



INTERNATIONAL COMMISSION OF JURISTS

Commission internationale de juristes - Comisión Internacional de Juristas

" dedicated since 1952 to the primacy, coherence and implementation of international law and principles that advance human rights "

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Iraq: ICJ calls for independent inquiry into abuses and arrest and detention by Coalition Forces

As the first court martial of a US soldier involved in the abuse of Iraqi detainees concluded in Baghdad today, the International Commission of Jurists (ICJ) called for an independent and impartial investigation into the treatment of detainees and the whole process of arresting and detaining people in Iraq to be swiftly set up by the Coalition Forces.

"The prosecution of a few individuals who carried out these crimes is a start, but is not enough. Nor is an internal military investigation such as the Taguba Report adequate," said Nicholas Howen, the ICJ Secretary General. "An independent inquiry should establish who in the military and civilian chain of command ordered or tolerated these abuses and to what extent the methods of interrogation, whether carried out by soldiers or private contractors, reflected an express or implied policy."

Under international law and practice an inquiry is not effective and credible unless it:

- is carried out by persons chosen for their recognized impartiality, competence and independence who are independent of any institution, agency or person that might be the subject of the inquiry;
- has the authority to oblige any military and civilian officials to appear and testify;
- is entitled to issue summons to witnesses, including the officials allegedly involved, to demand the production of evidence and to make immediate on-site visits;
- ensures that the victims and/or next of kin are involved in the process and are allowed to be represented;
- takes steps to protect anyone involved in the investigation, including those who make complaints or are witnesses, from ill-treatment, intimidation or reprisal and
- leads to reparations, including compensation, being provided to the victims and/or their families and is not a substitute for the criminal prosecution of those responsible at every level.

The inquiry should go beyond responsibility for the actual torture and ill-treatment. It should examine the complete process of arrest and detention in Iraq to establish what other abuses are taking place and what safeguards should be put in place to protect people at every stage. "The lack of safeguards and checks and balances from the moment a person is arrested by soldiers or the Iraqi police creates an environment in which abuses are more likely to happen with impunity" said Nicholas Howen.

"How many of these detainees should not have been in detention in the first place and how many have just disappeared?" he added, in light of the ICRC February 2004 report that cited representatives of the Coalition Forces estimating 70-90% of detainees in Iraq had been

The ICJ is an international non-governmental organisation comprising sixty of the world's most eminent jurists and has a worldwide network of national sections and affiliated organisations

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arrested 'by mistake'. The ICRC also said that by failing to notify relatives, many detentions had been a 'de facto disappearance' ”.

“Experience all over the world has shown that detainees who are cut off from the outside world, whose family have no idea where they are or why they have been arrested and who have no court to turn to, are at grave risk of being tortured or killed in custody. Even the ICRC has not had full access in Iraq.” said Nicholas Howen.

The inquiry should explore why private contractors – for whom the Coalition Forces remain responsible - appear to have been given such wide powers and it should recommend the minimum safeguards and controls that must be in place.

The ICJ today called on experts of the United Nations Commission on Human Rights, in particular the Special Rapporteur on Torture, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Working group on Arbitrary Detention, also to carry out a joint mission to Iraq.

“We urge the United Kingdom and United States to cooperate with any such specific and expert UN mission, as well as with the broader investigation into human rights in Iraq over the last year launched by the Acting UN High Commissioner for Human Rights” said Nicholas Howen.

The ICJ also expressed concern over the process of military justice under which these human rights violations are being prosecuted. At today's trial in Baghdad US authorities reportedly allowed access to journalists but denied access to trial observers from human rights organizations. “Given the intense controversy the Coalition Forces must be completely transparent,” said Nicholas Howen. Surely they should welcome expert trial observers from human rights organizations into the courtroom who have the real knowledge to confirm whether justice is indeed being done.”

The ICJ reiterated that under international law and practice soldiers who allegedly commit war crimes and other grave crimes under international law, such as torture, should be tried by an independent and impartial civilian court using normal procedures and following usual standards of fair trial.

Under international law those who carried out the acts of torture or other international crimes cannot escape conviction by pleading that they were following orders. Superiors, whether military or civilian can also be held criminally responsible for the acts of subordinates under their effective authority or control if they had a reasonable opportunity or the legal duty to prevent or stop such acts. It does not matter whether the superiors ordered the abuses or acquiesced in them or failed to prevent or stop them.

It is in a climate of impunity that a US civilian was beheaded in Iraq purportedly in revenge for the acts of ill-treatment and torture of Iraqi detainees. The ICJ condemns this execution in the strongest terms. Those responsible of such a crime must be brought to justice. A crime cannot be justified by the perpetration of another crime.

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