

FIDH – International Federation for Human Rights Global Policy Forum

Open Letter to Members of the Security Council Concerning Detentions in Iraq

April 22, 2008

Dear Ambassador,

On 28 April 2008, the Security Council is scheduled to discuss Iraq and to receive a report from the United States on the Multinational Force (MNF).

In anticipation of this debate, we urge the Council to exercise effective and credible oversight of the MNF mandate. In particular, we call attention to the extrajudicial and arbitrary detention/internment of large numbers of Iraqis by the MNF.

In its most recent human rights report, the United Nations Assistance Mission in Iraq (UNAMI) says that at the end of December 2007 the MNF was holding in confinement 24,661 people. These detainees are being held mainly in two “theater internment facilities” operated by the United States – Camp Cropper near the Baghdad airport where about 4,000 persons are held and Camp Bucca in the south near Um Qasr, where about 20,000 are held. It appears that additional persons are being held by the MNF temporarily in local facilities, including forward operating bases.

Camp Bucca, perhaps the world’s largest extrajudicial internment camp, is located in the desert and organized into “compounds” of 800 detainees each, surrounded by fences and guard towers. Many prisoners live in large communal tents. Water has at times been in short supply. Temperatures in these desert conditions can be scorching hot in the day and cold at night and the area is subject to sandstorms. There have been reports of abusive treatment of detainees by guards. The MNF regularly reports deaths of detainees in the facility.

The MNF is holding the overwhelming majority of these persons in indefinite detention. They have been detained without warrant, held without charge, and have no opportunity to defend themselves in a trial. While the MNF has put in place a formal review procedure, this review does not satisfy basic rules of justice mandated by international legal instruments, as UNAMI and NGO human rights reports have firmly concluded. Further, the MNF has not agreed to allow human rights organizations to visit and monitor these facilities. It would be important to know whether UNAMI has been allowed such visits and, if so, what its conclusions have been.

MNF detentions have risen sharply during the period of the Baghdad Security Plan (“surge”). The number of detainees rose (in round numbers) from 14,500 at the end of December 2006 to 24,700 at the end of December 2007, an increase of seventy percent in just twelve months. This increase has reportedly resulted in crowding and a general worsening of conditions. On 31 October 2007 it was reported that the US Army Corps of

Engineers had awarded a contract to expand Camp Bucca's capacity from 20,000 to 30,000.

UNAMI reports that at the end of December 2007 the Government of Iraq held 26,472 prisoners, bringing the total number of prisoners in the country to 51,133 – not including those held by Asayish Forces in Kurdistan and others held by Iraqi military units for which counts were unavailable. Though some institutional progress has lessened earlier sources of abuse, UNAMI reports that the Iraqi judicial system has been overwhelmed by the great number of additional persons detained.

Some of those held in Iraqi facilities have been convicted of crimes, but many others are being held in unlimited and extrajudicial detention without charge. Some have even been tried and, having been found innocent, continue to be held indefinitely. Many prisoners have been convicted in trials that do not measure up to minimal standards of legality. As UNAMI concludes, “substantial improvement is required to prevent gross miscarriage of justice.”

UNAMI said in its immediately previous report that Iraqi facilities are “severely overcrowded” and have “dire sanitation and hygiene conditions.” The most recent UNAMI report notes that there are “continuing reports of widespread and routine torture and ill-treatment of detainees” in the Iraqi-run prisons. Several women and girls interviewed by UNAMI reported being beaten, raped and sexually abused while held in police custody.

UNAMI reports that on 8 December there were approximately 874 juveniles held in MNF custody compared with 250 in early 2007. The number declined somewhat to 685 by 31 December 2007, 90 percent of whom are between the ages of 15 and 17. There have been reports of detainees considerably younger.

The MNF command, which exercises operational control over the Iraqi military, as well as strong influence over most Iraqi detention facilities, must be held accountable in substantial measure for these deplorable detention conditions and serious human rights violations.

Detentions in Iraq by the MNF should be regulated by common article three of the four Geneva Conventions, as well as customary international law and international human rights law. Persons who are deprived of their liberty are entitled to be informed of the reasons for their arrest, to be brought promptly before a judge if held on a criminal charge, and to challenge the lawfulness of their detention.

The US Government has recently told UNAMI that due process does not apply to security detentions under MNF authority in Iraq, because the US considers its forces to be engaged in an “international armed conflict” and because the detention policy falls under Chapter VII and under the MNF's UN mandate. The US has also rejected what it calls the “extraterritorial” applicability of the International Covenant on Civil and Political Rights. (See paragraph 66 of the July-December 2007 UNAMI report and

paragraph 66 of the April-June report) The international human rights community firmly disagrees. International human rights law applies at all times, in war as well as in peace.

On 13 February, the Iraqi Parliament passed an Amnesty Law that could apply to many thousands of detainees. The MNF command has also recently announced a program of detainee releases. The number of detainees has in fact declined since a peak in November 2007. This is to be welcomed. But it would be useful to remember that previous announcements of detainee releases have not been followed by a permanent, substantial reduction of detention numbers (see attached table and chart). To the contrary, the previous trend has been upward.

The Security Council has the responsibility to ensure that human rights law – embodied in the United Nations Charter and the UN Universal Declaration of Human Rights – applies to these detainees/internees. They must be charged and tried in a timely manner, or released – as the Government of Iraq and the world human rights community have long been urging. Action in this matter is essential to the Council’s credibility as an arbiter and enforcer of international law.

The Council should also insist on speedy implementation by the MNF of the recommendations contained in the recent UNAMI report – recommendations relating to detentions and the judicial system (see page seven of the report).

The Council should further act to defend and strengthen the UNAMI human rights reporting process. These indispensable reports have been steadily reduced in frequency and timeliness during the past year. Issued every two months until the end of 2006, the reports went on a three-month schedule in 2007. The most recent report, however, covered a six-month period. Furthermore, recent reports have had less to say about violations of international law by military operations of the MNF, a topic which earlier reports covered in commendable detail. The Council should insist on a return to a two-month period of coverage, a robust approach to all subjects, and a publication plan of release six weeks after the end of the reporting period.

We look forward to the opportunity to discuss these important matters with you and your delegation prior to the Council debate later this month.

Yours sincerely,



James A. Paul
Executive Director
Global Policy Forum



Souhayr Belhassen
President
FIDH