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## **CLIMATE OF FEAR: SEXUAL VIOLENCE AND ABDUCTION OF WOMEN AND GIRLS IN BAGHDAD**

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## I. SUMMARY

At a time when insecurity is on the rise in Baghdad, women and girls in Baghdad told Human Rights Watch that the insecurity and fear of sexual violence or abduction is keeping them in their homes, out of schools, and away from work and looking for employment. The failure of the occupying power to protect women and girls from violence, and redress it when it occurs, has both immediate and long-term negative implications for the safety of women and girls and for their participation in post-war life in Iraq.

Reports of sexual violence and abduction of women and girls abound in Baghdad. Medical practitioners, victims, witnesses, and law enforcement authorities have documented some of these crimes. Human Rights Watch is concerned that many other cases go unreported and uninvestigated. Some women and girls fear that reporting sexual violence may provoke “honor” killings and social stigmatization. For others, the obstacles to filing and pursuing a police complaint or obtaining a forensic examination that would provide legal proof of sexual violence hamper them from receiving medical attention and pursuing justice. Without a referral from the police, women and girls cannot receive forensic examinations and, in some cases, women and girls who have sought assistance for sexual violence were refused medical attention because some hospital staff do not regard treating victims of sexual violence as their responsibility, or give such care low priority given their limited resources due to the war and in its aftermath. Whatever the reason, both documented and rumored stories of sexual violence and abduction are contributing to a palpable climate of fear.

Many of the problems in addressing sexual violence and abduction against women and girls derive from the U.S.-led coalition forces and civilian administration’s failure to provide public security in Baghdad. The public security vacuum in Baghdad has heightened the vulnerability of women and girls to sexual violence and abduction. The police force is considerably smaller and more poorly managed when compared to prior to the war. There is limited police street presence; fewer resources available to police to investigate; little if any record keeping; and many complaints are lost. Many hospitals and the forensic institute are unable to operate twenty-four hours a day as they did before the war, thus preventing women from obtaining medical treatment and the forensic examinations necessary to document sexual violence in a timely manner.

The Coalition Provisional Authority (CPA) has announced a commitment to train and educate police, including training on human right standards.<sup>1</sup> In the meantime, as the occupying power, U.S.-led coalition forces have the responsibility to ensure public order and address Iraq’s law enforcement needs.

Other problems in addressing sexual violence and abduction in Baghdad, and Iraq more broadly, are long-term problems that have needed to be addressed for many years. Women and girls live in an atmosphere where, if they are raped or even believed to have been raped, they have poor legal recourse and have well-grounded fears of social ostracism, rejection by their families, and even physical violence. Although rape and abduction are serious crimes under Iraqi law, there is a long-standing cultural stigma and shame attached to rape that positions victims as the wrongdoer and too frequently excuses or treats leniently the perpetrator.

Moreover, there are provisions in Iraqi law that address sexual violence and abduction but do not adequately protect the human rights of women and girls from these violations. Some of the more notable of these are provisions in the Penal Code that allow a man to escape punishment for abduction by marrying the victim; and allow for significantly reduced sentences for so-called honor killings, for rape and other cases of sexual violence. In addition to these barriers in the law, Human Rights Watch investigated cases where police were reluctant to investigate cases of sexual violence and abduction and other cases where the police have blamed the victim, doubted her credibility, showed indifference, or conducted inadequate investigations. For these reasons, many women are reluctant to file a complaint.

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<sup>1</sup> See Al Guart, “Baghdad Bernie Teaching Civil Rights from Wrong,” *New York Post*, June 22, 2003; Amy Waldman, “U.S. Struggles to Transform a Tainted Iraqi Police Force,” *New York Times*, June 30, 2003; Keith Johnson and Alexei Barrionuevo, “U.S. Announces Indigenous Force To Police Iraq: Goal Is To Prevent Sabotage Of Power and Oil Facilities That Threatens Unrest,” *Wall Street Journal*, June 26, 2003.

At the time of writing, plans for Iraq's reconstruction are taking shape and the rights of women and girls are at stake. It is essential that all parties involved in these plans address the state's inadequate protection of the rights of women and girls. Those involved in the reconstruction process should ensure that any existing and new trends toward treating women and girls unequally before the law and discouraging women and girls from reporting sexual violence, or punishing women and girls for being the victims of crimes of sexual violence, are countered.

### **Methodology**

This report is based on research conducted by Human Rights Watch in Baghdad, Iraq, from May 27, 2003 to June 20, 2003. A female researcher conducted over seventy interviews with victims of sexual violence and abduction, Iraqi police officers, U.S. military police officers, U.S. civil affairs officers, health practitioners, nongovernmental organizations, intergovernmental organizations, and members of the CPA. Human Rights Watch found twenty-five credible reports of women who were victims of sexual violence or abducted, and took direct testimony from four victims. Because of the extreme consequences that face victims of sexual violence, all victims' names in this report are pseudonyms, and other details have been omitted in order to protect the confidentiality of the women and girls who agreed to share their experiences with Human Rights Watch.

