

# **Beyond Torture**

**U.S. Violations of Occupation Law in Iraq**



**A report by the Center for Economic and Social Rights**

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## About the Center for Economic and Social Rights

The Center for Economic and Social Rights (CESR) was established in 1993 to promote social justice through human rights. In a world where poverty and inequality deprive entire communities of dignity and even life itself, CESR promotes the universal right of every human being to housing, education, health and a healthy environment, food, work, and social security.

This report was written by Roger Normand, researched and edited by Jacob Park and Jean Carmalt, and designed by Jacob Park. It is the latest in a series of groundbreaking legal and humanitarian reports by CESR on the Iraq crisis. These include the first independent report on the public health crisis after the 1991 Gulf War;<sup>1</sup> the first post-war epidemiological survey to document increased child mortality in Iraq as a result of war and sanctions;<sup>2</sup> the first medical journal article to report over half a million excess child deaths since 1991;<sup>3</sup> the first law journal article to report on war crimes by Coalition forces;<sup>4</sup> and the first legal report to condemn U.N. sanctions policy for violating the human rights of the Iraqi population.<sup>5</sup>

Before the 2003 invasion of Iraq, CESR launched an *Emergency Campaign on Iraq* to promote solutions to the Iraq crisis based on established principles of international law. As part of this campaign, CESR conducted fact-finding missions in Iraq and prepared a set of educational resources, fact sheets, and human rights reports.<sup>6</sup> The reports included a prediction of the disastrous humanitarian consequences of war in Iraq,<sup>7</sup> a comprehensive analysis of the illegality of the war itself,<sup>8</sup> and an assessment of violations of the right to water by U.S. and U.K. forces during the invasion.<sup>9</sup>

The purpose of this work is to document and expose the systematic nature of rights violations by the U.S. and its allies in Iraq, support the global peace and justice movement in seeking alternative policies based on respect for international law, and express solidarity with the people of Iraq in their struggle for genuine self-determination.

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<sup>1</sup> Harvard Study Team, "Special Report: The Effect of the Gulf Crisis on the Children of Iraq," *New England Journal of Medicine* 325 (1991): 977-980. Lead organizers of the Harvard Study Team and International Study Team went on to establish the Center for Economic and Social Rights in 1993.

<sup>2</sup> International Study Team, *Health & Welfare in Iraq After the Gulf Crisis: An In-Depth Assessment* (1991), <http://www.cesr.org/iraq/docs/ist1991report.pdf>.

<sup>3</sup> Zaidi, S. and M. Fawzi, "Health of Baghdad's Children," *The Lancet*, 346 (2 Dec 1995).

<sup>4</sup> Normand, R., and C. Jochnick, "The Legitimation of Violence: A Critical Analysis of the Gulf War," 35 *Harvard International Law Journal* 2, at 387 (Spring 1994).

<sup>5</sup> Center for Economic and Social Rights, *Unsanctioned Suffering: A Human Rights Assessment of United Nations Sanctions Against Iraq*, (May 1996), <http://www.cesr.org/iraq/docs/unsanctioned.pdf>.

<sup>6</sup> See, e.g., <http://www.cesr.org/iraq/>.

<sup>7</sup> Center for Economic and Social Rights, *The Human Costs of War in Iraq*, (Feb. 2003), <http://www.cesr.org/humancosts.pdf>.

<sup>8</sup> Center for Economic and Social Rights, *Tearing up the Rules: The Illegality of Invading Iraq* (March 18, 2003), <http://www.cesr.org/iraq/docs/tearinguptherules.pdf>.

<sup>9</sup> Center for Economic and Social Rights, *Water Under Siege In Iraq: US/UK Military Forces Risk Committing War Crimes by Depriving Civilians of Safe Water*, (April 6, 2003), <http://www.cesr.org/iraq/waterundersiege.htm>.

## Executive Summary

*The student is gone; the master has arrived.*

– popular Iraqi saying after the U.S. ousted Saddam Hussein

The Bush Administration is committing war crimes and other serious violations of international law in Iraq as a matter of routine policy. Beyond the now-infamous examples of torture, rape, and murder at Abu Ghraib prison, the United States has ignored international law governing military occupation and violated the full range of Iraqis' national and human rights—economic, social, civil and political rights.

The systematic nature of these violations provides compelling evidence of a policy that is rotten at its core and requires fundamental change. The occupation of Iraq is not leading to greater respect for rights and democracy, as promised by the Bush Administration, but rather entrenching a climate of lawlessness and feeding an increasing spiral of violent conflict that will not end until the occupation ends and underlying issues of justice are addressed. The question is: how long will it take, and how many lives will be lost, before Iraqis are able to exercise genuine self-determination and control their own destiny?

This report by the Center for Economic and Social Rights documents ten categories of U.S. violations:

1. **Failure to Allow Self-Determination.** The “full sovereignty” that the Bush Administration claims will be restored to Iraq on June 30, 2004 is a sham without legal effect. Genuine self-determination requires the free exercise of political choice, full control over internal and external security, and authority over social and economic policy. Until this happens, Iraq is, and will remain, an occupied country, and the U.S. will remain subject to the laws of occupation.
2. **Failure to Provide Public Order and Safety.** The US violated international law and caused untold damage to the people and heritage of Iraq by allowing the wholesale looting of Iraq's public, religious, cultural, and civilian institutions and properties. The U.S. also created a climate of unbridled lawlessness by dismissing the entire army, security, and law enforcement personnel without a back-up plan to maintain public safety—predictably resulting in a sharp increase in violent crime, especially directed against women.
3. **Unlawful Attacks.** U.S. forces have routinely conducted indiscriminate attacks in populated areas of Iraq, causing widespread and unnecessary civilian casualties. Ambulances, medical staff and facilities have been targeted by snipers and regular forces in violation of the Geneva Conventions. To date there has been no official effort to seek accountability for these war crimes.
4. **Unlawful Detention and Torture.** It is regular policy for U.S. forces to indiscriminately arrest and detain Iraqi civilians without charge or due process. Up to 90% of the 43,000 Iraqis detained under the occupation are reported to be innocent bystanders swept up in illegal mass arrests. The much-publicized torture,

rape, and murder of detainees is a systemic practice in U.S. prisons throughout Iraq, the result of decisions made at the highest levels of the Bush Administration.

5. **Collective Punishment.** Taking a cue from Israeli tactics in the Occupied Palestinian Territories that have been widely condemned as war crimes, the U.S. has imposed collective punishment on Iraqi civilians. These tactics include demolishing civilian homes, ordering curfews in populated areas, preventing free movement through checkpoints and road closures, sealing off entire towns and villages, and using indiscriminate, overwhelming force in crowded urban areas.
6. **Failure to Ensure Vital Services.** The U.S. is legally required to meet the needs of Iraq's population by maintaining electricity, water, sanitation, and other services vital to people's life, health, and well-being. Yet despite the Bush Administration's funneling billions of taxpayer dollars to major corporate contributors in secret deals to "reconstruct" Iraq, these essential services remain in disrepair, often in worse condition than before the occupation.
7. **Failure to Protect the Rights to Health and Life.** The U.S. is violating Iraqis' rights to life and health by failing to ensure access to healthcare and to prevent the spread of contagious disease. The health infrastructure is in disrepair, unsanitary conditions are widespread even in hospitals, drugs and medical supplies are in short supply, clean water and sanitation are largely unavailable, and medical staff report disease outbreaks and increased mortality throughout the country.
8. **Failure to Protect the Rights to Food and Education.** The U.S. is required to ensure that the population has physical and financial access to food and education. Yet 60% of the population depends on a monthly food ration and 11 million Iraqis are classified as food insecure. The education system is in shambles, with two-thirds of school-age children in Baghdad skipping school because of dilapidated conditions, lack of teachers, and well-founded fears of crime.
9. **Failure to Protect the Right to Work.** In violation of the right to work, the U.S. summarily dismissed more than half a million workers, civil servants, teachers, and other professionals—without any evidence of wrongdoing or opportunity to defend themselves. Moreover, American corporations in Iraq generally rely on foreign rather than Iraqi contractors, exacerbating the unemployment crisis, and slowing the reconstruction process. More than 60% of Iraqis are unemployed.
10. **Fundamentally Changing the Economy.** As an Occupying Power, the U.S. is prohibited from imposing major legal, political, or economic changes in Iraq. However, the Coalition Provisional Authority has issued a number of executive orders that aim to privatize Iraq's economy for the benefit of American corporations, with little consideration for the welfare and rights of the Iraqi people. These changes violate international law and have no binding legal effect.

