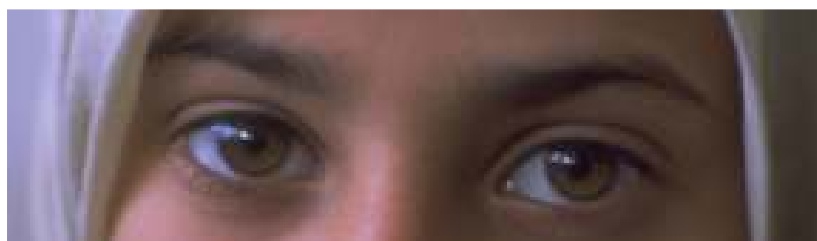




Office of the Special Representative
of the Secretary-General for

CHILDREN AND ARMED CONFLICT



REPORT

Visit of the Special Representative for
Children & Armed Conflict to

Iraq and the region

13-25 April 2008

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1- INTRODUCTION



The situation of children in the on-going violence in Iraq has been the subject of the attention of the Special Representative for Children and Armed Conflict (SRSG) since 2005 and has been reported upon in the Secretary General's annual reports on children and armed conflict in 2006 (S/2006/826) and 2007 (S/2007/757). Throughout, the SRSG and her staff have been in close contact with the Permanent Mission of Iraq to the United Nations on issues concerning the protection of children in the situation prevailing there, most especially since the worsening of the security situation following the 2006 Samarra bombing. The SRSG was subsequently invited

by the Government of Iraq to undertake a mission to Iraq to meet with Government officials, civil society and UN partners to assess the situation for children. She undertook a mission to Iraq and the region from 13 to 25 April 2008.

BACKGROUND

Following the military operations in 2003 and an initial period of calm, a number of insurgent groups have taken shape in the last five years and are still active in many regions of the country, particularly in the governorates of Baghdad, Basra, Ninewa and Diyala. In addition several bombings shook the relative calm in the northern Kurdistan Region (comprising the governorates of Erbil, Dohuk and Sulaimaniyah) of the country.

Violence reached unprecedented levels in 2005 and 2006, gradually declining towards the second half of 2007. This decline in bloodshed can largely be attributed to a six-month unilateral ceasefire called by the Shiite cleric Muqtada al-Sadr on behalf of his Mahdi Army in August 2007 and increased security operations by the Iraqi Armed Forces and the MNF-I. The ceasefire came on the heels of major clashes in Karbala between the Mahdi Army and the rival Islamic Supreme Council of Iraq, whose fighters have largely been integrated into state security forces. In February 2008, some elements within the Mahdi Army and other affiliated groups called upon Al-Sadr not to extend the ceasefire, however the Mahdi militia continues to respect the ceasefire. Other significant groups involved in armed violence or bombings include Al-Qaida in Iraq, and various affiliated or sectarian militias.

Children have been deeply impacted by the chaotic recent history and today's conflict in Iraq. The sanctions that were applied to the country in the 1990s had the largest impact on children, with lack of access to food and medical supplies and associated hardships, as well as disruption of provision of basic services.

Many Iraqis have fled their homes and communities to find safer places inside of Iraq and in the wider region. This large movement of population is both a cause and a consequence of increasing insecurity and a dire humanitarian situation.

The children of Iraq have also been victims of sectarian violence, lost their lives as innocent by-standers and coerced by or otherwise joined armed groups. The two bombings in the Baghdad Ghazil pet market (on 27 November 2007 and 1 February 2008) are a terrible symbol of the deliberate targeting of children in the on-going violence. Hundreds of children are detained, often without formal charges, in both MNF-I and Iraqi detention centers on suspicion of association with an armed group. Finally, children have been killed and maimed in firefights between armed groups and Iraqi/ MNF-I military personnel.

OBJECTIVES OF THE VISIT

The Special representative had the following objectives for her visit to Iraq:

1. Obtain a first-hand assessment of the situation of children in Iraq to enhance advocacy for protection and program interventions for conflict-affected children in Iraq and the region.
2. Dialogue with national authorities and civil society actors on measures taken with respect to protecting children during and after the conflict.
3. Dialogue with non state armed groups and political opposition groups through appropriate channels on child protection issues and their responsibility to ensure the full protection of children, including the need to exclude any person under 18 years of age from armed or other violence.
4. Dialogue with MNF-I forces and Iraqi forces on child protection issues, most notably the need to prevent any collateral damage and to examine the current caseload of children detained on suspicion of association with armed groups and/or security infractions.
5. Advocate for solutions for Iraqi conflict-affected children locally, regionally and internationally

OPERATIONAL CONTEXT



Special Representative for Children and Armed Conflict Ms. Coomaraswamy with Vice-President Adil Abdul-Mahdi

The operational context for the UN and child protection and humanitarian actors in Iraq is quite specific, as developed later in this report, and the SRSG was constrained in meeting with conflict-affected children and NGO workers in Baghdad. However, she was able to hold meetings in Amman, prior to her visit to Iraq, with international and Iraqi NGOs and UN operational partners. In Iraq, she also met with conflict-affected IDP children, NGOs, teachers and protection actors in the Kurdistan Regional Government areas, where the security situation is more stable. Prior to her arrival in Baghdad, the SRSG was also able to meet with Iraqi children who have taken refuge in Jordan and heard their concerns as well as their gratefulness to their hosts.

2- CHILDREN AND LACK OF ACCESS TO BASIC SERVICES

Over the past years, due to the sanctions that were imposed on the country, and the violence of the last few years, the humanitarian situation of children has dramatically worsened, and one of the most striking consequences of the continued violence in Iraq is the degradation of basic services. Although Iraq has sizeable revenue, in many parts of the territory, access to education, health, water, food and sanitation is lacking. According to UNICEF, 60% of Iraqis lack access to at least one critical social service, and more than half of the population does not have access to safe drinking water, which may have contributed to several outbreaks of cholera in 2007. Iraqi children are the primary victims, both because they have to face the violence of the conflict on a daily basis, and also because it deprives them of essential goods and services to survive.

