

Accounting for a Decade of War

U.S. Veterans and Iraqi Organizations
Seek Accountability for Human Rights Crisis Resulting
from a Decade of U.S.-Led War

*NGO Shadow Report Submitted before the United Nations Human Rights Committee
for its review of the United States of America during the Committee's 109th Session*

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Submitted by
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on behalf of

The Federation of Workers Councils and Unions in Iraq
Iraq Veterans Against the War
The Organization of Women's Freedom in Iraq

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I. Reporting Organizations

This report is submitted by the Center for Constitutional Rights on behalf of the **Federation of Workers Councils and Unions in Iraq**, **Iraq Veterans Against the War**, and the **Organization of Women's Freedom in Iraq**. The Federation of Workers Councils and Unions in Iraq (FWCUI) is a national unionist organization for the defense of rights of workers in Iraq, established in 2003, and has representatives in all main cities. FWCUI is known for its position against Iraq's newly introduced neo-liberal economic policies and the new labor code, which FWCUI describes as "protecting the rights of employers while disempowering workers." Iraq Veterans Against the War (IVAW) was founded by Iraq war veterans in July 2004 to give a voice to the large number of active duty service people and veterans who were against this war, but were under various pressures to remain silent. From its inception, IVAW has called for: (1) Immediate withdrawal of all occupying forces in Iraq; (2) Reparations for the human and structural damages Iraq has suffered, and stopping the corporate pillaging of Iraq so that their people can control their own lives and future; and (3) Full benefits, adequate healthcare (including mental health), and other supports for returning servicemen and women. The Organization of Women's Freedom in Iraq (OWFI), founded in 2003, is a pioneering national women's organization dedicated to rebuilding Iraq on the basis of secular democracy and human rights for all. OWFI has developed innovative anti-violence and political empowerment strategies for women across Iraq. OWFI advocates on behalf of women who are most marginalized, including those who are incarcerated, widowed, displaced or battered. The Center for Constitutional Rights is a United States-based legal and educational non-profit organization dedicated to advancing and protecting the rights guaranteed by the United States Constitution and the Universal Declaration of Human Rights.

II. Introduction: Context

On the ten-year anniversary of the invasion of Iraq, U.S. veterans of the Iraq war and civil society organizations in Iraq united in their demand that the U.S. government take responsibility for the enduring harms inflicted by more than a decade of misguided and illegal war. As part of this effort, FWCUI, IVAW, and OWFI jointly submit this report to the Human Rights Committee to inform its examination of the United States during its 109th session.* As aspects of the U.S. government's conduct of its so-called "War on Terror" have

** Many of the observations, recommendations and suggestions contained here may be relevant to the war in Afghanistan as well. Because the submitting organizations are U.S.- and Iraq-based, this report will focus on the data and information known about the impact of the war in Iraq.

been put forward in other shadow reporting before this committee, including the use of illegal detention, rendition, and targeted killings, this submission focuses on the human rights crisis brought about by the war-making itself and the effect of the lack of any recognition whatsoever by the U.S. government of the disastrous and tragic consequences thereof and the legal and moral obligation to make reparations. Because this is a first report, the submitting organizations take the opportunity to provide more context and background into some of the human rights violations and issues raised herein. For a more detailed analysis and discussion of these and other related issues, please see the report entitled *The Right to Heal: U.S. Veterans and Iraqi Organizations Seek Accountability for Human Rights and Health Impacts of a Decade of U.S.-led War*.[†]

The U.S.-led war in Afghanistan, begun on October 7, 2001, is now the longest running officially declared war in U.S. history.¹ Followed by the invasion of Iraq less than two years later on March 19, 2003, based on false claims about Iraq's possession of weapons of mass destruction, the wars together have, by conservative estimates, resulted in deaths due to direct war violence of at least 330,000 people – including civilians, humanitarian workers, journalists and combatants of different nationalities.² The number of indirect deaths due to after-effects of fighting, unexploded munitions, malnutrition, damaged health infrastructure and environmental degradation resulting from these conflicts is likely four times the number of direct deaths – or more than one million.³ The United Nations High Commission for Refugees reported that more than 4.5 million were displaced as a result of the war.⁴ The Iraqi Ministry of Labor and Social Affairs has estimated that approximately the same number of children lost one or both of their parents since the invasion and ensuing violence of the war.⁵

Iraq is now in the midst of a public health crisis, the full magnitude of which is still unknown as cancer rates and birth defects have skyrocketed since the U.S. invasion – widely believed to be the result of the U.S.'s use of weapons made of depleted uranium as well as the virtually unregulated use of other munitions and burn pits used to dispose of toxic waste. In addition to the use of weapons containing depleted uranium, U.S. officials and allies have admitted to using napalm-class munitions and white phosphorous, an incendiary agent that can burn to the bone, in Fallujah, Iraq and elsewhere.⁶ These weapons were reported to have been used in operations in populated areas and resulted in grave harm to civilians, including children.⁷ Similarly, the use of cluster munitions, which spread over a wide area and often fail to explode on impact, have resulted in the indiscriminate killing of civilians.⁸ The remaining unexploded munitions continue to maim and kill more over time.⁹

The violent consequences of these wars have resulted in additional hundreds of thousands of casualties – physical, mental and emotional injuries and trauma to individuals and communities in Iraq and among U.S. servicemembers sent to fight the war – that in some cases cannot be healed and in others will take decades, indeed generations, to overcome, even with due and adequate reparations. Given the far-reaching and multi-generational human rights crisis brought about by the war, it is striking that there has been no public acknowledgement whatsoever of the legal, and moral, obligation to make reparations both as a matter of a war-making state's international human rights obligations and as a basic precept of international humanitarian law.

[†] The report was submitted to the Inter-American Commission on Human Rights in March 2013 in support of a thematic hearing and is available online here:

<http://ccrjustice.org/files/RTH%20Supplemented%20Final%204%2024%2013.pdf>

III. Relevant Questions in List of Issues

A. Issue 1(a). The United States' Extraterritorial Obligations Under the ICCPR

In its List of Issues, this Committee asked the U.S. government to clarify its “understanding of the scope of applicability of the Covenant with respect to individuals under its jurisdiction but outside its territory; in times of peace, as well as in times of armed conflict.”¹⁰

U.S. Response. In response, the U.S. government chose to maintain its previously stated position that its obligations under the ICCPR apply only to individuals who were both within the territory of a State Party and within that State Party’s jurisdiction.¹¹

Assessment of U.S. Response. This position, while convenient from the U.S. government’s point of view given the magnitude of harm wrought extraterritorially, flies in the face of the jurisprudence of this committee and other international and regional human rights bodies. In General Comment 31 (2004), the Committee reiterated that “the enjoyment of Covenant rights is not limited to citizens of States Parties but must also be available to all individuals, regardless of nationality...who may find themselves in the territory or subject to the jurisdiction of the State Party.”¹² The Committee further explained, “This principle also applies to those within the power or *effective control* of the forces of a State Party acting outside its territory...”¹³ Likewise, this Committee has extended state responsibility for human rights violations in situations beyond the state’s control of either persons or places when (a) the State Party was a ‘causal link’ in the chain that led a violation of the Covenant and (b) if the state had knowledge that the rights violation was foreseeable.¹⁴

The Committee has recognized that failures to investigate and to bring perpetrators of such violations to justice give rise to separate breaches of the Covenant.¹⁵ The Committee has further recognized that reparation is an integral part of an effective remedy, as is the obligation to prevent a recurrence of violations of the Covenant.¹⁶

In 2006, the Committee expressed its concern with the United States’ position “that the Covenant does not apply with respect to individuals under its jurisdiction but outside its territory, nor in time of war, despite the contrary opinions and established jurisprudence of the Committee and the International Court of Justice.”¹⁷ Over the past twelve years in the conduct of its “War on Terror”, the U.S. has failed to respect, protect, and fulfill the rights enshrined in the ICCPR with respect to both the communities it targeted and the men and women it sent to militarily carry out its over-reaching policies.¹⁸ In the process, the government has failed to provide and in some cases blocked effective remedies for violations, as required by Article 2(3)(a)-(c).

Based on the Committee’s own interpretation of the ICCPR, these obligations clearly extend to the communities impacted as described below.

1. The “perpetual war” framework (Article 6) and war propaganda (Article 20(1))[‡]

This Committee has placed war and other acts of mass violence in the scope of states parties’ obligation under Article 6 when it observed:

...that war and other acts of mass violence continue to be a scourge of humanity and take the lives of thousands of innocent human beings every year. Under the Charter of the United Nations the threat or use of force by any State against another State, except in exercise of the inherent right of self-defence, is already prohibited. The Committee considers that States have the supreme duty to prevent wars, acts of genocide and other acts of mass violence causing arbitrary loss of life. ...¹⁹

In May of this year, President Barack Obama acknowledged that the United States had been in a state of “perpetual war” for the past twelve years and vowed to work to repeal the law which successive administrations have claimed provided virtually unfettered executive authority to use military force potentially anywhere in the world.²⁰ In the immediate aftermath of the attacks of September 11, 2001, Congress passed the Authorization for the Use of Military Force (AUMF), which authorized the President to use all “necessary and appropriate force” against:

[n]ations, organizations or persons he determines planned, authorized, committed or aided the terrorist attacks that occurred on Sept. 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.²¹

The AUMF was viewed by many as an unconstitutional delegation of Congress’ war-making power.²² Under the purported authority of the AUMF, the U.S. invaded Afghanistan in October 2001 without authorization from the United Nations Security Council. The U.S. government has continued to invoke the AUMF as the legal basis for targeted killings outside of the context of armed conflict and indefinite detention of terror suspects.²³ In June, a member of Congress introduced legislation, in the form of amendments to the National Defense Authorization Act, to repeal the AUMF, noting that the law had “catapulted our country into a state of perpetual war that must come to an end.”²⁴

[‡] The United States’ fourth periodic report fails to address the purported legal basis and consequences of the wars it has waged since September 11, 2001, in violation of article 1 of the ICCPR. While the focus of the Committee’s inquiry under this article was on the situation of indigenous people, General Comment 12 indicates the relevance of this article to respect for the sovereignty of other states by its reference to and incorporation of the *Declaration of Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations*. UN General Assembly, Declaration of Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations, 24 October 1970, available at <http://www.refworld.org/docid/3ddaf104.html> (last accessed on Sept. 11, 2013).