This report is grounded in the assumption that the U.S. is not above the law, but rather should be bound and limited by law. Yet the entire thrust of U.S. policy in Iraq stands in contradiction to the post-World War II legal order and particularly the legal framework governing occupation. The primary conclusion to be drawn is that the occupation itself is the root cause of systematic rights violations. They will not end until the occupation ends and Iraqis are allowed to exercise genuine self-determination. Full justice will not be done until all war criminals—U.S. as well as Iraqi—are put in the dock and held to account, and the U.S. pays reparations for the illegal devastation inflicted on Iraqi society. These international law-based demands can be expressed as follows:

- **Stop the violations**
- **End the occupation**
- **Establish accountability**
- **Pay reparations**

Fueled by outrage over the Bush Administration's deceptions and depredations and undeterred by a bipartisan Washington consensus to "stay the course" and even send more troops, an increasingly vocal and visible sector of the American public is seeking alternatives to the continued U.S. occupation of Iraq. This fast-growing peace and justice movement advocates human rights and international law as the basis to resolve the Iraq crisis, providing a framework for solidarity with likeminded popular movements worldwide. The Center for Economic and Social Rights offers this report as a contribution to the global campaign for justice in Iraq, in the hopes that people of conscience will continue to struggle together until everyone everywhere enjoys the right to live in freedom and dignity.

## Introduction

*I don't care what the international lawyers say, we are going to kick some ass.*  
– George W. Bush, Sept. 11, 2001<sup>10</sup>

The United States is committing war crimes and other serious violations of international law in Iraq as a matter of routine policy. The widely reported and egregious incidents of torture are the tip of the iceberg—not isolated excesses by “a few bad apples” in the United States military. Torture is a logical consequence of an occupation based on the systematic denial of rights guaranteed to Iraqis under international law.

The laws of occupation derive from both humanitarian law, including the Hague Regulations and Geneva Conventions, and human rights law, including the International Bill of Rights. Under well-established legal principles, Occupying Powers are required, first and foremost, to end the occupation and, in the interim: 1) to protect civilians and their property; 2) to ensure the well-being of the occupied population by respecting their human rights, including rights to life, health, food, education, and employment; and 3) to refrain from changing the country's legal and economic systems.

This report by the Center for Economic and Social Rights presents ten categories of U.S. violations of the laws of occupation, documented by human rights groups, journalists, eyewitnesses, and, at times, the U.S. military itself. This “top ten” list, which is by no means comprehensive, demonstrates how U.S. practices violate the full range of laws meant to safeguard the rights of the Iraqi people. The systematic nature of these violations provides compelling evidence of a policy that is rotten at its core and requires a fundamental transformation of assumptions and objectives. The occupation of Iraq is not leading to greater respect for rights and democracy, as promised by the Bush Administration, but rather entrenching a climate of lawlessness and feeding an increasing spiral of violent conflict that will not end until the occupation ends and underlying issues of justice are addressed.

After providing details of these war crimes and rights violations, the report offers recommendations, conclusions, and a postscript summarizing the recent history of U.S. policy towards Iraq. The overall report is intended to support the growing peace and justice movements in the U.S. and worldwide in their efforts to end the occupation and promote solutions to the Iraq crisis based on respect for human rights and international law.

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<sup>10</sup> Richard A. Clarke, *Against All Enemies: Inside America's War on Terror* (Free Press), March 2004.  
<http://www.amazon.com/exec/obidos/tg/detail/-/0743260244/002-5318494-6571254?v=glance>.

## Violation I: Failure to Allow Self-Determination

*Being sovereign is like being pregnant, you either are or you aren't. If the new Iraqi government doesn't have ultimate authority and responsibility for the security of the Iraqi people, then it is not truly sovereign.*  
– Kenneth Roth, Human Rights Watch<sup>11</sup>

*The fact is, Iraq is occupied and Bremer holds the reins of power, command of the security forces and the purse strings. He is the only man who issues decrees and he's unelected. What do you call that?*  
– Ahmad Fawzi, UN spokesperson in Iraq<sup>12</sup>

Occupation is a temporary status in international law, defined as exercising effective control over the occupied territory and population. In the decades after the establishment of the United Nations, it became widely recognized in law and practice that imperialism and foreign occupation were antithetical to the right of self-determination, which was understood to be the cornerstone of the post-World War II international order. By law, an Occupying Power gains no sovereign rights, no title to land, and no rights over people. On the contrary, the legal imperative is to end the occupation and allow people to exercise their national and human rights. To this end, Iraqi resistance to U.S. occupation, including by military means, is legitimate so long as the methods of resistance comply with international law by targeting occupation forces rather than civilians or other protected persons.

Genuine legal sovereignty and self-determination require, among other factors, the free exercise of political choice, full responsibility for internal and external security, and complete control over social and economic policy. None of these are present in U.S. proposals for “restoring Iraqi sovereignty” on June 30<sup>th</sup>. According to senior American political and military officials, U.S. policy envisions selecting or appointing Iraqi leaders and officials while postponing elections and other forms of popular participation;<sup>13</sup> retaining control over military and security matters<sup>14</sup> and building an extensive network of military bases throughout the country;<sup>15</sup> and continuing to transform the Iraqi economy and society along free market lines with disproportionate involvement of U.S.

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<sup>11</sup> Human Rights Watch, “Iraq: No ‘Sovereignty Lite’,” May 24, 2004.

<http://www.hrw.org/english/docs/2004/05/24/iraq8613.htm>

<sup>12</sup> “No U.N. wand could summon ‘angels’ to lead Iraq,” *Reuters*, June 3, 2004.

<http://cnn.netscape.cnn.com/ns/news/story.jsp?id=2004060310060002047668&dt=20040603100600&w=RT&cview=>

<sup>13</sup> Yochi Dreazen and Christopher Cooper, “Lingering Presence: Behind the Scenes, U.S. Tightens Grip On Iraq’s Future --- Hand-Picked Proxies, Advisers Will Be Given Key Roles In Interim Government --- Facing Friction Over the Army,” *The Wall Street Journal*, May 13, 2004.

<sup>14</sup> Evelyn Leopold, “Iraq Resolution Gives Wide Powers to U.S. Forces,” *Reuters*, May 24, 2004.

<http://asia.reuters.com/newsArticle.jhtml?type=worldNews&storyID=5240823>. John F. Burns and Thom Shanker, “U.S. finds a legal basis to retain force in Iraq,” *The New York Times*, March 27, 2004.  
<http://www.iht.com/articles/512217.html>.

<sup>15</sup> Thom Shanker and Eric Schmitt, “Pentagon Expects Long-Term Access to Key Iraq Bases,” *The New York Times*, April 19, 2003. See also GlobalSecurity.org’s Internet resource *Iraq Facilities*, available at <http://www.globalsecurity.org/military/facility/iraq-intro.htm>.

corporations.<sup>16</sup> Under these pre-conditions, the promised “transfer of sovereignty” is illusory, a form of political theatre with no relation to the legal requirements for Iraqi self-determination. The U.S. will therefore remain obligated as an occupying power after June 30<sup>th</sup>, and any agreements to the contrary reached with the new Iraqi authority will have no binding legal effect.

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Legal Principles related to Self-Determination

- “... the occupying authority was to be considered as merely being a de facto administrator” *ICRC Commentary, Geneva IV Art. 47*
- “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development” *Common Article 1, International Covenants on Economic, Social & Cultural Rights and Civil & Political Rights*
- “The purposes of the United Nations are... [t]o develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples...” *United Nations Charter, Article 1*
- “All armed action or repressive measures of all kinds directed against dependent peoples shall cease in order to enable them to exercise peacefully and freely their right to complete independence, and the integrity of their national territory shall be respected...” *General Assembly Resolution 1514 (XV), 1960*
- “... the inherent right of colonial peoples to struggle by all means necessary at their disposal against colonial powers which suppress their aspiration for freedom and independence,” *General Assembly Resolution 2621 (XXV), 1970*
- “Protected persons... shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by ... any agreement concluded between the authorities of the occupied territories and the Occupying Power” *Geneva Convention IV, Art. 47*

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## Violation II: Failure to Provide Public Order and Safety

*In the three weeks following the U.S. takeover, unchecked looting effectively gutted every important public institution in the city—with the notable exception of the Oil Ministry.*

– Peter Galbraith, former U.S. Ambassador to Croatia<sup>17</sup>

*Stuff happens... Freedom’s untidy, and free people are free to make mistakes and commit crimes and do bad things.*

– Defense Secretary Donald Rumsfeld, on the looting in Iraq<sup>18</sup>

Occupation law clearly requires an Occupying Power to safeguard property, and particularly institutions dedicated to religion, charity and education, the arts and sciences, and health and public welfare. In effect, the Occupying Power steps into the shoes of the previous government and assumes full responsibility for preventing looting and maintaining public order. U.S. occupation forces have utterly failed to fulfill this duty.

