

TABLE OF CONTENTS

1.0. INTRODUCTION	1
2.0. ROLE OF THE GOVERNING COUNCIL AND THE COALITION PROVISIONAL AUTHORITY	2
3.0. CHANGES TO LEGISLATION INTRODUCED BY THE COALITION PROVISIONAL AUTHORITY	4
3.1. Independence of the Judiciary	5
3.2. Freedom of Expression and Association	8
3.2.1. Amendments to the Penal Code	8
3.2.2. De-Ba'athification	9
3.3. Freedom of movement	14
3.4. Language and access to information	15
3.5. Property disputes	16
4.0. APPENDIX 1: Table of legal instruments introduced by the CPA and the delay in translation	17

Iraq

Memorandum on concerns related to legislation introduced by the Coalition Provisional Authority

1.0. INTRODUCTION

Amnesty International has expressed concerns on several occasions in the past over issues related to the conduct of the Coalition Provisional Authority (CPA) as an occupying power in Iraq. Amnesty International issued an extensive memorandum detailing many of the organization's concerns. In "*Memorandum on concerns relating to law and order*", (AI Index: 14/157/2003), issued in July 2003 (July 2003 Memorandum), Amnesty International welcomed the review undertaken by the CPA of the Iraqi Penal Code of 1969 and the Code of Criminal Procedures of 1971, in order to evaluate their compatibility with international human rights standards. The organization has made some observations in that Memorandum in relation to CPA orders and regulations that relate to law and order. The Memorandum stated that a further analysis of CPA Orders and Regulations in Iraq will be made at a later stage.

Further, in the July 2003 Memorandum, Amnesty International raised concerns related to practice by the CPA and British and United States (US) forces, including excessive use of force; the use of different procedures and guarantees of rights in arrest and detention accorded to different categories of detainees; allegations of torture and ill-treatment in custody by the Coalition forces; damage and destruction of property during searches; concerns over the independence of the judiciary; concerns related to the Central Criminal Court; lack of adequate recognition by the Coalition powers of applicability of international human rights law to all aspects of life; and lack of accountability of Coalition forces for violations of human rights and humanitarian law. Amnesty International provided a number of recommendations directed at the CPA.

This Memorandum highlights Amnesty International concerns in relation to CPA orders and regulations and their impact on human rights.¹ It includes concerns

¹ This document does not include analysis of CPA orders or regulations related to the management of funds available to the CPA, including the Development Fund for Iraq established according to Security Council Resolution 1483 and regulated according to CPA Regulation 2; the establishment of the Program Review Board by CPA Regulation 3; or other financial matters including those related to the banking sector.

related to independence of the judiciary, freedom of expression and association, freedom of movement, language and access to information, and property disputes.

2.0. ROLE OF THE GOVERNING COUNCIL AND THE COALITION PROVISIONAL AUTHORITY

Amnesty International notes the establishment of the Iraqi Governing Council in July 2003, and CPA Regulation Number 6 in which the CPA recognized the Governing Council “as the principal body of the Iraqi interim administration, pending an internationally recognised representative government by the people of Iraq, consistent with [Security Council] Resolution 1483”. Regulation Number 6 adds that “the Governing Council and the CPA shall consult and coordinate all matters involving the temporary governance of Iraq, including the authorities of the Governing Council”. Paragraph 9 of Security Council Resolution 1483 states that the Security Council “[s]upports the formation, by the people of Iraq with the help of the [Coalition Provisional] Authority and working with the Special Representative, of an Iraqi interim administration as a transitional administration run by Iraqis, until an internationally recognized, representative government is established by the people of Iraq and assumes the responsibilities of the Authority.” Neither Security Council resolution 1483, nor CPA Order Number 6 detail the exact powers and authorities of the Governing Council. However, Resolution 1483 indicates that the Governing Council does not enjoy the full authority of a government. The Security Council envisages that this will be carried out by an “internationally recognized, representative government ... established by the people of Iraq and assuming the responsibilities of the Authority”.

Article 64 of the Fourth Geneva Convention states that “[t]he penal laws in the occupied territories shall remain in force, with the exception that they may be repealed or suspended by the Occupied Power in cases where they constitute a threat to its security or an obstacle to the application of the present Convention.” The official ICRC Commentary on this provisions states:

“The legislative power of the occupant as the Power responsible for applying the Convention and the temporary holder of authority is limited to the matters set out in a limitative list below.