Global statistical picture¹

- 29 million Iraqis
- Half of the population is below the age of 18
- 4.9 million IDPs and refugees: 2.7 million are internal displaced, 2.2 million are external displaced
- 40% of IDP and refugee populations are children, 60% of whom are in the Kurdistan region
- 70.000 women have been widowed since 2003
- 870.000 children are orphaned by the death of one or both parents

The SRSB met with the UN Country Team in Amman (Jordan), prior to her trip to Baghdad. UN agencies highlighted the urgent need to find solutions to address the humanitarian crisis in Iraq. Children's access to social services is systematically undermined by violence, politicization of aid delivery by all parties, criminality, an exodus of service providers, destructive military operations, insecurity and chronic under-investment. Outreach services for the underserved have stopped in many areas due to fear and lack of staff. Displacement has also eroded local service capacity by burdening already weakened social services with additional demands from IDPs.

The major challenges for children's health throughout Iraq remain lack of full access for vaccination as well as the risks of other outbreaks of cholera. The psychological effects of violence must also be noted with school drop out and drug addiction increasingly reported. According to WHO sources, in Baghdad, one out of two Iraqis has been exposed to a major traumatic event and other surveys, such as in Basra, show that civilians suffer from a very high stress level. During her visit to a school in Erbil in Kurdistan, the SRSB met with many children who told her their stories, many of them having witnessed the violent death of members of their families or the destruction of their homes. As a result, the need for protection from further violence, increased support, training, and appropriate community based psychosocial programs is crucial.

Before the current conflict, Iraq had a very high level of education, but the conflict has disrupted school attendance in a number of ways. As a result of growing insecurity in many Iraqi cities, families are afraid to send their children to school and keep them at home where they feel they are more protected. During meetings with operational partners, it was told to the mission that primary school attendance has dropped to 53% in 2007 as opposed to 83% in 2005, and in Diyala, for example, children have not been able to go

¹ Source: UNESCO, UNICEF

to school for six months². In parallel, teachers, as well as other skilled Iraqis have fled the country, depriving Iraq of its human resources to generate quality education in 2006. Schools are also the target of deliberate attacks with more than 400 schools having been attacked. According to statistics from the Ministry of Education, 300 teachers having been reported killed and additional 1.158 wounded in 2006. Schools have also suffered damage in military operations, and several have closed as a result of threats and violence.

In Kurdistan, children have to face other issues related to school. The region lacks skilled teachers but has also problems with lack of school buildings and overcrowded classes, which has been exacerbated by the presence of high numbers of IDPs. In some areas, three shifts are organized to allow as many children as possible to attend school, but this also means less time for recreation for the children and very long hours for the teachers. As a result the quality of education is also affected.

Basic services in Iraq figures³

- School attendance has dropped from 83% in 2005 to 53% in 2007
- 417 schools were attacked in 2006⁴
- 300 teachers were killed in 2006⁵
- 70% of schools throughout Iraq are damaged by war or lack of maintenance
- Reliable access to safe water is available to only 40% of the population and sewage treatment capacity under 17%
- 1% of children are orphaned by both parents and 6% by one parent
- 30% of children show signs of high stress due to violence and armed conflict

Iraqi girls in general have suffered from school exclusion more than boys mostly because of fear of violence and an increasing climate of social and religious conservatism. In many areas, and especially in remote ones, girls may not be encouraged to go to school. It is of significant importance that awareness on gender equality be raised in Iraq, particularly outside Baghdad, because irrespective of the conflict, the status of young women and girls has traditionally been unequal. In Kurdistan for example, schools have been opened to girls since 1930 and more than half of the schools are mixed, but girls still face the problem of access if the school is not close to their homes. As a result, the drop out rate for girls is higher than for boys. The need for peace education and gender sensitization in schools cannot be stressed enough given the recent conflict and continued fighting in some areas.

Access to basic services has been hampered by the lack of a predictable security environment. More than 80 international organizations are present in Iraq but find it difficult to work because outreach to the populations is risky for international humanitarian personnel in the prevailing security environment, although national staff can move with greater facility. Military operations also limit access to communities and security barriers generally limit access to services to communities. As a result, children are deprived of the humanitarian assistance they rely on and the data collection on children's rights violations and their basic needs also becomes a challenge. The question of what can be done on the ground taking into account the current security parameters and how security concerns and humanitarian imperatives can be better balanced are issues that need to be addressed in order to ensure that children, and other vulnerable groups, are not left behind.

² Source: UNICEF, UN agencies.

³ Source: UNICEF, WHO, UNESCO/MOE UNDESS.

⁴ Updated figures are not available.

⁵ Updated figures are not available.

Recommendations and Follow-Up actions

1. The Government of Iraq should address child protection issues more systematically and as a follow-up to the field mission and the meeting of the SRSG with Vice President Adil Abdul Mehdi, create a child protection office within the Vice presidency. This Office would be composed of key decisions makers from relevant ministries such as Health, Education, Labor and Social Affairs, Migration, Interior, Justice etc. The head of this Office would help raising awareness on children rights and needs and coordinate the work of involved and relevant Ministries and other governmental bodies at the highest level. This Office should be granted all necessary means to fulfill its protection mandate. The UN should also be involved in building the technical capacity of the new Office.
2. The Government of Iraq may wish to consider as a priority an increase in the percentage of its budget that is allocated to provision of basic services for children and other vulnerable groups.
3. The UN system as a whole and particularly UN agencies, funds and programs should reassess the security situation and provisions for assistance to vulnerable populations in high-risk environments. Further political and diplomatic measures should be considered to ensure security.
4. Central and regional governments should ensure that all children have access to education and health. This includes urgent building of new schools and health centers, ensuring safe access to services, as well as awareness campaigns for reaching vulnerable groups such as girls and children in remote communities.