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<sup>16</sup> Antonia Juhasz, “The Economic Colonization of Iraq: Illegal and Immoral,” Testimony before the World Tribunal on Iraq, May 8, 2004. [http://www.worldtribunal-nyc.org/Document/Case\\_3\\_Juhasz.pdf](http://www.worldtribunal-nyc.org/Document/Case_3_Juhasz.pdf).

<sup>17</sup> James Fallows, “Blind into Baghdad,” *The Atlantic Monthly*, Jan/Feb. 2004. <http://www.theatlantic.com/issues/2004/01/fallows.htm>.

<sup>18</sup> Sean Loughlin, “Rumsfeld on Looting in Iraq: ‘Stuff Happens’,” *CNN*, April 12, 2003. <http://www.cnn.com/2003/US/04/11/sprj.irq.pentagon/>.

In the first two weeks of April 2003, every aspect of Iraq's vital infrastructure was ransacked, including ministries, museums, libraries, hospitals, electric plants, schools and universities.<sup>19</sup> Despite advance warnings from NGOs, UN agencies, and even internal government reports,<sup>20</sup> U.S. forces failed to protect these properties even when physically present at the scene.<sup>21</sup> There are documented reports of occupation troops actually encouraging looters.<sup>22</sup> Losses were extensive, including irreplaceable cultural heritage, vital public records, and physical infrastructure necessary to maintain life-saving services.<sup>23</sup> The entire affair was experienced by many Iraqis as a public humiliation that also set back efforts to rebuild the country. The looting of essential infrastructure continues even today, with water, electrical, and other facilities being stripped and their parts transported to Jordan to be sold as scrap.<sup>24</sup>

The Occupying Power is also responsible for ensuring public safety on a daily basis. Yet the U.S. created the conditions for increased crime and lawlessness by summarily dismissing the entire Iraqi army, police, and security forces shortly after the war – without a back-up plan for maintaining order.<sup>25</sup> The predictable and well-documented result has been a sharp rise in violent crime, including revenge killing, rape, kidnapping, theft, and sexual crime.<sup>26</sup> Women are most at risk, with little hope of obtaining justice when victimized.<sup>27</sup> The breakdown in public safety was entirely foreseeable. One can imagine what would happen in any American city if all governing authorities, including law enforcement, were suddenly eliminated, at a time when most of the population was experiencing desperate poverty.

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*Legal Principles related to Public Order*

- “All seizure of, destruction or willful damage done to institutions of [religion, charity and education, the arts and sciences]... historic monuments, works of art and science, is forbidden...” *Hague Regulations, Art. 56*
  - “The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety...” *Hague Regulations, Art. 43*
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<sup>19</sup> Amnesty International, Iraq: *Looting, lawlessness and humanitarian consequences*, April 11, 2003. AI Index: MDE14/085/2003, at <http://www.web.amnesty.org/pages/irq-engmde140852003>.

<sup>20</sup> Fallows, *ibid*.

<sup>21</sup> Amnesty International, *ibid*.

<sup>22</sup> David Enders, “Getting Back on the Grid,” *Baghdad Bulletin*, June 10, 2003. [http://www.baghdadbulletin.com/pageArticle.php?article\\_id=18&cat\\_id=7](http://www.baghdadbulletin.com/pageArticle.php?article_id=18&cat_id=7).

<sup>23</sup> Ken Guggenheim, “Iraq’s Looting Appears More Serious Year after War,” *Associated Press*, March 14, 2004. <http://cnews.canoe.ca/CNEWS/World/2004/03/14/382373-ap.html>.

<sup>24</sup> James Glanz, “In the Scrapyards of Jordan, Signs of a Looted Iraq,” *New York Times*, May 28, 2004.

<sup>25</sup> Richard Norton-Taylor, “Violence blamed on US decision to disband Iraq army,” *The Guardian*, April 7, 2004. <http://www.guardian.co.uk/Iraq/Story/0,2763,1187360,00.html>.

<sup>26</sup> Human Rights Watch, *Sidelined: Human Rights in Postwar Iraq*, January 26, 2004. [http://hrw.org/wr2k4/6.htm#\\_Toc58744955](http://hrw.org/wr2k4/6.htm#_Toc58744955).

<sup>27</sup> Human Rights Watch, *Climate of Fear: Sexual Violence and Abduction of Women and Girls in Baghdad*, July 16, 2003. <http://hrw.org/reports/2003/iraq0703/>.

### Violation III: Unlawful Attacks

*My view and the view of the British chain of command is that the Americans' use of violence is not proportionate and is over-responsive to the threat they are facing. They are not concerned about the Iraqi loss of life... It is trite, but American troops do shoot first and ask questions later.*

– A senior British officer in Iraq<sup>28</sup>

*[We will] use a sledgehammer to crush a walnut.*

– U.S. Major General Charles H. Swannack, Jr.<sup>29</sup>

It is a war crime either to target protected persons and property or to conduct indiscriminate attacks in civilian areas. Yet it is well documented that U.S. forces routinely conduct indiscriminate attacks in populated areas, causing unnecessary and disproportionate civilian casualties. Numerous eyewitnesses have reported incidents in which U.S. forces kill and injure civilians through random fire during military operations or in response to attacks by resistance forces.<sup>30</sup> The reported killing of over 40 people at a wedding party near Al Qaim,<sup>31</sup> and over 600 people in Fallujah, half of them women and children,<sup>32</sup> appear to be particular egregious examples of indiscriminate killing. Even top commanders of British occupation forces in Iraq have condemned the unrestrained use of U.S. firepower.<sup>33</sup>

The Geneva Conventions also guarantee special protections to medical staff and facilities in order to ensure the functioning of health services even during war. These norms have been regularly violated by U.S. forces. There are widespread and consistent reports of U.S. attacks against well-marked medical personnel, ambulances, and hospitals, including attacks by snipers situated near hospitals.<sup>34</sup> These war crimes have prevented injured persons from accessing life-saving treatment.<sup>35</sup>

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#### Legal Principles related to Unlawful Attacks

- “Persons regularly and solely engaged in the operation and administration of civilian hospitals, including the personnel engaged in the search for, removal and transporting of and caring for wounded

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<sup>28</sup> Sean Rayment, “US tactics condemned by British officers,” *The Telegraph*, April 11, 2004.

<http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2004/04/11/wtact11.xml>

<sup>29</sup> Major General Charles H. Swannack, Jr., Special Operational Briefing from Baghdad, November 18, 2003. [http://www.cpa-iraq.org/transcripts/20031118a\\_Nov-18-Gen-Swannack-Briefing-post.htm](http://www.cpa-iraq.org/transcripts/20031118a_Nov-18-Gen-Swannack-Briefing-post.htm).

<sup>30</sup> Eyewitness testimony is available on the website of the World Tribunal for Iraq, New York session. <http://www.worldtribunal-nyc.org>.

<sup>31</sup> Scheherezade Faramarzi, “U.S. Aircraft Reportedly Kills 40 Iraqis,” *Associated Press*, May 19, 2004. [http://news.yahoo.com/news?tmpl=story&cid=540&u=/ap/20040519/ap\\_on\\_re\\_mi\\_ea/iraq\\_attack&printer=1](http://news.yahoo.com/news?tmpl=story&cid=540&u=/ap/20040519/ap_on_re_mi_ea/iraq_attack&printer=1).

<sup>32</sup> Abdul Qader-Saadi, “Fallujah Death Toll for Week More than 600,” *Associated Press*, April 12, 2004.

<sup>33</sup> Rayment, *ibid*.

<sup>34</sup> Dahr Jamail, “Sarajevo on the Euphrates,” *The Nation*, April 12, 2004.

<http://www.thenation.com/doc.mhtml?i=20040426&s=jamail>. Jo Wilding, “Getting aid past US snipers is impossible,” *The Guardian*, April 17, 2004.

<sup>35</sup> Eyewitness testimony is available on the website of the World Tribunal for Iraq, New York session. <http://www.worldtribunal-nyc.org>.

and sick civilians, the infirm and maternity cases, shall be respected and protected” *Geneva Convention IV, Article 20*

- “... the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.” *Geneva Protocol I, Article 48*
  - “Indiscriminate attacks are prohibited... [including] an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated” *Geneva Protocol I, Article 51*
  - “In case of doubt whether a person is a civilian, that person shall be considered a civilian” *Geneva Protocol I, Article 50*
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## Violation IV: Unlawful Detention and Torture

*Iraq is free of rape rooms and torture chambers.*

– George W. Bush, remarks at the 2003 Republic National Committee Gala<sup>36</sup>

The Occupying Power must not arbitrarily detain a protected person, or willfully deprive such a person of basic due process. Yet mass arrests appear to be standard operating procedure for occupation forces in Iraq. Men unfortunate enough to be living, working, or walking in the immediate vicinity of an area targeted for house raids are liable to be bound, hooded, and detained.<sup>37</sup> Of 43,000 Iraqis detained under the occupation, the International Committee of the Red Cross (ICRC) estimates that 70-90% have been innocent bystanders swept into detention in this unlawful manner.<sup>38</sup> Once detained, Iraqi prisoners are not only denied minimal due process,<sup>39</sup> but also held incommunicado for weeks and months without the knowledge of their families.<sup>40</sup> Thousands of innocent people have been “disappeared” into a black hole of detention, where they face the prospect of harsh and abusive treatment, including torture.<sup>41</sup> In addition, U.S. forces have held family members of wanted suspects as hostages, a practice that has been condemned as a war crime.<sup>42</sup>

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<sup>36</sup> White House press release, October 8, 2003.