Less than two years after the passage of the AUMF, Congress passed the similar Authorization for Use of Military Force in Iraq on October 16, 2002, which cited as a key justification Iraq's alleged development of weapons of mass destruction.²⁵ The pretext of weapons of mass destruction was used to galvanize Congressional and political support for invading Iraq, though at the time there was a wealth of evidence that Iraq did not possess and was not close to possessing such weapons – a fact which was later proven incontrovertibly during the course of the war.^{26, 27} Indeed, the campaign to build support for the war on Iraq within the United States is also a clear example of war propaganda envisaged in *Article 20(I)* of the Covenant.²⁸ Despite having waged an illegal war based on false justifications, no civilian or military official has been investigated or held accountable for their role in fabricating the justification to go to war in Iraq. In fact, the current administration recently argued in a legal case brought by victims of the Iraq war that officials responsible for planning and waging the war in violation of international law should be afforded immunity and shielded from suit.²⁹

Recommended Questions:

Q1. What steps has the U.S. government taken to repeal the AUMF and dismantle the perpetual war apparatus?

Q2. What steps has the U.S. government taken to hold accountable those responsible for misrepresentations used to falsely justify the war in Iraq as well as the decision to wage the Iraq war, which has resulted in hundreds of thousands of deaths and even more lasting injuries?

Suggested Recommendations:

R1. The U.S. government should repeal the AUMF and amend the War Powers Resolution of 1973 to include mechanisms to hold the President accountable in the event of unauthorized use of military force.

R2. The U.S. government should investigate and prosecute those officials responsible for generating false justifications for the war upon which authorization to use military force was based and ensure that its laws are adequate to ensure accountability and remedy for the resulting harms.

2. Violations of the right to life (Article 6) and the prohibition on torture or cruel, inhuman and degrading treatment (Article 7), and their particular impact on children (Article 24)

i. Casualties during war - deaths

The U.S.'s wars in Iraq and Afghanistan have resulted in hundreds of thousands of violent deaths, many of them civilian.³⁰ In October 2010, Wikileaks released U.S. Army field reports known as the Iraq War Logs (IWL), which detailed 109,032 deaths in Iraq from January 1, 2004 – December 31, 2009, 60.6% (or 66,081) of which were civilian deaths.³¹ The IWL only reflect what troops actually witnessed.³² Organizations that track the loss of civilian life in Iraq estimate the total number of civilian deaths to be much greater. The non-profit organization Iraq Body Count (IBC) estimates that over 150,000 violent deaths have been recorded since March 2003, with more than 122,000-134,000 (approximately 80-90%) of

them civilian.³³ The number of civilian deaths in Afghanistan is much harder to estimate.³⁴ However, the non-partisan, non-profit Costs of War project estimates that approximately 16,725-19,013 civilians have been killed in Afghanistan since the initial 2001 invasion.³⁵ The researchers acknowledge that these are conservative estimates based on third-party reporting.³⁶

“Excess deaths,” which are those deaths above what would have normally been expected had the war not occurred including indirect deaths due to malnutrition, damaged health infrastructure, and environmental degradation, are much higher still. Researchers from Johns Hopkins University, Al Mustansiriya University and Massachusetts Institute of Technology estimate that already by 2006 approximately 654,956 people had died directly and indirectly as a result of the war in Iraq.^{37, 38} Near the formal end of the war, estimates of the death toll were approximately 1 million.³⁹

Recommended Questions

Q3. What policies or systems, if any, does the U.S. government have in place for accounting for the number of civilians and combatants killed during the course of the war?

Q4. What plans or systems, if any, does the U.S. government have for making reparations to the state of Iraq as well as individualized reparations to affected individuals in Iraq? What, if any, discussions have there been within the U.S. administration and/or with Congress concerning reparations for the war in Iraq?

Suggested Recommendation

R3. The U.S. government should establish clear and transparent policies and procedures for accounting for the full scope and magnitude of harm caused by the war and for making reparations to Iraq, including individualized reparations to individuals in Iraq who have suffered loss of family members or who have themselves sustained injuries and/or losses as a result of the U.S.’s conduct of the war.

ii. Continuing violations of the right to life from the use of depleted uranium and burn pits

In Iraq, cancer rates, birth defects and other illnesses have sky-rocketed since the U.S. invasion.⁴⁰ Depleted uranium used by the U.S. military in Iraq is believed to have contaminated civilian areas across the country, exposing both civilians and U.S. servicemembers to an unparalleled risk of cancer and other illnesses, as well as to having children with birth defects, some of whom have defects so severe they do not survive.⁴¹ According to one cancer specialist based in Basra:

Before the Gulf War, we had two or three cancer patients a month. Now we have 30 to 35 dying every month. Our studies indicate that 40 to 48% of the population in this area will get cancer in five years’ time to begin with, then long after. That’s

almost half the population. Most of my own family have it, and we have no history of the disease. It is like Chernobyl here; the genetic effects are new to us; the mushrooms grow huge; even the grapes in my garden have mutated and can't be eaten.⁴²

Despite widespread reports of this unprecedented epidemic, the U.S. government has not taken action to study and decontaminate affected civilian areas or help treat the illnesses and health conditions of Iraqis and servicemembers apparently harmed by the toxic exposures. In fact, there is evidence to suggest that the U.S. has blocked efforts to study areas in Iraq where depleted uranium weapons were deployed. According to a former assistant secretary-general of the United Nations who served as the senior UN official in Iraq, the U.S. government “sought to prevent [the World Health Organization (WHO)] from surveying areas in southern Iraq where depleted uranium had been used and caused serious health and environmental dangers.”⁴³

Another cancer specialist who served as chief of the WHO's cancer programme in the 1990s has reported that after the first Gulf War, U.S. and British advisers to the Iraq sanctions committee routinely blocked delivery of radiotherapy equipment, chemotherapy drugs and analgesics and further that “we were specifically told [by the WHO] not to talk about the whole Iraq business.”⁴⁴

Additionally, the largely unregulated use of burn pits to dispose of toxic and hazardous materials on U.S. military bases is believed to have resulted in a wide range of illnesses including respiratory and neurological problems and cancer among U.S. servicemembers, some of whom have died from these illnesses.⁴⁵ Existing studies and accounts on burn pits often do not specifically address the harm to civilians located near bases. Although a 2011 Institute of Medicine report on the potential effects of burn pits looked at cancer risks for servicemembers exposed to pits for up to 15 months, the research committee could not find existing epidemiological information on health effects among Iraqi civilians living near bases where burn pits were used.⁴⁶

In January 2013, President Obama signed legislation requiring the Department of Veterans Affairs (VA) to establish a registry to track veterans who were exposed to burn pits.⁴⁷ In February 2013, in response to the 2011 Institute of Medicine study, the VA announced that it planned to conduct a long-term study of the possible health effects of burn pits on servicemembers using findings gained from the registry.⁴⁸ This study will take years to complete, and oversight is critical to ensure unbiased results. A former VA researcher revealed that the Department of Veterans Affairs purposefully manipulated or hid research finding health risks for servicemembers who served in Iraq or Afghanistan. In prepared testimony given under oath to the U.S. House Committee on Veterans Affairs in March 2013, epidemiologist Steven Coughlin revealed that, “If the studies produce results that do not support the office of public health's unwritten policy, they do not release them,” and other data is “manipulated to make them unintelligible.”⁴⁹

iii. The particular impact of the continuing violations of the right to life on children

The Committee has explained that children are to “benefit from all of the civil rights enunciated in the Covenant,”⁵⁰ the protection of which may require state parties to adopt

“economic, social and cultural measures.”⁵¹ Children in particular have been victims of the U.S. military’s use of controversial and widely condemned weapons.

Depleted Uranium: Recent scientific studies strongly suggest that DU is a teratogen that can interfere with the pre-natal development of a fetus,⁵² and many have attributed the U.S. military’s use of DU to the elevated birth defect rates in Iraq.⁵³ Many of the children die soon after birth but others survive with deformities so rare they have not been given a medical name.⁵⁴ One doctor in Fallujah reported that between October 2009 and December 2011 she had personally logged 699 cases of birth defects.⁵⁵ The doctor’s records of birth defects indicate a rate of 14.7 percent of all babies born in Fallujah and some estimates are that the birth defect rate in Iraq is reportedly 14 times that found in Hiroshima and Nagasaki after the U.S. nuclear bombing.⁵⁶ The same doctor revealed in a recent interview that even a decade after the war, the remarkably high birth defect rate of 14.7% had not dropped, and may be even higher due to underreporting.⁵⁷ Local reporting collected by FWCUI corroborate this account, with one doctor at a local maternity hospital noting that he sees at least twelve cases of severe defects a month.⁵⁸ As an initial step to determining causality, researchers have analyzed the hair of parents of children with congenital anomalies in Fallujah and found an unusually high level of contamination by metals, including uranium and lead.⁵⁹

One area that has thus far not been the subject of study into the effects of DU and other sources of contamination is the Iraqi district of Haweeja, located just miles from Joint Base Balad and the U.S. Forward Operating Base McHenry. This district has also seen an alarmingly high rise in the number of severe birth defects.⁶⁰ It is believed that DU munitions may have been stored and/or tested in the area which was also the largest burn pit used by the military in Iraq. Women’s groups have undertaken surveys that indicate that one quarter of newborns are suffering from disabilities.⁶¹ The Haweeja district has a population of roughly 109,000 people, yet a local clinic reports that it too has seen alarming and high incidences of severe birth defects.⁶² Advocates report that the villages suffering from the most defects and cancer are the ones immediately down-wind of a U.S. training base.⁶³

Children of U.S. servicemembers who have fought in Iraq also appear to be at risk. A 2001 study by the U.S. government of 21,000 veterans who had served in the first Gulf War found that their children were two to three times more likely to have birth defects.⁶⁴ The same study also noted a higher rate of miscarriages in the studied population.⁶⁵ Despite these disturbing statistics, in 2003 after concerns were raised about the U.S.’s continued use of DU weapons, a Pentagon spokesperson dismissed the concerns about serious health effects and confirmed that there were no “plans for a DU clean-up in Iraq.”⁶⁶ Since then, the U.S. Department of Defense and Department of Veterans Affairs have done little to acknowledge the likely linkages and to adequately diagnose, treat or prevent the apparent widespread health effects of exposure to depleted uranium.

Based on the widespread concerns about apparent links between depleted uranium and severe health effects among U.S. servicemembers, legislation was passed in 2006 requiring the Department of Defense to undertake a comprehensive study and report on the use and effects of weapons containing depleted uranium. To date, the Department of Defense has failed to do so. Instead, the department simply surveyed existing literature and determined it was inconclusive.

