crimes” and other violence against women, it is clear from comparing survey data on violence against women with the number of police recorded cases of violence against women that the vast majority of such incidents remain unreported. Even when women have been killed or survived a killing attempt, many perpetrators have not been brought to justice – often because investigations have failed to identify the perpetrators or because suspects remain at large.

Freedom of expression continues to be severely curtailed in practice, despite the recent abolition of imprisonment for publishing offences. Journalists have been arrested and sometimes beaten, particularly when publishing articles criticizing government policies or highlighting alleged corruption and nepotism within the government and the dominant political parties. Again, the hand of the seemingly all powerful and unaccountable *Asayish* and other security agencies is alleged to be behind a number of these attacks. One journalist was killed in July 2008 in suspicious circumstances.

This report details a wide range of human rights violations committed in the Kurdistan Region of Iraq in recent years. In particular, it sheds light on violations such as arbitrary and prolonged detention without charge or trial, enforced disappearance, torture and other ill-treatment, the death penalty, unfair trials, discrimination and violence against women, and attacks on freedom of expression. It includes case studies to illustrate these abuses. The report also puts forward numerous recommendations which, if implemented, would go a long way towards reducing such violations.

Much of the information contained in this report is the outcome of a fact-finding visit conducted by Amnesty International in the Kurdistan Region of Iraq from 23 May to 8 June 2008,² the first such visit by Amnesty International for several years. Amnesty International submitted its findings, in the form of two memoranda on human rights concerns, to the KRG in August 2008 and sought its response. The responses received in communications from the KRG Ministry of Human Rights at the end of 2008 are reflected in this report.³

2. BACKGROUND

Since 1991 the Kurdistan Region of Iraq, made up of the three northern governorates of Dohuk, Erbil and Sulaimaniya, has been fully and effectively administered by the two leading Kurdish political parties: the Kurdistan Democratic Party (KDP), led by Mas'ud Barzani, the current President of the KRG; and the Patriotic Union of Kurdistan (PUK), led by Jalal Talabani, currently President of Iraq.

In 1992 elections were held for the 105-member Kurdish provisional parliament. The KDP and the PUK each won 50 seats with the remaining five going to small Assyrian (Christian) political parties. The KDP and the PUK agreed to rule the Kurdistan Region jointly, forming an uneasy power-sharing arrangement but this broke down in early 1994 following disagreements on sharing of joint revenues and control of territory. Fighting between the two parties broke out in May 1994 and continued sporadically until the end of 1997,⁴ following which reconciliation was achieved in 1998.⁵ However, the KDP and PUK each continued to control a distinct geographical area and established "governments", based in Erbil and Sulaimaniya, respectively, and maintained their own *Peshmerga* (militia) and *Asayish* (security) forces.

In December 2005, however, following the US-led invasion, which overthrew Saddam Hussain, the KDP and PUK participated in the Iraqi general elections under a united list and won 53 of the 275 seats in the Iraqi Council of Representatives (parliament) in Baghdad. Mas'ud Barzani was named President of the Kurdistan Region by the Kurdistan Parliament in June 2005, and a few months later Jalal Talabani was elected President of Iraq. On 21 January 2006, the KDP and the PUK signed the Kurdistan Regional Government Unification Agreement, which paved the way for the merger of the two separate administrations.

A government for the Kurdistan Region, the KRG, was announced in May 2006. Nechirvan Barzani, a nephew of Mas'ud Barzani, became Prime Minister. The government is dominated by the KDP and PUK but includes a few members of minority groups, such as Assyrians and Turkomen, as well as representatives of legal Islamist political parties. Government ministries were unified and are based in Erbil, the capital of the Kurdistan Region, except for three ministries that have yet to be unified - the Interior Ministry, the Finance Ministry and the Ministry of *Peshmerga* Affairs.⁶ In addition to these, none of the security and intelligence organs have been unified and they continue to operate as separate entities based in Erbil and Sulaimaniya.

The three Kurdish governorates were recognized as a legal "region" by the October 2005 Iraqi Constitution, with the power to introduce new laws for the Kurdistan Region and also to amend Iraqi national legislation as it applies in the Kurdistan Region. In fact, the Kurdistan Parliament has issued many new laws and amendments to Iraqi legislation, including the Penal Code and the Criminal Procedure Code. Some of these laws were issued before 2005. The KRG also maintains its own diplomatic representatives in many countries.

In recent years the Kurdistan Region of Iraq has generally been spared the daily and deadly violence that has marked most other areas of Iraq. The region has also enjoyed relative economic prosperity. However, many Kurds interviewed by Amnesty International expressed concern about corruption, nepotism and a lack of transparency within the KRG, and particularly within the two predominant political parties. There was serious concern too that the two principal Kurdish leaders, Mas'ud Barzani and Jalal Talabani, appeared not to be accountable in practice to the Kurdistan Parliament or to any other institution.

Major areas of contention currently exist between the KRG and Iraq's central government in Baghdad. One relates to the permanent status of Kirkuk, located in al-Ta'mim governorate just outside the Kurdistan Region, and other areas bordering the Kurdistan Region.⁷ The Kurdish authorities consider Kirkuk, which is one of the centres of Iraq's oil industry and has considerable oil reserves,⁸ and certain towns and villages in the governorates of Diyala, al-Ta'mim and Ninawa (Mosul), to be historically Kurdish,⁹ and consequently, they should be made formally part of the Kurdistan Region of Iraq. Most non-Kurdish members of the Iraqi central government dispute this. It was agreed that the matter should be decided by popular referendum, in which the population of Kirkuk and the other disputed territories, were to vote whether or not to join the Kurdistan Region. According to the Iraqi Constitution of October 2005, this referendum was to be held by December 2007, but this has not happened. The referendum has been repeatedly delayed due to the tense security conditions prevailing in Kirkuk and because of disagreement between the different political factions represented in the Iraqi Council of Representatives and central government. The governorates of Ninawa and Diyala have also been severely affected by political violence.

Following the collapse of the former Iraqi government in the wake of the US-led invasion in 2003, the Kurdistan Region authorities sent thousands of Kurdish security forces into Kirkuk and they are now reported effectively to control the oil-rich city and many disputed bordering areas, and to have forced many Arab Iraqis and members of the Turkomen ethnic minority to leave. Provincial elections were held on 31 January 2009 in 14 out of 18 governorates in Iraq, but not in the three governorates of the Kurdistan Region and in Kirkuk (al-Ta'mim); provincial elections in these areas are scheduled for later in 2009. The UN Assistance Mission for Iraq (UNAMI) is assisting the Iraqi central government and the KRG in their efforts to find a mutually-acceptable solution to the dispute over the future status of Kirkuk and other areas.¹⁰

The Iraqi central government and the KRG have also had major disagreements about control of oil revenues and oil exploration. After months of negotiation and amendment in various committees, a national oil and gas draft law is now reported to have been submitted to the Iraqi Council of Representatives for approval. However, an oil and gas law has already been introduced in the Kurdistan Region of Iraq and the KRG has issued oil and gas exploration contracts to several foreign companies, leading to tension between the KRG and the Iraq central government – whose Oil Minister has described the contracts signed by the KRG as illegal. The KRG, for its part, asserts that both its own oil and gas law and the contracts it has issued are legal and comply with Iraq's Constitution.

3. ROLE AND ACCOUNTABILITY OF THE *ASAYISH*

The *Asayish* is the official security agency in the Kurdistan Region. It was established by the Kurdish authorities in 1992 and became operational in early 1993. During 1993, it was placed under the Kurdish Ministry of the Interior.¹¹ After fighting erupted in the mid-1990s, however, the KDP and PUK ensured that they had their own separate *Asayish* forces under the control of their own interior ministries. The KDP and PUK removed the *Asayish* from the control of these ministries in 2004 and 2005, respectively.

On 20 November 2004 a new law, Law 46 of 2004, was approved by the Kurdistan Parliament.¹² The law sets out the purpose and role of the *Asayish* forces in the whole Kurdistan Region. Their main role is to “protect the population, provide stability and security in the Kurdistan Region of Iraq and to combat terrorism, espionage and drug-related crime” (Article 6). The agency does not fall under any ministry, but reports directly to the presidency of the KRG. The agency enjoys financial and administrative independence and has its own budget (Article 2, 3). It is headed by a senior official with the rank of minister, who is appointed by the President of the KRG and reports to him directly (Article 4). The law does not include any provision about disciplinary procedures if a member of the *Asayish* commits a crime.

As of February 2009, in practice, there are still two separate *Asayish* entities, each under the control of the KDP and the PUK in their respective areas of influence. In principle, both refer to the Iraqi Criminal Procedure Code and the Penal Code as well as the 2006 Anti-Terrorism Law in Kurdistan Region for issues relating to law and order. In each city and town there is an *Asayish* building with a prison or detention facility annexed to it. The headquarters are called the *Asayish Gishti* (General Security Apparatus): one, in Sulaimaniya, is headed by Seif al-Din Ali Ahmed; the other, in Erbil, is headed by Ismat Argushi. Each *Asayish Gishti* building has its own prison located within it.

Allegations of serious human rights violations, including torture and other ill-treatment, have been made against both *Asayish* entities, and Amnesty International delegates received further such allegations when they visited the Kurdistan Region of Iraq in mid-2008. However, the KRG authorities have failed to establish prompt, impartial and independent investigations into such allegations, as international human rights standards require, and the agency appears to operate in a climate of impunity.

Many people complained to Amnesty International that the *Asayish* is permitted to act outside the law, unconstrained by any judicial or other oversight, and operates as a law unto itself. Even members of parliament expressed frustration that they are not able to require *Asayish* officials to appear before the Kurdistan Parliament to answer questions about

specific violations alleged to have been committed by the agency and reported to them by their constituents. Many of the cases highlighted in this report describe human rights violations allegedly carried out by *Asayish* officials following arrests.

While most politically motivated arrests are carried out by the *Asayish*, others have been carried out by members of the *Parastin* or *Dezgay Zanyari*, respectively the intelligence agencies of the KDP and PUK. The *Parastin* is headed by Masrour Barzani, son of the KRG's President, while the *Dezgay Zanyari* is headed by Pavel Talabani, son of Iraq's President. Both agencies are reported to have committed serious human rights abuses in the secret detention facilities that they run. They are also reported to have threatened journalists, writers and academics who have spoken out against alleged corruption within the KDP and PUK.

During their visit to the Kurdistan Region in 2008, Amnesty International delegates had lengthy discussions with several senior *Asayish* officials focusing primarily on issues relating to law and order and the administration of justice, including arrest and detention without charge or trial by the *Asayish*. The delegates were given permission to meet a few detainees held in the headquarters of the *Asayish* in Erbil and Sulaimaniya. Some of these detainees were later released.

Amnesty International considers that the present situation, where the *Asayish*, *Parastin* and *Dezgay Zanyari* are effectively operating outside the rule of law, needs urgently to be addressed by the KRG authorities, taking into account relevant international standards. The UN Code of Conduct for Law Enforcement Officials, the UN Standard Minimum Rules for the Treatment of Prisoners and the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles) set out important principles and prerequisites for the humane performance of law enforcement functions. These include that:

- Every law enforcement agency should be representative of, and responsive and accountable to, the community as a whole;
- The effective maintenance of ethical standards among law enforcement officials depends on the existence of a well-conceived, popularly accepted and humane system of laws;
- Every law enforcement official is a part of the criminal justice system, the aim of which is to prevent and control crime, and the conduct of every official has an impact on the entire system;
- Every law enforcement agency should discipline itself to uphold international human rights standards;
- The actions of law enforcement officials should be open to public scrutiny;
- Standards for humane conduct of law enforcement officials lack practical value unless their content and meaning become part of the creed of every law enforcement official, through education, training and monitoring.

4. ARBITRARY DETENTION

Until recently thousands of political detainees were held without charge or trial in the Kurdistan Region of Iraq, some for several years. In response to Amnesty International's August 2008 memorandum on human rights concerns, the KRG Ministry of Human Rights informed Amnesty International on 19 October 2008 that the authorities had released more than 3,000 detainees from the detention centres of the security forces during 2007 and the first half of 2008.

When Amnesty International delegates visited the Kurdistan Region in May-June 2008, hundreds of detainees were still being held without charge or trial, most of whom had spent years in prison. The head of the *Asayish Gishti* in Erbil informed Amnesty International at the end of May 2008 that there were then 670 political detainees being held without charge or trial. The Human Rights Ministry subsequently informed Amnesty International that hundreds of detainees were released uncharged between June and September 2008.¹³ Amnesty International has received reliable information that the releases were conditional and that the majority of those freed were required to report to the nearest *Asayish* office every week.

The exact number of those currently held is not known to Amnesty International. The Ministry of Human Rights stated that as of 19 October 2008 only nine people were then held without charge or trial.¹⁴ However, arrests and detentions by the *Asayish* are often shrouded in secrecy. While Amnesty International welcomed the releases, its request for information regarding the exact number and identities of those released, the duration of their detention in each case, and the legal basis for their imprisonment remains unanswered.