<http://www.whitehouse.gov/news/releases/2003/10/20031008-9.html>

<sup>37</sup> Jeffrey Gettleman, “As U.S. Detains Iraqis, Families Plead for News,” *New York Times*, March 7, 2004.

<sup>38</sup> Alexander G. Higgins, “Red Cross: Iraq Abuse Widespread, Routine,” *Associated Press*, May 11, 2004.

<http://www.fredericksburg.com/News/apmethods/apstory?urlfeed=D82G3F9G1.xml>

<sup>39</sup> United Nations press release, “UN Human Rights Expert Calls on Coalition Authorities to Allow Iraqi Detainees to Challenge Lawfulness of Detention,” May 5, 2004.

<http://www.un.org/News/Press/docs/2004/hr4742.doc.htm>

<sup>40</sup> Ian Fisher, “Searing Uncertainty for Iraqis Missing Loved Ones,” *New York Times*, June 3, 2004.

<sup>41</sup> Human Rights Watch, *Iraq: US Treatment of Detainees Shrouded in Secrecy*, April 22, 2004.

<http://hrw.org/english/docs/2004/04/21/iraq8477.htm>

<sup>42</sup> Mohamad Bazzi, “U.S. using some Iraqis as bargaining chips,” *Newsday*, May 26, 2004.

<http://www.newsday.com/news/printedition/world/ny-woabus263819545may26,0,2416932.story?coll=ny-worldnews-print>

The well-documented abuse of detained Iraqi prisoners—including murder, rape, sodomy, physical assault, and sexual humiliation<sup>43</sup>—clearly falls within the standard legal definition of torture, despite repeated denials by top U.S. officials like Secretary of Defense Donald Rumsfeld.<sup>44</sup> Evidence for systemic torture was long known and covered up by the Bush Administration until the public release of incriminating photos and videotapes. Reports by the ICRC, human rights groups, and the Pentagon itself demonstrate that these violations are systemic not only in Iraq, but wherever the U.S. has established detention centers for alleged terrorist suspects.<sup>45</sup> These acts of torture and abuse, far from being aberrations, are an inevitable outcome of a policy shift by the U.S. government since 9/11 to employ torture as a method of interrogation,<sup>46</sup> and to secretly transfer suspected terrorists to repressive countries in full knowledge that they will be brutally tortured.<sup>47</sup>

There is little prospect of accountability for crimes related to the occupation. The Bush Administration is seeking to avoid responsibility for the torture scandal and prosecute only low-level individuals in military courts.<sup>48</sup> Iraqis themselves are prevented from bringing any war crimes cases against U.S. forces since Paul Bremer provided blanket immunity to all occupation authorities and military forces through CPA Order 17—an

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<sup>43</sup> Maj. Gen. Antonio M. Taguba, *Article 15-6 Investigation of the 800<sup>th</sup> Military Police Brigade* (the “Taguba Report” on Treatment of Prisoners in Abu Ghraib prison), February 2004.

<http://news.findlaw.com/hdocs/docs/iraq/tagubarpt.html>

<sup>44</sup> Donald H. Rumsfeld, Defense Department Operational Update Briefing, May 4, 2004. Available at <http://www.defenselink.mil/transcripts/2004/tr20040504-secdef1423.html>.

<sup>45</sup> Amnesty International, *USA: Pattern of Brutality and Cruelty—War Crimes at Abu Ghraib*, May 7, 2004. <http://web.amnesty.org/library/index/ENGAMR510772004>. Human Rights Watch, “U.S.: Systemic Abuse of Afghan Prisoners,” May 13, 2004. <http://hrw.org/english/docs/2004/05/13/afghan8577.htm>. Amnesty International, “USA: Amnesty International calls for a commission of inquiry into ‘war on terror’ detentions,” May 19, 2004. <http://web.amnesty.org/library/Index/ENGAMR510872004?open&of=ENG-USA>. Center for Constitutional Rights, “CCR Charges in Lawsuit that Government Illegally Withheld Information On Torture of Detainees in U.S. Custody,” June 2, 2004. <http://www.ccr-ny.org/v2/reports/report.asp?ObjID=UmaKNh6eJq&Content=379>. John Barry, Michael Hirsh and Michael Isikoff, “The Roots of Torture: The road to Abu Ghraib began after 9/11, when Washington wrote new rules to fight a new kind of war,” *Newsweek*, May 24, 2004. <http://msnbc.msn.com/id/4989422/site/newsweek/>; Don Van Natta, Jr., “Questioning Terror Suspects in a Dark and Surreal World,” *The New York Times*, March 8, 2003. <http://www.nytimes.com/2003/03/09/international/09DETA.html?ex=1086753600&en=f745b3305833e9c7&ei=5070>; Molly Moore, “Villagers Released by American Troops Say They Were Beaten, Kept in ‘Cage,’” *The Washington Post*, February 11, 2002.

<sup>46</sup> Jess Bravin, “Pentagon Report Set Framework For Use of Torture,” *The Wall Street Journal*, June 7, 2004. <http://www.commondreams.org/cgi-bin/print.cgi?file=/headlines04/0607-01.htm>. U.S. Air Force General Counsel Mary Walker et al., *U.S. Defense Department Working Group Report on Detainee Interrogations in the Global War on Terrorism*, March 6, 2003. Available at [http://online.wsj.com/public/resources/documents/military\\_0604.pdf](http://online.wsj.com/public/resources/documents/military_0604.pdf).

<sup>47</sup> Dana Priest and Joe Stephens, “Secret World of U.S. Interrogation: Long History of Tactics in Overseas Prisons Is Coming to Light,” *Washington Post*, May 11, 2004. <http://www.washingtonpost.com/wp-dyn/articles/A15981-2004May10.html>. Reed Brody, “Prisoner abuse: What about the other secret U.S. prisons?” *International Herald Tribune*, May 4, 2004. <http://hrw.org/english/docs/2004/05/04/usint8524.htm>.

<sup>48</sup> Mark Danner, “The Logic of Torture,” *The New York Review of Books*, May 27, 2004. <http://www.nybooks.com/articles/17190>.

immunity which will continue even after the proposed “transfer of sovereignty.”<sup>49</sup> Moreover, private contractors, who have been implicated in some of the worst torture cases, are totally unaccountable, shielded from prosecution in Iraqi and U.S. courts, and even military courts-martial.<sup>50</sup> About 20,000 contractors—including mercenaries formerly employed by the militaries and intelligence agencies of states such as apartheid-era South Africa, Pinochet-era Chile, and Israel—are now operating freely in Iraq.<sup>51</sup> The Senate Armed Services Committee reported in May 2004 that the number of contract security workers in Iraq “could more than triple over the next several months.”<sup>52</sup>

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*Legal Principles related to Unlawful Detention and Torture*

- “Grave breaches... shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: ...unlawful deportation or transfer or unlawful confinement of a protected person ... willfully depriving a protected person of the rights of fair and regular trial... willful killing, torture or inhuman treatment... willfully causing great suffering or serious injury to body or health...” *Geneva Convention IV, Art. 147*
  - “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment” *Universal Declaration of Human Rights, Art. 5*
  - “No one shall be subjected to arbitrary arrest, detention or exile” *Universal Declaration of Human Rights, Art. 9*
  - “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment...” *International Covenant on Civil and Political Rights, Art. 7*
  - “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention” *International Covenant on Civil and Political Rights, Art. 9*
  - *The Convention Against Torture* (ratified by the U.S. in November 1994)
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## **Violation V: Collective Punishment**

*With a heavy dose of fear and violence, and a lot of money for projects, I think we can convince these people that we are here to help them.*

– U.S. Colonel Nate Sassaman, after encircling Abu Hishma village with razor wire<sup>53</sup>

Many routine practices of the U.S. occupation violate the prohibition against imposing collective punishment on the civilian population. In addition to mass arrests and detention, mass lay-offs, and failure to provide public safety, the U.S. has prevented

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<sup>49</sup> Kamal Ahmed, “Iraqis Lose Right to Sue Troops Over War Crimes,” *The Observer*, May 23, 2004. <http://observer.guardian.co.uk/international/story/0,6903,1222817,00.html>.