(a) It may promulgate provisions required for the application of the Convention in accordance with the obligations imposed on it by the latter in a number of spheres: child welfare, labour, food, hygiene and public health etc.

(b) It will have the right to enact provisions necessary to maintain the “orderly government of the territory” in its capacity as the Power responsible for public law and order”.

The Commentary adds that the term “penal legislation” refers to “all legal provisions in connection with the repression of offences”.²

In accordance with these provisions of international humanitarian law, the CPA must exercise legislative powers only to the extent necessary to amend Iraqi legislation which violates international law and standards. Broader legislative reform should await the establishment of an Iraqi government which will replace the CPA.

Recommendations:

- *Amnesty International recommends that the CPA reviews its orders and regulations that are already issued, in light of the recommendations included in this memorandum, to ensure that they are fully consistent with the CPA’s obligations under international human rights and humanitarian law.*
- *Amnesty International also recommends that the CPA suspends provisions of the Iraqi penal legislation that clearly contravene international law and standards. These provisions should be replaced by new legislation only if their suspension would create a legislative gap.*
- *Amnesty International calls on the Governing Council of Iraq to support the adoption by the CPA of the recommendations contained in this memorandum.*

² For further analysis of the responsibilities of the CPA, see Iraq: “Responsibilities of the occupying powers”, Amnesty International Index: MDE 14/089/2003, (April 2003).

3.0. CHANGES TO LEGISLATION INTRODUCED BY THE COALITION PROVISIONAL AUTHORITY

Up to the end of October 2003, the CPA had issued six Regulations, 43 Orders, six Memoranda, and four Public Notices. The first 20 orders and three regulations focused mainly on issues related to law and order, touching on certain rights and freedoms. Most of the orders and regulations issued afterwards are related to the reestablishment of the Iraqi security, including the creation of the New Iraqi Army (CPA Order 22), creation of the Code of Military Discipline for the New Iraqi Army (CPA Order 23), creation of the Department of Border Enforcement (CPA Order 26), establishment of the Facilities Protection Service (CPA Order 27), and the Iraqi Civil Defense Corps (CPA Order 28). Orders 37-40 are related to financial matters including taxes, levies, and banking.

CPA Regulation Number 1, issued on 16 May 2003, defines the powers of the CPA and the applicable law in Iraq during the period of occupation administered by the CPA. Section 1 of Regulation Number 1 states:

- “1) The CPA shall exercise powers of government temporarily in order to provide for the effective administration of Iraq during the period of transitional administration....
- 2) The CPA is vested with all executive, legislative and judicial authority necessary to achieve its objectives ...”

According to Section 2 of Regulation 1:

“Unless suspended or replaced by the CPA or suspended by legislation issued by democratic institutions of Iraq, laws in force as of April 16, 2003 shall continue to apply in Iraq insofar as the laws do not prevent the CPA from exercising its rights and fulfilling its obligations, or conflict with the present or any other Regulation or Order issued by the CPA.”

Section 3 defines Regulations as “those instruments that define the institutions and authorities of the CPA”, while Orders are “binding instructions by the CPA.” It adds that “Regulations and Orders ... shall take precedent over all other laws and publications to the extent such other laws and publications are inconsistent.”

The CPA must exercise its functions in compliance with both human rights and humanitarian law. In a letter to Amnesty International, dated 27 June 2003, Ambassador Paul Bremer, the CPA Administrator, stated that “the only relevant standard applicable to the Coalition’s detention practices is the Fourth Geneva Convention of 1949. This Convention takes precedence, as a matter of law, over other

human rights conventions.” However, in addition to humanitarian law, human rights law is also applicable, and Coalition states should respect the provisions of the human rights treaties which they have ratified, as well as treaties to which Iraq is a party.³ The European Convention for the Protection of Human Rights and Fundamental Freedoms is applicable to the conduct of forces of Coalition states, such as the United Kingdom, that are parties to this treaty.