Many of those detained in recent years were arrested because of their suspected membership of or support for armed Islamist groups, in particular Ansar al-Islam¹⁵ (Supporters of Islam), a banned organization, as well as legal political parties including the Kurdistan Islamic Movement and *al-Jama'a al-Islamiya*¹⁶ (the Islamic Group). Some were active members of these organizations at the time of their arrest; others had reportedly already ceased their involvement, some a long time before their arrest. Still others were detained when they surrendered to PUK *Peshmerga* forces in 2003 following armed clashes.

Most of the detainees were arrested by members of the *Asayish*, sometimes wearing civilian clothes. In all cases known to Amnesty International, such arrests were carried out without an arrest warrant issued by a judicial authority, as Iraqi law requires. Some detainees were arrested at home, often in the evening or at night, while others were picked up in the street. Detainees were rarely told the reason for their arrest, and such information was also withheld from their families. In some cases, detainees' families were unaware of their arrest and unable to find out information about them for weeks or even months, despite making inquiries about them with the KRG authorities.

Following arrest, detainees were taken to prisons and detention facilities controlled by the *Asayish*, including, in some cases, secret detention facilities. These included private houses in Erbil and Sulaimaniya that were, and possibly still are, used for this purpose by the *Asayish*. Conditions in some of the places of detention were reported to be very harsh; conditions in 'Aqra Prison, east of Erbil, were reported to have been so severe that the prison was closed in mid-2007 after it was visited by the KRG Minister of Human Rights.

Detainees may be interrogated weeks or months after their arrest. Despite this, as highlighted by the cases below, they were invariably denied access to lawyers and had no means to challenge the legality of their detention, in clear violation of international human rights law and standards and in breach of Iraqi and Kurdish law. Indeed, some lawyers told Amnesty International that they would be afraid to defend terrorism suspects for fear of harassment or other reprisals from the KRG's security forces. Detainees who did ask to see a lawyer were told by the *Asayish* that there was no case dossier and therefore no need for them to have access to a lawyer.

Almost all detainees were denied prompt access to their families after arrest; some were denied family visits for more than a year. In particular, detainees were not permitted family visits while they were still subject to interrogation by the *Asayish*. Some families learned of the whereabouts of detained relatives only through the auspices of the International Committee of the Red Cross (ICRC), often months after they were arrested. When detainees were permitted family visits, these were generally short with detainees receiving visits from male and female relatives in alternate weeks. Detainees and their families could request a special visit. Generally, *Asayish* officials were present during special or normal visits, making private conversation between the detainee and his visitor difficult.

These practices clearly violate international human rights standards. For example, Article 9 of the International Covenant on Civil and Political Rights (ICCPR), to which Iraq is a State Party, stipulates that:

"No one shall be subjected to arbitrary arrest or detention... 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."¹⁷

Iraqi legislation too provides for safeguards against arbitrary arrest and detention. According to the Code of Criminal Procedure (Article 123), criminal suspects must have their case reviewed by an examining magistrate within 24 hours of arrest. This provision has been routinely ignored by the *Asayish* with regard to hundreds of long-term uncharged and untried detainees.

The Code of Criminal Procedure, as amended by Section 8 of Coalition Provisional Authority (CPA) Memorandum Number 8, also provides that all criminal detainees suspected of a felony are entitled to consult with a lawyer while in detention. Article 13 of the 2006 Anti-Terrorism Law in Kurdistan stipulates that anyone detained should have access to a lawyer and must not be tortured. The Article also states that anyone who has been tortured should have the right to sue those responsible for the torture. These safeguards have often been ignored by the *Asayish*, and there are reportedly no disciplinary procedures or measures available in cases where members of the *Asayish*, or other security agencies, are accused of torture or other human rights abuses.

The Code of Criminal Procedure, as amended by Section 30(13) of CPA Memorandum Number 2, provides that untried prisoners shall be allowed to inform their families immediately of their detention. Section 14(1) of CPA Memorandum Number 2 also provides that detainees are entitled to communicate with family and friends through correspondence and regular visits.

All Islamist detainees who have been released following amnesties, including amnesties issued by the President of the KRG, have been required, as a condition of their release, to report to the *Asayish* on a weekly basis and are not allowed to travel outside the governorate in which they reside without permission from the *Asayish*. If the released person fails to honour these conditions or commits a criminal offence, the *Asayish* can redetain him and confiscate his house or the house of a guarantor that he has nominated.



Mothers and relatives of detainees wait to be interviewed by Amnesty International May/June 2008
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On 1 July 2007, the Kurdistan Parliament passed the Amnesty Law (Law 4 of 2007), which provides for the release of prisoners in cases where reconciliation is achieved before the courts. However, most detainees held on account of their suspected involvement with Islamist organizations were not included for release under this amnesty law and they remained in prison until their release between June and September 2008.

The cases briefly described below reflect what has been a widespread pattern of arrests and prolonged detention without charge or trial of Islamists and others suspected of opposing or criticizing the Kurdistan Region authorities and the two predominant political parties, the

KDP and the PUK. Some of these detainees were released in 2008 or in previous years under special pardons granted by the President of the KRG, but in all or most cases their releases are reported to have been made conditional on their regular reporting to the *Asayish*.

Walid Yunis Ahmad, a Turkoman born in 1958, married with three children, was arrested by men in civilian clothes, believed to be *Asayish*, in the street in Erbil on 6 February 2000. His relatives started looking for him and contacted the authorities, who denied having any information about him. His family did not discover his whereabouts for about three years. Then they learned through the ICRC that he was being detained in the Erbil headquarters of the *Asayish* and managed to visit him for the first time.

Walid Yunis Ahmad, who worked for a local radio and TV station linked to the Islamic Movement in Kurdistan, is alleged to have been tortured following his arrest. He was transferred to Shaqlawa Prison, then 'Aqra Prison and eventually moved back to *Asayish* Erbil, where he was still being held without charge or trial in February 2009, reportedly in solitary confinement. When his family visited him on 23 November 2008 they found him in poor health following a 45 day hunger strike in protest against his continuing detention.

Shams al-Din Saleh 'Abdallah, a 33-year-old fitness instructor from Erbil, married with two children, was arrested on 5 May 2002. A man went to his house and told him that the *Asayish* wanted to speak to him. He went to the *Asayish* building in Erbil where he was arrested and taken to the *Parastin* headquarters in Salahuddin, just outside Erbil. The family later found out, through connections, that he was being held at the *Parastin* headquarters.

His family managed to visit him five months after his arrest, when he was being held in Salahuddin. He was held in solitary confinement for a year and is reported to have been tortured during his first months in detention. His hands were kept tied behind his back and he was made to sign a prepared statement, whose contents were not known to him, while blindfolded. He was transferred to Shaqlawa Prison and held there for a few months, then moved to 'Aqra Prison and finally, after several more months, to the *Asayish* building in Erbil. He remained there until 19 June 2008 when he was released, according to the KRG Ministry of Human Rights.

Mostafa Mohammad Amin, born in 1976, married with two children, was reportedly a member of Ansar al-Islam. He was Imam of a mosque in the Shahrzur neighbourhood of Halabja. On 6 April 2003 he gave himself up to the *Asayish* in Qardagh village near Sulaimaniya after the PUK announced that it would extend an amnesty to members of Ansar al-Islam who presented themselves to the authorities. He was taken to the *Asayish* Gishti prison in Sulaimaniya, where his wife was able to visit him for the first time about six months later. Thereafter, he received frequent visits for 18 months, but they were then stopped. For a time, his family could correspond with him through the ICRC but they have had no letters for several months, increasing their anxiety about him. He has had no access to a lawyer and has not been taken before an investigative judge even though he has been detained without charge or trial for more than five years. His family has learned that he has been moved from one prison or detention centre to another not from the authorities, but only informally from released detainees. The KRG Human Rights Ministry told Amnesty International in October 2008 that Mostafa Mohammad Amin was handed over to the US-led Multinational Forces (MNF) but gave no further details, such as the date of the transfer, place of detention and current legal status and fate.



Mas'ud Mahmoud Mohammad
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Gharib 'Aziz Mahmoud
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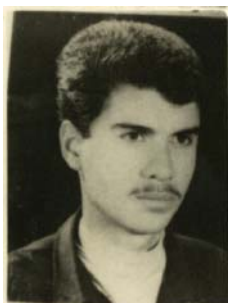


'Omar 'Aref Mohammad
© Private

On 23 April 2003, 13 men were arrested just outside Sulaimaniya and detained without charge or trial until their conditional release in September 2008: **Aras Ibrahim Shawkat Mohammad**, a 27-year-old labourer, single, from Kalar; **Taha Hassan 'Abd al-Karim**, a 38-year-old married man with one daughter, from Sulaimaniya; **Mas'ud Mahmoud Mohammad**, a 28-year-old married man from Kifri; **Gharib 'Aziz Mahmoud**, a 34-year-old man married; **Shawqi Saleh al-Shafi'i**, a 29-year-old man from Chamchamal; **Sherzad Jamal Hassan**, a 43-year-old man married with four children; **'Omar 'Aref Mohammad**, aged 33, unmarried, and his brother, **Salam 'Aref Mohammad**, aged 29, unmarried; **Abd al-Rahman Zein al-'Abidin**, aged 36, married with one daughter; and **Umayed Mahmoud**, **'Abd al-Qahar 'Omar**, **Rezgar 'Abd al-Latif**, and **Haiman Mahmoud 'Abdullah**.

All 13 were reportedly detained in connection with their links to *Ansar al-Islam* and were said to have surrendered themselves to PUK *Peshmerga* after fighting between *Ansar al-Islam* and PUK forces, assisted by US forces, in March and April 2003. Many members of *Ansar al-Islam* were killed in the fighting, which took place in the Sourin mountains near Sulaimaniya, and others fled the area. The 13 named above were reported to have been transferred to the custody of the *Asayish* after they gave themselves up to PUK *Peshmerga* on 23 April 2003.

For the first three months, the 13 were held in solitary confinement in al-Salam Camp, 15 km west of Sulaimaniya, where they were first visited by the ICRC on 7 July 2003. Thereafter, they were permitted weekly family visits, which continued until September 2008. One of the detainees was reported to be suffering from mental health problems as a result of his prolonged detention and all 13 complained that they did not know why they continued to be held. All appealed for the authorities to either charge them and bring them to trial, or release them. On 11 August 2008 the 13 men went on hunger strike. All were released between 4 September and 6 October 2008, but their releases are conditional. They have to



Salam 'Aref Mohammad
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Abd al-Rahman Zein al-'Abidin
© Private



Haiman Mahmoud 'Abdullah
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report to the nearest *Asayish* building once a week and must obtain authorization from the *Asayish* if they want to travel to another town or city in the Kurdistan Region of Iraq.

RECOMMENDATIONS

Amnesty International is urging the KRG to take the following practical and legislative measures to address the problem of arbitrary detention:

- Immediately review all cases of detention.
- Release all detainees held without charge unless they are to face recognizably criminal charges and be brought to trial promptly and in full accordance with international standards of fair trial.
- Ensure that anyone arrested is brought before an investigative judge within 24 hours as stipulated by the Iraqi Code of Criminal Procedure.
- Issue a law prohibiting arrest by the *Asayish* and other security agencies without an arrest order issued by a judge.
- Ensure that all detainees have access to legal counsel within 24 hours and are allowed visits by members of their families promptly after arrest.
- Ensure that all detainees are informed at the time of arrest of the reasons of their arrest and detention, and promptly informed of any charges against them.
- Ensure that all detainees are held only in officially recognized places of detention and that accurate information about their arrest and whereabouts is made immediately available to relatives, lawyers and others.
- Ensure that all detainees are immediately informed of their rights. These include the right to lodge complaints about their treatment and the right to have a lawyer present during interrogations.
- Set up an effective judicial mechanism to enable all detainees to challenge the legal basis of their detention.
- Establish effective judicial mechanisms to guarantee, in practice, the right to fair trial.
- Ensure that conditions of detention conform to international standards for the treatment of prisoners. The authorities responsible for detention should be separate from those in charge of interrogation. There should be regular, independent, unannounced and unrestricted visits of inspection to all places of detention.

5. ENFORCED DISAPPEARANCES

A number of people arrested by the *Asayish* have disappeared since they were taken into custody. The practice of enforced disappearances is not new in the Kurdistan Region of Iraq. In the 1990s, during fighting between PUK, KDP and Islamic Movement in Kurdistan forces, scores of people were subjected to enforced disappearance after being taken prisoner, and the fate of many of them is still unknown. During their visit to the Kurdistan Region in 2008, Amnesty International delegates met several families of disappeared individuals who have not lost hope that one day their loved ones will reappear.

The practice of enforced disappearance is a grave human rights violation. The International Convention for the Protection of All Persons from Enforced Disappearance (Convention on Enforced Disappearance) defines enforced disappearance as the: “arrest, detention, abduction or any other form of deprivation of liberty committed by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.” The defining characteristic of an enforced disappearance is that it puts the victim beyond the protection of the law while concealing the violations from outside scrutiny, making them harder to expose and condemn, and allowing governments to avoid accountability.