<sup>50</sup> Adam Liptak, “Who Would Try Civilians of U.S.? No One In Iraq,” *New York Times*, May 26, 2004; Human Rights Watch, “U.S. Prisoner Abuse Sparks Concerns Over War Crimes: Investigation Should Probe Role of Superiors, Private Contractors,” April 30, 2004. <http://www.hrw.org/english/docs/2004/04/30/iraq8521.htm>.

<sup>51</sup> “Pentagon was warned in 2002 of contractors: abuse scandal includes use of private interrogators”, Associated Press, May 7, 2004. <http://www.newsletters.newsweek.msnbc.com/id/4923442/>

<sup>52</sup> Scott Shane, “Chalabi raid adds scrutiny to use of U.S. contractors,” *Baltimore Sun*, May 30, 2004. <http://www.baltimoresun.com/news/nationworld/bal-te.contractors30may30.0,6411461.story>

<sup>53</sup> Dexter Filkins, “Tough New Tactics by U.S. Tighten Grip on Iraq Towns,” *The New York Times*, December 6, 2003. <http://query.nytimes.com/gst/abstract.html?res=F10610FD38590C748CDDAB0994DB404482>.

freedom of movement through checkpoints and road closures, demolished civilian homes, and sealed off entire towns and villages. After U.S. forces were attacked on the road skirting Abu Hishma on November 2003, the entire village was encircled with razor wire and residents prevented from entering or leaving without U.S.-issued identification cards.<sup>54</sup> Human rights groups have also documented numerous examples of home demolitions being used as collective punishment. As Human Rights Watch has pointed out, “destroying civilian property as a reprisal or as a deterrent amounts to collective punishment, a violation of the 1949 Geneva Conventions.”<sup>55</sup>

These unlawful practices mirror Israeli military tactics used in the occupied Palestinian territories. The New York Times reports that “Israeli defense experts briefed American commanders on their experience in guerrilla and urban warfare”—a euphemism for Israeli actions in Jenin, Gaza and elsewhere that have been widely condemned as war crimes.<sup>56</sup> Considering the international and especially regional outrage at Israel’s routine commission of war crimes as an integral component of its occupation of Palestine, American reliance on these same tactics has grave and troubling consequences for the occupation of Iraq.

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*Legal Principles related to Collective Punishment*

- “Collective penalties and likewise all measures of intimidation or of terrorism are prohibited” *Geneva Convention IV, Article 33*
- “Collective punishments... are and shall remain prohibited at any time and in any place whatsoever, whether committed by civilian or by military agents” *Geneva Protocol I, Article 75*
- “Everyone has the right to freedom of movement and residence within the borders of each State” *Universal Declaration of Human Rights, Article 13*
- “Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.” *International Covenant on Civil & Political Rights, Article 12*
- “Civilian objects shall not be the object of attack or of reprisals... In case of doubt whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used.” *Geneva Protocol I, Article 52.*
- “Everyone has the right to... housing.” *Universal Declaration of Human Rights, Article 25.*

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<sup>54</sup> Filkins, *ibid.*

<sup>55</sup> Human Rights Watch, *Sidelined*

<sup>56</sup> Filkins, *ibid.*

## Violation VI: Failure to Ensure Vital Services

*We, the Iraqi engineers, can repair anything, but we need money and spare parts and so far Bechtel has provided us with neither. The only thing that the company has given us so far is promises.*

– Mohsen Hassan, Iraqi Ministry of Electricity<sup>57</sup>

The Occupying Power is under an explicit duty to meet the population's basic needs by maintaining electricity, water, transportation, and other vital services. These services—upon which many Iraqis depend to work, eat, and survive—were already badly damaged due to 12 years of war and sanctions.<sup>58</sup> Yet despite the lifting of sanctions and the awarding of billions of dollars in reconstruction contracts to (mostly) U.S. companies,<sup>59</sup> vital services remain in disrepair, often worse than before the occupation. Iraqi companies and experts with ability to repair these facilities at low cost have been excluded from the reconstruction process.<sup>60</sup> Although Russian, German and French companies built much of Iraq's infrastructure, the U.S. refuses to import spare parts from these countries, instead contracting with American companies to rebuild entire facilities.<sup>61</sup>

According to the UN, at the current rate of repair it will take another four to five years before 90% of the population has electricity.<sup>62</sup> Lack of electricity damages health and sanitation systems and undermines overall economic development. The failure of U.S. occupation authorities to respect the legal obligation to maintain public services stands in stark contrast to the successful rebuilding effort undertaken with very limited resources by the Iraqi government after the 1991 Gulf War.

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### *Legal Principles related to Vital Services*

- An Occupying Power has the duty to ensure and maintain “the material conditions under which the population of the occupied territory lives” *ICRC Commentary to Article 55 of Geneva Conv. IV*
- “...the Occupying Power shall, to the fullest extent of the means available to it and without any adverse distinction... ensure the provision of clothing, bedding, means of shelter, other supplies essential to the survival of the civilian population of the occupied territory and objects necessary for religious worship.” *Geneva Protocol I, Art. 69*
- “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family” *Universal Declaration of Human Rights, Article 25*
- “Everyone [has the right] to an adequate standard of living...” *International Covenant on Economic, Social & Cultural Rights, Art. 11*

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<sup>57</sup> Pratap Chatterjee and Herbert Docena, “Occupation, Inc.,” *The Institute for Southern Studies*, Winter 2003/2004. <http://www.southernstudies.org/reports/OccupationInc.htm>.

<sup>58</sup> Center for Economic and Social Rights, *The Human Cost of War in Iraq*, February 2003. <http://www.cesr.org>.

<sup>59</sup> See <http://www.publicintegrity.org/wow/resources.aspx?act=resources> and <http://www.iraqrenewwatch.org/>.

<sup>60</sup> Ariana Eunjung Cha, “Iraqi Experts Tossed With The Water Workers Ineligible To Fix Polluted Systems,” *Washington Post*, February 27, 2004. Available at <http://www.occupationwatch.org/article.php?id=3307>.

<sup>61</sup> Antonia Juhasz, “The Economic Colonization of Iraq: Illegal and Immoral,” Testimony before the World Tribunal on Iraq, May 8, 2004. [http://www.worldtribunal-nyc.org/Document/Case\\_3\\_Juhasz.pdf](http://www.worldtribunal-nyc.org/Document/Case_3_Juhasz.pdf).

<sup>62</sup> “In pictures: Living conditions and reconstruction in Iraq,” *BBC News*, April 10, 2004.

## Violation VII: Failure to Protect the Rights to Health and Life

*It's definitely worse now than before the war. Even at the height of sanctions, when things were miserable, it wasn't as bad as this. At least then someone was in control.*

– Eman Asim, Iraqi Ministry of Health<sup>63</sup>

*Hepatitis is everywhere. It's unbelievable that standing water still causes such outbreaks, a year after the U.S.-led invasion of Iraq.*

– Omar Mekki, medical officer for WHO-Iraq<sup>64</sup>

The Occupying Power is obligated to respect the right to health, to ensure access to health care, and to prevent the spread of contagious disease. Yet even the U.S.-appointed Ministry of Health official who oversees Iraq's public hospitals reports that health services are currently in worse shape than during the war or under sanctions.<sup>65</sup> Unsanitary conditions are common in hospitals.<sup>66</sup> There has been a consistent decline in available medicines, drugs,<sup>67</sup> and basic supplies, such as gloves, painkillers, syringes, gauze, and oxygen.<sup>68</sup> Basic health infrastructure remains broken and in disrepair. Bechtel's failure to fulfill a contract to repair the Rustamiya sewage treatment plant in Baghdad means that one and a half tons of raw sewage are being dumped into the Tigris River every day.<sup>69</sup> One third of the population still lacks clean drinking water,<sup>70</sup> and bottled water is too expensive for most Iraqis. A World Health Organization-supported sentinel disease surveillance in the summer of 2003 found that diarrhea had increased threefold from the previous year.<sup>71</sup> UN officials report that unsanitary conditions throughout Iraq are causing outbreaks of water-borne disease like hepatitis and cholera.<sup>72</sup>

U.S. failure to protect Iraqis' right to health inevitably results in widespread violations of the right to life.<sup>73</sup> Deaths due to diarrhea and acute respiratory infections already

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<sup>63</sup> Jeffrey Gettleman, "Chaos and War Leave Iraq's Hospitals in Ruins," *New York Times*, February 14, 2004. Available at [http://www.veteransforpeace.org/Chaos\\_and\\_war\\_021404.htm](http://www.veteransforpeace.org/Chaos_and_war_021404.htm).

<sup>64</sup> "Inadequate sewage disposal blamed for hepatitis outbreak", *Integrated Regional Information Networks*, June 1, 2004.

<http://www.reliefweb.int/w/rwb.nsf/480fa8736b88bbc3c12564f6004c8ad5/8d62b544c2655a1785256ea600541d06?OpenDocument>

<sup>65</sup> Gettleman, *ibid*.