### **Recommendations**

#### **To the Coalition Provisional Authority (CPA) and Iraqi authorities:**

- Abide by international standards that ban sexual violence and discrimination against women and children, with particular regard to the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child.
- As part of general judicial reform, examine legislation that in intent or effect treat women and girls unequally, and legislation relating to rape and other sexual violence against women and girls to ensure its compliance with international standards. In particular, repeal Iraqi Penal Code articles 398 and 427.
- Take measures to include women into the police force, including by establishing special units with women staff to deal with sexual crimes.
- Establish a clear protocol for investigating sexual violence. This protocol should specify, among other things, how and where victims of sexual violence are to receive forensic medical attention. Distribute this protocol to all relevant Iraqi or other officials.
- The Ministry of Labor and Social Affairs should strengthen support services for victims of rape and sexual violence, such as counseling, testing, health and medical services, legal and financial services.
- The Ministry of Interior and its coalition advisors should ensure that investigating officers handling sexual violence, abduction, and rape cases specialize in such investigations and be trained in the issues surrounding gender violence and the use of medical and other forensic evidence.

#### **To the U.S.-led coalition military forces:**

- Until the Iraqi police are fully capable of doing so, the U.S. should deploy a special investigative unit to investigate sex-based and trafficking crimes against women and girls. This unit should comprise experienced individuals trained in such work, and should employ female as well as male investigators and translators.

- Train military and Iraqi police about the need for sexual violence victims to have access to immediate medical and forensic attention for the collection of evidence.
- Clarify lines of communication between civil affairs officers, whom many women, girls, or their relatives may approach to report crimes of sexual violence, and the military police and Iraqi police, to ensure maximum coordination and information-sharing about cases, leads, and patterns.
- Until Iraqi police forces are able to do so, publish and widely disseminate crime statistics, which would include both crime reports received as well as perpetrators apprehended. Work with the Iraqi police to ensure that Iraqi record-keeping matches that of coalition forces.

**To the donor community:**

Special priority should be given to programs that:

- Review and reform existing laws to ensure that they are consistent with Iraq’s obligations under international human rights standards, do not discriminate on the basis of sex or gender, and afford women and girls equality of access and opportunity.
- Train law enforcement and judicial personnel in recognizing, investigating, and prosecuting sexual violence, including sexual violence against children, and assist law enforcement agencies in acquiring necessary forensic skills and equipment for investigating cases of sexual violence.
- Provide financial and technical assistance to civil society organizations providing services to women and girls who have suffered sexual violence, trafficking, forced marriage, or who fear reprisals from their families in the form of “honor” killings. Such services may include shelter, legal services, counseling and testing, and medical assistance, and should be sensitive to the special needs of street children, internally displaced persons and refugees, and members of disadvantaged social groups.

**II. SEXUAL VIOLENCE AND ABDUCTION OF WOMEN AND GIRLS**

An accurate count of women and girl victims of sexual violence is almost impossible to achieve since many victims do not report such cases or even seek medical attention. In addition, the breakdown in police record keeping and widespread looting of court and hospital records that ensued after U.S. troops entered Baghdad means that there are no reliable figures or statistics available from Iraqi authorities regarding complaints or charges that are filed. The perception of the people on the ground, however, is that there has been a sharp increase in the cases of sexual violence since the war. Human Rights Watch obtained credible information on twenty-five cases of sexual violence and abduction and interviewed four victims of rape and abduction in Baghdad in the period between May 27, 2003 and June 20, 2003. Two of the cases involved girls under sixteen years of age. At one police station that Human Rights Watch visited, Iraqi police officers said that prior to the war they typically received one rape complaint every three months but had seen several cases in the few weeks it had been reopened since the war.<sup>2</sup> Police investigators at the East Baghdad station stated categorically that the number of cases reported was substantially higher than before the war. “It is much worse,” said one Iraqi police investigator who asked not to be identified.

There is no safety, and there is too much crime, too many cases, even to pursue... Some gangs specialize in kidnapping girls, they sell them to Gulf countries. This happened before the war too, but now it is worse, they can get them in and out without passports. We have so many other cases, we have no authority to solve or investigate them.<sup>3</sup>

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<sup>2</sup> Human Rights Watch interview with police officers, al-Karrada police station, June 4, 2003.

<sup>3</sup> Human Rights Watch interview with Iraqi police investigator, Baghdad June 16, 2003.

Despite indications from police that there has been an increase in sexual violence in Baghdad, the director of the Institute of Forensic Medicine (*Ma`had al-Tibb al-`Adli*), Dr. Faek Amin Bakr, told Human Rights Watch that before the war the institute, which is responsible for conducting rape examinations, received approximately seventeen to twenty cases of rape per month. He said that since the war the institute had only received one case, but stressed that the institute had turned away victims of sexual violence and had significantly shortened its working hours due to the security situation.<sup>4</sup>

The cases of Saba A., Salma M., Muna B., and Dalal S. (not real names or initials) are in keeping with other accounts of rape and abduction that Baghdad women and girls and their families cited as the primary reason that they feared to leave their homes.