The Convention on Enforced Disappearance¹⁸ states that enforced disappearance is an international crime and establishes an absolute right not to be subjected to enforced disappearance. The Convention on Enforced Disappearance obliges governments to promptly and impartially investigate allegations of enforced disappearances. An inherent characteristic of a disappearance is the continuing nature of this violation, which persists as long as the fate or whereabouts of the disappeared person have not been established.

Enforced disappearances can also violate a number of other human rights, including the right to life, the prohibition on torture and other cruel, inhuman or degrading treatment, the right to liberty and security of the person, and the right to a fair and public trial.

Enforced disappearance also has a terrible impact upon family members, who are also acknowledged as victims by the Convention on Enforced Disappearances.

Amnesty International submitted the following cases of enforced disappearance to the KRG. In response, the KRG Human Rights Ministry's informed Amnesty International on 19 October 2008 that the KRG security forces had no knowledge of any of those listed or their fate and whereabouts, except in one case. Commenting on the practice of enforced disappearance, the Ministry response stated: “We condemn such a grave practice [which we consider] a criminal offence.”

Badran Mostafa Mahmoud, a 33-year-old construction worker, single and from Erbil, was abducted on 27 July 2005 on his way home after praying in a mosque. He was seized by armed men wearing civilian clothes, believed to be members of the security forces. They forced him into a car and told witnesses, who knew Badran Mostafa Mahmoud, that he would be released within half an hour.

The family of Badran Mostafa Mahmoud told Amnesty International in May 2008 that about a year after the abduction they received an anonymous call from someone who told them that Badran Mostafa Mahmoud was in Rizgari Hospital in Erbil. The family went to the hospital but could not find him.

Badran Mostafa Mahmoud was a member of the Islamic Movement in Kurdistan in the 1990s but, according to his family, he had left the organization long before his abduction. Since his abduction, the family has had no information about his fate and whereabouts. They have searched for him everywhere, including by visiting the *Asayish* in Erbil. They have also approached NGOs as well as UNAMI and the ICRC, but more than three years after his abduction they still have no information as to his fate and whereabouts.

Hedayat 'Aziz Ahmad Karim, a 35-year-old married labourer from Chamchamal, was a member of *al-Jama'a al-Islamiya* and in 2000 lost his right leg after he stepped on a mine. On 10 February 2007 four vehicles full of masked men, reportedly members of *Dezgay Zanyari*, stopped at the building of *al-Jama'a al-Islamiya* in Chamchamal. One of the masked men asked, reportedly in broken Arabic, if Hedayat 'Aziz Ahmad Karim was there. They were told he was not. They left and went to the house of a relative of Hedayat 'Aziz Ahmad Karim, where they found him. They took him forcibly first to Qarhanjeer, near Kirkuk, and then, later the same day, to Sulaimaniya.

Since 10 February 2007 his fate and whereabouts have remained unknown. His family have searched everywhere and inquired about him with the *Asayish* in Sulaimaniya, the Human Rights Ministry, the Kurdistan Parliament and political parties, and the ICRC. A former detainee reported that he had seen Hedayat 'Aziz Ahmad Karim in al-Salam camp, a detention facility in Sulaimaniya, but the *Asayish* denies any knowledge of him.

Wahed Hussain Amin, born in 1967, married with four children, is from Kirkuk and worked there as a security guard for a water department. On 28 June 2006, he was arrested by three armed men wearing civilian clothes who had been waiting for him in a car when he arrived home in Hissabat in Kirkuk. A witness reportedly told the family that the three men told Wahed Hussain Amin that they were *Asayish*. Since that day, his family have been unable to obtain any information about Wahed Hussain Amin, although they have inquired with the *Asayish*, the Ministry of Human Rights, ICRC and others, and are greatly distressed and facing economic problems as he was the family's main breadwinner.

Farhang Ahmad 'Aziz, aged 33 and married with one child, was arrested on 27 August 2003 from his house in Sulaimaniya. The reasons for his arrest are not known but are believed to be linked with his membership of an Islamist group. Despite inquiries by family members about his whereabouts the authorities apparently have refused to provide any information about him. Some reports suggest that he may have been handed over to the MNF in Iraq but this has not been confirmed.

Hoshyar Saleh Hama 'Aref, a 31-year-old man from Kirkuk, married with three children and a member of *Ansar al-Islam*, was arrested on 10 September 2003 from his house in Kirkuk. Three cars full of men who identified themselves as *Asayish*, armed and wearing civilian clothes, stormed the house and arrested Hoshyar Saleh Hama 'Aref without an arrest warrant. They tied his hands behind his back, handcuffed him and forced him into one of the cars. He was taken to the *Asayish* building in Chamchamal, where he was held for two days then transferred to the *Asayish Gishti* in Sulaimaniya.



Hoshyar Saleh Hama 'Aref
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On 16 March 2004 his family received a letter from him through the ICRC. They were able to visit him for the first time in March and again in October 2004, but since then they have not been able either to visit him or to obtain information about him. His mother made inquiries everywhere and sought the help of the Ministry of Human Rights, who gave her a letter to take to the *Asayish Gishti* in Sulaimaniya. When she went there, she was told that Hoshyar Saleh Hama 'Aref was in the custody of US forces. When the ICRC contacted the US military on her behalf, the latter denied that US authorities were holding her son, and the ICRC reported this to the *Asayish*. As of November 2008, five years after Hoshyar Saleh Hama 'Aref was taken into custody, his legal status, fate and whereabouts are unknown to his family. The KRG Human Rights Ministry told Amnesty International that Hoshyar Saleh Hama 'Aref was handed over to the MNF, but gave no further details.

Karim Ahmad Mahmoud was arrested on 15 May 2000 at his home in Sulaimaniya by members of *Dezgay Zanyari*. On the same day two of his sons, Asu and Makwan, were also arrested respectively in the street and at work. Their arrest followed that of the eldest brother, Arslan, on 14 May. Some reports suggest that during the same period up to 57 people were arrested by the PUK authorities. Soon after the arrests, the family of Karim Ahmad Mahmoud sought information from the authorities about his and his sons' whereabouts but are said to have been told nothing other than that they should not make further inquiries. On 9 August 2001 Amnesty International wrote to the then Prime Minister of the area controlled by the PUK requesting clarification of the fate of Karim Ahmad Mahmoud and his sons. The authorities responded in September 2001 through the Minister of Human Rights, who said that "extensive inquiries" had failed to establish the fate of the prisoners but that the Ministry would continue to "look into the matter" without being more specific.

'Abd al-Jabbar Qadir Hassan, a shopkeeper from Sulaimaniya married with three children, was arrested on 1 September 2001. Four *Asayish* armed men in a car stopped near the shop and told him that they wanted him for questioning in relation to some of the prices he was charging customers. They took him with them in the car to the *Asayish* building in Sulaimaniya. His father followed him to the *Asayish* to ask why he had been arrested and was told that he would be released after two days.

As of November 2008, seven years later, those words ring hollow. He was not released and his family do not know where he is being held or on what grounds, and are greatly concerned because the *Asayish* now reportedly deny holding him. They have looked for him everywhere but without success.

RECOMMENDATIONS

Amnesty International urges the KRG to take the following steps to address and remedy these and other enforced disappearances:

- End all enforced disappearances and publicly condemn the practice.
- Ensure that the commission of an enforced disappearance is a criminal offence, punishable by sanctions commensurate with the gravity of the practice but which do not attract the death penalty. The prohibition of enforced disappearances and the essential safeguards for their prevention must not be suspended under any circumstances.
- Ensure that all cases mentioned in this report and other reports of enforced disappearances are investigated promptly, impartially and effectively by a body that is independent of those allegedly responsible and has the necessary powers and resources to carry out the investigation. The methods and findings of the investigation should be made public. Officials suspected of responsibility for enforced disappearances should be suspended from active duty during any investigation. Relatives of the victim should have access to information relevant to the investigation and should be entitled to present evidence. Complainants, witnesses, lawyers and others involved in the investigation should be protected from intimidation and reprisals. The investigation should not be curtailed until the fate of the victim is officially clarified.
- Ensure that those responsible for enforced disappearances are brought to justice in proceedings complying with international fair trial standards and which do not attract the death penalty.
- Ensure that people subjected to enforced disappearances and their families receive appropriate reparation from the KRG, including financial compensation. Victims who reappear should be provided with appropriate medical care or rehabilitation.

6. TORTURE AND OTHER ILL-TREATMENT

Amnesty International has received numerous reports of torture and other ill-treatment of political suspects in prisons and detention centres under the control of the *Asayish* and other security agencies throughout the Kurdistan Region of Iraq. Methods reported to Amnesty International include: the application of electric shocks to different parts of the body; beatings with fists and with a cable and/or metal or wooden baton; suspension by the wrists or ankles; beating on the soles of the feet (*falaqa*); sleep deprivation; and kicking. In a few cases, detainees are alleged to have died as a result.

Torture and other ill-treatment are widely used to obtain information and confessions from detainees and also as a form of punishment. Torture often takes place immediately after arrest, when detainees are under interrogation. Victims of torture include members and suspected members of banned Islamist groups and members of recognized Islamist political parties.

Aras 'Omar Faqih Faraj, a member of *al-Jama'a al-Islamiya*, born in 1980, married with three children, was arrested at the end of 2004 while he was walking near where a bomb had exploded minutes earlier. He was taken to the *Asayish* prison in Erbil. His family did not know of his whereabouts, despite their inquiries, until a year after his arrest, when they heard that he was being held in the *Asayish* prison. They then started visiting him.

He is reported to have been tortured during the first months of his detention. He was subjected to electric shocks on different parts of the body, especially his back, and left naked while exposed to extreme heat in the summer and extreme cold in the winter. When his family visited him for the first time they saw marks of torture on his body. He was held in solitary confinement for almost the whole of the first year of his detention. He was reportedly released in early June 2008.

Other security agencies, namely the *Parastin* and *Dezgay Zanyari*, are also reported to have used torture and other ill-treatment against people they have arrested and detained in their respective headquarters and detention facilities.

Najat 'Abdel-Karim Hamad, a 32-year-old company supervisor in Erbil, married with four children, was arrested on 12 August 2004 from his home in Erbil by armed men. They told his wife that he would be taken for questioning and that he would be able to return within an hour. He was reportedly taken to the headquarters of the *Parastin* in Salahuddin. His family did not know his whereabouts for three months. During this time he is reported to have been tortured and to have sustained a broken rib as a result of being beaten, and impairment of his hearing. He was transferred to 'Aqra Prison until 2007, then moved to the *Asayish* prison in Erbil. He is believed to have been detained because he is an Islamist. He was held without charge or trial until his release on 5 June 2008.

During their visit to the Kurdistan Region of Iraq in 2008, Amnesty International delegates requested and were given permission to see a detainee who had allegedly been tortured - **Srood Mukarram Fatih Mohammad**, a correspondent for al-Sumariya satellite channel, married with three children, who remains held without charge or trial. He told Amnesty International that he was arrested on 17 April 2007 from his home in Erbil by around 20 people who were armed and wearing uniforms. The men searched the house, arrested him without an arrest warrant, and confiscated some books, CDs and a computer. They blindfolded him and forced him into the boot of one of the cars. For 53 days the family did not know his fate and whereabouts. Eventually, his mother received information that he was being held at the *Asayish* prison in Erbil and then was able to visit him, although *Asayish* guards watched throughout and remained within earshot.

Srood Mukarram Fatih Mohammad was brought before an investigative judge two months after his arrest, by which time he had “confessed,” under torture, that he was a member of a terrorist group. During his first two months in detention, he said, he was kept blindfolded in solitary confinement, beaten with a cable on different parts of the body and threatened that his wife would be detained and raped by guards in front of him. The family engaged a lawyer at the beginning of 2008 but he was prevented from visiting Srood Mukarram Fatih Mohammad on several occasions. Srood Mukarram Fatih Mohammad was charged with having contacts with terrorists and the case was sent to Erbil Criminal Court; however, the court is reported to have returned the dossier to the investigative judge on three separate occasions on the grounds that the information was not complete. Srood Mukarram Fatih Mohammad is said to be still detained in Erbil.



Akhtar Ahmad Mostafa
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Melko 'Abbas Mohammad
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While visiting Sulaimaniya in June 2008 Amnesty International delegates asked the head of the *Asayish Gishti*, Seif al-Din Ali Ahmed, for permission to meet a woman and her son who were being held in the headquarters of the agency. The delegates were able to meet the mother very briefly, but the request to meet the son who had reportedly been tortured was turned down. **Melko 'Abbas Mohammad**, aged 22, and his mother, **Akhtar Ahmad Mostafa**, aged 60, were both arrested on 19 March 2008 in connection with a suicide car bomb explosion on 10 March 2008 outside the Sulaimaniya Palace Hotel which killed two people and injured more than 30. Akhtar Ahmad Mostafa was arrested at around midnight from her house. Several *Asayish* armed men went into the house and started searching it. They arrested her without an arrest warrant and put her inside a car, where she saw Melko 'Abbas Mohammad who had been arrested earlier in the outskirts of Sulaimaniya. The two were taken to a secret detention centre in the village of Qala Chulan, outside Sulaimaniya, where they were interrogated until the following morning. Then they were transferred to the *Asayish Gishti* headquarters in Sulaimaniya.