3- RECRUITMENT OF CHILDREN IN THE ON-GOING VIOLENCE IN IRAQ

Scope of the issue

Since 2004, and more so in the aftermath of the 2006 Samarra bombing and the ensuing inter-communal violence, children have been recruited and utilized by an array of parties to the conflict in Iraq. It has been reported that hundreds of children, some as young as 10 years of age, have been used in a varying array of tasks including scouting, spying, digging holes for Improvised Explosive Devices (IEDs), planting IEDs, videotaping attacks, as well as more traditional combat roles. Especially troubling are reports of Al Qaida in Iraq (AQI) and associated groups using children as suicide bombers. However, AQI is not the only group that has been alleged to recruit and utilize children under the age of 18 years. Other groups who have been cited for use of children are Sunni Militias, such as the new Awakening Councils and Shiite militias, including the Mahdi Army. The Security Forces of the Government of Iraq are not known to use children under the age of 18 years. Iraq has just ratified the Optional Protocol on the involvement of children in armed conflict. However, it has been suggested that there may be a need for Iraqi forces to strengthen age determination procedures.

Measuring the amplitude of the problem of children associated with armed groups in Iraq is hampered in a number of ways: 1) UN international staff access outside of the International Zone (IZ) in Baghdad and parts of the Kurdistan Regional Government (KRG) areas is severely restricted; 2) In the security atmosphere associated with the on-going fighting in Iraq, UN partners and local staff are less able to inquire into and investigate fully incidents of recruitment and use of children by armed groups on the ground; 3) The absence of specialized international child protection staff located permanently in Baghdad and of a reporting structure to record grave violations. However, anecdotal evidence and number of confirmed cases suggest that the problem of children associated with armed groups is significant and has rapidly escalated after the Samara bombings. Sources include UN staff, Iraqi Government Ministries, civil society, communities sympathetic to Sunni and Shiite militias and MNF-I. Although there are reports of young girls being used by AQI, to date there has been no verified information on this matter.



The recruitment of children into armed groups is due to a number of underlying factors. Many children join for ideological and sectarian reasons, but the mission found that children are often recruited for other reasons as well. It should be noted that the international community and child protection specialists do not consider any under-age recruitment to be “voluntary” in light of the child’s vulnerability and lack of maturity. Many of the people the mission spoke with underlined the fact that there have been some ideological and/or revenge motives for recruitment of adolescents in Sunni militias in the past, and sources close to Sunni militias in Iraq openly stated in interviews with the mission that “...everyone, even children, should fight for their [Sunni] community...”.

However, in discussions with protection interlocutors in Iraq, including military sources, it became readily apparent that children are often engaged in dangerous acts such as planting a roadside bomb or scouting or other activities for militias and armed groups because of the vulnerability of the family or sheer reasons of poverty. Protection partners stressed the fact that, since the up-surge in inter-sectarian violence following the Samarra bombings, the impact of inter-sectarian killings on families in Iraq has

been severe. The number of widows and “orphaned”⁶ children in Iraq has risen steeply since 2006, and many extended families have been affected on multiple occasions by killings of heads of household, and thus have a reduced absorptive capacity to care for orphaned and widowed family members. This is compounded by the fact that Iraq has suffered several years of sanctions which have drastically hampered community members’ savings and capacity to plan for unforeseen difficulties. Iraq has a strong tradition of family and community bonds and many are making incredible efforts to care for orphaned children of relatives or close friends. However, the conflict and poverty have stretched those bonds precariously thin. Additionally, there has been a rise in the number of children separated from their families by the impact of conflict.

This vulnerability due to poverty and the absence of heads-of-household to protect families has led to a situation where families, some earning as little as 14 US dollars per month have become destitute and can not provide for the barest necessities for their children. Many children are also not able to attend school due to poverty or to insecurity in their communities, and have little or no access to basic care. In a situation as dire as that described above, it is of little surprise that the following “stipends” for acts on behalf militias and groups who use terror tactics can exercise a tantalizing appeal to extremely impoverished children and young people. According to informed sources the following are the going rates for particular activities on behalf of armed groups or groups who use terror tactics:

Armed Group activity	Stipend rate (US Dollars)
Firing a Mortar round	100.00
Digging a hole for a roadside bomb	20.00
Planting an IED	20.00 - 40.00
Filming an attack	50.00

Data such as this suggests that more must be done to strengthen families and communities and civil society to prevent and respond to the extreme poverty and breakdown in family and community protection which result in children’s association with armed groups in Iraq.

Although time precluded individual meetings with religious leaders, the often charged atmosphere surrounding inter-sectarian violence in Iraq points to a need for a stronger involvement of moral and religious leaders in Iraq in fighting against recruitment and use of children with armed groups. The SRSRG would welcome the development of an inter-community and inter-faith dialogue around the protection of children and the prevention of the recruitment and use of children.

Despite the need to understand the circumstances leading to the recruitment of children into armed groups it must be emphasized that those who do the recruiting, especially those who use children to perpetrate suicide bombings, are committing a heinous crime, in violation of international humanitarian law and all tenets of the great religions. It is important that national and international actors unite in calling for the ending this practice. Perhaps most importantly, Iraqi law must criminalize the recruitment and use of children under the age of 18 years. Accountability for these crimes must be a major component of any plan to cease all under-age recruitment. The arrest and prosecution of individuals responsible for recruiting or using children would be a major step in ending impunity for those who recruit and utilize children in situations of armed conflict in Iraq.

⁶ In Iraq, children are considered “orphaned” if they lose their father, even though the mother may be alive. This suggests the centrality of the father in the society and his primary role as bread winner and protector of the family.

