

COALITION PROVISIONAL AUTHORITY ORDER NUMBER 98

IRAQI OMBUDSMAN FOR PENAL AND DETENTION MATTERS

Pursuant to my authority as Administrator of the Coalition Provisional Authority (CPA) and under the laws and usages of war, and consistent with relevant U.N. Security Council resolutions, including Resolutions 1483 and 1511 (2003),

Recognizing the need to promote the development of an effective framework for officials of the Iraqi Government to participate in the oversight of the detention of individuals in Iraq,

Determining the necessity of an independent means of investigating complaints of abuse and acting in accordance with UNSCR 1483 to promote the protection of human rights,

Acting in accordance with the consultations between the Coalition Provisional Authority and the Iraqi Interim Government,

I hereby promulgate the following:

Section 1 Definitions

- 1) "Detaining authority" means any Iraqi, Multinational Force or contracted personnel employed, engaged in, supervising or commanding, criminal or security custody in Iraq with respect to persons held in such custody for any period. This does not include Multinational Force detention of its own personnel.
- 2) "The Government" means the Iraqi Interim Government and the Iraqi Transitional Government.
- 3) "Complainant" means a person complaining of adverse treatment by a detaining authority.
- 4) "Conduct" means any action or inaction relating to the behavior or administrative functions of a detaining authority.
- 5) "Head of Government" means, before June 30, 2004, the CPA Administrator, and thereafter means the Prime Minister of the Iraqi Interim Government or the Iraqi Transitional Government.

Section 2

Office of the Ombudsman

- 1) The Head of Government may, on the recommendation of the Minister of Justice, appoint an Ombudsman on such terms and conditions, consistent with and subject to this Order, as are specified in the instrument of appointment.
- 2) For administrative purposes, and without prejudice to the powers and responsibilities vested in the Ombudsman under this Order, the Ombudsman shall be considered an officer of the Ministry of Justice and shall be entitled to a salary at a level commensurate with the duties and responsibilities of the office, as determined by the Minister of Justice, which salary shall not be reduced during the Ombudsman's tenure.
- 3) Subject to this Order, the Ombudsman holds office for such period, not exceeding seven years, as is specified in the instrument of his or her appointment and is eligible for re-appointment.
- 4) To be eligible for appointment as Ombudsman the person must:
 - a) be an Iraqi national,
 - b) be of high moral character and reputation for impartiality and integrity,
 - c) have a background of opposition to the Ba`ath Party, non-membership in the Ba`ath Party or membership that does not fall within the leadership tiers described in CPA Order 1, dated May 16, 2003 and entailed no involvement in Ba`ath Party activity, and
 - d) have no criminal record unless the record consists only of a political or false charge made by the Ba`ath Party regime.
- 5) The Head of Government may replace an Ombudsman from office of Ombudsman, if the Head of Government considers that one or more of the following grounds have been established, but such grounds shall be presented in writing and shall be subject to appeal to the Courts of Iraq:
 - a) acceptance of any gainful employment outside the duties of the office, unless with the permission of the Minister of Justice;
 - b) decision to stand for election as a member of the National Assembly or of the any provincial governate or council,

- c) resignation of the office by instrument in writing addressed to the Head of Government;
 - d) physical or mental disability affecting his or her capacity to perform his or her functions, or failure in the execution of his or her functions; or
 - e) conviction for a criminal offense punishable by a term of imprisonment.
- 6) The Ombudsman has and may exercise the functions conferred or imposed on the Ombudsman by or under this or any other law.

Section 3 Deputy and Assistant Ombudsmen

- 1) The Ombudsman may appoint one or more Deputy Ombudsmen and Assistant Ombudsmen. Deputy or Assistant Ombudsmen shall exercise such authority and perform such duties as the Ombudsman delegates, without limitation.
- 2) The Ombudsman may employ such assistance as he or she deems proper for the carrying out of any inquiry or investigation, and may, in writing, authorize any person so employed to inspect and report upon documents or other items, or (without affecting the generality of the foregoing) accounts, he/she considers relevant to the subject matter of the inquiry.