Amnesty International welcomes the positive steps taken by the CPA, including CPA Order 7 which suspends the death penalty, prohibits torture, cruel, inhuman and degrading treatment or punishment, and prohibits discrimination. The organization also welcomes the lifting of the restrictions imposed in the past by the Iraqi government on travel for academic reasons for faculty, employees or students (CPA Order 8), the suspension of provisions in the Iraqi Penal Code and Code of Criminal Procedures that are contrary to human rights standards, such as mitigating circumstances in cases of kidnapping (CPA Order 31, Section 2).

In this section, Amnesty International highlights CPA orders and regulations which are not consistent with international law, especially relating to independence of the judiciary, freedom of expression and association, freedom of movement, access to information, and property rights.

3.1. Independence of the Judiciary

CPA Order 15: Establishment of the Judicial Review Committee

This order suspends the Iraqi Organization of the Judiciary Act of 1979 (the Judiciary Act) “insofar as its provisions conflict with this Order,” and establishes an entity to be known as the Judicial Review Committee (the Committee). The Committee’s mandate is to investigate and gather information on the suitability of judges and prosecutors to hold office. It also has the power “to remove judges and prosecutors from office,

³ Iraq is a party to the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the Convention on the Rights of the Child (CRC); the International Convention on the Elimination of All Forms of Racial Discrimination (CERD); and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The US is a party to ICCPR, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and the Protocol Relating to the Status of Refugees. The UK is a party to the ICCPR, Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty, ICESCR, CEDAW, CRC, Optional Protocol to the CRC on the involvement of children in armed conflict, CERD, CAT, Convention relating to the Status of Refugees (1951), Protocol relating to the Status of refugees, and the Rome Statute of the International Criminal Court.

confirm their continued holding of office, appoint replacements for judges and prosecutors removed from office and resolve the claims of judges and prosecutors who assert that they were improperly removed from office.”⁴

The Order does not specify which parts of the Judiciary Act are suspended. It is not clear what criteria the Committee uses in appointing, removing, and confirming appointments of judges and prosecutors to their office, and whether this will be in accordance with criteria in the Judiciary Act and the Public Prosecution Act, since nothing to the contrary has been stated in CPA Order 15, or any other CPA order.

The Judiciary Act requires persons appointed as judges to be graduates of the judicial academy, and encourages judges to acquire masters or doctorate degrees by granting them the right to obtain a sabbatical for two years for studies.

However, Article 36 of the Judiciary Act and Article 41 of the Public Prosecution Act require that persons appointed as judges or prosecutors should be Iraqi by birth and be married. These criteria discriminate against those who have acquired Iraqi nationality and constitute discrimination on the basis of social status, prohibited by Principle 10 of the Basic Principles on the Independence of the Judiciary (Basic Principles) which state:

“Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives. In the selection of judges, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth, or status, except that a requirement, that a candidate for judicial office must be a national of the country concerned, shall not be considered discriminatory.”

CPA Order 35: Re-Establishment of the Council of Judges

This order re-establishes the “Council of Judges” (the Council), which existed previously in Iraq. The Council, according to the Order, “is charged with the supervision of judicial and prosecutorial systems of Iraq (Section 1)”. The Order further states that “the Council shall perform its functions independently of the Ministry of Justice”, which is a welcome step consistent with the principle of independence of the judiciary enshrined in international law.

⁴ In the past, a Council of the Judiciary existed and carried out functions related to the judiciary including promotion and discipline. For further details, see “*Iraq and the Rule of Law*”, International Commission of Jurists, (February 1994), pages 104-108.

Section 2 of the Order provides a list of office holders who shall be members of the Council. These include the Chief Justice of the Supreme Court as President of the Council, Deputy Chief Justice of the Supreme Court, and the Director General of the Office of Public Prosecution. The duties of the Council include investigating allegations of professional misconduct and incompetence involving members of the judiciary and public prosecutors, and taking disciplinary measures when appropriate; nominating capable persons to fill judicial vacancies or public prosecutor vacancies and recommending their appointment; promoting, advancing, upgrading and transferring judges and prosecutors; and finally assigning judges and prosecutors to hold specific posts (Section 3). The Council replaces the previous Council of Justice established under the Judicial Organization Law number 160 of 1979 “in so far as the Council of Justice exercised any authority over any judge or prosecutor (Section 6.2)”.⁵

The relationship between the Council of Judges and the Judicial Review Committee (established by CPA Order 15 discussed above) is not clear. For example, the Council has the role of nominating people to office and recommending their appointment, while the Committee has the duty of appointing replacements for officials removed from office. The Council has the duty to investigate allegations of misconduct by judges and prosecutors and removing them from office, while the Committee is also empowered with removing officials from office, as well as resolving claims of improper removal from office. Neither of the orders makes clear if there is a connection between the two bodies, and if so, what it is and how it operates.