The hotel attack was allegedly masterminded by Riyadh Nouri Jassem, Akhtar Ahmad Mostafa's nephew, and allegedly a leader of an Islamist group linked to al-Qa'ida, *Kata'ib Kurdistan* (Kurdistan Brigades). One month before the attack, Riyadh Nouri

Jassem went to his mother's house and borrowed a camera. He offered her a lift as she was going outside to buy something. Both got inside a car, which was being driven by one of his friends. While driving on the road where the hotel is located, Riyadh Nouri Jassem started filming buildings, including the hotel. Akhtar Ahmad Mostafa asked why he was filming and said that she was worried about it. She told him to keep away from the friend who was driving - he was an Iraqi Arab from Ba'quba who had come to her house with Riyadh Nouri Jassem on a few occasions previously. She said she did not trust him. Apparently, this conversation was recorded on the video. In a meeting with an *Asayish* investigator in early June 2008, Amnesty International delegates were told that this recorded conversation, in Kurdish, was being used as evidence against Akhtar Ahmad Mostafa. The *Asayish* suspect that she knew about the plot and did not inform the authorities. However, Akhtar Ahmad Mostafa has denied knowledge of the plan.

Following the attack, the *Asayish* arrested Riyadh Nouri Jassem and nine other men, all said to be members of the Islamist group. Riyadh Nouri Jassem apparently confessed to being the ring-leader of the group and that he and the nine others were responsible for the attack on the hotel. However, despite being tortured he and the nine other men told the *Asayish* that Akhtar Ahmad Mostafa had nothing to do with the attack and that she was not even aware of it. On 20 March 2008, several TV channels in Kurdistan showed footage of Akhtar Ahmad Mostafa, Melko 'Abbas Mohammad and the 10 other detainees, and announced that these people, giving their names, were "terrorists" who had confessed to bombing the hotel.

Both Akhtar Ahmad Mostafa and Melko 'Abbas Mohammad were held in solitary confinement for 19 days in the *Asayish Gishti* prison, in very small cells close to each other. Melko 'Abbas Mohammad was tortured. Methods of torture included being suspended by his limbs for long periods, beatings with a cable, and electric shocks to different parts of his body, especially his genitals. His mother could hear him screaming. During the night he would be forced to put on headphones and the guards would play extremely loud music. This would last for several hours every night. Melko 'Abbas Mohammad reportedly could not urinate for 13 days because of electric shocks applied to his genitals, and his stomach swelled. He received medical treatment in prison.

A week after the arrests of Melko 'Abbas Mohammad and Akhtar Ahmad Mostafa, their family, who had searched for them without success, engaged a lawyer on their behalf but he was not permitted to visit the two detainees, apparently because they had not made confessions. Eventually, 40 days after their arrest, he was allowed to see them, after family members had been allowed to visit them for the first time. The *Asayish* confiscated the house which belongs to Melko 'Abbas Mohammad's brother, who lives in Europe, for more than two months but then returned the keys to the family's lawyer in early June 2008.

On 6 November 2008 a criminal court in Sulaimaniya sentenced four people, Riyadh Nouri Jassem, Mohammad Sultan, 'Omar Rahmatullah and Yousef Jadu', to death. The court acquitted four other others, including Akhtar Ahmad Mostafa and Melko 'Abbas Mohammad, for lack of evidence. However, the director of the *Asayish Gishti* in Sulaimaniya refused to release the four because he reportedly rejected the court verdict. Eventually, the two were released, Akhtar Ahmad Mostafa on 19 January 2009 and Melko 'Abbas Mohammad on 4 February 2009.

Torture and other forms of ill-treatment are absolutely prohibited under international law. Article 7 of the ICCPR states that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment...” The KRG is also obliged by international law to ensure the prompt, thorough and impartial investigation of all allegations of torture by the *Asayish* and other security agencies, to bring suspected perpetrators to justice, and to provide full reparation for victims. Any evidence extracted under torture and other ill-treatment should not be used in proceedings against the detained.

In its October 2008 response to Amnesty International's memorandum, the KRG Human Rights Ministry said that the authorities strongly condemn all acts of torture. The KRG apparently initiated a campaign against torture in the Kurdistan Region of Iraq a month before they sent the response to Amnesty International. The purpose of the campaign, according to the KRG, is to document and have access to more torture cases. The response said that investigations in all these cases, including the ones mentioned above, had started and the outcome would soon be published. The response does not give any further details, including the body entrusted to initiate such investigations, the terms of reference and the time frame. As of the end of February 2009, however, it remained unclear whether any investigation into allegations of torture had been initiated and, if it had, its outcome was unknown.

RECOMMENDATIONS

Amnesty International is urging the KRG to introduce the following measures:

- Publicly condemn the practice of torture and other ill-treatment and declare unequivocally that such abuses will not be tolerated.
- Set up prompt, thorough and independent investigations into all allegations of torture and other ill-treatment, including those cited above. Ensure that the methods and findings of such investigations are made public.
- Suspend officials suspected of committing torture and other ill-treatment from active duty during the investigation.
- Bring to justice all individuals – regardless of their position or rank – against whom there is evidence of having authorized, condoned or committed torture or other ill-treatment. Ensure that all trials for alleged perpetrators comply with international standards for fair trial and do not attract the death penalty.
- Ensure that any detainee alleging that they have been tortured or otherwise ill-treated is promptly examined by a medical doctor.
- Ensure that victims of torture and other ill-treatment and their dependants obtain prompt reparation, including compensation from the KRG.

7. UNFAIR TRIALS AND THE DEATH PENALTY

Amnesty International received information from a number of sentenced prisoners indicating that their trials had not met international fair trial standards. Some had been tried in secret locations, rather than in properly established courts of law. Some trials had been completed within an hour. A number of prisoners complained that they had been convicted on the basis of false “confessions” which they had been forced to make under torture or other ill-treatment during pre-trial detention. Detainees commonly were denied access to lawyers in the early stages of their detention, when they were usually held incommunicado, and were interrogated by the *Asayish*. Even when they were permitted lawyers, when their cases went to court, they were often denied regular, adequate consultation with their lawyers. Some prisoners also complained that they had not been taken before an investigative judge or, if they were, that the judges had simply accepted without question what *Asayish* interrogators had told them. Some prisoners said they had been too afraid to make complaints about torture because of the presence of *Asayish* officers, noting that although investigative judges are under the authority of the Ministry of Justice, their offices are located in the headquarters of *Asayish Gishtî* in both Sulaimaniya and Erbil.

On a few occasions, uncharged detainees have been shown on television and publicly accused of involvement in violent attacks, including suicide bombings, in gross breach of the presumption of innocence and the independence of the judicial process and the judiciary.

Amnesty International encountered widespread concern about the lack of independence of the judiciary in the area administered by the KRG and judicial subordination to the requirements of the *Asayish*. In one instance, Amnesty International was informed, a judge who wrote a newspaper article in which he criticized *Asayish* interference in the judicial process was subsequently threatened by a senior *Asayish* official that he should desist from such comments or face adverse repercussions.

In its 19 October 2008 communication to Amnesty International, the KRG Human Rights Ministry acknowledged that the judiciary’s performance was not satisfactory and that a lot needs to be done to make it compatible with international standards. It added that “the judicial system is not complete and does not meet its responsibility. It is one of the places [sic] where obvious violations are committed.”

The right to a fair and public trial is an established principle, enshrined in international human rights law. It is a fundamental safeguard to ensure that accused persons are not unjustly punished. It is indispensable for the protection of other human rights, such as the rights to freedom from torture, to life and to freedom of expression and association. Article 14 (1) of the ICCPR states:

“All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order... or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.”¹⁹

Kamal Said Qadir, who has been living in Austria for many years, was abducted by members of the *Parastin* outside a hotel in Erbil on 26 October 2005, while on a visit to the Kurdistan Region of Iraq. He was held in solitary confinement for a few days without access to a lawyer or to his relatives. On 19 December 2005 he was sentenced by a court in Erbil to 30 years’ imprisonment for defamation, under Article 433 of the Iraqi Penal Code, for articles he had published. The trial fell far short of international standards. Kamal Said Qadir was told about the trial only a few minutes before it began, and was represented by a lawyer who had been appointed by the court. He met the lawyer for the first time just before the session began. The trial lasted one hour, and the judge passed the sentence once Kamal Said Qadir confirmed that he was the author of the articles in question. Kamal Said Qadir went on hunger strike in protest at being imprisoned simply for expressing his opinions. His health deteriorated and he asked for a doctor, but the prison authorities apparently ignored his request.

After worldwide protests and international pressure the Court of Cassation referred the case back to the criminal court for re-trial. On 26 March 2006 a criminal court in Erbil retried Kamal Said Qadir and sentenced him to 18 months’ imprisonment for defamation. Kamal Said Qadir was released on 3 April 2006 after Mas’ud Barzani, President of the KRG, issued a special amnesty.

Amnesty International is concerned that dozens of people on death row may not have received fair trials. During their 2008 visit to the Kurdistan Region, Amnesty International delegates interviewed one young man who was then on death row at al-Mahatta Prison in Erbil, who complained that he had been beaten and tortured in detention and sentenced to death after a seriously flawed judicial process. **Hoshyar Saber Hassan**, a 26-year-old shopkeeper from Erbil, married with one child, was arrested on 21 August 2004 in his shop. He was a member of *al-Jama’a al-Islamiya* but had reportedly left the organization before he was arrested. Five men, one wearing military uniform and the others wearing civilian clothes, went into the shop at around 9.30pm and asked for his identity card. When he said he did not have it they asked him to go with them to the *Asayish*



Hoshyar Saber Hassan
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Gishti. Outside the shop he discovered that there were more than 20 armed men in uniform and three cars. The men tied his hands behind his back, blindfolded him and took him to a secret place of detention, which he later realized was a house. An interrogator asked him whether he was a member of *Ansar al-Islam*. He said he was not.

He was asked the same question many times and on each occasion he denied that he was a member. He was slapped and punched several times. At around midnight a different interrogator asked the same question and Hoshyar Saber Hassan, fearing further ill-treatment, said that he was a member of *Ansar al-Islam*. He was asked a number of questions about the group. The following morning, his interrogators told him that there had been two almost simultaneous suicide attacks in February 2004 in Erbil and that they believed he was one of the people who had organized the attacks but provided no evidence. Hoshyar Saber Hassan denies any involvement.

Hoshyar Saber Hassan is reported to have been tortured by being beaten with a cable, subjected to electric shocks, beaten on the soles of his feet, forced to carry heavy weights, and forced to listen to loud music through headphones. He was also denied food and water for several days and he alleges that on one occasion an *Asayish* officer pointed a gun at his head to try and make him admit to co-operating with the Erbil suicide bombers. His wife was brought into the next room and interrogators threatened to rape her, he alleges, unless he confessed; this occurred on his sixth day in detention. He then agreed to sign whatever was required if they would agree not to harm his wife. He was made to sign a document, whose contents were not made known to him, by fingerprint. The next day, the interrogator who had made him sign returned with a man who he described as his boss and told Hoshyar Saber Hassan to repeat what he had said the previous day. Hoshyar Saber Hassan then repeated the same sentence: "I co-operated with the bombers". The man described as the interrogator's boss then signed a document. A few days later, Hoshyar Saber Hassan became aware that the "boss" was, in fact, the investigative judge.

Hoshyar Saber Hassan remained in the same cell for nearly eight months. Several other detainees were held in the same cell and there were others in adjoining cells. At night, Hoshyar Saber Hassan heard people screaming. In winter the cell became very cold and at one point he was taken to hospital for a few hours. He was eventually transferred from this secret place of detention to the *Asayish Gishti* prison where, after one month, he was visited by the ICRC.

His family first visited him eight months after his arrest but he was unable to tell them what had happened to him because an *Asayish* officer remained within earshot. In September 2005 he was transferred to 'Aqra Prison, where he remained until its closure almost two years later. He was then moved to Shaqlawa Prison for five months before he was transferred to the *Asayish Gishti* for a further two months and three days.

On 17 May 2006, while he was at 'Aqra Prison, *Asayish* guards told him that they were to take him to a court. When he said he did not have a lawyer, they told him the court would appoint a lawyer. The court was in a small room and did not appear to be a court of law. However, there were three judges, one of whom told Hoshyar Saber Hassan to be quiet when he protested that the case against him was fabricated and he did not have a lawyer to represent him. The judge told him that the court had appointed a lawyer for him, who was present. Apart from Hoshyar Saber Hassan, his court-appointed lawyer with whom he had not

consulted, and the three judges, the only other people present were *Asayish* officers. The latter took Hoshiyar Saber Hassan out of the room when he continued to protest and told him he must co-operate with the judge. He was then returned to the courtroom and questioned by a judge who showed him photographs and asked him several times if he knew the man pictured. Hoshiyar Saber Hassan said he did not know him.