<sup>66</sup> Gettleman, *ibid*.

<sup>67</sup> "Penurie generalisee de medicaments—Le Comite d'Aide Medicale denonce une situation inquietante," April 19, 2004. "Patients complain of medicine shortage," *IRIN*, January 22, 2004.

[http://www.irinnews.org/report.asp?ReportID=39076&SelectRegion=Iraq\\_Crisis&SelectCountry=IRAQ](http://www.irinnews.org/report.asp?ReportID=39076&SelectRegion=Iraq_Crisis&SelectCountry=IRAQ).

<sup>68</sup> Geert Van Morter, M.D., *One year after the fall of Baghdad: how healthy is Iraq?* April 28, 2004.

Available at <http://www.health-now.org/site/article.php?articleId=193&menuId=1>.

<sup>69</sup> Integrated Regional Information Networks, *ibid*.

<sup>70</sup> USA Today/CNN/Gallup Poll, April 28, 2004. [http://www.usatoday.com/news/world/iraq/2004-04-28-poll-cover\\_x.htm](http://www.usatoday.com/news/world/iraq/2004-04-28-poll-cover_x.htm).

<sup>71</sup> UN Humanitarian Briefing, July 10, 2003.

<http://www.reliefweb.int/w/rwb.nsf/0/0cfc17cc074470d649256d60002149f4?OpenDocument>.

<sup>72</sup> Integrated Regional Information Networks, *ibid*.

<sup>73</sup> The UN Human Rights Committee has interpreted the right to life to protect against government failure to provide adequate health care.

accounted for 70 percent of childhood mortality in 2002.<sup>74</sup> This figure is certainly higher today due to deteriorated health services and increased poverty throughout occupied Iraq. It is worth bearing in mind that over 500,000 children under the age of five died during the sanctions period, largely as a result of unsafe water, inadequate health care services, shortages of medical supplies, and simple poverty.

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Legal Principles related to the Rights to Health and Life

- “To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring the... medical supplies of the population; it should, in particular, bring in the necessary... medical stores and other articles if the resources of the occupied territory are inadequate... The Occupying Power has the duty of ensuring and maintaining... public health and hygiene in the occupied territory... the Occupying Power has the duty [to adopt and apply] the prophylactic and preventive measures necessary to combat the spread of contagious diseases and epidemics.” *Geneva Convention IV, Arts 55 and 56*
- “Everyone has the right to life, liberty and security of person” *Universal Declaration of Human Rights, Art. 3*
- “Every human being has the inherent right to life” *International Covenant on Civil and Political Rights, Art. 6*
- “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family” *Universal Declaration of Human Rights, Article 25*
- “Everyone [has the right] to the enjoyment of the highest attainable standard of physical and mental health...” *International Covenant on Economic, Social & Cultural Rights, Art. 12*

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## Violation VIII: Failure to Protect the Rights to Food and Education

*They [the Americans] promised to make it a paradise. But all they've changed is the paint.*  
– Hana Abboud, teacher at the Shura Primary School, Baghdad<sup>75</sup>

The Occupying Power must ensure that the population has access—physical and financial—to adequate food and education. Yet more Iraqis are hungry now than before the occupation. The UN Food and Agricultural Organization classifies approximately eleven million Iraqis as food insecure,<sup>76</sup> mainly due to unemployment and the rising price of food and other basic necessities since the introduction of “free market” measures. Things could get even worse—the CPA is considering “monetizing” and phasing out the national food rationing system upon which 60% of Iraqi families completely depend for basic nutrition, despite predictions that this will lead to inflation and make basic necessities unaffordable.<sup>77</sup>

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<sup>74</sup> Food and Agricultural Organization, *Crop, Food Supply, and Nutrition Assessment Mission to Iraq*, September 23, 2003. <http://www.reliefweb.int/library/documents/2003/fao-irq-23sep.pdf>.

<sup>75</sup> Nicholas Riccardi, “For Iraqis, a Symbol of Unkept Promises,” *The Los Angeles Times*, June 1, 2004. <http://www.latimes.com/la-fg-school1jun01.1,1892130.story>.

<sup>76</sup> Food and Agricultural Organization, *ibid*.

<sup>77</sup> “Briefing paper on food security,” *Integrated Regional Information Networks*, 26 May 26, 2004, <http://www.reliefweb.int/w/rwb.nsf/480fa8736b88bbc3c12564f6004c8ad5/83508a567eef374985256ea00051c3ae?OpenDocument>; Nathaniel Hurd, “Iraqi Food Security in Hands of Occupying Powers,” *MERIP*, December 2, 2003. <http://www.merip.org/mero/mero120203.html>.

Similarly, the education system is in shambles throughout Iraq. Already crippled by 12 years of sanctions, educational opportunities have been reduced even further under the occupation. Up to two-thirds of school-age children in Baghdad do not attend school full time because of inadequate numbers of teachers, dilapidated school buildings, and poverty.<sup>78</sup> Girls are particularly unlikely to attend, due to well-founded fears of insecurity and kidnapping.<sup>79</sup> An internal U.S. Army audit of schools supposed to be repaired by Bechtel as part of its nearly-three billion dollar contract found that “the work was horrible,” with dangerous debris left in playgrounds, crumbling walls, sloppy paint jobs, and broken toilets.<sup>80</sup>

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*Legal Principles related to the Rights to Education and Food*

- “The Occupying Power shall, with the cooperation of the national and local authorities, facilitate the proper working of all institutions devoted to the care and education of children” *Geneva Convention IV, Art 50*
  - “Everyone has the right to education” *Universal Declaration of Human Rights, Article 26*
  - “Everyone [has the right] to education” *International Covenant on Economic, Social and Cultural Rights, Art. 13*
  - “Education is both a human right in itself and an indispensable means of realizing other human rights” *Committee on Economic, Social & Cultural Rights, General Comment 13*
  - “To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring the food ... of the population; it should, in particular, bring in the necessary foodstuffs... if the resources of the occupied territory are inadequate.” *Geneva Convention IV, Article 55*
  - “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food...” *Universal Declaration on Human Rights, Article 25*
  - “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food...” *International Covenant on Economic, Social and Cultural Rights, Article 11*
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<sup>78</sup> Christian Aid, “Life ‘worse’ for many of Iraq’s poor, survey reveals,” April 16, 2004. <http://www.alertnet.org/thenews/fromthefield/108237842520.htm>.

<sup>79</sup> “School Attendance Falling due to fear of abduction,” *IRIN*, October 7, 2003. [http://www.irinnews.org/report.asp?ReportID=37058&SelectRegion=Iraq\\_Crisis&SelectCountry=IRAQ](http://www.irinnews.org/report.asp?ReportID=37058&SelectRegion=Iraq_Crisis&SelectCountry=IRAQ).

<sup>80</sup> Larry Kaplow, “Bechtel criticized over school project in Iraq,” *Palm Beach Post-Cox News Service*, December 14, 2003. <http://www.corpwatch.org/article.php?id=11120>.

## Violation IX: Failure to Protect the Right to Work

*You're talking about around a million or more people, one to two million people, who are suffering because the head of the household's out of work.*

– Gen. Jay Garner, first U.S. Administrator in Iraq on dismissal of armed forces<sup>81</sup>

*It is difficult to understand why thousands upon thousands of teachers, university professors, medical doctors and hospital staff, engineers and other professionals who are sorely needed, have been dismissed within the de-Baathification process.*

– Lakhdar Brahimi, UN Special Envoy to Iraq<sup>82</sup>

The Occupying Power is obligated to ensure that people have the opportunity to find gainful employment. Yet the U.S. has not only imposed mass lay-offs throughout the country, but has also failed to provide Iraqis with work in the reconstruction of their own country. More than half a million workers, including civil servants, teachers,<sup>83</sup> and other professionals, were fired in the “de-Baathification” process<sup>84</sup>—without any evidence of wrongdoing or opportunity to defend themselves. The vast majority had joined the Baath party as a necessary formality to obtain work. As a result of this and other disruptions caused by the war and occupation, more than 60% of Iraqis are unemployed,<sup>85</sup> imposing enormous hardship throughout the country.

Compounding the problem, the Coalition Provisional Authority has rewarded politically connected U.S. firms with the largest reconstruction contracts. These firms have relied on foreign rather than Iraqi contractors, exacerbating the unemployment crisis, marginalizing local expertise, and slowing the reconstruction process to a crawl. The U.S.-appointed ambassador-designate to the United States has said that she is “appalled” by this practice.<sup>86</sup>

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### *Legal Principles related to the Right to Work*

- “Protected persons who, as a result of the war, have lost their gainful employment, shall be granted the opportunity to find paid employment...” *Geneva Convention IV, Article 39*
- “All measures aiming at creating unemployment or at restricting the opportunities offered to workers in an occupied territory, in order to induce them to work for the Occupying Power, are prohibited.” *Geneva Convention IV, Art. 52*
- “Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment” *Universal Declaration of Human Rights, Art. 23*

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<sup>81</sup> “Former U.S. administrator blasts U.S. post-war actions in Iraq,” *CBC News*, November 26, 2003. <http://www.cbc.ca/stories/2003/11/26/jaygarner031126>.