Amnesty International is also concerned that the role of the Council to nominate officials to fill vacancies, assign and reassign judges and prosecutors to hold specific posts, while at the same time acting on complaints against these same officials, could give rise to conflicts of interest.

Finally, Amnesty International is concerned that there are no clear grounds on which the Council can investigate allegations of professional misconduct of judges, and take disciplinary measures, including removal from office. The Basic Principles require that “[j]udges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties” (Principle 18), but this is not clearly specified by CPA Order 35.

⁵ The order adds that “[a]ll administrative oversight of the judges and prosecutors shall now rest only with the Council of Judges. The Council of Justice shall continue in existence, but shall have no jurisdiction over any prosecutor or judge.”

Recommendations:

- *Amnesty International recommends that the CPA ensures that the Judicial Review Committee carries out its tasks of appointing, removing and confirming the appointment of judges and prosecutors in conformity with international standards, including the Basic Principles on the Independence of the Judiciary.*
- *The CPA should also clarify the relationship between the Judicial Review Committee and the Council of Judges. Clear criteria for disciplinary action against judges should be set and should be limited to reasons of incapacity or behaviour, in line with international standards, including the Basic Principles on the Independence of the Judiciary.*

3.2. Freedom of Expression and Association

3.2.1. Amendments to the Penal Code

CPA Order 7 “Penal Code”

This Order allows for legal proceedings to be brought in relation to a list of offences in the 1969 Iraqi Penal Code, specified in the Order, only after written permission from the Administrator of the CPA (Section 2). The list includes publishing offences related to external and internal security, and offences against public authorities and public officials.⁶

Amnesty International believes that several provisions of the Iraqi Penal Code falling in this category pose a clear threat to the right to freedom of expression. These include restrictions on dissemination of information, “insulting” the president and public figures, and violations of “public integrity and decency”. These restrictions on freedom of expression go beyond those permitted by Article 19 of the International Covenant on Civil and Political Rights (ICCPR).⁷ Further, the Order is not clear on

⁶ The exact articles (called Paragraphs in the Order) in the Iraqi Penal Code subject to this CPA Order 7 are: 81-84 (publication offences), 156-189 (offences against the external security of the state), 190-195, 198-199, 2001-219 (offences related to internal security), 223-224, 226-228 (offences against public authorities), and article 229 (offences of insulting a public figure).

⁷ Among the provisions in the Penal code that can be subject to such permission according to CPA order 7 is Article 200. Amnesty International wishes to note that Article 200 of the Penal Code was suspended by CPA Order 7 (Section 2 (1)).

which criteria the Administrator should apply in determining whether legal proceedings should be commenced.

Recommendation:

- ***Amnesty International recommends that clear criteria be specified to guarantee that permission from the CPA Administrator for legal proceedings, according to CPA Order 7, should not be granted in situations where they would amount to violations of freedom of expression.***

3.2.2. De-Ba'athification

CPA Order 1 “De-Ba'athification of Iraqi Society”

This Order was issued on 16 May 2003. It refers to a declaration by the CPA on 16 April 2003 to disestablish the Ba'ath Party of Iraq. CPA Order number 1 states that it implements this declaration “by eliminating the party’s structures and removing its leadership from positions of authority and responsibility in Iraqi society”. The Order adds:

“Full members of the Ba'ath Party holding the ranks of ... regional Command Member, ... Branch Member, ... Section Member, ... and Group Member are hereby removed from their positions and banned from future employment in the public sector.

Individuals holding positions in the top three layers of management in every national government ministry, affiliated corporations and other government institutions (e.g., universities and hospitals) shall be interviewed for possible affiliation with the Ba'ath Party, and subject to investigation for criminal conduct and risk to security. Any such persons determined to be full members of the Ba'ath Party shall be removed from their employment. This includes those holding the more junior ranks of ‘Udw (Member) and ‘Udw ‘Amil (Active Member), as well as those determined to be Senior Party Members.”