Recommendations and Follow-Up actions

1. Inclusion of Child Protection Advisors in UNAMI and UNICEF international specialized protection staff stationed in Iraq to allow the collection of regular, verified and accurate data on recruitment and use of children by parties to the conflict; and assist the Government of Iraq in the prevention of recruitment and use of children and adequate response.
2. Engagement of UNAMI staff and partners and, where appropriate, the SRSR-CAAC in fostering inter-sectarian and inter-faith dialogue around the prevention of recruitment and protection of children in conflict.
3. Need for immediate increase in delivery of basic social services for children, including poverty alleviation programs such as the social safety net program under the Ministry of Labor and Social Welfare that would participate to preventing the recruitment and use of children.
4. Iraqi authorities should criminalize the recruitment and/or use of children as an immediate measure and to invigorate investigations and prosecutions of the crime of recruitment and use of children as a priority.

4- DETENTION OF CHILDREN ACCUSED OF ASSOCIATION WITH ARMED GROUPS IN IRAQ

Related to the use of children by armed groups in Iraq and of great concern to the mission is the fact that hundreds of children have been detained by both the Iraqi security forces and MNF-I in the last years. What is especially worrisome is that these children have been detained on security or terrorism charges, and a number of children have been tried and convicted on these charges in Iraqi courts. There are currently approximately 1,500 children in detention in Iraq, the youngest of which is 10 years old.

IRAQI DETENTION

Iraqi law recognizes 18 years as the age of consent and 11 or 9 years as the age of criminal responsibility⁷, and Iraq has ratified the Convention on the Rights of the Child in July 1994 and the Optional Protocol on recruitment and use of child soldiers in early 2008. There were approximately 1,000 children in known Iraqi Government detention centers during the time of the visit. Government sources and lawyers' groups with whom the mission spoke identified a number of procedural and other issues surrounding the pre and post-trial detention and trial of children under the age of 18 years under Article Four of the Law to Combat Terrorism⁸ that broadly defines acts of terrorism. These are outlined below:

a) Article Four of the Law to Combat Terrorism and applicability to children under the age of 18 years

Article four of this law roughly defines acts of terrorism and includes 14 other crimes. Of great concern is that this article remains very broad and does not give any special consideration for children charged under the act. A re-examination of the act and its applicability to children, especially children below the age of 15 years, should be undertaken as a priority. Children have been arrested and detained by the Iraqi Security Forces and the Ministry of Interior as well as transferred from MNF-I detention and detained and tried under this terrorism charge. This situation should be addressed as a matter of priority by the Government of Iraq and relevant ministries and governmental bodies as well as MNF-I authorities.

b) Pre- and post-trial detention conditions

The Iraqi Ministry of Labor and Social Affairs (MOLSA) is in charge of facilities relating to the pre- and post-trial detention of children. Children arrested and detained under Article 4 of the Law to combat Terrorism and other legislation are all placed in Al-Topchi juvenile facility in Baghdad, and range in age from 10-18 years. Before the Amnesty law was applied in early 2008, 446 minors, all boys, were held in cramped quarters at Al-Topchi, which has a maximum capacity of 204 children⁹. The conditions of detention are well below internationally acceptable standards. UNAMI Human Rights Officers, who visited Al-Topchi before the amnesty release, found children cramped 4 to a cell and having to take shifts to sleep on mattresses on the floor. Although there has been a significant release of children from this facility in recent months, the center remains over-crowded and MOLSA informed the mission that it does not have the space or the funds to undertake education and skills training activities and psychological care it had previously offered.

⁷ 11 years under laws applying under the Kurdistan Regional Government and 9 years in other areas of Iraq

⁸ No. 13/2005, Iraqi Gazette, Vol. 4009, November 9, 2005.

⁹ The application of the Amnesty Law between April and June 2008 enabled the release of 325 children from Iraqi detention centers, including children of concern held in the Al-Topchi juvenile facility.

There have also been a number of incidents of rape of boys in Iraqi Security Forces (ISF) detention facilities prior to remand to the Ministry of Justice and MOLSA. Reports of sexual violence and abuse remain a grave concern as are reports of ill treatment of children in these facilities. Even more worrisome is the targeting of at least one of these facilities by armed men in Baghdad who attacked the facility and abducted 4 children on 11 March 2008, assumed to have been former militia members. Additional security precautions and the inclusion of necessary educational, skills training and psycho-social activities are urgently needed and should be vigorously supported by the UN and the Government of Iraq to bring them in line with the UN Standards on Minimum Rules for the Administration of Juvenile Justice (Beijing Rules).

c) Access of judicial authorities and UNAMI human rights officers to all detention facilities

The Ministries of Justice, Interior and Defense have facilitated access for UNAMI human rights officers to their detention facilities and prisons, and MOLSA has granted UNAMI access to detention facilities for juveniles under their authority. Ministry of Justice officials have noted that they are aware of several Ministry of Interior and Defense detention facilities to which they do not have access. As children are likely to be found in such inaccessible detention facilities, access should be granted to the appropriate authorities as soon as possible. On a positive note, most detention facilities, including those for juveniles run by MOLSA, enjoy weekly visits of the Iraqi Council of Representatives' Human Rights Committee and regular visits by the Ministry of Human Rights, who report and advocate on procedural grounds as well as examine the treatment of juvenile detainees.

d) Timeliness of pre-trial procedure

The Central Criminal Court of Iraq (CCCI) is charged with the prosecution of serious criminal offenses¹⁰, including those allegedly perpetrated by children. The Court has a specialized juvenile judge and the proceedings are attended by representatives of MOLSA, the prosecution and counsel for the defendant. The proceedings are also open to the UNAMI Human Rights Office. However, there have been consistent delays in proceedings of the Court on a number of levels that have resulted in significant delays in the review of detainees' cases. In particular, the paucity of judicial investigating officers and the security conditions on the ground have resulted in extensive delays. This is compounded by the fact that the investigating judge requests a personality test administered by a psychologist to assess any motives for the crime. Other factors contributing to delays include burdensome procedures for age determination of juveniles and the heavy reliance upon 'secret informants' in prosecuting cases, many of whom can no longer be located or refuse to obey summons by the investigating judge. Due to shortages of competent staff, some children have waited 8 months to have their cases heard. More concentrated efforts must be undertaken to ensure that children can have access to speedy pre-trial proceedings and that the capacity to administer personality tests either is augmented or alternatives are found which respect the integrity of the pre-trial process¹¹.

e) Access to counsel

Access to counsel is provided for children accused of serious crimes. The vast majority of counsel is provided by the Court. However, counsel in most cases has little time to review the child's dossier or to interview the child before hearings and the child is rarely sufficiently

¹⁰ These felonies include acts of terrorism or sabotage, abduction, drug trafficking and money laundering.