Section 4 Right to Complain

- 1) Subject to this section, any person (including a public authority) may complain in writing to the Ombudsman about the conduct of a detaining authority unless the conduct took place before the date of entry into force of this Order.
- 2) A member of the Government may complain to the Ombudsman on behalf of a complainant.
- 3) A detaining authority must permit and facilitate the confidential transmission of a complaint to the Ombudsman, including transmitting immediately and unopened any written matter addressed to the Ombudsman.
- 4) The Ombudsman may accept a complaint that is not in writing, in which case he or she shall reduce the complaint to writing within three days of receiving the complaint.

Section 5 Investigations

- 1) Notwithstanding any provision of law existing at the time of the signing of this Order, the Ombudsman may investigate conduct referred to in Section 16, regardless of whether a complaint has been filed, however nothing herein authorizes the Ombudsman to investigate any matter that occurred prior to the date of this Order.
- 2) In deciding whether to investigate or discontinue the investigation of a complaint, the Ombudsman may consider such matters as he or she thinks fit, including but not limited to whether:
 - a) the complaint is frivolous, vexatious or not in good faith,
 - b) the subject matter of the complaint is trivial,
 - c) the conduct complained of occurred at too remote a time to justify investigation, or
 - d) internal remedies have previously been exhausted.
- 3) Where the Ombudsman declines to investigate a complaint, or discontinues the investigation of such complaint, the Ombudsman shall inform the complainant in writing of his or her decision and the reasons for the decision.
- 4) The Ombudsman, upon deciding to investigate the conduct of a detaining authority, shall give notice of the decision:
 - a) to the complainant, and
 - b) to the head of the detaining authority and, if practicable, to the detaining authority.
 - c) A notice under this section must be in writing, must describe the conduct under investigation, and must, so far as practicable, identify the detaining authority and may request that the alleged perpetrator of the conduct be removed from direct control, supervision of, or contact with the complainant.

Section 6 Public Disclosure

An investigation under this Order shall not be disclosed to, and shall be made in the absence of, the public until completion. The names of individuals shall be withheld until the completion of any civil, criminal or administrative proceedings that may involve those individuals. The name of a complainant shall not be publicly disclosed without that person's consent

Section 7
Detaining Authority to Give Information

- 1) For the purposes of an investigation under this Order, and subject to Subsection (3) of this Section, the Ombudsman may require a detaining authority:
 - a) to give the Ombudsman a statement of information,
 - b) to produce to the Ombudsman any document or other thing, or
 - c) to give the Ombudsman a copy of any document.
- 2) A request under this section must be in writing, must specify or describe the information, document or thing required, and must fix a time and specify a place for compliance.
- 3) The Ombudsman may request the Multinational Force Commander or his delegate to produce documents, copies of documents or real evidence. The Multinational Force Commander or his delegate may deny such requests if concurrence would result in an unacceptable breach of operational security or if otherwise prevented or denied pursuant to law.
- 4) The Multinational Force Commander or his delegate may submit, and the Ombudsman shall consider, the results or report of any Multinational Force investigation concerning the subject of an investigation.
- 5) The Ombudsman shall maintain the confidentiality of all confidential or classified information and data obtained, with special attention being given to the safety of complainants and witnesses.

Section 8
Inquiries

- 1) In an investigation under this Order, the Ombudsman may make or hold inquiries.
- 2) Where it is shown to the satisfaction of the Ombudsman that any person is substantially and directly interested in any subject-matter of the inquiry, or that the person's conduct in relation to any such matter has been challenged to the person's detriment, the Ombudsman may authorize such person to appear at the inquiry. Persons involved in such an inquiry have the right to be represented by legal counsel.
- 3) Any legal counsel so appointed and any person so authorized or the person's legal counsel may, with the leave of the Ombudsman, examine or cross-examine any

witness on any matter which the Ombudsman deems relevant to the inquiry.