Amnesty International is concerned that this order may violate the right to freedom of expression and association. Amnesty International believes that mere past membership in the Ba'ath party should not in itself constitute grounds to deny a person the possibility to hold employment in the top three layers of management of government ministries, especially if there is no evidence that they were implicated in human rights violations.

While former members of the Ba'ath party are not allowed to hold certain offices in ministries by virtue of the above order, there is no requirement that, for example, members of the police should be investigated for any past crimes before they resume their jobs.

It is not clear if this vetting process was used when the Iraqi police re-assumed their responsibilities. However, it appears that a certain number of previous members of the police force were re-instated in their positions without being subjected to any vetting system.

CPA Order 14 “Prohibited Media Activities”

This order prohibits media organizations from publishing or broadcasting original or re-broadcasted, re-printed or re-syndicated, material that, among other things, “advocates the return to power of the Iraqi Ba'ath Party or makes statements that purport to be on behalf of the Iraqi Ba'ath party”.

Amnesty International is concerned that CPA Orders 1 and 14 discussed above place sweeping restrictions on the right to freedom of expression and the role of the media. Any restrictions should be limited to those permissible under Article 19 of the International Covenant on Civil and Political Rights (ICCPR) which states:

- “1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others;
 - (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.”

The Human Rights Committee, which supervises the implementation of the ICCPR by states party, has stated that “[t]he Covenant does not permit restrictions on the expression of ideas, merely because they coincide with those held by an enemy entity or may be considered to create sympathy for that entity”.⁸

Further, Article 20 of the ICCPR prohibits any propaganda for war (Paragraph 1) and “[a]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law” (Paragraph 2). The Human Rights Committee commented on these provisions as follows:

“The prohibition under paragraph 1 extends to all forms of propaganda threatening or resulting in an act of aggression or breach of the peace contrary to the Charter of the United Nations, while paragraph 2 is directed against any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, whether such propaganda or advocacy has aims which are internal or external to the State concerned. The provisions of article 20, paragraph 1 do not prohibit advocacy of the sovereign right of self-defence or the right of peoples to self-determination and independence in accordance with the Charter of the United Nations. For article 20 to become fully effective there ought to be a law making it clear that propaganda and advocacy as described therein are contrary to public policy and providing for an appropriate sanction in case of violation.”⁹

Further, restrictions on employment of former Ba’ath members, as reflected in CPA Order 1, may be in violation of Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) which states:

“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.”

The ICESCR stipulates in Article 2.2 that “the State Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, *political or other opinion*, national or social origin, property, birth or other status”(emphasis added). The ICESCR allows for imposing limitations on rights

⁸ Concluding observations of the Human Rights Committee on the Republic of Korea's Second Periodic Report, 1 November 1999, CCPR/C/79/Add.114, para. 9.

⁹ Human Rights Committee, General Comment 11: Prohibition of propaganda for war and inciting national, racial or religious hatred, (29/07/83), para 2.

enshrined in it if such limitations “are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.” (Article 4)

Blanket restrictions on access to employment in the public sector on former members of the top four layers of the Ba’ath Party (CPA Order 1) contravenes the rights of citizens to hold public office without discrimination, enshrined in international law, including Article 25 of the ICCPR which states:

“Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(c) To have access, on general terms of equality, to public service in his country”.

General Comment 25 by the Human Rights Committee states:

Subparagraph (c) of article 25 deals with the right and the opportunity of citizens to have access on general terms of equality to public service positions. To ensure access on general terms of equality, the criteria and processes for appointment, promotion, suspension and dismissal must be objective and reasonable. Affirmative measures may be taken in appropriate cases to ensure that there is equal access to public service for all citizens.