¹¹ A number of child protection partners have suggested that the personality test is inappropriate and should be reconsidered as a policy

informed regarding the charges against him or the process itself. Court-appointed lawyers are overwhelmed and many lack sufficient training and expertise in dealing with youth defendants.

f) Lack of child-friendly procedures and over-reliance on institutionalization

Most interlocutors explained that, though the Ministry of Justice and MOLSA have made several efforts to make the judicial and detention processes more appropriate for children, improvements are still urgently needed. Indeed, even age determination has been the subject of some concern. If they lack identification documents and the age is in question, children have been charged as adults. There are currently no alternatives to institutionalization for those tried and convicted of crimes and no community-based programs for children in conflict with the law. There has yet to be serious discussions on the fact that incarceration and institutionalization should be methods of last resort and that more must be done to develop alternatives to incarceration and formal prosecution for low-level offenders, including diversion schemes at the pre-trial stages. This is an imperative if Iraq is to begin to heal the wounds of years of conflict and violence.

A number of initiatives have been undertaken by the Iraqi Government, in conjunction with UNAMI and UNICEF, among others, on the issue of children in conflict with the law which should be strengthened. UNICEF, in collaboration with other relevant actors, has begun to work with MOLSA in a multi-stakeholder consultation on juvenile justice, including alternatives to detention. The Government has made efforts to improve the transparency of the judicial process and detention facilities and the Ministry of Human Rights of Iraq has been most active in reviewing conditions and cases of children in conflict with the law at Al-Topchi and other detention facilities. The Iraqi Bar Association has also been very active in advocating for children, especially those apprehended for security grounds. More needs to be done to strengthen the Government's efforts to improve the timeliness and child-appropriateness of the Iraq legal, judicial and detention systems to bring them into line with international standards and to prevent abuse and ill-treatment. In particular, all interlocutors noted the need for a more sustained international presence of UNICEF in Iraq to assist them in designing and following through on initiatives to improve the manner in which children are treated when accused of security crimes to ensure that their rights are respected and vulnerabilities recognized.

Recommendations and Follow up actions

- 1) Policy discussions at the highest level should take place with UN and other relevant child protection actors on the need for diversion alternatives and alternatives to the deprivation of liberty. The Government of Iraq is encouraged to provide the necessary funding to improve the capacity and conditions of the Al-Topchi detention center and other juvenile facilities, to include skills training, psycho-social support and reintegration support upon release from detention or incarceration.
- 2) UNICEF should be encouraged to appoint an expatriate child protection officer charged with juvenile justice issues and prison reform based in Iraq to work on a daily basis with the Government of Iraq to further strengthen their response for children in conflict with the law. This would include further training for child judges as well as court-appointed lawyers on juveniles in conflict with the law.

- 3) UNAMI should put in place a sufficient number of child protection advisers to address and ensure adequate follow-up and monitoring and reporting on children affected by armed conflict in general and children in conflict with the law in particular.
- 4) The judicial authorities of Iraq, supported by UNAMI and UNICEF, should improve and streamline or alter age determination, personality test and other relevant procedures to take into account the need for timely and transparent procedures for juveniles accused of security crimes so that they are in line with the “Beijing Rules” and are child friendly and rehabilitative and restorative in nature.
- 5) The Iraqi Bar Association should be encouraged and supported to engage more fully on the issue of defense of child detainees in general and children accused of security crimes in particular.

MNF-I DETENTION

At the time of the mission visit, MNF-I held approximately 500 minors below the age of 18 in security detention in their facility at Camp Cropper outside Baghdad. Encouragingly, latest figures of children held in MNF-I detention has been reduced to approximately 360 individuals, all boys. This is an improvement on the previous number of approximately 950 children detained until late 2007 following the so-called “surge” under the Baghdad Security Plan. Children are held under Coalition Provisional Authority Memo no. 3 (revised) of 27 June 2004. According to MNF-I, an imperative security threat is any person who “...by his/her presence or actions is *likely* to be a threat to Iraqi society”. MNF-I detention, including child detention, is the responsibility of MNF-I Task Force 134 (Detention Operations) under the command of Maj. General Douglas Stone (succeeded by Rear Admiral Garland Wright on 6 June 2008). According to Task Force 134 documentation, the Task Force was established to consolidate and provide oversight and coordination to Coalition Force detention operations in Iraq following revelations in 2004 of widespread detainee abuse in Abu Ghraib Prison. The Task Force states that its aim is to “ensure that once [detainees] are released they are no longer a threat to Iraq and are capable citizens ... Additionally, we aim to ensure that those determined to be irreconcilable are held in a long term detention facility in Iraq”.

Task Force 134 runs the *Dar al-Hikmah* (“House of Wisdom”) juvenile education and recreation facility at Camp Cropper, which observers have stated has quite good educational and recreational facilities for boys eligible for the program. The SRSG was invited by MNF-I to visit the site but was unable due to scheduling conflicts. The SRSG notes that the activities in the *Dar al-Hikmah* program are in line with the responsibilities of the MNF-I under article 50 of the 4th Geneva Convention. However, UNAMI Human Rights Officers continue to be denied confidential access to minors in MNF-I custody.

Questions concerning procedure of detention and due process for minors in MNF-I custody

Several questions arose in the SRSG's discussions with MNF-I Major General Bergner and the then Task Force 134 Commander, Major General Stone on the detention of children described as "imperative threats to security" and therefore under administrative detention.