Cluster Munitions: Unexploded cluster submunitions pose significant risks to children, as they are less cognizant of the risks posed by the weapons and are likely to be attracted by

their unique appearance. It is believed that 60 percent of casualties caused by unexploded submunitions in Iraq were children under the age of 15.⁶⁷ According to the U.S. Department of State, the U.S. has invested more than \$209 million in Iraq towards clearing landmines, unexploded ordnance and leftover conventional weapons.⁶⁸ Still, as reported by the United Nations and acknowledged by the State Department, “[a]n estimated 1,863 square kilometers (719 square miles) of land in Iraq are reported to contain as many as 20 million landmines and millions more pieces of unexploded ordnance. As many as 1,670 Iraqi cities, towns and villages remain at risk from explosive hazards.”⁶⁹

Recommended Questions

Q5. What studies has the government conducted to determine the health effects of munitions in Iraq and among U.S. servicemembers? Please provide reports or results of any studies undertaken.

Q6. What steps is the government taking to clean up burn pits and cluster bombs from Iraq? What steps is the government taking to remediate other environmental contamination as a result of the war in Iraq?

Q7. What steps is the government taking to assist Iraqi authorities in addressing the public health crisis that has ensued since the start of the war, in particular with the medical and healthcare needs of the Iraqi population as cancer and birth defect rates have dramatically increased?

Suggested Recommendations

R4. The U.S. government should support, assist and fully cooperate with independent scientific studies and assessments concerning the environmental contamination and effects on health of Iraqi populations as a result of its use and handling of weapons containing depleted uranium and other toxic substances as well as the health effects on U.S. servicemembers.

R5. The U.S. government should support, cooperate with and fully assist efforts to diagnose and provide comprehensive treatment for those suffering ill health effects as a result of environmental contamination resulting from the war, including cancers and birth defects.

R6. The U.S. government should fund environmental clean-up and remediation efforts to alleviate deleterious health and environmental effects of the munitions used in the conduct of the war.

iv. Continuing violations of the right to life and the prohibition on torture or cruel, inhuman and degrading treatment in the form of untreated psychological trauma and mental harm

As the Committee explained in its General Comment 6, “the right to life has been too often narrowly interpreted.”⁷⁰ In the spirit of this comment, the submitting organizations request the Committee to consider the dramatic impact war has had on the mental health of civilian populations in Iraq and U.S. servicemembers alike. Emblematic of the deep harms of these wars is the dramatically elevated suicide rate amongst servicemembers, which is nearly

double the civilian suicide rate.⁷¹ The reporting organizations recall that other organizations have brought the widespread torture and cruel, inhuman and degrading treatment of persons in the detention context to the Committee,⁷² and join in urging the Committee to fully address accountability and redress in that context as well.

The harms should also be viewed as forms of torture or cruel, inhuman and degrading treatment under Article 7, which the Committee has recognized encompass mental suffering as well as physical suffering.⁷³ The Committee has observed that the Covenant “does not contain any definition of the concepts covered by Article 7, nor does the committee consider it necessary to draw up a list of prohibited acts or to establish sharp distinctions between the different kinds of punishment or treatment,” noting that “the distinctions depend on the nature, purpose and severity of the treatment...”⁷⁴ The Committee has further noted that the duty to protect against treatment applies whether it is inflicted by “people acting in their official capacity, outside their official capacity or in a private capacity” and further that it applies to children, students and patients in educational or medical settings.⁷⁵

While there is still much more to be learned about the psychological impacts of war on returning servicemembers and more appropriate and comprehensive institutional responses are urgently needed, much less is known or even discussed about the likely rates of post-traumatic stress disorder (PTSD), traumatic brain injury (TBI) and other harms among the populations where the wars are waged. In a study undertaken for the World Health Organization and the Iraq Ministry of Health, it was estimated that nearly half of Iraq’s population suffers from some sort of psychological disorder due to the realities and consequences of the war, including the death of family members, forced displacement and living in a climate of fear and violence.⁷⁶ Traumatic injuries resulting from the U.S.’s war have had a particularly devastating impact on the children of Iraq. Iraqi psychologist Dr. Haider Maliki has estimated that “28% of Iraqi children suffer some degree of PTSD, and their numbers are steadily rising.”⁷⁷

Based on data collected by the U.S. military, the incidence of mental health disorders, including adjustment disorders, depressive and anxiety disorders, and PTSD, have increased by approximately 65 percent among active servicemembers over the last twelve years.⁷⁸ While acknowledging that the number of TBI cases is underestimated and underreported, the U.S. government still estimates that over 250,000 troops suffer from TBIs.⁷⁹ Similarly, the U.S. government estimates that 29% of veterans or one in four returning veterans have been diagnosed with PTSD.⁸⁰

Not least among the policies of the U.S. military that have given rise to serious health consequences is the multiple redeployment policy that exacerbated the trauma of the wars for many servicemembers.⁸¹ Repeated and rapid redeployment also gave rise to command overrides of medical opinions as to fitness for duty.⁸² The military’s response to the health needs of returning servicemembers has also been deplorable in that it reportedly follows policies which often serve to discharge and deny servicemembers benefits for what are likely the manifestations of illness and trauma encountered during their military service, leaving them without adequate means to support themselves and their families and obtain much-needed treatment.⁸³

Recommended Questions

Q8. What steps is the government taking to ensure that servicemembers and veterans suffering from mental health issues as a result of the war or physical ailments due to munitions or burn pits are adequately treated?

Suggested Recommendations

R7. Address and provide resources for untreated mental health illnesses and trauma/traumatic injuries suffered by Iraqis and U.S. servicemembers, which has resulted in increase in rates of homicide and suicide; and reform redeployment policies to end multiple tours and redeployment of servicemembers suffering from mental health issues; end the policy of command overrides of medical determinations of fitness/unfitness for duty. Implement policies and practices that ensure that behavior infractions that may result in termination of benefits are not a result of service-related physical or mental illness. Ensure that nationally recognized medical and psychological health care ethics and standards of practice are followed in the treatment of active-duty servicemembers in the military.

3. Violations of the right to equality (Articles 2 and 3) and freedom of association (Article 22)

During its military occupation of Iraq, former U.S. President George W. Bush appointed Ambassador L. Paul Bremer as civil Administrator of Iraq and executive of a new government agency, the Coalition Provisional Authority (CPA). The authority of the CPA, which was answerable to the President of the United States, was sweeping: it assumed all control over all lawmaking functions in the U.S. occupied country.⁸⁴

i. Repression of labor unions in Iraq

While in existence and under the authority of Paul Bremer, the CPA issued orders which opened the door to foreign investment, and attempted to privatize more than 200 state-owned firms.⁸⁵ Despite President Bush's assurance that the U.S. would "work on the development of free elections and free markets, free press and *free labor unions* in the Middle East," one law maintained by the CPA was Hussein's 1987 law prohibiting unions among workers in the public sector, which constitutes more than 70 percent of the nation's workforce.⁸⁶ The CPA reportedly continued to work to prevent unions from organizing, arbitrarily arresting eight members of the Iraqi Federation of Trade Unions for their involvement in labor unions with no apparent basis and no explanation ever given.⁸⁷

ii. Gender-based violence and Violation of the Right to Equality and Equal Protection in Iraq

While the U.S. actively sought to undo much of Saddam Hussein's legislation aimed at protecting Iraq's economy, the U.S.-controlled CPA let stand provisions in the Iraqi Penal Code and Personal Status law that immunized perpetrators of gender-based violence.⁸⁸ As a result of the U.S. authorities' refusal to prioritize the rights to equality, life and personal security of women, the Iraqi Penal Code still provides immunity for acts of violence

committed by those “exercising a legal right,” which includes a husband’s punishment of his wife within the limits prescribed by law or custom.⁸⁹ As a result of this legal endorsement, men are rarely arrested or prosecuted for violence against female relatives. Indeed, these provisions have helped create conditions in which the rate of gender-based killings is increasing.⁹⁰

In spite of protests by Iraqi women’s groups, the new constitution, which the U.S. was heavily involved in drafting,⁹¹ established an official state religion to which all future laws must conform, incorporated religious doctrine as a source of law, and allows citizens to choose between the civil Personal Status Code and religious law for family matters.⁹² The constellation of these legal provisions and endorsement by the U.S. were serious setbacks for women and have served to create a climate in which many forms of violence against and persecution of women, along with impunity for such crimes, have dramatically increased.⁹³

Recommended Questions

Q9. Please clarify and explain why, when the U.S. exercised authority and control during the occupation of Iraq and spearheaded legal and constitutional reform, it perpetuated the ban on labor unions in the public sector?

Q10. Please clarify and explain why, when the U.S. exercised authority and control during the occupation of Iraq and spearheaded legal and constitutional reform, it perpetuated immunities set out in the Iraqi Penal code for acts of violence against women by those deemed to be “exercising a legal right.”

Q11. Please clarify and explain why, when the U.S. exercised authority and control during the occupation of Iraq and spearheaded legal and constitutional reform in that country, the U.S. helped negotiate a constitution that established an official state religion requiring that all laws be in conformity and consistent with the dictates of that religion? Please explain how such a constitution can ensure respect for the rights of religious minorities and the rights to gender equality and non-discrimination.

Suggested Recommendations

R8. The U.S. government should acknowledge that prohibitions on labor unions it continued as an occupying force are in violation of the right to association set out in Article 22 of the covenant.

R9. The U.S. government should acknowledge that constitutional recognition of an official state religion with the requirement that all laws be in conformity with the dictates of that religion may result in the denial of the right to freedom of thought, conscience and religion of religious minorities or other non-adherents of the official state religion in violation of Article 18, the right to hold opinions without interference and freedom of expression in Article 19, and the rights to equality and non-discrimination in Articles 3 and 26.

R10. The U.S. government should acknowledge that the provision that immunizes violence against women when committed by husbands

“disciplining” their wives constitutes a violation of the rights to equality and non-discrimination set out in Articles 3 and 26 of the Covenant and of the prohibition of torture or cruel, inhuman and degrading treatment in Article 7.

B. Issue 10(b). Investigation and prosecution of lower- and high-level officials for unlawful killings and other war crimes.

The Committee asked the U.S. government to:

...clarify whether the State party has effectively investigated and punished lower-ranking soldiers for unlawful killings, including possible war crimes, in its international operations, and whether it has held senior officers responsible under the doctrine of command responsibility. Please also clarify whether similar investigations have been instigated against private contractors and civilian intelligence agencies.⁹⁴

U.S. Response. The U.S. government failed to note any specific investigations or prosecutions of senior officers under the doctrine of command responsibility.⁹⁵ This is despite the fact that the use of torture, both in Iraq and elsewhere, has been found by more than one governmental committee to have been widespread and systemic, and sanctioned by officials at the highest levels, as discussed further below.