Basing access to public service on equal opportunity and general principles of merit, and providing secured tenure, ensures that persons holding public service positions are free from political interference or pressures. It is of particular importance to ensure that persons do not suffer discrimination in the exercise of their rights under article 25, subparagraph (c), on any of the grounds set out in article 2, paragraph 1.¹⁰

CPA Order 13 “Central Criminal Court (Revised)”

This order imposes the requirement that judges appointed to the court “have a background of either opposition to the Ba’ath Party, non-membership of the Ba’ath party, or membership that does not fall within the leadership tiers described in the CPA/ORD/16 May 2003/01 [Order Number 1: De-Ba’athification of the Iraqi Society], and entailed no involvement in Ba’ath Party activity” (Section 5 (1-B)). It is

¹⁰ General Comment 25 of the Human Rights Committee: “The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25)” (12 July 1996).

not clear if this restriction on appointment of judges to the Central Criminal Court is intended to ensure that judges are independent and are not influenced by political parties or other quarters. If this is the case, Amnesty International is concerned that such restriction is imposed only in relation to past membership or involvement with the Ba'ath Party. Such restriction could result in discrimination. Further, the terms "involvement" and "activity" are not defined, and therefore there is a risk that mere membership could be interpreted as involvement in the party's activities.

Principle 8 of the Basic Principles on the Independence of the Judiciary states that "members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly; provided, however, that in exercising such rights, judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary." Further, Principle 10 states that selection of persons for judicial office shall be based on integrity and ability, training or qualifications in law of the person. It also prohibits discrimination for such selections on a number of grounds including political or other opinion.

Unless there is evidence that previous membership of the Ba'ath party would affect the independence and impartiality of judges, such a sweeping exclusion on the basis of political opinion is discriminatory. Appointment of judges to the Central Criminal Court and other judicial positions should be based on the criteria of integrity, ability, appropriate training or qualification. Mere membership of the Ba'ath party should not be used in itself as a criteria for exclusion.

Recommendations:

- ***Amnesty International recommends that CPA Orders and Regulations do not impose restrictions on the rights to freedom of expression, access to work and right to hold public office, beyond those that are permissible in international law. Effective and fair vetting is needed, so as to reduce the chance of restoring to their duties officials who may have been involved in human rights violations. Persons suspected of involvement in human rights violations should be duly charged and tried following fair trial procedures.***
- ***The CPA should not impose any restrictions on the media and the right of people to receive and impart information and ideas in any form, beyond those defined by international law, particularly Article 19 (3) of the ICCPR.***
- ***Judges and prosecutors should not be excluded from appointment or unduly penalised on the basis of mere previous membership of the Ba'ath Party.***

3.3 Freedom of movement

CPA Order 8 “Travelling Abroad for Academic Purposes”

This order lifts restrictions on travel by faculty staff or students of public universities, colleges, or other institutions of higher education, for educational purposes that have been imposed in the past through government regulations, instructions or policies. Amnesty International welcomes this measure by the CPA. However, it is not clear why the restrictions on travel have been lifted only for academic purposes and not for other categories of Iraqi professionals who suffered from similar restrictions, for example judges, doctors, and civil servants. Article 12 (2-3) of the ICCPR states:

“Everyone shall be free to leave any country, including his own.

The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.”

The Human Rights Committee has commented on these restrictions imposed in the past on freedom of movement in Iraq stating that:

“The Committee notes with concern reports of arbitrary restrictions imposed by the authorities on the right to freedom of movement within Iraq and freedom to leave the territory of the State party, in breach of Iraq's obligations under article 12 of the Covenant. Therefore:

Measures should be taken to ensure that article 12 is complied with and, among other things, that administrative costs for the issue of passports be reduced.”¹¹

Recommendation:

- ***Amnesty International recommends that the CPA lift all unlawful restrictions that were imposed in the past on freedom of movement, particularly the right to travel abroad.***

¹¹ Concluding Observations of the Human Rights Committee: Iraq, 19/11/97, CCPR/C/79/Add.84, para 14.

3.4. Language and access to information

As stated in the July 2003 Memorandum, Amnesty International is concerned that many of the CPA Orders or Memoranda have been issued in Arabic at a much later date than the English original version. As of end of October 2003, some were still not available in Arabic. The examples below are based on the dates when the Arabic translation was posted on the CPA website, which, Amnesty International understands, is approximately the same date as when the documents became available in hard copy inside Iraq. The following are selected examples.¹²

- CPA Order 10 “Management of Detention and Prison Facilities” was issued in English on 8 June 2003. The Arabic version of that order was available on the CPA website on 29 October 2003 (143 days later).
- CPA Order 13 “the Central Criminal Court of Iraq” was issued in English on 18 June. The Arabic version of that order was available on the CPA website on 2 September 2003 (44 days later).
- CPA Order 15 “Establishment of the Judicial Review Committee” was issued in English on 23 June 2003. The Arabic version of that order was available on the CPA website on 29 October 2003 (126 days later).
- CPA Regulations 6 “Governing Council of Iraq” was issued on 13 July. The Arabic version of that order was available on the CPA website on 2 September 2003 (50 days later).