The procedure by which the MNF-I arrests, detains and releases children alleged to be "imperative threats to security" follows the pattern outlined below¹²:

Upon arrest, children undergo an initial threat screening at brigade level to determine whether or not they should be released. It is important to note that MNF-I does give the benefit of the doubt to young people whose minority can not be determined with absolute accuracy and this policy is appreciated. Those deemed to be a security threat are transferred to a Division Holding Area within 72 hours of arrest, where they undergo a further assessment and legal review by a Staff Judge Advocate personnel. They are then transferred to a Theater Internment Facility (for children, this would be Camp Cropper) within 14 days of arrest. Within a further 7 days, detainees' files are reviewed by a Magistrate Cell which can recommend continued internment, referral to the CCCI, or expedited release. Thereafter administrative reviews are conducted every three months. Appeals can be launched within 90 days of arrest. MNF-I policy is not to hold any minor for more than 364 days. However, there are a large number (approximately 100 we have been informed) who have remained for longer than a year and are not eligible for *Dar al-Hikmah* education and recreation activities, purportedly due to the fact that they are "irreconcilable" and constitute a "risk to US forces". The concern of the mission for these children is especially grave due to the complete lack of information available to the UN on their status.

Internationally accepted practice with regard to administrative detention is made up of the following basic rights for the detained, rights that must be reinforced for children due to their minority:

1. Right to information regarding the reasons for his or her arrest and detention
2. Right to be registered
3. Right to challenge the lawfulness of his or her detention
4. Right to legal counsel of the detainees choosing
5. Right to have a review board which is independent and impartial

Although, at first glance, the MNF-I detention procedures appear to meet international standards with regard to the right to be registered, there are serious concerns with regard to the other rights mentioned above. Beyond these basic rights for all detained persons, there are a number of child-specific provisions of international human rights law which can not be suppressed in times of conflict. In conducting operations and internment, special attention should be paid to the most vulnerable groups such as children. Children have special legal protection under international instruments including those that Iraq and the United States of America are parties to, including the ICCPR and Optional Protocol¹³. However, the mission was informed by MNF-I authorities that, in their estimation, the ICCPR and human rights instruments in general does not apply to those individuals detained under their authority in Iraq¹⁴. This is problematic for those seeking to guarantee the rights of children subject to administrative detention.

¹² As detailed in interview with MNF-I Task Force 134. This has not been independently verified.

¹³ Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict.

¹⁴ The US Government holds that US obligations under the ICCPR do not apply extra-territorially. US Government commentary has not addressed their obligations under the Optional Protocol on the Involvement of Children in Armed Conflict, specifically Articles 6 (3).

Beyond concerns regarding the application of these general legal principles to MNF-I detention practices for minors, the following aspects of the procedure for arrest, detention and release are also of particular concern to the SRSG with regard to minors detained by the MNF-I:

1. Initial threat assessment

Little is known of what safeguards are in place for children being assessed and if there are assessors who are versed in communicating with children, who may themselves be victims. Additionally, the definition of a security threat as being “ anyone who, by his/her presence or actions is *likely* to pose a threat to Iraqi society...” is especially troubling due to the fact that children, by their very status as minors, should be considered as “threats to society” only in the most aggravated of circumstances.

2. Lack of opportunity to appoint counsel of one’s own choosing

Although not an express policy of MNF-I, de-facto children in MNF-I detention are effectively not given the right to independent counsel of their choosing. Practically, access of the accused to his counsel on a regular basis is not granted in a large number of cases, ostensibly due to security concerns related to counsel’s access to the MNF-I detention facility. Furthermore, counsel has , in an important number of instances, not been granted the time and opportunity to prepare an effective defense. In her interview with Major General Stone, the SRSG reiterated the imperative to consider detention of children only in the most extreme cases and that detention should only be a last resort. Additionally, the child’s right to independent counsel, not only to those made available by the MNF-I, who are able to explain the charges and consequences of the procedure as well as the ability to challenge their detention was not well received. The SRSG intends to seek to broach these issues further with the Department of Defense in Washington.

3. Lack of full access to charges and evidence brought by review board and inability to challenge detention

Iraqi Ministry of Justice officials complained to the mission that they were frustrated with MNF-I administrative detention review boards. In protest to what they called “inadequate evidence for detention”, the Ministry of Justice has at times suspended its participation in these review boards, although these Ministries have since re-joined the board.. It appears that much of the potential criminal “evidence” connected to an alleged child offender’s case in many instances has not been fully granted, as the MNF-I consider such evidence as “classified intelligence”, and is not handed over to the board and counsel. The right of the children to know the full scope of the accusations and to be able to challenge that evidence is a fundamental right and one that is not being respected in the current MNF-I procedure.

4. Lack of respect and timely release for acquittals of children by Iraqi judicial authorities

Iraqi Judicial authorities and protection partners complained of a significant caseload of children whose cases have been referred to the Iraqi justice system (CCCI) and who have been acquitted, many due to a lack of adequate evidence. It appears that, in a number of cases, the MNF-I does not honor these acquittals.

5. Questions concerning release procedure of children held in MNF-I detention

Many issues and questions remain regarding the children release process and what follows. Indeed, in the interviews the mission conducted, it was unclear what becomes of the children once they are released from MNF-I detentions. No access is granted to these children and therefore no follow-up procedure may exist, which impedes social workers and other UN partners in assisting the children in reintegrating their communities and ensuring their security and well-being after release.

Recommendations and Follow-Up actions

1. Confidential access should be granted for UNAMI international staff as well as representatives of the Ministry of Labor and Social Affairs to children detained by MNF-I forces. Tracking and sharing of data concerning the arrest, detention and release of minors should be established on a regular basis.
2. MNF-I should, as a matter of priority, clarify the status of children who have spent more than one year in MNF-I detention and those children who are considered “irreconcilable” and not eligible for the *Dar al-Hikmah* program.
3. Detention of children should always be considered as a last resort. Alternatives to the deprivation of liberty, diversion and restorative justice, through Iraqi specialized processes for minors, should be further developed.
4. Alternatives to security internment should be sought and pending cases should be transferred to adequate Iraqi programs supported by the UN system which emphasize restorative justice and which are bound to due process.
5. Transparent access to UNICEF, UNAMI, MOLSA and protection partners should be granted as a matter of priority to allow the release of data and the collection of information on the whereabouts and identities of released children with adequate safeguards to protect the identities of children whom data is collected and shared.