Assessment of U.S. Response. When photos depicting torture and humiliating and degrading treatment by U.S. servicemembers of Iraqi detainees at Abu Ghraib first surfaced, high-ranking officials in the Department of Defense and Bush administration rushed to lay the blame on lower level enlisted and non-commissioned officers, claiming that this was aberrant behavior.⁹⁶ However, in a report of the investigation into the situation at Abu Ghraib, Major General Antonio Taguba concluded that instances of “sadistic, blatant, and wanton criminal abuses” were the product of structural and command failures or decisions made at higher levels and especially faulted the decision of command to make military intelligence officers and civilian contractors responsible for the military police units conducting detainee operations.⁹⁷

Similar reports documented acts of torture and other forms of cruel, inhuman and degrading treatment at Guantánamo Bay and a detention facility at Bagram Air Force Base in Afghanistan.⁹⁸ In 2004, three memos were leaked to the press which were drafted and signed by high-ranking staff at the U.S. Office of the Attorney General and Office of Legal Counsel of the U.S. Department of Justice which advised the Central Intelligence Agency, the Department of Defense and the Office of the President on the use of so-called “enhanced interrogation techniques,” which included various forms of torture and cruel, inhuman and degrading treatment that the authors advised could be regarded as legally permissible.⁹⁹

The interrogation methods used on detainees were euphemistically qualified by the U.S. government as “enhanced,” but the United Nations and the ICRC found that they rose to the level of torture and cruel, inhuman or degrading treatment.¹⁰⁰ The ICRC unequivocally concluded that, upon the information gathered from interviews with the former CIA detainees, conducted after their transfer to Guantánamo: “The allegations of ill-treatment of the detainees indicate that, in many cases, the ill-treatment to which they were subjected while held in the CIA program, either singly or in combination, constituted torture.”¹⁰¹

A report by the Senate Armed Services Committee which was released in full in 2009, further confirmed that the legal memos had served to “redefine torture,”¹⁰² “distorted the meaning and intent of anti-torture laws, [and] rationalized the abuse of detainees”¹⁰³ and led to the torture of detainees in U.S.-run facilities in Iraq, Afghanistan and Guantánamo Bay and to the killings of two detainees in Afghanistan.¹⁰⁴ The Senate Committee additionally concluded that senior administration officials were responsible for the torture program:

The abuse of detainees in U.S. custody cannot simply be attributed to the actions of “a few bad apples” acting on their own. The fact is that senior officials in the United States government solicited information on how to use aggressive techniques, redefined the law to create the appearance of their legality, and authorized their use against detainees.¹⁰⁵

A recent report by The Constitution Project of an investigation by a bi-partisan task force into detainee treatment looked at the military and government response to detainees’ deaths. The Constitution Project’s report found that in terms of accountability for the killings, “One after one, military court-martial panels were reluctant to punish comrades who had been following the operating procedures in place and listening to the instructions of their leadership.”¹⁰⁶

Similarly, there have been reports of deaths of detainees at Guantánamo Bay under highly suspicious circumstances.¹⁰⁷ In June 2006, Yasser Al-Zahrani, Salah Ali Abdullah Ahmed Al-Salami, and Mani Shaman Al-Utaybi were reported as having been found dead in their cells.¹⁰⁸ Government officials described the deaths as suicides by hanging, but the personal accounts of guards stationed at the prison at the time undercut the official narrative and strongly suggest that the men may have been killed as the result of treatment at a black site located at the base.¹⁰⁹ To date, there has been no full and independent investigation into their deaths. Moreover, a civil case brought by the relatives of two of the deceased was dismissed under the 2006 Military Commissions Act, which the government argues, and some courts have held, prohibits men held at Guantánamo from challenging their treatment and conditions during detention, or seeking accountability after release.¹¹⁰

More recently, a joint investigation undertaken by The Guardian and BBC Arabic has surfaced evidence that high-ranking officials in the Bush Administration were closely involved in and linked to secret detention and torture centers in Iraq and other serious human rights abuses.¹¹¹ The investigation revealed that former Defense Secretary Donald Rumsfeld appointed retired Colonel James Steele to help organize paramilitaries and commando units from 2003 to 2005 and again in 2006.¹¹² Steele reported directly to Rumsfeld and reportedly “knew everything that was going on there” – including the torture.¹¹³ The appointment of Steele for service in Iraq was extremely controversial since he had previously worked as a military advisor from 1984-1986 in El Salvador where he reportedly trained counter-

insurgency commandos who were documented as having committed serious human rights abuses there.¹¹⁴

As the Abu Ghraib photos indicated, sexual and gender-based violence were a feature of the torture and humiliating and degrading treatment. U.S. military personnel and corporate government contractors subjected detainees, men, women and children alike, to sexual violence. Those working at the Abu Ghraib prison on behalf of the U.S. government forced detainees to wear women's underwear, simulate sex, masturbate, or have oral sex with other detainees,¹¹⁵ and raped detainees.¹¹⁶ The Taguba Report of the military investigation into the abuses acknowledged the existence of photographs and videos of naked female detainees, and of a U.S. military officer "having sex" with a female Iraqi detainee.¹¹⁷ One female prisoner of Abu Ghraib reported that her cellmate, who had been unconscious for two days, told her that she had been raped over 17 times by U.S. forces.¹¹⁸

The Abu Ghraib scandal was illustrative of a larger problem of gender-based and sexualized violence in U.S.-operated prisons.¹¹⁹ An attorney representing female detainees in Abu Ghraib explained that such abuse by U.S. guards was "happening [in detention centers] all across Iraq."¹²⁰ In 2005, the Iraqi National Association for Human Rights issued a report outlining the abuse of female detainees in various detention centers in Iraq and documenting "systematic rape by the investigators."¹²¹ There were additional instances reported where Iraqi police, under the U.S. occupation, brought female relatives to police stations and threatened to mistreat and to rape them unless their male relatives confessed, who, upon confession, were handed over to U.S. forces.¹²² In Al-Mosul, Iraq, U.S. forces arrested the female relatives of Iraqi fighters so that the men would surrender.¹²³

While in detention, women continued to suffer from physical and psychological abuse, and were subjected to inhumane living conditions.¹²⁴ In 2005, U.K. member of Parliament Ann Clwyd verified a report that U.S. soldiers tortured an elderly Iraqi woman by attaching a harness to her and riding her like a donkey.¹²⁵ In a letter smuggled out of the prison in 2003, one female detainee of Abu Ghraib described how American guards had raped (in some cases impregnating) the female detainees held at the prison and forced them to strip naked in front of men.¹²⁶

Despite clear and still emerging evidence of a policy and practice by the senior officials of the previous administration that encouraged and facilitated torture and serious ill-treatment, including that which led to the deaths of detainees in Iraq, Afghanistan, possibly Guantánamo Bay and elsewhere, no high-level administration or military officials have been held accountable for these serious human rights violations.

The 'supreme international crime'

Moreover, the war in Iraq was itself a "supreme international crime" for which there has been no accountability.¹²⁷ Not only was there no Chapter VII authorization by the United Nations Security Council, U.S. Congressional authorization for the war was obtained on false premises. And, as noted above, not only has the current administration failed to investigate and prosecute those responsible for the war, administration officials have worked to shield those responsible from legal accountability by asserting their immunity from suit.

Recommended Questions

Q12. In light of the findings of multiple investigative bodies and inquiries that senior military and civilian officials authorized methods of torture and cruel, inhuman and degrading treatment, which in some cases have led to deaths of detainees, why has there been no investigation or prosecution of senior officials for the torture policies?

Q13. What steps is the government taking to provide reparations, including compensation and rehabilitation, to victims of torture and other forms of cruel, inhuman and degrading treatment, including sexual and gender-based violence?

Q14. With regard to the deaths of Yasser Al-Zahrani, Salah Ali Abdullah Ahmed Al-Salami, and Mani Shaman Al-Utaybi while in detention at Guantánamo Bay and in light of reports from witnesses and whistleblower that they may have been murdered, why has there been no investigation or prosecution of those responsible, including of senior commanders in charge of the detention facility?

Suggested Recommendations

R11. The government should appoint an independent, special prosecutor to investigate and prosecute those involved in developing, implementing and overseeing policies and practice of torture and other forms of cruel, inhuman and degrading treatment. To the extent there are ongoing criminal investigations, including in foreign courts, the United States should provide any requested assistance, and desist from any actions taken to deter or hinder investigations or prosecutions in other fora.

R12. The government should provide reparations to those who have been illegally detained and to those who have been subjected to torture or other forms of ill-treatment while detained. The government should provide reparations to the families of those who have died or been killed while detained in U.S. detention facilities.

R13. With regard to sexual violence within the military, also referred to as Military Sexual Trauma, the government should eliminate commander discretion and chain-of-command adjudication of sexual assault cases.

Endnotes

¹ While military involvement in Vietnam had been building for some time, the official formal beginning of the military intervention is dated from Congress's passage of the Tonkin Gulf Resolution in August 1964. U.S. troops were withdrawn 103 months later in March 1973. *See, e.g.,* Rick Hampson, *Afghanistan: America's Longest War*, USA TODAY, May 28, 2010, available at http://usatoday30.usatoday.com/news/military/2010-05-27-longest-war-afghanistan_N.htm (last accessed on Sept. 11, 2013).

² *See* Cost of War Project, *330,000 Killed by Violence, \$4 Trillion Spent and Obligated*, Watson Institution for International Studies, Brown University, available at <http://costsofwar.org/> (last accessed on Sept. 11, 2013).

³ *Id.*; Neta C. Crawford, *Civilian Death and Injury in Iraq, 2003-2011*, Costs of War Project, Sept. 2011, available at <http://costsofwar.org/sites/default/files/CrawfordIraqCivilians.pdf> (last accessed on Sept. 11, 2013); John Tirman, *Iraq's Shocking Human Toll: About 1 Million Killed, 4.5 Million Displaced, 1-2 Million Widows, 5 Million Orphans*, THE NATION, Feb. 1, 2009, available at http://www.alternet.org/story/123818/iraq's_shocking_human_toll%3A_about_1_million_killed,_4.5_million_displaced,_1-2_million_widows,_5_million_orphans (last accessed on Sept. 11, 2013).

⁴ United Nations High Commissioner for Refugees, *Life for Iraqi refugees increasingly difficult*, 2013 UNHCR country operations profile – Iraq, available at <http://www.unhcr.org/pages/49e486426.html> (last accessed on Sept. 11, 2013).