Access to information concerning the applicable law is fundamental to allow citizens to understand and enjoy their rights. It is particularly important that members of the legal profession are kept informed of legal developments so that they can practise their duties professionally. Evidence from members of the legal profession indicate that they were not aware of legal changes introduced through the CPA in a timely way. This was the case also with the establishment of significant institutions, for example the Central Criminal Court.

CPA Orders and Regulations state that they enter into force on the date of signature, which is on the English version of the instrument. This is inconsistent with international humanitarian law. Article 65 of the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War states that the “penal provisions enacted by the Occupying Power shall not come into force before they have been published and brought to the knowledge of the inhabitants in their own language.”

¹² A full list of CPA instruments with the exact dates of issuing the instrument and the delay in the translation is contained in the Appendix attached to this document.

Although there has been progress in issuing instruments by the CPA in the official Gazette, in Arabic, delays in the translation continue.

Recommendations:

- ***Amnesty International urges the CPA to ensure that its penal legislation enters into force after an appropriate period of time following its publication in Arabic in the Official Gazette.***
- ***Amnesty International calls on the CPA to ensure that all such legislation is adequately disseminated.***

3.5. Property disputes

CPA Regulation 4

This Regulation establishes the Iraqi Property Reconciliation Facility (IPRF) to collect real property claims and resolve such claims “on a voluntary basis in a fair and judicious manner.” The Regulation also establishes a Fund for this purpose. Among the powers and functions of the Facility are to “provide a voluntary dispute resolution and reconciliation facility that individuals may use to resolve their dispute” (Section 4 (2-c)). The Regulation states that the Facility “shall be bound by and operate in accordance with any Regulations, Orders or Memoranda issued by the Administrator” (Section 6).

It is not clear, however, if this Facility would apply to Iraqi law in relation to property rights or related offences, and what the relationship is between the IPRF and the Iraqi legal system and courts. Neither is there clarity on possible referrals to regular courts of cases that cannot be resolved through reconciliation or dispute resolution. Further, the order states that the IPRF will deal with “real property claims”, but does not define the term. Further clarification is needed on whether the IPRF would be granting compensation.

Recommendation:

- ***Amnesty International recommends that the CPA clarify the applicability of the existing Iraqi legislation for property disputes, and the relationship between the Property Reconciliation Facility and the Iraqi justice system, including whether cases can be referred for adjudication to the courts. Further, Amnesty International recommends that the CPA defines clearly what is meant by terms used in the order, including “real property”.***

4.0. APPENDIX 1: Table of legal instruments introduced by the CPA and the delay in translation¹

<i>CPA Official Documents</i>	<i>ENGLISH Version</i>	<i>ARABIC Version</i>	<i>Time difference</i>
REGULATION			
1:The Coalition Provisional Authority	16 May 2003	16 July 2003	60 days
2:The Development Fund for Iraq	15 May 2003	16 July 2003	59 days
3:Program Review Board	19 May 2003	29 October 2003	130 days
4:Establishment of the Iraqi Property Reconciliation Facility	26 June 2003	16 July 2003	20 days
5:Council for International Coordination	17 June 2003	18 October 2003	120 days
6:Governing Council of Iraq	13 July 2003	02 September 2003	50 days
ORDERS			
1:De-Ba'athification of Iraqi society	15 May 2003	16 July 2003	60 days
2 Dissolution of Entities	23 May 2003	16 July 2003	53 days
3:Weapons Control	23 May 2003	29 October 2003	153 days
4:Iraqi Ba'ath Party	25 May 2003	29 October 2003	153 days
5:Establishment of the Iraqi De-Ba'athification Council	25 May 2003	29 October 2003	153 days
6:Eviction of Person Illegally Occupying Public buildings	08 June 2003	29 October 2003	140 days
7:Penal Code	10 June 2003	19 June 2003	9 days
8:Traveling Abroad for Academic purposes	07 June 2003	29 October 2003	142 days
9:Management and Use of Iraqi Public Property	08 June 2003	29 October 2003	143 days
10:Management of Detention and Prison Facilities	08 June 2003	29 October 2003	143 days
11:Licensing Telecommunications services and Equipment	09 June 2003	16 July 2003	37 days
12:Trade Liberalization Policy	08 June 2003	17 July 2003	39 days
13:The Central Criminal Court of Iraq	18 June 2003	02 September 2003	44 days
14:Prohibited Media Activity	10 June 2003	19 June 2003	9 days