Two days later Hoshiyar Saber Hassan was returned to the court. The judge read the verdict and the court sentenced him to death by hanging. His lawyer tried to address the court but was told to sit down by the judge. Hoshiyar Saber Hassan subsequently lodged an appeal which is still pending, and he remains under sentence of death in al-Mahatta Prison.

Amnesty International urged the KRG authorities to immediately suspend the death sentence imposed on Hoshiyar Saber Hassan, investigate promptly, thoroughly and independently his alleged torture and other ill-treatment, and give him a fair retrial in accordance with international standards or release him. The response received from the KRG did not include any information on this case.

Before the suspension of the death penalty by Paul Bremer, then head of the CPA, on 10 June 2003, the death penalty was rarely used by the Kurdish authorities in northern Iraq. The Iraqi central government in Baghdad reinstated the death penalty on 8 August 2004. In the Kurdistan Region of Iraq the death penalty was further extended in July 2006 when the Kurdistan Parliament passed the Anti-Terrorism law (Law 3 of 2006). This law made a number of offences punishable by death, including kidnapping, membership of terrorist organizations, espionage and aiding presumed terrorists to leave or enter the country. On 29 June 2008 the Kurdistan Parliament passed a new law to extend the application of the Anti-Terrorism law until 16 July 2010.

To Amnesty International's knowledge, the first executions to be carried out in the Kurdistan Region of Iraq since 1992 took place on 21 September 2006, when 11 people were executed by hanging in Erbil. According to reports, the 11 men, said to be members of *Ansar al-Islam*, had been sentenced to death in March 2006 after they were convicted of killings and kidnappings in the Kurdistan Region during 2003 and 2004. In July 2005 Kurdish news channels broadcast "confessions" to offences of murder and rape by **Shaikh Zana 'Abdul Karim Barzanji** and others which had been taped while they were held in detention. Among those executed were **Shaikh Zana 'Abdul Karim Barzanji, Burhan Tal'at Mohammad, Dilir Haidar 'Abdullah, Mariwan Karim Hassan, Karukh Burhan Mohammad, Hafal Fariq Isma'il, Aza' Mu'tasam Karim, Fariq Isma'il 'Abdullah, Dilir Abu Bakr Isma'il, Yusuf 'Aziz Qadir and Ziyad Rif'at 'Abd al-Karim.**

Four further executions were carried out on 29 May 2007. **Herman Mohamed, 'Othman 'Abd al-Karim, Sherwan Ahmed and Qaraman Rasul**, who were executed in Erbil, had been convicted in June 2006 of participating in a bomb attack in Erbil a year earlier. As far as Amnesty International is aware, there were no other executions in 2007. Two more executions are reported to have been carried out at the beginning of 2008 but Amnesty International has no further details.

On 6 November 2008 a criminal court in Sulaimaniya sentenced four people to death – **Riyadh Jasim Mohammad, Mohammad Sultan, 'Omar Rahmatullah and Yousef Jadu**'. They

were sentenced in connection with a car bomb attack outside the Palace Hotel in Sulaimaniya that killed one person and injured 40 others on 10 March 2008. The four were convicted under the Anti-Terrorism Law of 2006 for the Kurdistan Region of Iraq and the Iraqi Penal Code. Four other defendants were acquitted (see Chapter 6).

Amnesty International was told by the KRG that as of June 2008 there were 33 people on death row in Erbil and about 47 in Sulaimaniya. With the four death sentences passed on 6 November 2008, this means that there are at least 84 people on death row, including some women. No execution has been carried out recently in Sulaimaniya or other areas where the PUK is predominant, apparently because of the PUK leadership's opposition to the death penalty. All death sentences have to be ratified by the President of the KRG before executions are carried out.

In the response sent to Amnesty International on 19 October 2008, the KRG Human Rights Ministry stated that the government was urging the parliament to reduce the scope of the death penalty but with little success because there were not enough members who support such a proposal.

Amnesty International opposes the death penalty in all cases, without exception, as a violation of the right to life and as the ultimate form of cruel, inhuman and degrading punishment. In addition, international human rights standards, as well as various bodies and experts, have long affirmed that it would be a violation of the right to life to execute a person after a trial that does not satisfy all guarantees for fair trials under international law and standards. On 20 November 2008, 105 countries adopted a second UN resolution calling for a moratorium on the use of the death penalty. The resolution was adopted in the UN General Assembly (Third Committee).

With regard to current law and practice in the area administered by the KRG, Amnesty International is greatly concerned that some of those sentenced to death may have been convicted on the basis of information or confessions obtained under torture or other ill-treatment. For example, some of those executed on 21 September 2006 made televised confessions before their trial, possibly as a result of torture or other forms of duress. In addition, Amnesty International considers that such television broadcasting of self-incriminating testimony of pre-trial detainees violates the right to a fair trial. Article 14 (2) of the ICCPR states: "Everyone charged with a criminal offence has the right to be presumed innocent until proven guilty according to the law."

Amnesty International regrets the recent decision of the KNA to renew the Anti-Terrorism law for a further two years without amending its provisions allowing for capital punishment. The organization has welcomed the opposition to the death penalty expressed by Kurdish leaders, including Iraqi President Jalal Talabani, and the continuing debate about the death penalty in the area administered by the KRG. Amnesty International has also welcomed the initiatives being taken in favour of abolition of this cruel and inhuman punishment, including the conference held on 1 July 2008 under the auspices of the Ministry of Human Rights and Kurdish human rights NGOs, which recommended to the Kurdistan Parliament that it should reduce the number of crimes punishable by death.

RECOMMENDATIONS

Amnesty International recommends that the KRG should take the following steps:

- Ensure the most rigorous standards for fair trial are respected in all cases, including:
 - The right to be tried before an independent and impartial tribunal;
 - The right to have access to a competent defence counsel of one's choice at all stages of the proceedings;
 - the right to be presumed innocent until proven guilty according to law;
 - The highest standards for the gathering and assessment of evidence, in particular a prohibition of any statement obtained through torture or other ill-treatment being used in any proceedings against the accused.
- Establish an immediate moratorium on executions.
- Commute all pending death sentences.
- Reduce the number of crimes punishable by death and move towards the abolition of the death penalty, and respect international standards restricting the scope of the death penalty pending abolition.

8. DISCRIMINATION AND VIOLENCE AGAINST WOMEN

Over the past decade lobbying and campaigning by women human rights defenders in the Kurdistan Region of Iraq have achieved some important improvements concerning protection for women from violence and women's legal status. Since the late 1990s shelters for women at risk have been established by women's organizations and, more recently, also by the authorities. Further, women's organizations are involved in many activities contributing to strengthening women's role in society – including education, vocational training, income-generating projects, legal assistance, awareness and advocacy work.

In recent years, the Kurdistan Parliament has addressed violence against women. It has established specialized bodies tasked with monitoring and preventing violence against women – including at the police and at inter-ministerial level.²⁰ Law 14 of 2002 amended the Iraqi Penal Code in order to prevent inappropriately lenient sentences against perpetrators of crimes against women who claimed they had acted with “honourable motives.”²¹ In October 2008 the Kurdistan Parliament passed Law 15 of 2008 amending the Personal Status Law enhancing women's rights. These amendments included restrictions on polygamy, but many Kurdish women's rights activists keep calling for a total ban as they see the retention of discriminatory laws on polygamy as a capitulation to religious interests

Other positive steps taken include the Draft Law on Violence in the Family, which was drafted by the Kurdistan Parliament's Women's Committee and aims to improve protection of women and children. Among other issues, the draft law proposes to facilitate judicial procedures against perpetrators and envisages improved protection measures for victims or persons at risk.²²

State authorities must act properly and effectively to prevent violence against women, and to investigate and punish such violence after it occurs, otherwise the state can itself be held responsible for the violation. This is known as the standard of “due diligence”, which determines the efforts that a state must undertake to fulfil its responsibility to protect individuals from abuses of their rights by non-state actors. According to the UN Declaration on the Elimination of Violence against Women, states should “exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the state or by private persons”.²³

SCALE OF VIOLENCE AGAINST WOMEN

The scale of violence against women remains difficult to ascertain despite increased monitoring and reporting of violent acts against women by NGOs, media, inter-governmental organizations and the Kurdish authorities. Particular attention is often

given to the most violent incidents - including cases where women have been killed by members of their family or where their death was caused by burning injuries.

According to official records²⁴ at least 102 women and girls were killed between the beginning of July 2007 and the end of June 2008 in the Kurdistan Region of Iraq.²⁵ These include an unknown number of "honour killings" – women who were killed by male relatives because their behaviour was considered to have infringed traditional codes of "honour." Victims of "honour crimes" include women who have objected to being forcibly married as well as women who were found having telephone contact with a man without approval of their family.

In addition to the 102, a further 262 women and children died or were severely injured in the same period due to intentional burning, including suicides. Some women were reported to have been burned to disguise a killing.

Cilan Muhammad Amin, aged 23, was strangled to death on 8 March 2008 and subsequently burned in the village of Tanjara, near Sulaimaniya. Cilan Muhammad Amin's sister and her husband have reportedly been detained and accused of having burned the body. However, her brother who is suspected of killing her – reportedly because he believed she had a secret relationship with a man - remains at large.²⁶

Burning has become the most frequent method of suicide for women in the Kurdistan Region of Iraq. For example, in 2007 in the governorate of Sulaimaniya, 105 women and girls died due to burning injuries – including at least 29 who were identified as suicides (although the actual number is believed to be significantly higher); an additional 17 women committed suicide by other means.²⁷ Relatives and friends of suicide victims or suicide survivors have frequently reported violence or repression in the family as a main reason for the act.

According to a report by *Awene* newspaper, a 13-year-old girl named **Rojan**, from Saydani village, near Bahraka, in Erbil governorate, committed suicide by setting herself on fire on 16 March 2008. According to her brother, Rojan objected to being forcibly married to an adult man.²⁸

Violence against women by family members spans the spectrum from depriving women of economic necessities through verbal and psychological violence, to beatings, sexual violence and killings. Many acts of violence apparently have some social sanction, including "crimes of honour", forced marriage,²⁹ including early marriage,³⁰ "*Jin be Jin*" (a practice involving the barter of women to avoid paying dowries and other marriage expenses) and female genital mutilation. Husbands, brothers, fathers and sons are responsible for most of these abuses - sometimes acting on the orders of family councils, gatherings of family or clan elders.

The most recent population survey on violence against women in the Kurdistan Region, published by the World Health Organization (WHO), was based on interviews conducted in early 2007.³¹ According to this survey, 10.9 per cent of the married women surveyed had experienced at least one act of physical violence during the previous 12 months. Although this constitutes a considerably lower level than the average in Iraq,³² it implies that tens of thousands of women in the Kurdistan Region suffer from abuse with the vast majority of these incidents apparently remaining unreported.

RESTRICTED LIFE CHOICES

Women and girls with restricted life choices are particularly vulnerable to violence. In the Kurdistan Region of Iraq the life choices of many women and girls are restricted because they

are not allowed to choose their partner and many are subjected to forced or early marriage. Many women and girls have received little or no school education; they have limited employment opportunities and are not economically independent.

In May and June 2008 Amnesty International delegates interviewed 16 women and girls staying in shelters and 16 women and girls held in detention centres in the Kurdistan Region of Iraq. This random sample included 20 interviewees who were or had been married. Of these, 12 said that they had been forced to marry, including six who were aged under 15 years when they were married. According to the Iraqi Personal Status Law, forced marriages (Article 9) and marriages of girls younger than 15 are illegal, but they continue to be conducted in private or religious ceremonies without those responsible being held to account.

Five of the 12 interviewees who had never been married were subjected to or at risk of violence because they had insisted to choose their partner. Some women reported that they had been raped, including a 22-year-old woman who expected to be married to her rapist as his second wife in a settlement that also involved the rapist's daughter being married to one of her relatives. The Iraqi Penal Code supports such practice by excusing a rapist from punishment if he marries the victim (Article 398).

Six of the interviewed women reported that violence they had experienced or feared was related to allegations of adultery. Whilst the Iraqi Penal Code criminalizes adultery by both husbands and wives (Article 377) such legislation has a disproportionate impact on women. For example, it may be used to harass women or to enable their husbands to evade responsibility for their children.

A 27-year-old mother of three children told Amnesty International that her father had forced her to marry an older man when she was just 13. Years later, she said, her husband falsely accused her of adultery because he wanted to divorce her and evade responsibility for supporting her. She was being detained in Erbil because of her husband's accusations. She said she had received only minimal education as a child and, alone, could not support herself and her children. She now hoped that her husband would allow her to return to the family home to live as her husband's "servant", if this was what he required, so that she could at least be with her children.

Kurdish women human rights defenders confirmed that many incidents of violence against women which they had encountered involved women who had experienced early or forced marriages, or whose husbands had entered polygamous marriages. However, the KRG appears to have no mechanisms for monitoring early and forced marriages, including those conducted through court arrangements, and therefore for ensuring that those responsible for marriages which contravene the law are prosecuted.

In the vast majority of cases, the girl's family arranges the early marriage. Generally, the lower her family's income and her level of education, the more likely she is to be forced into an early marriage. Thirteen of the 32 women and girls interviewed by Amnesty International had never had any school education. Ensuring girls' access to education is one of the most effective steps to end early marriage.