⁵ Child Victims of War, Iraq, available at <http://childvictimsofwar.org.uk/get-informed/iraq/> (last accessed on Sept. 11, 2013); John Pilger, *We've moved on from the Iraq war – but Iraqis don't have that choice*, THE GUARDIAN, May 26, 2013, available at <http://www.theguardian.com/commentisfree/2013/may/26/iraqis-cant-turn-backs-on-deadly-legacy> (last accessed on Sept. 11, 2013); *4.5 Million Orphans in Iraq: Protests Over Food and Shelter*, GLOBAL RESEARCH TV, Feb. 22, 2011, available at <http://tv.globalresearch.ca/2011/02/45-million-orphans-iraq-protests-over-food-and-shelter> (last accessed on Sept. 11, 2013) (explaining that the Ministry of Labor and Social Affairs estimate that around 4.5 million children are orphans, nearly 70 percent of whom lost their parents since the U.S. invasion and the ensuing violence).

⁶ *U.S. Official Admits Phosphorus Used as Weapon in Iraq*, CBC NEWS, Nov. 16, 2005, available at <http://www.cbc.ca/news/world/story/2005/11/16/phosphorus-fallujah051116.html> (last accessed on Sept. 11, 2013); Letter from the U.K. Minister of State for the Armed Forces to MP Linda Riordan, June 13, 2005, available at http://www.rainews24.ra.i.it/ran24/inchiesta/foto/documento_ministero.jpg (last accessed on Sept. 11, 2013) (responding to controversy over whether the U.S. and UK forces used napalm); *see also* Colin Brown, *US lied to Britain over Use of Napalm in Iraq War*, THE INDEPENDENT, Jun. 17, 2005, available at <http://www.commondreams.org/headlines05/0617-01.htm> (last accessed on Sept. 11, 2013).

⁷ Andrew Buncombe and Solomon Hughes, *The fog of war: white phosphorus, Fallujah and some burning questions*, THE INDEPENDENT, Nov. 15, 2005, available at <http://www.independent.co.uk/news/world/americas/the-fog-of-war-white-phosphorus-fallujah-and-some-burning-questions-515345.html> (last accessed on Sept. 11, 2013).

⁸ Human Rights Watch, *Off Target: The Conduct of the War and Civilian Casualties in Iraq* 85 (2003), available at <http://www.hrw.org/sites/default/files/reports/usa1203.pdf> (last accessed on Sept. 11, 2013).

⁹ Handicap International, *Circle of Impact: The Fatal Footprint of Cluster Munitions on People and Communities* 107-08 (2007) available at <http://www.stopclustermunitions.org/wp/wp-content/uploads/2009/02/circle-of-impact-may-07.pdf> (last accessed on Sept. 11, 2013).

¹⁰ Human Rights Committee, “List of issues in relation to the fourth periodic report of the United States of America (CCPR/C/USA/4 and Corr. 1), adopted by the Committee at its 107th session (11–28 March 2013),” para. 1(a), CCPR/C/USA/Q/4, Apr. 29, 2013 [hereinafter *HRC List of Issues for the U.S.*]

¹¹ United States of America, “United States Responses to Questions from the United Nations Human Rights Committee Concerning the Fourth Periodic Report of the United States on the International Covenant on Civil and Political Rights (ICCPR),” para. 2 [hereinafter *U.S. Response to HRC List of Issues*] (citing United States of America, “Consideration of reports submitted by States parties under article 40 of the Covenant,

Fourth periodic report, United States of America,” paras. 504-510, CCPR/C/USA/4, Dec. 30, 2011 [hereinafter *U.S. Report to HRC*]).

¹² Human Rights Committee, *General Comment No.31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, para. 10, U.N. Doc. CCPR/C/21/Rev.1/Add. 13 (2004) [hereinafter *HRC General Comment No. 31*] available at <http://www2.ohchr.org/english/bodies/hrc/comments.htm> (last accessed on Sept. 11, 2013).

¹³ *Id.* (emphasis added).

¹⁴ U.N. Human Rights Comm., *Munaf v. Romania*, para. 14.2, 96th Sess., July 13–31, 2009, U.N. Doc. CCPR/C/96/D/1539/2006 (Aug. 21, 2009).

¹⁵ HRC General Comment No. 31, *supra* note 12, at para. 8.

¹⁶ *Id.* at paras. 16-17.

¹⁷ Human Rights Committee, “Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, Concluding Observations of the Human Rights Committee, United States of America,” para. 10, CCPR/C/USA/CO/3/Rev.1, Dec. 18, 2006.

¹⁸ HRC General Comment No. 31, *supra* note 12, at para. 11 (“As implied in General Comment 29, the Covenant applies also in situations of armed conflict to which the rules of international humanitarian law are applicable. While, in respect of certain Covenant rights, more specific rules of international humanitarian law may be specially relevant for the purposes of the interpretation of Covenant rights, both spheres of law are complementary, not mutually exclusive.”).

¹⁹ Human Rights Committee, *General Comment No. 6: The right to life*, para. 2, (1982) [hereinafter *HRC General Comment 6*] available at <http://www2.ohchr.org/english/bodies/hrc/comments.htm> (last accessed on Sept. 11, 2013).

²⁰ President Barack Obama’s speech at National Defense University – full text, THE GUARDIAN, May 23, 2013, available at <http://www.theguardian.com/world/2013/may/23/obama-drones-guantanamo-speech-text> (last accessed on Sept. 11, 2013).

²¹ See Authorization for the Use of Military Force, Sec. 2, Public Law 107-40, 115 Stat. 224, enacted Sept. 18, 2001, available at <http://www.gpo.gov/fdsys/pkg/PLAW-107publ40/pdf/PLAW-107publ40.pdf> (last accessed on Sept. 11, 2013).

²² See, e.g., David Swanson, *Congresswoman Lee introduces bill to repeal AUMF*, Sept. 6, 2011, available at <http://my.firedoglake.com/davidswanson/2011/09/06/congresswoman-lee-introduces-bill-to-repeal-aumf/> (last accessed on Sept. 11, 2013).

²³ See, e.g., Michael McAuliff, “House Votes To Continue Endless War Authorized In 2001,” THE HUFFINGTON POST, July 24, 2013, at http://www.huffingtonpost.com/2013/07/24/aumf-endless-war_n_3647864.html (last accessed on Sept. 11, 2013).

²⁴ Press Release, *Congresswoman Barbara Lee Calls for Sunset of AUMF, Report on Lethal Use of Drones, Introduces Amendments to National Defense Authorization Act for Fiscal Year 2014*, June 11, 2013, available at <http://lee.house.gov/press-release/congresswoman-barbara-lee-calls-sunset-aumf-report-lethal-use-drones-introduces> (last accessed on Sept. 11, 2013).

²⁵ See Authorization for Use of Military Force Against Iraq, Public Law 107-243, 116 Stat. 1498, enacted Oct. 16, 2002, available at <http://www.gpo.gov/fdsys/pkg/PLAW-107publ243/pdf/PLAW-107publ243.pdf> (last accessed on Sept. 11, 2013).

²⁶ See, e.g., Statement of Dr. Mohamed ElBaradei, Director General of International Atomic Energy Agency, to United Nations Security Council, “The Status of Nuclear Inspections in Iraq,” Mar. 7, 2003, available at <http://www.iaea.org/newscenter/statements/2003/ebsp2003n006.shtml> (last accessed on Sept. 11,

2013). See also Sidney Blumenthal, *Bush Knew Saddam Had No Weapons of Mass Destruction: Exclusive: Two Former CIA Officers Say the President Squelched Top-secret Intelligence, and a Briefing by George Tenet, Months Before Invading Iraq*, SALON, Sept. 6, 2007, available at http://www.salon.com/2007/09/06/bush_wmd/ (last accessed on Sept. 11, 2013); Don Van Natta Jr., *Bush Was Set on Path to War, British Memo Says*, NEW YORK TIMES, Mar. 27, 2006, available at http://www.nytimes.com/2006/03/27/international/europe/27memo.html?_r=1&oref=slogin (last accessed on Sept. 11, 2013).

²⁷ On June 10, 2008, twelve members of Congress introduced thirty-five articles of impeachment against President George W. Bush to the House of Representatives. Included among the articles of impeachment were the false justification for the invasion of Iraq, the illegalities around the conduct of the war, the treatment, kidnapping and detention of detainees as part of the global “war on terror,” and the warrantless surveillance program. The House voted 251 to 166 to refer the resolution to the Judiciary Committee for further consideration, which took no action on it. Bush’s second term ended with no accountability whatsoever for the false representations justifying the invasion of Iraq. “Impeaching George W. Bush, President of the United States, of high crimes and misdemeanors,” H. Res. 1345, Jun. 11, 2008, available at <http://thomas.loc.gov/cgi-bin/query/z?c110:H.RES.1258>: (last accessed on Sept. 11, 2013).

²⁸ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), art. 20, 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976 (“1. Any propaganda for war shall be prohibited by law.”).

²⁹ See *Saleh v. Bush*, No. 3:13-cv-01124 JST, dkt. 19-1 (N.D. Cal.), available at <http://warisacrime.org/sites/afterdowningstreet.org/files/Certification%20of%20Scope%20of%20Employment.pdf> (last accessed on Sept. 11, 2013).

³⁰ Human Costs of War Chart: Direct War Death in Afghanistan, Iraq, and Pakistan, October 2001-February 2013, Costs of War Project, available at http://costsofwar.org/sites/default/files/HMCHART_2.pdf (last accessed on Sept. 11, 2013).

³¹ The IWL provides U.S. government data taken from January 1, 2004 – December 31, 2009 denoting every “Significant Action of War” as documented by U.S. Forces abroad. Iraq War Logs, available at WikiLeaks, <http://www.wikileaks.org/irq> (last accessed on Sept. 11, 2013).

³² *Id.*; John Tirman, *The Forgotten Wages of War*, NEW YORK TIMES, Jan. 3, 2012, available at http://www.nytimes.com/2012/01/04/opinion/the-forgotten-wages-of-war.html?_r=0 (last accessed on Sept. 11, 2013).

³³ Iraq Body Count, at <http://www.iraqbodycount.org/analysis/numbers/warlogs/> (last accessed on Sept. 11, 2013).

³⁴ In the early days of that war, General Tommy R. Franks famously said, “We don’t do body counts.” John Tirman, *The Forgotten Wages of War*, *supra* note 32.

³⁵ Human Costs of War Chart, *supra* note 30.