5 – INTERNALLY DISPLACED AND REFUGEE CHILDREN OF IRAQ

The issue of displaced persons is becoming one of greater concern and is the direct result of violence and conflict of past years. The larger incidence of Iraqis currently displaced is due to the outbreak of war in 2003, with a massive outflow after the bombing of the Samarra shrine in February 2006. Today, more than 4.5 million Iraqis are IDPs or refugees, 40% of whom are children.



Although Iraqis are displaced throughout the territory of Iraq, the phenomenon is aggravated in the KRG, which hosts approximately 800,000 IDPs, 60% of whom are children. The IDP population is not homogenous, has arrived in different waves and consists of diverse groups. In Kurdistan, for example, IDPs are of Arab or Kurdish origins, and may belong to three different categories: those who fled because of armed conflict, because they felt discriminated against as a minority or because they lived in disputed areas. Some were displaced before 2003 because of ethnic confrontations (in Kirkuk for example) or of fighting with the PKK; while others came to Kurdistan from insecure areas of the country after

2003 and especially after 2006. It is this very diversity of the IDP population that requires a common coordinated approach to this issue, both at the Kurdish and at the central government levels. During her mission the SRSR has advocated for the creation of an Iraqi Office for Coordination of refugees and IDPs as policy coordination is essential in dealing with such a vulnerable population for which the Government of Iraq is naturally the primary responsible party in ensuring safety and well-being. The needs of displaced Iraqis are tremendous and range from additional schools to welfare programs, psychosocial support and training programs. In KRG, the burden falls largely on the regional government since the central government does not provide financial or technical assistance. But here also funding program interventions should not be problematic since the region reportedly has a large budget surplus. What is needed is the political will to allocate a larger part of the budget for IDPs and to implement programs in a timely way. This may also indicate the need for further UN backstopping for line ministries on the issue of IDPs.

During the two days she spent in Erbil, the SRSR met with IDP families and children to better understand their concerns and fears. In a school where she met with displaced Arab teachers, it appeared that even though there is no formal discrimination, access to school for Arab children remains very difficult. This is mainly due to the fact that very few schools teach in Arabic, and this creates a de facto barrier for Arab IDPs who have fled to KRG areas. This is especially true for very young children and girls outside of major urban areas whose families are reluctant to send them to more distant schools. The SRSR was told by the teachers and the mothers of students that even if there is a school nearby that teaches in Arabic, children often were excluded because the families simply could not pay for the bus ticket.

Displaced Iraqis, whether they be Arabs, Kurds or other minority communities, are rarely displaced as family units. The vast majority are widows or women separated from their husbands and extended families. This was very obvious when the SRSR met with them in Erbil and in Shawes IDP settlement. Most of the women lamented the fact that they are left without the protection of their spouses, alone with their children and in need of basic goods. In addition, many of the children she met with evidently suffered from high levels of stress and appeared to have difficulties in interacting with other children. It is

crucial that the regional and the central governments provide host communities with the necessary means to more readily absorb IDPs and to strengthen their coping mechanisms, especially with delivery of basic services and goods and with access to psycho-social care.

Iraqis have also fled because of the lack of basic services and security in their home communities. Egypt, Syria, Lebanon and Jordan, are the primary host countries for Iraqi refugees. Iraqis there are tolerated as part of the traditional agreement among countries in the region. However, those countries have significant social and economic challenges of their own and the massive arrival of refugees is a new burden that impacts negatively on their ability to provide basic services to their own population, including access to health care or to education.

Jordan, which the SRSG visited prior to Iraq, is hosting between 450,000 and 700,000 Iraqis. An initial policy of welcoming their neighbors fleeing violence, as well as the urban scattering of Iraqis and their settlement among host communities, has impaired data collection and the delivery of assistance to the most vulnerable difficult. They are often, though not exclusively, from the poorest segment of the population, but a significant portion of Iraqi refugees are highly skilled, especially those residing in Amman. According to interviews the SRSG conducted, there are up to 3000 Iraqi doctors in the Jordanian capital and perhaps even more in Damascus, Syria. Teachers and university professors are also part of this diaspora of trained personnel so needed in Iraq today.

Life for refugee children in Jordan is easier than in many other surrounding countries because there have been efforts made by the Jordanian government to facilitate their stay. However, children still suffer from a number of indirect challenges, especially with regard to access to education. Jordan has granted full access to their public primary schools for Iraqi refugees, but concern remains for secondary school and university access, which is not free, as private schooling is too expensive for most refugee families. During her meetings in Amman, the SRSG was also told that Iraqi school certificates are not easily transferable abroad, which effectively limits access to education for refugee children. UNICEF also reported that Iraqi children are frequently stigmatized in Jordanian schools. Many youths are also forced to leave schools and look for menial labor to contribute to the family income.

Access to health care, although provided, remains limited for Iraqi refugees, as they are treated at the level and priority of uninsured Jordanians¹⁵. The visa that is granted to Iraqis is also an issue because they are provided with a “humanitarian visa” with a three-month-duration, after which each family must pay 1.5 dinars (approximately 2 US\$) per day per member. And as Jordan is not party to the Convention relating to the status of refugees (1951), they do not have a legal status beyond that of being tolerated as “guests” and cannot be granted formal work permits.

The Office of the High Commissioner for Refugees (UNHCR) has taken the lead in responding to Iraqi refugee needs in all affected countries, but further support from donors and the Government of Iraq is needed. In July 2008 UNHCR supported the Iraqi government in launching a National Policy on Displaced Persons, which will play a central role with regard to these issues. Other agencies have started planning and implementing programs, but the response remains insufficient compared to the tremendous and growing needs of that population.