- 4) The Ombudsman may by notice in writing summon any person who is not a member of the Multinational Force to attend an inquiry at a time and place named in the summons, and then and there to give evidence and to produce any documents or other things in the person's custody or control which the person is required by the summons to produce.
- 5) The Ombudsman may request the Multinational Force Commander or his delegate to permit the attendance of Multinational Force personnel as witnesses at an inquiry. The Multinational Force Commander or his delegate may deny such requests if he or his delegate determines that compliance would result in an unacceptable breach of operational security, provision of the personnel would prejudice the conduct of operations, such witnesses are not reasonably available or their attendance is otherwise prevented by law.
- 6) The Ombudsman may administer an oath to any person appearing as a witness at the inquiry, whether the witness has been summoned or appears without being summoned, and may examine the witness upon oath or affirmation.
- 7) Every witness who has been summoned to attend the commission shall appear and report from day to day unless the witness is excused from attendance or until the witness is released from further attendance by the Ombudsman.
- 8) A witness summoned, in accordance with Subsection (4) of this Section, to attend before the Ombudsman shall not be entitled to refuse to:
 - a) be sworn or to make an affirmation,
 - b) answer any question relevant to the inquiry put to the witness by the Ombudsman,
or
 - c) produce any document or other thing in the witness's custody or control which the witness is required by the summons to produce.
- 9) Nothing in this Order shall make it compulsory for any witness:
 - a) to answer any question or produce any document or other thing if the witness has a reasonable excuse for refusing, or
 - b) to disclose any operationally classified information or material.

Section 9
Inspection and Copies of Documents

- 1) The Ombudsman may retain documents or other material for such reasonable period as required to complete an inquiry.
- 2) When the retention of a document or other material ceases to be reasonably necessary for the purposes of the inquiry to which it relates, the Ombudsman is required, if a person who appears to the Ombudsman to be entitled to the document or other thing so requests, to cause it to be returned to that person.
- 3) The requirement under Subsection (2) does not apply if the Ombudsman has furnished the document or other thing or proposes to furnish it to a person or body referred to in section 12 or the Ombudsman deals with it or proposes to deal with it otherwise according to law.

Section 10
Communication of Information

The Ombudsman may communicate any information or furnish any material (including evidence) that it obtains in the course of the inquiry conducted by it to a law enforcement agency, if the information or material relates or may relate to a breach of a law of Iraq in relation to Iraqi detaining authorities.

Section 11
Entry to Premises

In an investigation under this Order, the Ombudsman may, at any time:

- a) enter and inspect any premises occupied or used by a detaining authority to deprive persons of their liberty, and
- b) inspect any document or thing in or on the premises,

subject only to the limitation that the Multinational Force Commander or his delegate may deny access for reasons of imperative military necessity as an exceptional and temporary measure, or prevent the inspection of operationally classified documents.

Section 12
Persons to be Heard

- 1) In an investigation under this Order, the Ombudsman shall give an opportunity to the subject of the investigation to make submissions.

- 2) Where, in an investigation under this Order, the Ombudsman considers that there are grounds for adverse comment in respect of any person, the Ombudsman, before making any such comment in any report, shall, so far as practicable:
 - a) inform that person of the substance of the grounds of the adverse comment, and
 - b) give the person an opportunity to make submissions.

Section 13 Consultation with the Minister of Justice

- 1) In an investigation under this Order, the Ombudsman shall, on request by the Minister of Justice, consult the Minister on the conduct of the investigation.
- 2) Before publishing a report under this Order the Ombudsman:
 - a) shall inform the Minister of Justice that he or she proposes to publish such a report, and
 - b) shall, on request by that Minister, consult that Minister.

Section 14 Report of Investigation

- 1) Where, in an investigation under this Order, the Ombudsman finds that the conduct the subject of the investigation, or any part of the conduct, is of any one or more of the following kinds:
 - a) contrary to law,
 - b) unreasonable, unjust, oppressive or improperly discriminatory,
 - c) in accordance with any law or established practice but the law or practice is, unreasonable, unjust, oppressive or improperly discriminatory,
 - d) based wholly or partly on improper motives, irrelevant grounds or irrelevant consideration,
 - e) based wholly or partly on a mistake of law or fact, or
 - f) otherwise wrong,

the Ombudsman shall make a report accordingly, giving his or her reasons.