³⁶ Neta C. Crawford, *Civilian Death and Injury in Afghanistan 2001-2011*, Costs of War Project, Sept. 13, 2011, available at <http://costsofwar.org/sites/default/files/CrawfordAfghanistanCasualties.pdf> (last accessed on Sept. 11, 2013).

³⁷ Gilbert Burnham, *The Human Cost of the War in Iraq: a Mortality Study, 2002-2006*, Johns Hopkins University, Al Mustansiriya University, and Massachusetts Institute of Technology (2006).

³⁸ Likewise, there is a need to assess the number of “excess deaths” on the U.S. side of the equation beyond the numbers of those servicemembers killed in combat. One study in California has noted that the number of veterans under age 35 who died between 2005 and 2008 was three times higher than the number of California service members killed in Iraq and Afghanistan during the same period. See Aaron Glantz, *After Service, Veterans Deaths Surge*, NEW YORK TIMES, Oct. 16, 2010, available at <http://www.nytimes.com/2010/10/17/us/17bcvets.html?pagewanted=all> (last accessed on Sept. 11, 2013).

Veterans under age 35 were far more likely to commit suicide and die by other means than others of the same age with no military service. *Id.* Additionally, there are reports of increasing rates of homicide committed by returning veterans, who often also suffer from PTSD and other mental disorders. See, e.g., David Philipps, *Casualties of War, Part II: Warning Signs*, THE GAZETTE, Jul. 28, 2009, available at <http://www.gazette.com/articles/html-59091-http-gazette.html> (last accessed on Sept. 11, 2013).

³⁹ John Tirman, *Iraq's Shocking Human Toll*, *supra* note 3.

⁴⁰ *Falluja Doctors Report Rise in Birth Defects*, BBC NEWS, Mar. 4, 2010, available at <http://news.bbc.co.uk/2/hi/8548707.stm> (last accessed on Sept. 11, 2013); *Huge rise in birth defects in Falluja; Iraqi former battle zone sees abnormal clusters of infant tumours and deformities*, THE GUARDIAN, Nov. 13, 2009, available at <http://www.guardian.co.uk/world/2009/nov/13/falluja-cancer-children-birth-defects/> (last accessed on Sept. 11, 2013); Dahr Jamail, *Iraq: War's Legacy of Cancer*, AL JAZEERA, Mar. 15, 2013, available at <http://www.aljazeera.com/indepth/features/2013/03/2013315171951838638.htmlz> (last accessed on Sept. 11, 2013).

⁴¹ *US to Use Depleted Uranium*, BBC NEWS, Mar. 18, 2003, available at http://news.bbc.co.uk/2/hi/in_depth/2860759.stm (last accessed on Sept. 11, 2013); Rita Hindin, *Teratogenicity of depleted uranium aerosols: A review from an epidemiological perspective*, 4 ENVIRONMENTAL HEALTH: A GLOBAL ACCESS SCIENCE SOURCE 17 (Aug. 26, 2005). See also U.S. Department of Veterans Affairs, *Depleted Uranium*, Sep. 5, 2012, available at http://www.publichealth.va.gov/exposures/depleted_uranium/index.asp (last accessed on Sept. 11, 2013); Alaani et al., *Uranium and other contaminants in hair from the parents of children with congenital anomalies in Fallujah, Iraq*, 5 CONFLICT AND HEALTH 15 (2011), available at <http://www.biomedcentral.com/content/pdf/1752-1505-5-15.pdf> (last accessed on Sept. 11, 2013) (finding increased levels of Uranium in parents of children who suffered birth defects).

⁴² John Pilger, *We've moved on from the Iraq war*, *supra* note 5.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ M. King, R. Eisenberg, et al., *Constrictive Bronchiolitis in Soldiers Returning from Iraq and Afghanistan*, 365 NEW ENGLAND JOURNAL OF MEDICINE 222 (Jul. 21, 2011); A. Szema, W. Salihi, K. Savary, J. Chen, *Respiratory Symptoms Necessitating Spirometry Among Soldiers with Iraq/Afghanistan War Lung Injury*, 53 JOEM 961 (Sept. 2011); David Zucchini, *Veterans Speak Out Against Burn Pits*, LOS ANGELES TIMES, Feb. 18, 2010, available at <http://articles.latimes.com/2010/feb/18/nation/la-na-burn-pits18-2010feb18/2> (last accessed on Sept. 11, 2013); R.B. Stuart, *Leukemia: A Soldiers Souvenir From the Burn Pits of Iraq*, THE HUFFINGTON POST, Feb. 3, 2009, available at http://www.huffingtonpost.com/r-b-stuart/leukemia-a-soldiers-souve_b_162841.html (last accessed on Sept. 11, 2013). See also generally Burn Pits Action Center, *Personal Stories*, available at <https://sites.google.com/site/burnpits/stories> (last accessed on Sept. 11, 2013); Burnpits 360, *Personal Stories*, available at <http://www.burnpits360.org/blog/2011/01/06/Burn-Pit-Stories.aspx> (last accessed on Sept. 11, 2013).

⁴⁶ Institute of Medicine, *Long-term health consequences of exposure to burn pits in Iraq and Afghanistan* at 15, 17 (2011), available at http://www.nap.edu/openbook.php?record_id=13209&page=15 (last accessed on Sept. 11, 2013).

⁴⁷ Dignified Burial and Other Veterans' Benefits Improvement Act of 2012, S. 3202, 158 Cong. Rec. H7442, available at <http://www.gpo.gov/fdsys/pkg/BILLS-112s3202enr/pdf/BILLS-112s3202enr.pdf> (last accessed on Sept. 11, 2013); see also, Patricia Kime, *Burn Pit Registry for Veterans Signed Into Law*, THE NAVY TIMES, Jan. 10, 2013, available at <http://www.navytimes.com/news/2013/01/military-burn-pit-legislation-signed-011013w/> (last accessed on Sept. 11, 2013).

⁴⁸ Department of Veterans Affairs, *Initial Research on the Long-Term Health Consequences of Exposure to Burn Pits in Iraq and Afghanistan*, 78 FR 7860, 7860-61 (Feb. 4, 2013), available at <https://federalregister.gov/a/2013-02264> (last accessed on Sept. 11, 2013).

⁴⁹ Kelley Kennedy, *Researcher says officials covered up vets' health data*, USA TODAY, Mar. 13, 2013, available at <http://www.usatoday.com/story/news/nation/2013/03/13/whistleblower-alleges-veterans-affairs-cover-up/1979839/> (last accessed on Sept. 11, 2013) ("This applies to data regarding adverse health consequences of environmental exposures, such as burn pits in Iraq and Afghanistan, and toxic exposures in the Gulf War... On the rare occasions when embarrassing study results are released, data are manipulated to make them unintelligible.")

⁵⁰ Human Rights Committee, *General Comment No. 17: Rights of the Child*, paras. 1 and 2 (1989) [hereinafter *HRC General Comment No. 17*] available at <http://www2.ohchr.org/english/bodies/hrc/comments.htm> (last accessed on Sept. 11, 2013).

⁵¹ *Id.* at para. 3.

⁵² Rita Hindin, *Teratogenicity of depleted uranium aerosols*, *supra* note 41. See also U.S. Department of Veterans Affairs, *Depleted Uranium*, *supra* note 41; Alaani et al., *Uranium and other contaminants*, *supra* note 41.

⁵³ There is also evidence to suggest that white phosphorous can cause long term health effects, which may be intergenerational. A 2012 study undertaken in Gaza found a strong correlation between birth defects in newborns and families in which one or both parents were exposed to white phosphorus. See Naim, et al., *Birth Defects in Gaza: Prevalence, Types, Familiarity and Correlation with Environmental Factors*, 9 INTERNATIONAL JOURNAL OF ENVIRONMENTAL RESEARCH AND PUBLIC HEALTH 1732 (May 7, 2012), at 13, available at <http://www.mdpi.com/1660-4601/9/5/1732> (last accessed on Sept. 11, 2013).

⁵⁴ Dahr Jamail, *Fallujah babies: Under a new kind of siege*, AL JAZEERA, Jan. 6, 2012, available at <http://www.aljazeera.com/indepth/features/2012/01/2012126394859797.html> (last accessed on Sept. 11, 2013) ("There are not even medical terms to describe some of these conditions because we've never seen them until now").

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Dahr Jamail, *Iraq: War's Legacy of Cancer*, AL JAZEERA, Mar. 15, 2013, available at <http://www.aljazeera.com/indepth/features/2013/03/2013315171951838638.htmlz> (last accessed on Sept. 11, 2013).

⁵⁸ Federation of Workers' Councils and Unions in Iraq Report (Feb. 19, 2013) (*on file with CCR*).

⁵⁹ M. Al-Sabbak, *Metal Contamination and the Epidemic of Congenital Birth Defects in Iraqi Cities*, 89 BULLETIN OF ENVIRONMENTAL CONTAMINATION AND TOXICOLOGY 937 (Sept. 2012) available at http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3464374/pdf/128_2012_Article_817.pdf (last accessed on Sept. 11, 2013).

⁶⁰ Organization of Women's Freedom in Iraq Report on Hawijah (*on file with CCR*); Interview with Yanar Mohammed.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ H. Kang, C Magee, et al., *Pregnancy Outcomes Among U.S. Gulf War Veterans: A Population-based Survey of 30,000 Veterans*, ANNALS OF EPIDEMIOLOGY 2001, 11:504-511. See also *Study: Gulf War vets' children have more birth defects*, ASSOCIATED PRESS, Oct. 6, 2001, available at http://onlineathens.com/stories/100601/hea_1006010063.shtml (last accessed on Sept. 11, 2013).