International human rights standards recognize the right to education – including that primary education shall be free and mandatory.³³ In the area under the KRG administration, children

are required to have at least six years of primary education, generally starting at age six or seven. However, the number of women and girls who received no school education is alarmingly high in the Kurdistan Region of Iraq. According to the WHO study, 31.7 per cent of the interviewed women and girls aged between 15 and 49 never attended school compared with 15.1 per cent of the interviewed women in the same age group in other parts of Iraq. The study also found that fewer girls than boys attend secondary school or higher education.³⁴

Depriving girls of education constitutes, among other things, a form of economic discrimination. They are less likely to fulfil their potential in all areas of employment, including in politics. The WHO study found that 90 per cent of the interviewed women aged between 15 and 49 were not working in the Kurdistan Region of Iraq compared with 86.6 per cent of women of the same age group in the rest of the country.³⁵ In a communication to Amnesty International the Kurdish authorities emphasized that there are no legal restrictions discriminating against women seeking employment.³⁶ However, the Ministry of Social and Labour Affairs is planning to provide more job opportunities for women.

REPORTING VIOLENCE

While the suffering of many women victims of violence goes unnoticed by the authorities there has been an increase in the number of complaints filed against perpetrators of violent acts against women. In some cases, women have filed complaints directly with the authorities; in others, this has been done through the assistance of women's rights organizations. Hotlines for women at risk have been established by the authorities and NGOs.



Police Directorate to Combat Violence Against Women, Erbil
© Amnesty International

The KRG authorities state that since the creation of police directorates specializing in violence against women,³⁷ the number of complaints of violence against women has increased, apparently because the establishment of the directorates has facilitated reporting of such crimes. As the directorates are located in the main cities, however, it remains difficult for women in rural areas to report violence or threats. Further, the relative lack of female staff within the police directorates may inhibit the level of reporting even in the main urban areas.

Despite the creation of the directorates and the specialist gender training being made available to police, it would appear that some police officers still are unwilling or unable to respond effectively when confronted with cases of violence against women. In their meetings with Amnesty International, KRG officials acknowledged that, as yet, many police officers are not sufficiently trained on gender issues in order to deal adequately with women victims of violence.

One woman interviewed by Amnesty International delegates in May 2008 stated that she had suffered decades of violence and abuse by her former husband, to whom she had been married at the age of 13. She said she had repeatedly complained to the local police in Sulaimaniya but without obtaining an adequate response. She said: "If the police would have taken real measures to protect me this abuse could not have continued." She stated that in 2001 both she and her daughter sought to report a violent act against her daughter but were discouraged from doing so by the police. Eventually, with the support of a women's organization she did file a complaint against her husband, and in 2008 he was sentenced to a prison term for committing a violent act against her. She fears, however, that she will again be at risk after his release which is scheduled for 2010.

NEED FOR IMPROVED PROTECTION

Compared with other parts of Iraq, protection mechanisms for women in the Kurdistan region of Iraq are more advanced. The establishment of several new institutions over the past decade - including NGOs providing legal advice, shelters for women at risk as well as the specialized police directorates - have contributed to improved protection of women from violence. Further steps are needed, however, to build on these positive initiatives and to create an environment in which women are free from violence and the threat of violence.

Many women at imminent risk of violence have been referred by others to, or have themselves sought directly, refuge in a location considered to be safe - such as shelters for women, offices of the security forces, detention centres, and private homes belonging to community leaders or women human rights defenders. All of these, however, can be seen as no more than short or medium term "solutions." They cannot provide a durable resolution of the needs of women who, due to the violence to which they have been exposed or a continuing threat, are unable or unwilling to return to their family or other previous living environment.

In February 2009 there were six shelters operating in Northern Iraq: one each in Dohuk, Erbil and Kirkuk, and three in Sulaimaniya. Their capacity, however, is insufficient to meet the true level of need. The KRG authorities acknowledge this and say they hope to create additional capacity.³⁸

Many of the women and girls interviewed by Amnesty International in shelters and detention centres expressed hopelessness and fear. **A 34-year-old divorcee** at a shelter who had been attacked and told she would be killed when she returned to her family told Amnesty International: "I know my brothers will kill me. They said that no matter where you go we will find and kill you. I know I will die."

One of the most difficult challenges facing those responsible for the safety of women staying at a shelter or other location is determining under what conditions the women should leave and return to what may still be an extremely unsafe environment. It would appear that currently no general set of standards or operating procedures exist to address this issue.³⁹

As a general rule such standards should ensure that no woman will be returned to an unsafe environment against her will, and she needs to be able to withdraw her consent to return at any moment. Those involved in negotiating a possible return of a woman at risk to her family should ensure that the woman is fully informed about the risks and also presented with alternative long-term perspectives in a safe environment, in order to make sure that she is not placed in a position of having no choice but to return to her family.

Further, such standards and procedures could be of help to the women, particularly if they include procedures for ensuring the provision of local back-up support systems involving people such as community leaders and others who do not pose a risk to the women concerned. Good protection planning would also require qualified staff conducting regular and appropriate follow-up and review meetings with women who return to a potentially unsafe environment, in order to ensure that the most effective safeguards are kept constantly in place, as well as expert advice and support in providing good security, including provision of mobile phones, safety locks and so on. Amnesty International is aware of staff at shelters trying to maintain regular contact with women after they have left, but there needs to be a more comprehensive system of regular follow ups and adequate resources available to ensure this.

Negotiations about the return of a woman at risk to her family are generally led by the institution offering protection to the woman and frequently involve representatives of the authorities and community leaders. Amnesty International is aware of a frequent practice at shelters, detention centres and police stations where at the conclusion of a negotiation process about the return and prior to the woman's departure from the place of protection, her relatives are required to sign a commitment before a court undertaking not to harm her.

Amnesty International is concerned that negotiations with community leaders or others, and obtaining such written undertakings, are insufficient unless other effective protection measures are put in place to ensure that such undertakings are honoured in practice. In a number of cases reported to Amnesty International, it appears that women were subjected to violence by relatives, in some cases lethally, even though family members had provided written guarantees that they would not harm them.

Kowan Yunis Qadir, aged 17, was shot dead on 1 February 2008 in Bastora village, near Erbil. She had stayed at the Nawa Shelter in Erbil in October 2007 because her husband refused to agree to a divorce. Before leaving the shelter, several of Kowan Yunis Qadir's male relatives signed an agreement guaranteeing her safety. However, at least one of her male relatives was detained and subsequently charged in connection with the killing.⁴⁰

The above case demonstrates the grave risk that may face women leaving a safe environment. In many cases, women who do return to their families suffer further abuse but are unable or fear to report it; for many women the threat of violence remains and may be unbearable.

In meetings with Amnesty International, Kurdish women human rights defenders frequently expressed a need for the creation of long-term safe living environments inside or outside the shelters for those women who are not able or willing to return to their families. This should include measures to improve the economic independence of women, including through access to more education, job training and placement. The Kurdish authorities informed Amnesty International that they were considering providing qualification and job opportunities for women in shelters.⁴¹

Amnesty International learned of a number of cases in which the KRG authorities apparently failed to take appropriate preventive or restraining measures against a man posing a threat to a woman although they had been alerted to the threat. The following case, of a 27-year-old journalist murdered in April 2008, provides a compelling example of the possible consequences when the authorities fail to take adequate measures to protect a woman at risk.

Begerd Hussein Muhammad Amin was stabbed to death allegedly by her husband, Muhammad Mustafa Hama Amin, on 18 April 2008 at her home in Erbil. She had separated from him but they had not divorced. She was killed after she formed a relationship with another man and after receiving a number of threats from her husband. She reported these threats to the police and sought police protection, notably from the Police Directorate of Follow-up Violence against Women in Erbil. The police advised Begerd Hussein Muhammad Amin to seek refuge in a shelter, but when she declined to do this, fearing that this would prevent her continuing her work as a journalist, she asked for a police guard for her house. The police declined to do this and apparently did not propose alternative measures, such as a restraining order on her husband. This tragic case might have been avoided if the police had been more proactive in identifying and enforcing measures to protect the safety of Begerd Hussein Muhammad Amin. As of early 2009, her husband remained at large.



Women demonstrating against an honour killing in front of the Kurdistan Parliament, Erbil 2007.

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PROSECUTION OF PERPETRATORS

The amendments to Law 14 of 2002 to the Iraqi Penal Code in the Kurdistan Region of Iraq should prevent inappropriately lenient sentences for perpetrators of crimes against women who claim they acted with “honourable motives”. Since the amendments, Amnesty International has obtained details on 10 verdicts of criminal courts⁴² involving men convicted of killing a woman relative. The sentences in these cases ranged from two years’ imprisonment (two cases) to the death penalty (one case).⁴³ In at least five of the cases the Court of Cassation has ruled on the verdicts. In the two cases where the perpetrators were sentenced to two years’ imprisonment, the Court of Cassation rejected the lenient sentence in one case and approved it in the other.

On 17 May 2007 the Court of Cassation quashed the conviction for manslaughter and sentence of two years’ imprisonment of Faisal Ahmad Ali for having shot dead his estranged wife in 2006 in Zakho. In its second verdict the Dohuk Criminal Court sentenced him to a three year prison sentence for murder. On 9 March 2009 the Court of Cassation confirmed the conviction for murder but considered the prison sentence as too lenient, noting that the Dohuk Criminal Court had considered mitigating circumstances when sentencing “in contravention of Law 14 of 2002.”

On 12 November 2006 the Court of Cassation upheld the conviction and two-year prison sentence of Azad Dawud Suleiman by a criminal court in Sulaimaniya⁴⁴ for strangling his sister to death in 2006 in Khanaqin, Diyala governorate. The Court of Cassation approved the conviction for murder, but accepted mitigating circumstances under Article 128 of the Penal Code. The criminal court had acknowledged that the defendant, who confessed to the crime, acted with an “honourable motive” and with the intention to “clean the shame” when he murdered his sister, whom he claimed was a prostitute.

On the basis of information on a limited number of court cases it remains difficult for Amnesty International to assess the extent to which courts continue to allow mitigation based on the concept of “honour.” However, Amnesty International is concerned that despite the legal amendments of 2002, at least in some cases criminal courts have continued to pronounce inappropriately lenient sentences for men convicted of killing a female relative.

In many cases perpetrators of violent acts against women – including so called “honour killings” and other killings – are never brought to justice. In some cases they may have successfully disguised the killing as an accident or suicide; in other cases authorities have not been able to identify the perpetrator or he remains at large.

Kurdistan Aziz, aged 16, from the Kolkarash village near Heran, Erbil governorate, disappeared in May 2008. She is presumed dead since her father reported to the police on about 21 May 2008 that one of his nephews had called him and confessed to her murder. She had run away with a young man in February 2008 to Erbil where both were held in detention. At the end of February she agreed to return to her parents’ home after they signed a commitment guaranteeing her safety. The KRG authorities detained her parents in June 2008 and held them for several months. However, their nephew, the main suspect, remains at large as of early 2009.

Failure to identify and bring to justice the perpetrators of violent acts against women sends a frightening message to all women. Amnesty International reiterates its call to the Kurdish authorities to increase efforts to ensure prompt, effective and independent, impartial and thorough investigations into all reported cases of violence against women.

WOMEN HUMAN RIGHTS DEFENDERS AT RISK

Violence in the family can extend to the activists who work to protect women's rights and women's choices. Women human rights defenders active in addressing violence against women in the Kurdistan Region, and elsewhere in Iraq, themselves risk violence from within the community. Several activists who spoke to Amnesty International had received threats, including women lawyers and shelter staff who act on behalf of women subjected to violence.

A woman lawyer in the Kurdistan Region told Amnesty International that she had received threats on her mobile phone from relatives of a woman for whom she had filed a divorce application. One of the messages she received in 2008 read: "Where do you want to hide? If she gets a divorce we will take our right. We know that you are her lawyer. We are able to get hold of you and kill you. No power can prevent us from doing so."

A women caseworker at a shelter in the Kurdistan Region told Amnesty International: "I have received threats from the day I have started working here several years ago." She reported one incident in 2008 when a relative of a woman staying at the shelter threatened her by phone saying: "I want to tell you that I know you and your family name. I know that you gave the names of the men suspected of having attacked her to the police and you also wrote the letter to the court. You defend her but that is wrong. I warn you!" After the call the caseworker informed the police and as a safety measure left her workplace and took her child out of the kindergarten for that day. The caller was never identified.



The NGO ASUDA runs a shelter in Sulaimaniya

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An armed attack on 11 May 2008 on the shelter run by the NGO ASUDA in Sulaimaniya was a reminder of the risks to which women human rights defenders are exposed. Gunmen believed to be relatives of a woman staying at the shelter fired several shots from a neighbouring building into the shelter, seriously injuring the woman. As of February 2009, no one had been charged in connection with the incident.