- 2) In preparing his or her report, the Ombudsman will consider any report of an investigation concerning the same or a similar subject that the Multinational Force has made available for his or her review.
- 3) In a report under this section, the Ombudsman may recommend that:
 - a) action be taken to rectify, mitigate or change the conduct or its consequences,
 - b) reasons be given for the conduct,
 - c) any law or practice relating to the conduct be changed,
 - d) compensation be paid to any person, or
 - e) any other appropriate actions be taken.
- 4) The Ombudsman shall give a report under this Section to the:
 - a) Head of Government and the Minister of Justice, and
 - b) the head of the detaining authority whose conduct is the subject of the report.
- 5) The Ombudsman may give a copy of a report or summary of the factual findings and recommendations under this Section:
 - a) where the investigation arises out of a complaint to the Ombudsman, to the complainant, and
 - b) to the detaining authority to whose conduct the report relates.
- 6) The person to whom a report is given under Subsection (3) (b) may, and on request by the Ombudsman shall, notify the Ombudsman of any action taken or proposed in consequence of a report under this section.

Section 15 **Serious Misconduct**

Where the Ombudsman is of the opinion that a detaining authority is or may be guilty of misconduct in the course of performing his or her functions to such an extent as, in the opinion of the Ombudsman, may warrant dismissal, removal or punishment, the Ombudsman shall report the opinion to the Head of Government, the Minister of Justice and to the head of the detaining authority, giving reasons for the opinion.

Section 16
IncrimINARY Statement

- 1) Where a person is required under this Order to give a statement that tends to incriminate that person, neither the requirement nor the statement may be used in any proceedings against that person.
- 2) Subsection (1) applies whether the person required to give a statement objects to giving it or not.

Section 17
Disclosure by Ombudsman or Officer

The Ombudsman shall not, nor shall an officer of the Ombudsman, disclose any information obtained by the Ombudsman or officer in the course of the Ombudsman's or officer's inquiry or investigation, unless the disclosure is made:

- a) where the information is obtained from a detaining authority, with the consent of the head of that authority or of the Minister of Justice,
- b) where the information is obtained from any other person with the consent of that person, or
- c) the disclosure is pursuant to section 12 or 16 herein.

Section 18
Offenses

- 1) A person shall not:
 - a) without lawful excuse, willfully obstruct, hinder or resist the Ombudsman or an officer of the Ombudsman in the exercise of the Ombudsman's or officer's powers under this or any other Order, law or regulation,
 - b) without lawful excuse, refuse or willfully fail to comply with any lawful requirement of the Ombudsman or an officer of the Ombudsman under this or any other Order, law or regulation, or
 - c) willfully make any false statement to or mislead, or attempt to mislead, the Ombudsman or an officer of the Ombudsman in the exercise of the Ombudsman's

or officer's powers under this or any other Order, law or regulation.

The maximum penalty for these offenses shall be USD\$100.

- 2) A person who uses, causes, inflicts or procures any violence, punishment, damage, loss or disadvantage to any person for or on account of:
 - a) complaining to the Ombudsman,
 - b) assisting the Ombudsman, or
 - c) providing evidence to the Ombudsman,

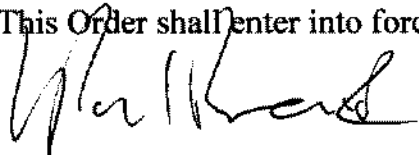
is guilty of a felony offense.

The maximum penalty for these offenses shall be USD\$1,000 or imprisonment for 5 years, or both.

- 3) This Order is subject to the provisions of any United Nations Security Council Resolution, treaty, agreement or law dealing with the status of non-Iraqi citizens in Iraq.

**Section 19
Entry into Force**

This Order shall enter into force on the date of signature.

 6/27/04

L. Paul Bremer, Administrator
Coalition Provisional Authority