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- 65 *Id.*
- 66 Alex Kirby, *US rejects Iraq DU clean-up*, BBC NEWS, Apr. 14, 2003, available at <http://news.bbc.co.uk/2/hi/sci/tech/2946715.stm> (last accessed on Sept. 11, 2013).
- 67 Handicap International, *Circle of Impact*, *supra* note 9 at 107.
- 68 Press Release, U.S. Department of State, U.S. Conventional Weapons Destruction Program in Iraq, PRN: 2012/091 (Jan. 20, 2012), available at <http://www.state.gov/r/pa/prs/ps/2012/01/182316.htm> (last accessed on Sept. 11, 2013).
- 69 *Id.*
- 70 HRC General Comment 6, *supra* note 19, para. 5.
- 71 *See, e.g.*, Nancy Berglas and Dr. Margaret C. Harrell, *Losing the Battle The Challenge of Military Suicide*, Center For New American Security, Oct. 2011, available at http://www.cnas.org/files/documents/publications/CNAS_LosingTheBattle_HarrellBerglass.pdf (last accessed on Sept. 11, 2013); *See also*, Chris Hedges, *The Crucifixion of Tomas Young*, TRUTHDIG, Mar. 10, 2013, available at http://www.truthdig.com/report/item/the_crucifixion_of_tomas_young_20130310 (last accessed on Sept. 11, 2013).
- 72 *See, e.g.*, American Civil Liberties Union, Suggested List of Issues to Country Report Task Force on the United States at 15-19 (Dec. 10, 2012) available at http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/USA/INT_CCPR_NGO_USA_14515_E.pdf (last accessed on Sept. 11, 2013); Human Rights Watch, Submission to the Human Rights Committee During its Consideration of the Fourth Periodic Report of the United States at 10 (Dec. 2012) available at http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/USA/INT_CCPR_NGO_USA_14524_E.pdf (last accessed on Sept. 11, 2013). *See also* *Al Shimari v. CACI*, 1:08-cv-000827-GBL-JFA, (E.D. Va. filed Sept. 15, 2008) available at <http://ccrjustice.org/ourcases/current-cases/al-shimari-v-caci-et-al> (last accessed on Sept. 11, 2013) (case brought by four former Abu Ghraib detainees against private military contractor that provided interrogators raising claims of war crimes, torture and cruel, inhuman and degrading treatment).
- 73 Human Rights Committee, *General Comment No. 20: Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment (Art. 7)*, para. 5, Mar. 10, 1992 [hereinafter *HRC General Comment No. 20*] available at <http://www2.ohchr.org/english/bodies/hrc/comments.htm> (last accessed on Sept. 11, 2013).
- 74 *Id.* at para. 4.
- 75 *Id.* at paras. 2 and 5.
- 76 *See* Paula Mejia, *Wounds of War: PTSD in Iraqis and Veterans*, THE MAJALLA, Oct. 10, 2010, available at <http://www.majalla.com/eng/2010/10/article55165470> (last accessed on Sept. 11, 2013); The Iraqi Mental Health Survey Study Group, *The Prevalence and Correlates of DSM-IV Disorders in the Iraq Mental Health Survey*, 8 WORLD PSYCHIATRY 97 (June 2009). In addition to the factors set out above, the study also recognizes the contributing factor of torture during the three decades under Saddam Hussein's rule to the population's mental health.
- 77 César Chelala, *Iraqi Children: Bearing the Scars of War*, THE GLOBALIST, Mar. 21, 2009, available at <http://www.theglobalist.com/iraqi-children-bearing-the-scars-of-war/> (last accessed on Sept. 11, 2013); *See also* Lourdes Garcia-Navarro, *Treating Iraqi Children for PTSD*, NATIONAL PUBLIC RADIO, Aug. 25, 2008, available at <http://www.npr.org/templates/story/story.php?storyId=93937972> (last accessed on Sept. 11, 2013).
- 78 Army Forces Surveillance Center, *Medical Surveillance Monthly Reports*, Vol. 19 No. 6, June 2012, http://www.afhsc.mil/viewMSMR?file=2012/v19_n06.pdf (last accessed on Sept. 11, 2013).

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- ⁷⁹ Hannah Fischer, *U.S. Military Casualty Statistics: Operation New Dawn, Operation Iraqi Freedom, and Operation Enduring Freedom*, U.S. Congressional Research Service, Feb. 5, 2013, available at <http://www.fas.org/sgp/crs/natsec/RS22452.pdf> (last accessed on Sept. 11, 2013).
- ⁸⁰ Erin Bagalman, *Report R41921: Mental Disorders Among OEF/OIF Veterans Using VA Health Care: Facts and Figures*, U.S. Congressional Research Service, Feb. 4, 2013, available at <http://www.fas.org/sgp/crs/misc/R41921.pdf> (last accessed on Sept. 11, 2013).
- ⁸¹ Mark Thompson, *Invisible Wounds: Mental Health and the Military*, TIME, Aug. 22, 2010, available at http://org2.democracyinaction.org/o/5966/p/salsa/web/tellafriend/public/?tell_a_friend_KEY=2572 (last accessed on Sept. 11, 2013) (“Repeat deployments deepen the crisis. One in every 10 soldiers who has completed a single combat deployment has a mental ailment; that rate jumps to 1 in 5 with a second deployment and nearly 1 in 3 with a third. That means that more than 500,000 troops have returned home to the U.S. in the last decade with a mental illness.”)
- ⁸² U.S. Department of Defense, DoD instruction 6490.07: Deployment-Limiting Medical Conditions for Servicemembers and DoD Civilian Employees, available at <http://www.dtic.mil/whs/directives/corres/pdf/649007p.pdf> (last accessed on Sept. 11, 2013).
- ⁸³ See Robyn M Highfill-McRoy, *Psychiatric diagnoses and punishment for misconduct: the effects of PTSD in combat deployed Marines*, BMC PSYCHIATRY (2010), available at <http://www.biomedcentral.com/1471-244X/10/88> (last accessed on Sept. 11, 2013); Terri L. Tanielian and Lisa Jaycox, *INVISIBLE WOUNDS OF WAR: PSYCHOLOGICAL AND COGNITIVE INJURIES, THEIR CONSEQUENCES, AND SERVICES TO ASSIST RECOVERY* 135 (2008).
- ⁸⁴ White House Office of Management and Budget, Report to Congress: Pursuant to Section 1506 of the Emergency Wartime Supplemental Appropriations Act, 2003 (Public Law 108-11), June 2, 2003.
- ⁸⁵ Matthew Harwood, *Pinkertons at the CPA: Iraq’s Resurgent Labor Unions Could Have Helped Rebuild the Country’s Civil Society. The Bush Administration Of Course Tried to Crush Them*, WASHINGTON MONTHLY, Apr. 2005, available at <http://www.washingtonmonthly.com/features/2005/0504.harwood.html> (last accessed on Sept. 11, 2013).
- ⁸⁶ David Bacon, *Saddam’s Labor Laws Live On*, The Progressive, Dec. 2003, available at <http://www.progressive.org/dec03/bac1203.html> (last accessed on Sept. 11, 2013).
- ⁸⁷ Harwood, *Pinkertons at the CPA*, *supra* note 85. See also, Steve Early, *Iraqi Labor Unions Still Struggling with U.S. Occupation’s Yoke*, LABOR NOTES, Aug. 21, 2012, available at <http://www.labornotes.org/blogs/2012/08/iraqi-labor-unions-still-struggling-us-occupation%E2%80%99s-yoke> (last accessed on Sept. 11, 2013).
- ⁸⁸ Yifat Susskind, *Promising Democracy, Imposing Theocracy: Gender-Based Violence and the US War on Iraq*, MADRE, Mar. 2007, available at <http://www.madre.org/index/resources-12/human-rights-reports-56/promising-democracy-imposing-theocracy-gender-based-violence-and-the-us-war-on-iraq-86.html#sub1.1> (last accessed on Sept. 11, 2013); see also Aaron D. Pina, *Women in Iraq: Background and issues for U.S. Policy*, Congressional Research Service, Jun. 23 2005, available at <http://fpc.state.gov/documents/organization/50258.pdf> (last accessed on Sept. 11, 2013). Although the report states that the Penal Code and the Personal Status Law are obstacles to gender equality in Iraq, it does not mention any initiative by U.S. government to reform these discriminatory legislations. See Iraqi Penal Code ¶ 41(1) available at http://law.case.edu/saddamtrial/documents/Iraqi_Penal_Code_1969.pdf (last accessed on Sept. 11, 2013).
- ⁸⁹ See Iraqi Penal Code ¶ 41(1), *supra* note 88.
- ⁹⁰ See Susskin, *Promising Democracy*, *supra* note 88.
- ⁹¹ *Id.* (quoting Dick Cheney, *Vice President’s Remarks at a Luncheon for Arizona Victor 2006*, Aug. 15, 2006); Iraq Constitution, Art. 2, Section A, available at <http://www.wipo.int/wipolex/en/details.jsp?id=10027> (last accessed on Sept. 11, 2013).

⁹² See, e.g., Edward Wong, *Iraqi Constitution May Curb Women's Rights*, NEW YORK TIMES, Jul. 20, 2005, available at http://www.nytimes.com/2005/07/20/international/middleeast/20women.html?pagewanted=all&_r=0 (last accessed on Sept. 11, 2013) (explaining how the draft constitution was already viewed as regressive to women's rights in Iraq and protested against by many feminist groups before it came in force). See also Nathan J. Brown, *Iraq's Constitutional Process Plunges Ahead*, at 9, 11, Carnegie Endowment for International Peace, Democracy and Rule of Law, Policy Outlook (2005) available at <http://carnegieendowment.org/files/PO19Brown.pdf> (last accessed on Sept. 11, 2013); Susskind, *Promising Democracy*, *supra* note 88.

⁹³ Interview with Yanar Mohammed, Director of Organization for Women's Freedom in Iraq, Feb. 1, 2013. See also Susskind, *Promising Democracy*, *supra* note 88; Naje Al-Ali and Nicola Pratt, *Conspiracy of Near Silence: Violence Against Iraqi Women*, Middle East Report, Spring 2011.

⁹⁴ HRC List of Issues to the U.S., *supra* note 10, at 10(b).

⁹⁵ U.S. Response to HRC List of Issues, *supra* note 11, at paras. 42-43.

⁹⁶ See Seymour M. Hersh, *Torture at Abu Ghraib: American Soldiers Brutalized Iraqis. How Far Up Does the Responsibility Go?*, NEW YORKER, May 10, 2004, available at http://www.newyorker.com/archive/2004/05/10/040510fa_fact (last accessed on Sept. 11, 2013); See also, e.g., Editorial: *The Abu Ghraib Spin*, NEW YORK TIMES, May 12, 2004, available at <http://www.nytimes.com/2004/05/12/opinion/12WED1.html?th> (last accessed on Sept. 11, 2013); William Saletan, *Rape Rooms: A Chronology: What Bush Said as the Iraq Prison Scandal Unfolded*, SLATE, May 5, 2004, available at http://www.slate.com/articles/news_and_politics/ballot_box/2004/05/rape_rooms_a_chronology.5.html (last accessed on Sept. 11, 2013).

⁹⁷ A. Taguba, Art. 15-6: Investigation of the 800th Military Police Brigade (2004) [hereinafter *Taguba Report*] available at <http://www.fas.org/irp/agency/dod/taguba.pdf> (last accessed on Sept. 11, 2013) (citing instances of "sadistic, blatant, and wanton criminal abuse" at Abu Ghraib).