RECOMMENDATIONS

Amend the law:

- Review all legislation that discriminates against women, in particular provisions of the Penal Code and Personal Status Law, and abolish or amend any provisions which discriminate, directly or in their impact, against women;
- Take effective measures to eliminate all violent acts against women, including by banning female genital mutilation and prosecuting those who order or commit such abuse;
- Take effective measures to ban early marriage and forced marriage, including by reviewing and implementing relevant legislation.

Empower women:

- Take steps to improve education for girls, including by ensuring that all girls receive primary education and by working to ensure that girls and boys are able to access secondary education on an equal basis;
- Support and promote the economic independence of women, including by increasing employment opportunities for women.

Improve protection measures:

- Ensure that all officials in contact with or aware of women at risk of violence are able and willing to take effective, appropriate and urgent protection measures, including measures that would allow the appropriate and timely implementation of civil protection orders - based on a judicial decision - banning a man who threatens to harm a woman from having contact with her;
- Provide appropriate financial and other support for the running or the establishment of shelters and other facilities run by NGOs or the authorities for women at risk of violence, in consultation with women's rights advocates and shelter managers;
- Ensure regular review of protection and security measures at all institutions – in particular shelters - where women at risk of violence reside, in consultation with women's rights organizations, shelter managers and others;
- Ensure that written standard procedures exist for institutions, including shelters, detention centres, police stations and hospitals, that frequently release women into a potentially unsafe environment; such procedures, drawn up in consultation with women's rights organizations, should stipulate a range of safety measures, including ensuring that a woman is fully informed about the risks and identifying a responsible body for establishing local back-up systems for protection of a returned woman and regular and appropriate follow-up contact with her;
- Create opportunities for a safe and empowering living environment for women in need of protection for an indefinite period within and outside shelters, including by providing qualification and job opportunities;
- Provide or support protection mechanisms for women human rights defenders in consultation with women's rights organizations.

Investigate and prosecute:

- Ensure prompt, effective, independent, impartial and thorough investigations into all reported cases of violence against women, including by conducting separate interviews with all relevant witnesses and conducting all necessary forensic tests;
- Ensure the availability of suitably trained staff, including female staff, for investigating cases of violence against women;
- Ensure gender-sensitivity and safety when taking testimony of survivors of violence and witnesses;
- Ensure protection of witnesses testifying at court;
- Ensure that where there is sufficient admissible evidence, suspects of violent acts against women are detained and charged, having due regard to their human rights, and that all appropriate efforts are made to apprehend suspects who remain at large;
- Ensure that all who, after a fair trial, are found to have committed violence against women are given sentences commensurate with the gravity of the crime, but without use of the death penalty.

Train officials in gender issues:

- Provide training in gender issues for all elements of the criminal justice system – including police officers, forensic medical examiners, prosecutors and judges – in order to fully equip officials and members of the judiciary to deal with women’s complaints with appropriate sensitivity and competence;
- Ensure that training in gender issues is made available to officials throughout the area under the administration of the KRG and take steps, as soon as possible, to ensure that there are police officers who have been trained in gender issues in all police stations, including those in rural areas;
- Ensure the establishment of an effective, independent complaints mechanism into all allegations of police and government officials failing to carry out their legal duty to protect women and prevent violence when clearly required to do so; those failing such legal duty should be subject to disciplinary or penal sanctions.

Improve preventive measures:

- Support and engage directly in public awareness-raising about crimes of violence against women, using new as well as existing approaches, in consultation and collaboration with women’s rights organizations;
- Compile systematically and maintain comprehensive data on incidents of violence against women, in collaboration with women’s rights organizations and other NGOs, academics and others; and ensure that the information obtained from data collection and analysis is made publicly available and is used to refine official policies and procedures to address violence against women.

9. ATTACKS ON FREEDOM OF EXPRESSION

In the past few years many media outlets, including satellite television stations, radio stations and newspapers and other publications, have emerged in the Kurdistan Region of Iraq. The majority are financially supported by the KRG. Some belong to the main political parties, the KDP and PUK, but even small political parties such as *al-Jama'a al-Islamiya* have their own TV stations and newspapers. Despite the increase in freedom of expression, however, the majority of the media outlets follow the official line and avoid criticizing the KRG, the *Asayish*, the intelligence agencies and the two main political parties.

Recently, the nascent independent press, especially newspapers such as *Hawlati* and *Awene*, have shown themselves more willing to criticize KRG policies and raise other issues. Among such issues are human rights violations by the *Asayish*, alleged corruption, nepotism and lack of transparency in KRG ministries and within the two main political parties, and the extent of their influence on all aspects of life in the Kurdistan Region.

One consequence of this has been an increase in arrests and other action against journalists, who have been detained, beaten and harassed by the *Asayish* and other security agencies. Several newspapers have been sued by the KRG and powerful individuals within the two main political parties. In January 2008, for example, Iraqi President Talabani sued *Hawlati* newspaper for defamation and republishing false information after it published a translated article written by Michael Rubin, a US scholar who had lectured at the universities of Salahuddin and Sulaimaniya. The charges were filed under Article 433 of the Iraqi Penal Code, which criminalizes defamation. This article has been used to target independent journalists and suppress freedom of expression.

For their part, the KRG authorities and the *Asayish* complain that the independent press has failed to adopt good editorial standards and shows insufficient respect for social and cultural traditions. In September 2008 a new press law was passed that removes imprisonment as a punishment for press-related offences. Despite this welcome step, journalists continue to be targeted and even arrested.

The following journalists were arrested and in some cases beaten before they were released in recent years. One journalist was murdered in suspicious circumstances.

Kamal Said Qadir was held in solitary confinement for a few days without access to a lawyer or to his family and relatives. His abduction was linked to articles he had published on the internet describing corruption and nepotism in the KRG. He was sentenced to 30 years' imprisonment, but was later pardoned (see Chapter 7).

Mohammed Siyassi Ashkani, aged about 35, a journalist working for the newspaper Peka in the town of Rania, near Sulaimaniya, was arrested by *Asayish* officers on 24 January 2007. He was reportedly accused of spying for another political party and a foreign country. He was held in solitary confinement for 55 days before he was allowed a family visit. He was allowed further family visits, once a week, but never had access to a lawyer. He was released without charge on 19 July 2007.

Nabaz Goran, a 31-year-old freelance journalist originally from Halabja who works and lives in Erbil, was abducted from outside a hotel in Erbil on 4 April 2007 by five armed men wearing military uniform. They blindfolded him, tied his hands behind his back and forced him into a car. He was taken to an unknown location. There, he was hit with a metal bar and another weapon, causing him to lose consciousness. He was left lying until a driver stopped and took him to a hospital in Erbil. Prior to this attack Nabaz Goran had published a number of articles critical of the KRG. His abduction and beating were said to have happened only a few days after he reported that a senior official in the KDP had insulted the Kurdish population of Iraq during a speech.



Nabaz Goran
© Amnesty International

Naseh 'Abd al-Rahim Rashid Amin, a 30-year-old freelance journalist from Halabja, was summoned to the *Asayish* in Halabja on 11 June 2007. He was interrogated for two hours in connection with an article he had published in Kurdish on a website called Kurdistan Post (www.kurdistanpost.info). The article was critical of the *Peshmerga* and accused senior *Peshmerga* of being corrupt. He was told to return to the *Asayish* building the next day and when he did so, he was again asked why he had written the article and whether he was a member of the Islamic Unity Party, which he denied. He was told that he had two choices, either to write an article apologizing to the *Peshmerga* or be sued, and that he had five days to decide. When he refused to apologize, he was arrested and charged with defamation under Article 433 of the Penal Code (criminalizing defamation). He was taken to court the same day and within minutes sentenced to 10 days' imprisonment.

His family appointed a lawyer, who appealed against the verdict and secured his release on bail. He was due to appear in court on 7 October 2007 but before that date he was reportedly seized by four *Asayish* officers who forced him into the boot of a car and took him to a place outside Halabja where they punched and kicked him. They left him, blindfolded, and drove off. He walked to a village from where he contacted his family. The next day, he went to the *Asayish* and complained, but the *Asayish* denied any involvement. Eventually, after third party mediation, he agreed to write an article stating that he had not meant to suggest that all *Peshmerga* were corrupt, only some of them. The case against him was then closed.

Aso Jamal Mukhtar, a 42-year-old journalist from Sulaimaniya, married with three children, works for *Rosznama*, an independent newspaper. Previously, he directed an educational programme on television. On the evening of 7 May 2007 he was driving home when three hooded armed men in civilian clothes stopped their car in front of him, forced him from his vehicle and hit him with a stick on the head and back. They said nothing and after a few minutes he was able to run away. He went to the television building and guards there took him to hospital. A month later, he was dismissed from his job. He told Amnesty International that a senior government official had told him that his dismissal was due to his published articles critical of the KRG.

Rezgar Raza Chouchani, a 28-year-old journalist from Erbil, married with one child, was summoned on 3 June 2008 to the headquarters in Salahuddin of the Zeravani, a *Peshmerga* intelligence agency. He had worked as a journalist for the *Zeravani Kurdistan*, a magazine published by the agency, but about a month before he was summoned he had resigned and stopped working for the magazine. He then published a few articles about corruption in the agency in a newspaper called *Berzan* and on a website, *Horakurd*, which he edited. *Zeravani* officials had apparently threatened him. He went with his brother to the *Zeravani* headquarters. *Zeravani* officials told the brother to leave, and said that Rezgar Raza Chouchani would be fine. After that, his family had no contact with Rezgar Raza Chouchani for six days until he was released on 9 June 2008. His release was said to have been made conditional on him not writing again. In the response sent to Amnesty International on 19 October the KRG Human Rights Ministry stated that Rezgar Raza Chouchani was “an army official and has been dealt with according to the army law”, without giving further details.

Souran Mama Hama, a 23-year-old journalist, was shot dead outside his parents' house in Kirkuk on 21 July 2008. He was shot from a car by men wearing civilian clothes. He had published articles critical of corruption and nepotism within the PUK and KDP. The articles were published in the independent magazine *Levin*, published in Sulaimaniya. He had reportedly received anonymous death threats a few days earlier.

On 12 August the KRG Minister of Human Rights, Yousif 'Aziz Mohammad, stated that the KRG was “saddened and shocked by the recent killing of the journalist Soran Mama Hama. We in the KRG believe strongly in the right of [to] free speech and condemn this killing in the strongest possible. We will do our utmost to assist in the investigation of this crime and in bringing the perpetrators to justice...”⁴⁵

Several other journalists and writers received death threats in July 2008. The name of one of those threatened, Souran 'Omar, appeared on a list of journalists and others at risk of being killed, apparently for their criticism of the two political parties and the KRG. On 24 July, **Souran 'Omar**, from Sulaimaniya and married with two children, received anonymous telephone calls threatening him with death if he did not stop writing. He had published a number of articles in a magazine called *Rega*, which he edits, as well as in *Levin*. These articles were said to be critical of corruption and nepotism in the two parties.

On 23 July, men wearing civilian clothes went to the house of **Nehad Jami**, a journalist based in the city of Kirkuk which, although outside its jurisdiction, is under the effective control of the KRG. The men knocked at the door of Nehad Jami's house, but he and his wife were not there.

The men waited for him for several hours and then left. At around the same time, another journalist, **Kusrat 'Abd al-Rahman**, received threats by phone related to articles he had written.

Marwan Tufiq, chief editor of *Birew*, an independent monthly publication, was detained on 28 August 2008 following an order from a judge in the town of Sayidsadiq. He was taken to the Tasfirat Prison in Sulaimaniya. He was apparently charged with insulting a Kurdish martyr following a complaint made by the martyr's son.⁴⁶

Shwan Dawdi, editor-in-chief of *Hawal*, a newspaper published in Kirkuk, was sentenced to a one-month prison term by a criminal court in Sulaimaniya on 5 November 2008 on three defamation charges filed by a retired judge relating to articles written in 2004 and detailing courthouse problems. He was also fined. Shwan Dawdi's lawyer appealed against the sentence and presented a copy of the new press law (see below) to the judge. However, the judge was reported to have said he was not aware of the new law and Shwan Dawdi remained held in a correctional prison just outside Sulaimaniya until his release on 11 November 2008.⁴⁷

'Adil Hussain, a medical doctor, was jailed for six months and fined by a court in Erbil on 24 November 2008 because of an article he wrote for the daily *Hawlati* newspaper about sex and homosexuality from a medical perspective. The article was published on 11 April 2007. Both the Public Prosecutor in Erbil and the Medical Syndicate initiated the court case against him. He was charged under Article 403 of the Iraqi Penal Code, which concerns the publication of material deemed immoral. Following local and international protests against his detention he was released on 7 December 2009.⁴⁸

International human rights treaties, including those ratified by Iraq, guarantee the right to freedom of expression. Article 19(2) of the ICCPR emphasizes that:

"Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

Freedom of expression is not absolute and may be subject to certain restrictions to ensure that it does not conflict with the rights of others. International human rights law sets out the framework for achieving a balance between freedom of expression and respect for the rights of others. In accordance with Article 19(3) of the ICCPR, freedom of expression may only be restricted if it is prescribed by law, necessary and proportionate to meet a legitimate aim (these aims are related to safeguarding the interests of others or the community as a whole). No one should be threatened or physically abused for exercising their right to freedom of expression.