¹⁵ It should be noted however that the granting of visas is eased for Iraqis who need to come to Jordan for urgent medical/surgical treatments, especially for children who have been war wounded.

Recommendations and Follow-Up actions:

1. Encourage the Government of Iraq to develop a coordination body in the Office of the Prime Minister, for the coordination of IDP and refugee policy and support, with outreach at both the central and regional levels as well for refugee populations,
2. The Government of Iraq should consider allocating additional funds, both at the regional and central levels, for IDPs and ensure their equitable treatment..
3. Host countries should grant a recognized status to Iraqis and allow them to have full access to basic social services
4. Further financial support from donor governments as well as the Government of Iraq should be given to lessen the tremendous burden that refugee host countries are assuming.

6 – GIRL CHILDREN IN IRAQ

The protracted violence in Iraq has had negative effects on children in general and on girls in particular, especially concerning access to education. Most girls, especially in rural areas, are not aware that they have a right to education. Lack of attention is given to the girl child and peace education should be opportunity to allow gender awareness programs to be included in schools.



Gender based violence has been exacerbated by the continuing violence in the country and the lack of specific attention to the needs of girls is of grave an immediate concern. The conflict allows crimes to go unpunished and impunity now prevails in many parts of the country for crimes such as rape, honor killings, forced early marriages and domestic violence. This is especially true in rural areas where there is no formal judicial process and where women and girls are not aware of their rights or are too fearful to exercise them. Rape and other grave sexual violence are also a major and increasing concern in IDP and refugee populations.

Recommendations and Follow-up Actions:

1. The ministers of education and human rights should continue to work closely together and in collaboration with UN partners on the programs that highlight peace education, gender equality, and children's rights.
2. Gender awareness campaigns within Iraqi Armed forces and police at central and regional level should be organized in collaboration with the Ministry of Human rights and UN partners to fight against impunity for gender based violence.
3. service provision for victims of gender based violence should be strengthened as well as training of relevant professionals in terms of how to treat survivors of gender based violence
4. More women should be recruited in the police and judiciary, and perform substantive functions such as patrols and investigations to facilitate the gathering of testimony for gender based crimes and to link victims to appropriate response services.

7 – MINES AND EXPLOSIVES REMNANTS OF WAR (ERW)

Iraq is one of the most landmine and ERW-contaminated areas in the world. More than 55 million cluster sub-munitions were also dropped during the last two wars, making Iraq the most affected country. Although the entire country is affected, 3000 hazardous areas have been identified in the Kurdistan region alone (766 km²). Children amount for one fourth of mine victims and one third of victims of ERWs. The majority of children who encounter them die; the remainder of them are maimed.

Three Mine Awareness Committees exist in Iraq, two at the KRG level (Erbil and Suleimaniah) and one regional Mine Action Centre in Basra. They support mine education and clear contaminated lands that are obstacles for energy and infrastructure projects. Awareness campaigns, especially in schools, have helped to lower the number of victims significantly. According to UNICEF, between 2003 and 2006, more than 300.000 children have been reached with awareness raising programs in contaminated areas, but much more needs to be done. No records or maps of mines and ERWs remain. With the current capacity and equipment, it is estimated that it will take more than a century to clear the KRG area alone.

Recommendations and Follow-Up actions

1. The Iraqi government should support financially the work and coordination of the Mine Awareness Committees, and the International community is called upon to provide technical support to increase the capacity of such committees.
2. Both central and regional governments should mobilize more funds for de-mining and ERW removal and increase the level of awareness among the population by campaigns in schools and in public media. These campaigns will need to be further intensified should IDPs and refugees' return take place in the future.

8 – UNINTENDED DEATH AND INJURY TO CHILDREN IN MILITARY OPERATIONS, SO-CALLED “COLLATERAL DAMAGE”

The 7th Secretary General's report on children and armed conflict indicated that there is a substantial number of children who are victims of collateral damage in the Iraqi conflict. Precise data is not available and children continue to be caught in the cross-fire. Evidence shows that thousands of children have been killed, maimed or injured as a result of military operations, insurgent violence, terrorist acts or mass casualty bombings. Schools and health centers have also been both unintended and deliberate targets of strikes. This remains a serious issue and requires the full attention of UNAMI and the Iraqi and MNF-I forces.

Recommendations and Follow-Up action

1. More intensive monitoring and reporting on children killed in insurgent violence and terror attacks should be undertaken with a view toward responsabilizing those parties for policies which intentional kill children and innocent civilians.
2. Efforts should be undertaken by UNAMI with any necessary back-stopping of the office of the SRSR-CAAC with the Iraqi Armed forces and the MNF-I to dialogue on how to limit “collateral damage” in the Iraq context.
3. SRSR-CAAC should advocate and seek further engagement with MNF-I senior officials at capital level to engage on global discussions on how best to limit “collateral damage”.

9 – GENERAL FOLLOW-UP

1. Assist the Iraqi government to follow up on the creation of the Child protection focal point office within the Office of Vice President Mehdi and on the timely appointment of the focal point and seek to ensure adequate UN back-stopping as appropriate.
2. Continue and increase advocacy both in NY and in Iraq for an increase in the budget allocated for basic services.
4. In order to follow up on the critical issues discussed and to further collect information on and advocate for children affected by armed conflict in Iraq and strengthen monitoring and reporting on CAAC, the SRSG would seek a follow up mission to Iraq. This mission would allow her to meet with moral and religious leaders to gather their support in the fight against child recruitment and use by parties to the conflict. The SRSG would also take this opportunity to organize visits to MNF-I and Iraqi detention facilities, upon the invitation of both the Iraqi government and MNF-I authorities. Finally, if the security conditions are favorable, the SRSG would like to meet with children and families themselves and liaise with the civil society and the Iraqi population in Baghdad and in other affected areas of the country.