⁹⁸ See Tim Golden, *In U.S. report, Brutal Details of Two Afghan Inmates' Deaths*, NEW YORK TIMES, May 20, 2005, available at <http://www.nytimes.com/2005/05/20/international/asia/20abuse.html?ref=bagramairbaseafghanistan> (last accessed on Sept. 11, 2013). See also Center for Constitutional Rights, *Report on Torture and Cruel, Inhuman and Degrading Treatment of Prisoners at Guantánamo Bay, Cuba*, Jul. 2006, available at http://ccrjustice.org/files/Report_ReportOnTorture.pdf (last accessed on Sept. 11, 2013).

⁹⁹ See *A Guide to the Memos on Torture*, NEW YORK TIMES, available at <http://www.nytimes.com/ref/international/24MEMO-GUIDE.html> (last accessed on Sept. 11, 2013). See also David Johnston and James Risen, *The Reach of War: The Interrogations; Aides Say Memo Backed Coercion Already in Use*, NEW YORK TIMES, Jun. 27, 2004, available at <http://www.nytimes.com/2004/06/27/world/reach-war-interrogations-aides-say-memo-backed-coercion-already-use.html> (last accessed on Sept. 11, 2013); *Joint Expert Opinion: Liability of the Six Defendants*, submitted in the Central Court for Preliminary Criminal Proceedings No. 6, Summary Procedure 134/2009, available at <http://www.ccrjustice.org/files/FINAL%20English%20Lawyers%20Responsibility%20Submission.pdf> (last accessed on Sept. 11, 2013); Declaration of Gitanjali Gutierrez, Lawyer For Mohammed Al Qahtani, In Support Of Filing In Support Of The On-Going Preliminary Investigation, 150/09-P, For Torture And Other Offenses, And The Request To Subpoena Major General Geoffrey Miller, available at <http://www.ccrjustice.org/files/SIGNED%20Gutierrez%20Declaration%202011%20Eng.pdf> (last accessed on Sept. 11, 2013).

¹⁰⁰ United Nations Human Rights Council, *Joint Study on Global Practices in Relation to Secret Detention in the Context of Countering Terrorism of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the Special Rapporteur on torture and other cruel,*

inhuman or degrading treatment or punishment, the Working Group on Arbitrary Detention, and the Working Group on Enforced or Involuntary Disappearances, A/HRC/13/42, 19 February 2010, at 45-50, available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-42.pdf>; ICRC, Report to John Rizzo, Acting General Counsel, CIA, *ICRC Report on the Treatment of Fourteen “High Value Detainees” in CIA Custody*, 14 February 2007 (detailing ICRC findings following interviews with 14 —high value detainees transferred to Guantánamo in September 2006), available at <http://www.nybooks.com/media/doc/2010/04/22/icrc-report.pdf> (“ICRC CIA Detainee Report”).

¹⁰¹ ICRC CIA Detainee Report, *supra* note 100, at 26.

¹⁰² Report by the Senate Armed Services Committee on Detainee Treatment, 110th Congress, 2nd Session, Nov. 20, 2008 at xvi, available at <http://documents.nytimes.com/report-by-the-senate-armed-services-committee-on-detainee-treatment#p=1> (last accessed on Sept. 11, 2013).

¹⁰³ *Id.* at xxvii.

¹⁰⁴ *Id.* at 152.

¹⁰⁵ *Id.* at xii.

¹⁰⁶ The Report of The Constitution Project’s Task Force on Detainee Treatment at 72, The Constitution Project (2013), available at <http://s3.documentcloud.org/documents/684407/constitution-project-report-on-detainee-treatment.pdf> (last accessed on Sept. 11, 2013).

¹⁰⁷ Nine men are known to have died at Guantánamo to date. While the government has claimed that all of these deaths were the result of suicide or natural causes, it has released its investigation into only four deaths, and only after being compelled by Freedom of Information Act litigation. See Andy Worthington, *NCIS Statement on the Guantanamo Suicides of June 2006*, Aug. 25, 2008, available at <http://www.andyworthington.co.uk/2008/08/25/ncis-statement-on-the-guantanamo-suicides-of-june-2006/> (last accessed on Sept. 11, 2013); Jason Leopold, *Widespread Breakdown of Safeguards at Gitmo*, AL JAZEERA, July 3, 2013, available at <http://www.aljazeera.com/humanrights/2013/07/20137324426228887.html> (last accessed on Sept. 11, 2013) (concerning death of Adnan Latif in 2012). Moreover, these investigations were conducted by an arm of the military, and the findings were highly redacted. To our knowledge, there has not been a full and independent investigation into any of these deaths.

¹⁰⁸ Scott Horton, *The Guantánamo “Suicides”: A Camp Delta Sergeant Blows the Whistle*, HARPER’S, Mar. 2010, available at <http://harpers.org/archive/2010/03/the-guantanamo-suicides> (last accessed on Sept. 11, 2013).

¹⁰⁹ *Id.*

¹¹⁰ See *Talal Al-Zahrani v. Rodriguez*, 669 F.3d 315 (D.C. Cir. 2012).

¹¹¹ See Mona Mahmood et al., *Revealed: Pentagon’s Link to Iraqi Torture Centres: General David Petraeus and ‘Dirty Wars’ Veteran Behind Commando Units Implicated in Detainee Abuse*, THE GUARDIAN, Mar. 6, 2013, available at <http://www.guardian.co.uk/world/2013/mar/06/pentagon-iraqi-torture-centres-link> (last accessed on Sept. 11, 2013).

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ Rumsfeld famously told the press that “the Salvador Option” was needed for Iraq. See Michael Hirsch and John Barry, *“The Salvador Option”: The Pentagon May Put Special-Forces-Led Assassination or Kidnapping Teams in Iraq*, NEWSWEEK, Jan. 9, 2005, available at <http://web.archive.org/web/20050110030928/http://www.msnbc.msn.com/id/6802629/site/newsweek/> (last accessed on Sept. 11, 2013). Steele was also implicated in the Iran-Contra scandal, in which senior officials in the administration of then President Ronald Reagan secretly facilitated arms sales to Iran in order to fund the Nicaraguan Contras, as official government funding had been prohibited by Congress. See Christopher Drew,

Testimony on Contras Still Haunts Colonel, CHICAGO TRIBUNE, Jul. 7, 1991, available at http://articles.chicagotribune.com/1991-07-07/news/9103170482_1_iran-contra-james-steele-special-prosecutor-lawrence-walsh (last accessed on Sept. 11, 2013); see also Peter Maass, *The Way of Commandos*, NEW YORK TIMES MAGAZINE, May 1, 2005, available at <http://www.nytimes.com/2005/05/01/magazine/01ARMY.html?pagewanted=all&position=> (last accessed on Sept. 11, 2013).

¹¹⁵ See Taguba Report, *supra* note 97, at 16-17.

¹¹⁶ *Id.*, at 17; *Al-Quraishi et al. v. Nakhla and L-3 Services*, Second Amended Complaint ¶ 20, 08-cv-1696 (D. Md. filed Oct. 1, 2008), available at http://ccrjustice.org/files/Al_Quraishi%20Second%20Amended%20Complaint%2010%201%202008.pdf (last accessed on Sept. 11, 2013).

¹¹⁷ Taguba Report, *supra* note 97, at 16-17.

¹¹⁸ Monitoring Net of Human Rights in Iraq (MHRI), First Periodical Report (Aug. 20, 2005) at 15 [hereinafter *MHRI First Periodical Report*], available at <http://www.brusselstribunal.org/pdf/mhri-1-eng.pdf> (last accessed on Sept. 11, 2013).

¹¹⁹ Likewise, and as demonstrated in other shadow reporting on the subject, recent reporting has shown an alarming rate of sexual and gender-based violence within the military, by U.S. servicemembers against other servicemembers, a situation enabled by Department of Defense policies and practices that foster a climate in which these acts have been committed with virtual impunity. The Department of Defense itself recorded 3,158 reports of sexual assault in 2010, a number that increased by 1% to 3,192 in 2011. The DOD estimates, however, that only 13.5% of sexual assaults in 2010 were actually reported. Based on the results of the military's 2010 Workplace and Gender Relations Survey of Active Duty Members, where service-members self-report sexual assaults, officials estimate that the number of sexual assaults in the military in 2010 was in fact 19,000. Studies demonstrate that assault often happens down the chain of command and enlisted servicemembers are more likely to be sexually harassed or assaulted than officers. Studies have also found, predictably, that sexual violence within the military often leads to disruptive psychological after-effects including post-traumatic stress disorder (PTSD), anxiety disorders, depression, increased suicide risk, feelings of numbness, trouble with sleeping, concentration, and memory, irritability, and anger. Physiological effects range from chronic pain and problems with weight, eating, and gastrointestinal functions to sexual difficulties. See, *Right to Heal*, Appendix A at 57-64; Letter from Service Women's Action Network and Equality now to Human Rights Committee, Re: List of Issues for the United States - 107th session of the Committee, Dec. 21, 2012, available at http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/USA/INT_CCPR_NGO_USA_14546_E.pdf (last accessed on Sept. 11, 2013).

¹²⁰ Luke Harding, *The other prisoners*, THE GUARDIAN, May 19, 2004, available at <http://www.guardian.co.uk/world/2004/may/20/iraq.gender> (last accessed on Sept. 11, 2013).

¹²¹ See Anna Badkhen, *Rape's Vast Toll in Iraq War Remains Largely Ignored: Many Rape Victims Have Escaped to Jordan But Still Don't Have Access to Treatment and Counseling*, THE CHRISTIAN SCIENCE MONITOR, Nov. 4 2008, available at http://www.csmonitor.com/World/Middle-East/2008/1124/p07s01-wome.html?nav=topictag_topic_page-storyList (last accessed on Sept. 11, 2013).

¹²² See, e.g., International Committee of the Red Cross, Report of the International Committee of the Red Cross on the Treatment by the Coalition Forces of Prisoners of War and other Protected Persons by the Geneva Conventions in Iraq During Arrest, Internment and Interrogation at ¶ 36 (Feb. 2004).

¹²³ MHRI First Periodical Report, *supra* note 118, at 17.

¹²⁴ *Id.* at 15-17.

¹²⁵ Harding, *The other prisoners*, *supra* note 120.

¹²⁶ *Id.*

¹²⁷ According to the International Military Tribunal at Nuremberg: “To initiate a war of aggression, therefore, is not only an international crime; it is the supreme international crime, differing only from other crimes in that it contains within itself the accumulated evil of the whole.”