Amnesty International considers that, as a general rule, criminal sanctions for defamation are inappropriate. In particular, they are inappropriate in the case of alleged defamation of public officials who, courts have widely recognized, should be expected to tolerate a greater degree of criticism than private individuals. Amnesty International considers that the existence of such laws can have an inhibiting effect on discussion of matters of public concern and that the imposition of criminal sanctions for defamation of public officials is a violation of the right to freedom of expression.

The UN Special Rapporteur on Freedom of Expression recommends that, at a minimum, criminal defamation laws should be repealed in favour of civil laws, and that sanctions for defamation should not be so punitive as to exert a chilling effect on freedom of opinion and expression.⁴⁹

The KRG has tried to regulate the press. A draft press law was first approved on 13 December 2007 by the KRG parliament. This draft law was very restrictive and imposed heavy financial penalties and even imprisonment for journalists found guilty of a number of vague offences such as “disturbing security,” “spreading fear” and “encouraging terrorism”. The bill was awaiting final approval by the President of the KRG. However, following wide international and local criticism of the draft law, the President sent the draft law back to parliament for revision.

On 22 September 2008 the new press law was passed by the Kurdish parliament. The law abolishes prison terms for offences such as defamation and reduces fines that can be levied against journalists for carrying out their duties.⁵⁰ The law was welcomed by journalists and media workers in the Kurdistan Region. However, some have complained that it is being ignored in practice by the *Asayish* and other security agencies, as shown by the arrest, interrogation and in some cases ill-treatment of journalists since the law was passed.

RECOMMENDATIONS

Amnesty International is calling on the KRG to:

- Respect and protect the right to freedom of expression, including media freedom, in conformity with Iraq’s obligations under international law;
- End the practice of detaining journalists for exercising legitimately their right to freedom of expression and put an end to other forms of illegitimate official interference in the free operation of the media, such as threats against journalists;
- Publicly condemn physical attacks, acts of intimidation, threats and other crimes carried out against journalists and other media workers. Ensure that all such acts are promptly, thoroughly and impartially investigated and that those responsible are brought to justice;
- Investigate the murder of journalist Souran Mama Hama and ensure that those responsible for his death are brought to justice in a fair trial without resort to the death penalty;
- Suspend all articles in legislation, especially in the Iraqi Penal Code, which criminalize defamation against public officials, and repeal criminal defamation laws replacing them with civil legislation.

ENDNOTES

¹ This is the term used in the Iraqi Constitution to refer to the three northern Kurdish provinces.

² During the visit Amnesty International's delegates met several senior KRG ministers and officials, the directors of the *Asayish Gishtî* - general security (directorate) in both Erbil and Sulaimaniya, members of the Kurdistan Parliament, representatives of NGOs, lawyers, judges, journalists and many families of detainees and former detainees. Amnesty International gratefully acknowledges all assistance made available to its delegates during their visit to the Kurdistan Region of Iraq.

³ Amnesty International has published numerous reports documenting a wide range of human rights violations committed by all sides involved in the conflict in Iraq, including the Iraqi government, the Multinational Force and armed groups. For more details on these visit Amnesty International's website: <http://www.amnesty.org>

⁴ The Islamic Movement in Iraqi Kurdistan was also involved in the fighting.

⁵ The USA mediated between the KDP and PUK. In September 1998 the two parties signed the Washington Accord.

⁶ On 24 February 2009 the PUK announced the unification of the three ministries. It was not possible to verify this information.

⁷ Starting from the early 1970s previous Iraqi governments embarked on a process of Arabization of Kirkuk, which eventually led to the displacement of an estimated 250,000 Kurdish people and their replacement by Iraqi Arabs from Central and Southern Iraq. The city is now heavily mixed with Kurdish, Turkomen and Arab populations.

⁸ Kirkuk is said to have oil reserves estimated at between 11 and 15 billion barrels. Iraq's oil reserves are believed to be at least 112 billion barrels.

⁹ Kurdistan Regional Government, Ministry of Extra Regional Affairs, Report on the Administrative Change in Kirkuk and the Disputed Regions, Erbil, December 2007.

¹⁰ On 5 June 2008, UNAMI issued an initial report and recommended putting two disputed areas under the control of the Iraqi central government, while giving the KRG the right to administer two other areas. This initial report and recommendations were criticized by the Kurdish authorities. They did not reject them, but they were waiting for other reports and recommendations before they could give an official response.

¹¹ Amnesty International: Iraq: Human Rights Abuses in Iraqi Kurdistan since 1991 (Index: MDE 14//01/95), 28 February 1995.

¹² The law is available on the Kurdistan Parliament's website.

¹³ Letter by the KRG Human Rights Ministry to Amnesty International, 19 October 2008.

¹⁴ According to the KRG Ministry of Human Rights, the names of the nine people are: Newzad Karim Ismail, Hassan 'Abdullah Said, Hashim 'Osman Feqi, 'AbdulSalam Hassan Kanebi, Aso 'Omer Ismail, Walid Yunis Ahmed, Ahmed, Mohammad 'Osman, Arselan Ismail Kheder, and Hiwa 'Abdulrehman Rasoul. The Ministry said it was working with the Ministry of Justice to solve the cases of these individuals.

¹⁵ Ansar al-Islam is an armed group, formerly based mainly around Halabja that has been fighting against

the Kurdish authorities in the north, the Iraqi government and the US-led Multinational Force. It has carried out numerous armed and suicide attacks and committed gross human rights abuses, including kidnapping, torture and killing of civilians, as well as killing members of security forces after capture.

¹⁶ *Al-Jama'a al-Islamiya* is a recognized political opposition party and has members in the Kurdistan Parliament and one member in the Iraqi Council of Representatives (parliament) in Baghdad, as well as a minister in the KRG. Despite this, dozens of its members have been targeted for arrest and detention. The majority have now been released following a steady rapprochement between the leadership of *al-Jama'a al-Islamiya* and both the KDP and PUK.

¹⁷ Article 14 of the same Covenant also includes the following provisions:

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him.

(c) To be tried without undue delay;

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

¹⁸ It was adopted by the UN General Assembly on 20 December 2000.

¹⁹ Article 14(2) states: "Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law. Article 14 (3) stipulates that:

"In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.”

²⁰ Positive steps undertaken by the KRG in recent years to address violence against women included the establishment of new bodies to monitor violence against women and provide support to victims of violence – the Honour Killing Monitoring Commission at cabinet level, the Special Committee composed of representatives of several ministries and Police Directorates of Follow-up of Violence against Women at governorate level.

²¹ Law 14 of 2002 states: “The perpetration of a crime with respect to women under the pretext of honourable motives shall not be considered an extenuating legal excuse for the purposes of applying the rules of articles 128, 130 and 131 of the Penal Code, number 111, 1969, amended.” Outside the Kurdistan Region in other parts of Iraq Article 128 continues to be the legal basis for handing down inappropriately lenient sentences for men convicted of killing a female relative. Article 128 states: “Excuses either exempt an individual from being punished or have their punishment reduced. There are no excuses except for those cases specified by the law; other than in these cases, an extenuating excuse is the perpetration of a crime for honourable motives or because of a serious, unjustified provocation by the victim of the crime.” According to Article 130, where there are mitigating circumstances, a death penalty may be commuted to one year’s imprisonment and a life sentence may be reduced to six months’ imprisonment.

²² At the time of writing, the Draft Law on Violence in the Family was expected to be presented to the Kurdistan Parliament to be voted on soon.

²³ Declaration on the Elimination of Violence against Women, General Assembly resolution 48/104 of 20 December 1993, G.A. res. 48/104, 48 U.N. GAOR Supp. (No. 49) at 217, U.N. Doc. A/48/49 (1993) (http://www.unesco.org/shs/human_rights/wac.htm).

²⁴ Letter of the Ministry of Human Rights, Kurdistan Regional Government, to Amnesty International, 30 October 2008.

²⁵ This number appears to include only incidents where there are strong reasons to believe that the killing was intentional and not caused by an accident. However, it does not include intentional killings caused by burning injuries.

²⁶ On 19 November 2008 Kurdish authorities informed Amnesty International that two suspects remained in detention and a third suspect was still at large.

²⁷ The data was provided by the Police Directorate of Follow-up of Violence against Women in Sulaimaniya.

²⁸ The article in Awene newspaper of 1 April 2008 was summarized on the website of Kurdish Women’s Rights Watch: <http://www.kwrw.org>.

²⁹ A forced marriage is a marriage conducted without the valid consent of both parties, where duress is a

factor. It is a violation of internationally recognized human rights standards and cannot be justified on religious or cultural grounds. Under Iraq's Personal Status Law, forced marriage is prohibited and punishable by up to three years' imprisonment for first degree relatives involved (Article 9).

³⁰ According to the Iraqi Personal Status Law, the legal age for marriage is 18 (Article 7). Anyone who wishes to marry under the age of 18 must meet certain conditions prescribed by law: they must be at least 15 years old, have the approval of their parent or guardian, and have obtained judicial permission (Article 8). However, in practice many girls younger than 18 are married in religious or private ceremonies and not before a court.

³¹ World Health Organization (WHO), Iraq Family Health Survey 2006-2007, January 2008.

³² According to the WHO survey in central and southern Iraq, 22.7 per cent of married women reported at least one form of physical abuse during the past 12 months.

³³ See ICESCR (Article 13) and the CRC (Principle 7).

³⁴ World Health Organization, Iraq Family Health Survey 2006-2007, January 2008, +page 2 and page 13.

³⁵ World Health Organization, Iraq Family Health Survey 2006-2007, January 2008, page 2.

³⁶ Letter of the Ministry of Human Rights, Kurdistan Regional Government, to Amnesty International, 19 November 2008.

³⁷ A so-called Police Directorate of Follow-up of Violence against Women was established in 2007 in each of the three governorates.

³⁸ In mid-July 2008 Kurdish authorities announced that a building for a shelter for temporary protection of women had been identified. It had not yet started to operate at the beginning of 2009.

³⁹ The Iraq Office of the Heartland Alliance, based in Sulaimaniya, is working on a Code of Conduct for shelters in Iraq.

⁴⁰ In another similar case, 'Awara Ali Mahmud was shot dead on 23 December 2007 in the street near her home in the Azadi neighbourhood of Sulaimaniya. She had earlier taken refuge at a shelter in Sulaimaniya and before leaving the shelter male members of her family signed an agreement to guarantee her safety. A male family member is suspected of the killing but remains at large as of the end of 2008.

⁴¹ Letter of the Ministry of Human Rights, Kurdistan Regional Government, to Amnesty International, 19 November 2008.

⁴² These were seven verdicts by the Dohuk Criminal Court, one by the Sulaimaniya Criminal Court and one by a Sulaimaniya-based criminal court dealing with a case that occurred outside the territory administered by the KRG.

⁴³ On 8 July 2008 the Dohuk Criminal Court sentenced Rebar Khoshid Said to death for the murder of his estranged wife Gulizar Khidr Muhammad. Amnesty International appealed to the Kurdish authorities for Rebar Khoshid Said to receive a sentence commensurate with the gravity of his crime but without resort to the death penalty.

⁴⁴ The case was tried before the Sulaimaniya-based criminal court of Kirkuk that deals with crimes that occurred outside the governorate.

⁴⁵ "Statement: Kurdistan Regional Government condemns killing of journalist in Kirkuk, www.KRG.org, 12 August 2008.

⁴⁶ By Kamal Chomani, KurdishMedia.Com, 28 August 2008.

⁴⁷ Committee to Protect Journalist: "CPJ letter to His Excellency Faruq Jami, Minister of Justice of Kurdistan Regional Government", 11 November 2008 (by e-mail).

⁴⁸ Amnesty International had publicly called for his immediate and unconditional release as a prisoner of conscience.

⁴⁹ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, E/CN.4/2000/63, 18 January 2000, para. 52.

⁵⁰ Reuters, 23 September 2008.



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HOPE AND FEAR

HUMAN RIGHTS IN THE KURDISTAN REGION OF IRAQ

The Kurdistan Region of Iraq has generally been free of the daily violence that has marked most other areas of the country in recent years. The region has enjoyed relative economic prosperity and an expansion of civil society, and the Kurdish Regional Government has made encouraging progress in the field of human rights. Despite this, serious human rights violations persist.

Thousands of people have been detained arbitrarily and held without charge or trial, many for years. Some have been tortured and otherwise ill-treated; some have been victims of enforced disappearance. Most were detained by the Asayish, the security agency, without an arrest warrant and were then denied access to a lawyer or any opportunity to challenge their detention before a court. Among those targeted have been political opponents of the Kurdish authorities, including media workers, and members of Islamist groups.

Widespread violence against women also continues, despite the introduction of several positive measures, including legal reforms and the establishment of shelters for women fleeing abuse.

This report, based on extensive research conducted in the Kurdistan Region, includes many individual cases. It highlights the progress made by the Kurdish authorities, including the release of most long-term and political detainees, but shows that many other measures are urgently needed to ensure that the human rights of all those living in the Kurdistan Region are respected and protected.

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