<sup>82</sup> “U.N. Special Advisor Lakhdar Brahimi on the Political Situation in Iraq,” *U.N. Observer and Special Report*, April 15, 2004. <http://www.unobserver.com/layout5.php?id=1582&blz=1>

<sup>83</sup> Richard Sale, “Iraqi CPA fires 28,000,” *United Press International*, November 21, 2003. <http://www.globalpolicy.org/security/issues/iraq/occupation/2003/1121fires.htm>.

<sup>84</sup> CPA, “Coalition Provisional Authority Order Number 1: De-Baathification of Iraqi Society,” CPA/ORD/16 May 2003/01. See <http://www.cpa-iraq.org/regulations/CPAORD1.pdf>

<sup>85</sup> Food and Agricultural Organization, *ibid*.

<sup>86</sup> Jackie Spinner, “U.S. Criticized for Dismissing Iraqi Companies in Reconstruction,” *The Washington Post*, February 9, 2004. <http://www.washingtonpost.com/ac2/wp-dyn?pagename=article&contentId=A25371-2004Feb9&notFound=true>.

- “The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right” *International Covenant on Economic, Social, and Cultural Rights, Art. 6*

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## Violation X: Fundamentally Changing the Economic Structure

*The imposition of major structural economic reforms would not be authorized by international law.*  
 – Lord Goldsmith, British Attorney General, leaked memo to Tony Blair<sup>87</sup>

Occupation law mandates that the Occupying Power act as temporary custodian and therefore prohibits the imposition of major legal, political or economic restructuring. Yet U.S. policy has explicitly sought to privatize Iraq’s economy with little consideration for the welfare and rights of the Iraqi people. The reconstruction process has been run as a form of thinly-disguised pillage of the spoils of war. Deputy Secretary of Defense Paul Wolfowitz declared that only companies from countries that supported the unlawful invasion of Iraq<sup>88</sup> were eligible to bid on reconstruction contracts.<sup>89</sup> Even before the war began, U.S. government agencies were awarding lucrative contracts to American corporations in secret deals lacking any transparent bidding process. The largest contracts were handed to corporations with close connections to the Bush Administration.<sup>90</sup>

Moreover, the Bush Administration and CPA have openly declared a policy of radically restructuring Iraq’s economy along free market lines through a series of new legal orders.<sup>91</sup> CPA Order 39 permitted privatization of state enterprises, 100% foreign ownership of Iraqi firms, tax-free repatriation of all investment profits, and 40 year leases on contracts.<sup>92</sup> Order 40 transformed the banking sector from state-run to market-driven overnight, under the direction of JP Morgan. Order 37 imposed a flat tax rate of 15%, drastically reducing the tax burden on corporations and wealthy individuals. Order 12 abolished all tariffs and prohibited protective trade measures. These structural reforms violate the laws of occupation, and have not resulted in measurable economic gains for the population – although Halliburton and Bechtel have recorded enormous profits.<sup>93</sup>

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<sup>87</sup> Thomas Catán, “Iraq Business Deals May Be Invalid, Law Experts Warn,” *Financial Times (UK)*, October 30, 2003. Available at <http://www.commondreams.org/headlines03/1030-02.htm>.

<sup>88</sup> Center for Economic and Social Rights, *Tearing up the Rules: The Illegality of Invading Iraq*, March 18, 2003. Available at <http://www.cesr.org>.

<sup>89</sup> Paul Richter, “Antiwar Nations Barred from Bids,” *The Los Angeles Times*, December 10, 2003. Available at <http://www.commondreams.org/headlines03/1210-04.htm>.

<sup>90</sup> Ibrahim Warde, “Iraq: A license to loot the land,” May 2004, *Le Monde Diplomatique*. <http://mondediplo.com/2004/05/02iraq>.

<sup>91</sup> Antonia Juhasz, “Ambitions of Empire: The Bush Economic Plan for Iraq (and Beyond),” *Left Turn Magazine*, January 20, 2004. Available at <http://www.globalpolicy.org/security/issues/iraq/after/2004/0120ambitions.htm>.

<sup>92</sup> All CPA Orders and Regulations can be found on the CPA website at <http://www.cpa-iraq.org/regulations/>.

<sup>93</sup> David R. Baker, “Bechtel’s 2003 revenue breaks company record: Iraq rebuilding contracts help S.F. firm reverse a 3-year slump,” *San Francisco Chronicle*, April 20, 2004. <http://www.occupationwatch.org/article.php?id=4361>.

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*Legal Principles related to Fundamental Changes*

- “The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country” *Hague Regulations, Art. 43*
  - “... the occupying authority was to be considered as merely being a de facto administrator” *ICRC Commentary, Geneva IV Art. 47*
  - “Protected persons... shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by ... any agreement concluded between the authorities of the occupied territories and the Occupying Power” *Geneva Convention IV, Art. 47*
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## Recommendations

*I will remind you that the Americans are governing this country... Bremer is the dictator of Iraq. He has the money. He has the signature.*

– Lakhdar Brahimi, UN Special Envoy to Iraq<sup>94</sup>

The following recommendations assume that international law is meant to apply equally to all governments, even the world's lone superpower. They may be dismissed by some as “unrealistic” in today's geopolitical climate. But, especially today, we are called to challenge prevailing realities on the grounds that only respect for equal rights and justice can bring about a positive resolution to the crisis in Iraq. Moreover, the opportunity for principled policy change grows daily with every new revelation of lies and mistakes by the Bush Administration.

As the contradiction between the U.S. occupation and Iraqi self-determination becomes more apparent, the growth of Iraqi resistance more widespread and popular, the imposition of U.S. interests through Iraqi proxies more untenable, the need for multilateral participation more urgent, regional opposition to U.S. hegemony more forceful, and the voice of global opinion more powerful, it will become more realistic to promote law-based solutions to a conflict created by lawless behavior.

It is on this basis that the Center for Economic and Social Rights offers the following recommendations:

- **Stop the violations.** The first priority is for the U.S. immediately to stop violating Iraqis' rights under human rights and humanitarian law. This applies to all the categories of violations documented above—economic and social rights to health and work, civil and political rights to free expression and bodily integrity, and humanitarian protections against unlawful killing and detention. For the violations to end, the Bush Administration must acknowledge their systemic nature and implement immediate changes to basic occupation policies.

The second priority is to establish conditions for the protection and promotion of these rights. This would require a public commitment by the Bush Administration to renounce imperial ambitions in Iraq and declare respect for legal principles governing occupation, starting with the Geneva Conventions. This commitment should be backed up by allowing independent rights groups and journalists free access in Iraq to monitor and report on U.S. practices.

Any willingness to change abusive policies on the ground and accept the rule of international law would, of course, mark a radical departure from the lawless behavior that has characterized the Bush Administration's Iraq policy and, more broadly, its pursuit of “the war against terror” since 9/11. It would also mark a

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<sup>94</sup> Tom Lasseter, “Brahimi: Bremer the ‘dictator of Iraq’ in shaping Iraqi government,” *Knight Ridder Newspapers*, June 2, 2004. <http://www.realcities.com/mlld/kwashington/8821031.htm>

first step towards restoring the trust, goodwill, and cooperation of not only the Iraqi people but the entire international community.

- **Establish accountability.** Top U.S. government officials should accept responsibility for systemic violations rather than scapegoat those individuals who happen to get caught on camera. Donald Rumsfeld and Paul Wolfowitz, the architects of the invasion and occupation of Iraq, should be forced to resign and publicly apologize for the myriad lies, misjudgments, and crimes that have driven U.S. policy in Iraq. They and other responsible Administration officials should also face criminal and civil charges for war crimes and other violations of international law.

Occupation forces, including private contractors, should be stripped of extraterritorial immunity—an affront to Iraqi sovereignty reminiscent of 19<sup>th</sup>-century imperialism. Any agreements reached with interim Iraqi authorities to exempt U.S. forces from criminal accountability lack legal force and effect and therefore can and should be nullified once a legitimate sovereign Iraqi government assumes power. Any agreements reached with interim Iraqi authorities to exempt U.S. forces from criminal accountability lack legal force and effect and therefore can be nullified once a legitimate sovereign Iraqi government assumes power.