¹ Dates, as of 31 October 2003, are taken from the CPA website, www.cpa-iraq.org/regulations/index.html

15:Establishment of the Judicial Review Committee	23 June 2003	29 October 2003	126 days
16:Temporary Control of Iraqi Borders, Ports and Airports	27 June 2003	02 September 2003	66 days
17:Status of the Coalition, Foreign Liaison Missions, Their Personnel	28 June 2003	15 August 2003	47 days
18:Measures to Insure the Independence of the Central Bank of Iraq	07 July 2003	02 September 2003	55 days
19:Freedom of Assembly	10 July 2003	15 August 2003	36 days
20:Trade Bank of Iraq	17 July 2003	02 September 2003	45 days
21:Interim Exercise of Baghdad Mayoral Authority	05 August 2003	15 August 2003	10 days
22:Creation of a New Iraqi Army	07 August 2003	02 September 2003	26 days
23:Creation of a New Code of Discipline for the New Iraqi Army	07 September 2003	22 September 2003	15 days
24:Establishment of the Ministry of Science and Technology	01 September 2003	24 September 2003	23 days
25:Confiscation Of Property Used In or resulting from certain Crimes	21 September 2003	24 September 2003	3 days
26:Creation of a Department of Border Enforcement	01 September 2003	25 September 2003	24 days
27:Establishment of the Facilities Protection Service	07 September 2003	18 September 2003	11 days
28:Establishment of the Iraqi Civil Defense Corps	09 September 2003	25 September 2003	16 days
29:Amendment to Law Of Estate Lease	21 September 2003	25 September 2003	4 days
30:Reform of Salaries and Employment	09 September 2003	15 September 2003	6 days
31:Modifications Of Penal Code and Criminal Proceedings Law	21 September 2003	23 October 2003	32 days
32:Legal Department of the Ministry of Justice	09 September 2003	Not Available	
33:Ministry of Municipalities and Public Works	09 September 2003	04 October 2003	25 days
34:Amendment To Coalition Provisional Authority Order Number 2	21 September 2003	21 October 2003	30 days
35:Re-Establishment of the Council of judges	21 September 2003	24 October 2003	33 days
36:00:00	Not Available	Not Available	
37:Tax Strategy for 2003	21 September 2003	21 October 2003	30 days
38:Reconstruction Levy	21 September 2003	04 October 2003	13 days
39:Foreign Investment	21 September 2003	04 October 2003	13 days
40:Bank Law	24 September 2003	Not Available	
40:Bank Law-Annex 1	24 September 2003	Not Available	
41:Notification of Criminal Offenses	24 September 2003	08 October 2003	14 days
42:Creation of the Defense Support Agency	23 September 2003	08 October 2003	15 days
43New Iraqi Dinar Banknotes	15 October 2003	Not Available	
MEMORANDA			

1:Implementation of De-Ba'athification Order No.1	03 June 2003	29 October 2003	146 days
2:Management of Detention and Prison Facilities	08 June 2003	29 October 2003	141 days
3:Criminal Procedures	18 June 2003	29 October 2003	131 days
4:Contract and Grant Procedures	01 September 2003	26 October 2003	56 days
5:Implementation of Weapons Control Order 3	24 September 2003	24 September 2003	0
6: Annex A Implementation of Weapons Control Order	24 September 2003	24 September 2003	0
7:Implementation of Regulation 6 on the Governing Council	24 September 2003	24 September 2003	0
PUBLIC NOTICES			
Regarding Public Incitement to Violence and Disorder	09 June 2003	02 September 2003	54 days
Regarding Organization in the Workplace	09 June 2003	02 September 2003	54 days
Regarding Administrative Procedures for Establishing Trading Agencies	09 June 2003	16 July 2003	37 days
Regarding the Prohibition Under Iraqi Law of Vehicles with Tinted Windows	29 June 2003	02 September 2003	63 days