Moreover, any tribunal for war crimes in Iraq should be held according to international standards, with jurisdiction over all crimes committed by all parties against the Iraqi people. A tribunal that prosecutes only Baath Party leaders without holding officials from foreign governments and international actors accountable would rightly be seen as a kangaroo court dispensing victor's justice. At the broader level, the Bush Administration should join the International Criminal Court and stop negotiating bilateral exemptions to legal liability for the most egregious international crimes, including genocide, war crimes, and crimes against humanity

- **End the occupation.** Promoting an illusory political transition on June 30<sup>th</sup> (or any future date) while retaining effective control on the ground will neither stop the cycle of violence nor shield the U.S. government from accountability as an occupying power. Changing Iraq's economic structure and laws to secure U.S. corporate ownership of its natural resources and national assets while establishing U.S. military bases across the country will only further entrench the occupation.

In Washington, a bipartisan consensus currently exists that asserts that the occupation must continue because a U.S. withdrawal would leave chaos and civil strife in its wake. Similar to the "White Man's Burden" argument of a century ago, this unprincipled position uses the prospect of local violence to justify an unlawful policy of foreign intervention, and ignores the plain fact that the presence of occupation forces is itself the primary cause of Iraqi resistance and a trigger to increased sectarian violence. Rather than issue empty rhetoric about

protecting Iraqis from each other, the Bush Administration must instead articulate a clear plan to withdraw U.S. forces according to a transparent timetable, and publicly disavow current plans to maintain indefinite military and economic control of Iraq.

A policy declaration to this effect, followed by concrete actions, would almost certainly result in a sharp reduction in violence, facilitate increased participation by international and regional mediators and peacekeepers, and create favorable conditions for an agreement on free and fair elections negotiated by Iraqi factions based on their actual support in the country rather than the strength of their foreign sponsors. While no course of action, even one based on full respect for international law, can guarantee peace, stability, and democracy, it would be difficult to do more damage to these values than present U.S. occupation policy.

- **Pay reparations.** The damage caused by U.S. policy in Iraq will remain long after the last occupation troops have withdrawn. Most consequences can never be undone—the unnecessary deaths, the impoverishment of a wealthy nation, the deprivation of an entire generation of children, the intellectual brain drain, the cultural losses, the shredding of Iraq’s social fabric, the ethnic and religious fragmentation. Nevertheless, the U.S. has a duty to repair what is repairable through economic compensation. This is not an act of benevolence. It is a legal obligation to remedy the results of wrongful actions.

There are many precedents for imposing reparations on countries that have invaded, occupied, and committed war crimes against other nations and peoples, stretching back to the Second World War and before. The Kuwait Compensation Commission—which assessed over \$200 billion in damages against Iraq for individual, corporate, and governmental losses arising from the invasion of Kuwait in 1990—provides one relevant model for determining U.S. reparations owed to Iraq.

To date, the C.P.A. has provided only paltry compensation for a handful of wrongful deaths confirmed by the U.S. military, while excluding the vast majority of claims. It must be emphasized that reparations for illegal actions, including the massive destruction of civilian life and property from two wars, sanctions, and occupation, are a penalty for wrongdoing rather than charity to rebuild the country. Reconstruction aid should be considered independently of reparations, and should be provided as unconditional grants rather than long-term loans that would trap Iraq in an endless cycle of debt to foreign creditors. Similarly, forgiveness for debt incurred by the Ba’ath regime is an important but independent consideration for restoring the country’s economic health and securing its financial future.

## Conclusions

*Law and order exist for the purpose of establishing justice.*

– Rev. Martin Luther King, Jr.

*If civilization is to survive, it must choose the rule of law.*

– Dwight Eisenhower

This report is grounded in the assumption that the U.S. is not above the law, but rather should be bound and limited by law. Such limitation would have profound implications for Bush Administration policies in Iraq. International law forbids imperialism in any guise; forbids unilateral aggression in the guise of “pre-emptive” war; forbids military occupation in the guise of providing security; forbids hand-picking political leaders in the guise of promoting democracy; forbids economic pillage in the guise of reconstruction; forbids extraterritorial impunity for war crimes in the guise of establishing rule of law; and forbids criminalizing resistance in the guise of fighting terrorism. In essence, the entire thrust of U.S. policy in Iraq stands in contradiction to the post-World War II legal order and particularly the legal framework governing occupation.

While the U.S. is clearly obligated to comply with occupation law, the primary conclusion to be drawn is that the occupation itself is the root cause of ongoing war crimes and rights violations documented in this report. The violations will not end until the occupation ends and Iraqis are allowed to exercise genuine self-determination. Justice will not be done until all war criminals—U.S. as well as Iraqi—are put in the dock and held to account, and the U.S. pays reparations for the devastation inflicted on Iraqi society by its unlawful policies and practices. These must be the primary demands of the international community—governments, multilateral institutions, civil society actors, social movements, and people of conscience everywhere.

Too many advocacy organizations, especially in the U.S., are willing to demand remedies for specific human rights violations but are unwilling to take the logical and necessary step of condemning the occupation itself. Part of their reluctance is the mistaken assumption that supporting self-determination is not impartial but “political,” when in fact the right to self-determination—for both individuals and nations—is the foundation of the United Nations Charter and stands as the first article in the two primary international human rights treaties. This selective interpretation of human rights law privileges narrow, incrementalist critiques of U.S. policy and marginalizes more fundamental challenges to the underlying U.S. attack on international law itself.

The structural lawlessness of the occupation is based on the Bush Administration’s view that strict adherence to the Geneva Conventions aids “the terrorists” and that U.S. military power should not be constrained by “quaint” legalities.<sup>95</sup> This does not mark a radical break from past American policies, but rather an intensification of the longstanding tradition of “U.S. exceptionalism”—the doctrine that every country in the

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<sup>95</sup> Alberto R. Gonzales, *Memorandum to the President: Decision Re Application of the Geneva Convention on Prisoners of War to the Conflict with Al Qaeda and the Taliban*, January 25, 2002.

<http://www.msnbc.msn.com/id/4999148/site/newsweek/>.

world *except the U.S.* (and its favored allies) is bound by international law. Especially since 9/11, the Bush Administration has expressed open contempt for the rule of law, the United Nations, and global public opinion. The invasion and occupation of Iraq is merely the gold standard of U.S. exceptionalism—and the first time that this doctrine has been used so openly and effectively to undermine the United Nations system of post-colonial sovereignty.

The manipulation of legal language and principles to serve unlawful ends is, of course, not a uniquely American policy. Throughout history, powerful imperial states have stood above the law and claimed the right to liberate “less civilized” nations through the use of military violence disguised as humanitarian intervention. The rhetoric of freedom has generally masked the reality of conquest, subjugation, massacre, pillage, and torture. Occupied peoples have generally resisted such unwelcome liberation by all means at their disposal, leading to ever-escalating violence until either the invader is thrown out or the population is conquered and subdued.

The U.S. occupation of Iraq is proving to be no exception to this time-tested paradigm. Since Iraq is not fated to become America’s 51<sup>st</sup> state, the only question is: how long will it take, and how many lives will be lost, before Iraqis are able to exercise genuine self-determination and control their own destiny.

## Postscript

By restricting its scope to the period of occupation, this report covers only a fraction of the damage that has been inflicted on Iraqi society by U.S. policy in recent decades. The list of American crimes against the people of Iraq is, unfortunately, lengthy and well documented:

- The U.S. assisted Saddam Hussein's ruthless rise to power, covered up his crimes against the Iraqi people, and provided billions in economic and military support for his war against Iran, including materiel for weapons of mass destruction.
- In the first Gulf War, the U.S. used overwhelming force to kill well over 100,000 soldiers and civilians—bombing the country back to the “pre-industrial age” while leaving Saddam Hussein and the Baath regime firmly in control.
- Thirteen years of U.S.-led sanctions crippled the economy, wiped out the middle class and private sector, impoverished the majority of the population, and killed through hunger and disease up to one million children under the age of five.
- The unlawful invasion and occupation of Iraq—in defiance of international law and global public opinion—achieved “regime change” but at great cost to the lives, property, heritage, independence, pride, and national and human rights of the Iraqi people.

For years, advocacy groups in the U.S. speaking out against these crimes were like voices in the wilderness, unrecognized by those in power and marginalized even by some mainstream human rights and humanitarian groups. The recent emergence of a grassroots peace and justice movement opposing the lies and depredations of Bush Administration policy has succeeded in elevating first the invasion, and now the occupation of Iraq to the center of a vigorous national debate.

The task of this movement is to mobilize maximum public pressure on policy-makers at all levels to end the occupation and demand law-based solutions respecting Iraqi self-determination and human rights. The Bush Administration is therefore the primary target for protest, but it would be a major mistake to ignore the current bipartisan consensus in Washington around sending more troops to maintain the occupation of Iraq. To achieve the goal of ending the occupation, it will be necessary to educate the American public that both Republican and Democratic administrations have long pursued unprincipled and destructive policies towards Iraq, and that the struggle for justice must continue regardless of who sits in the White House.