On May 22, 2003, at approximately 4:00 p.m., nine-year-old Saba A. was abducted from the stairs of the building where she lives, taken to an abandoned building nearby, and raped. A family friend who saw Saba A. immediately following the rape told Human Rights Watch:

She was sitting on the stairs, here, at 4:00 p.m. It seems to me that probably he hit her on the back of the head with a gun and then took her to [a neighboring] building. She came back fifteen minutes later, bleeding [from the vaginal area]. [She was still bleeding two days later, so] we took her to the hospital.<sup>5</sup>

Human Rights Watch saw a copy of the medical report by the U.S. military doctor who treated Saba A. six days later. The report documented bruising in the vaginal area, a posterior vaginal tear, and a broken hymen.<sup>6</sup> Lieutenant Monica Casmaer, a physician's assistant attached to a U.S. military unit, examined Saba A. with the pediatrician. She described the injuries as fairly severe, especially given the time that had elapsed before she was examined.<sup>7</sup>

Lt. Casmaer said she also treated a woman who reported that she had been walking home from the supermarket in the middle of the day, on approximately May 12, when she was abducted and raped by unknown perpetrators. Lt. Casmaer said she saw bruising consistent with the woman's account of struggle.<sup>8</sup>

Forty-nine-year-old Salma M. told Human Rights Watch that armed men abducted her from her home on a Thursday night in early May. She told Human Rights Watch her captors gang-raped her at an unknown location before dropping her in an unfamiliar district of Baghdad the following morning. The attack seems to have been meted out by individuals seeking reprisal against persons associated with Saddam Hussein's government. Salma M. lives next door to a wealthy man who was known to do business with many people "from Tikrit," and she herself is rumored to have had connections with many of them.<sup>9</sup> Salma M. told Human Rights Watch,

I was here, on the stairs by the door. A car pulled up, a Volkswagen, it was painted as a taxi. One man got out. He asked me about someone, a certain Mr. X, and I said no, I didn't know him. My daughter was on the upper floor, I was on the ground floor. Then three more men appeared, they became four. They were armed, they put guns to my head and said come with us. I screamed and said take the pistol away. My daughter started to scream. They pulled my hair and pushed me in the car and they started

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<sup>4</sup> Human Rights Watch interview with Dr. Faek Amin Bakr, Baghdad, June 1, 2003.

<sup>5</sup> Human Rights Watch interview, (name withheld), June 10, 2003.

<sup>6</sup> Human Rights Watch interview with physician's assistant Lieutenant Monica Casmaer, attached to the 4-64 armored battalion, Second brigade, Third Infantry Division, Baghdad, May 31, 2003, who was present at the examination; and medical report signed by Dr. Eric Schobitz, staff pediatrician, CPT MC U.S. Army, dated May 28, 2003.

<sup>7</sup> Human Rights Watch interview with physician's assistant Lieutenant Monica Casmaer, attached to the 4-64 armored battalion, Second brigade, Third Infantry Division, Baghdad, May 31, 2003.

<sup>8</sup> Human Rights Watch interview with physician's assistant Lieutenant Monica Casmaer, attached to the 4-64 armored battalion, Second brigade, Third Infantry Division, Baghdad, May 31, 2003.

<sup>9</sup> Human Rights Watch interview with Salma M., Baghdad, June 20, 2003.

shooting at the house, more than fifty shots. My daughter was screaming the whole time. Many neighbors started to shoot too, but they couldn't catch them.<sup>10</sup>

Salma M. described what happened after the men forced her into the car:

They made me put my head down between my legs, and put a pistol to my head. They said that if I moved my head I'd be killed, so I don't know where they took me.... [Then they took me into a building where] they were hitting me on the head and arms, and I still can't stretch out because my whole body hurts. They used hot water on my head, my eyes still burn from that and my arms. They raped me, in many, many ways. They kept me until the next day, I begged them, I said I have a young child, I said he might die if I leave him alone. And so then they left me alone. When I came home my appearance was so bad, my hair was a mess, my mouth was bloody and my legs too. They burned my legs with cigarettes. They bit me, on my shoulders and arms. All of them raped me, there were five or six more than the four who kidnapped me, there were ten of them total and I was raped by all ten of them.<sup>11</sup>

Salma M. showed Human Rights Watch an oblong scar on her right ankle that she said came from the cigarette burns. A journalist "embedded" with the U.S. military unit who responded when Salma M. returned home described Salma M. as in shock, her face swollen and bite marks on her neck and shoulders.<sup>12</sup> Salma M. did not see a doctor, although one of the police officers recommended it. She explained, "I was afraid to go to a doctor. I couldn't—I had a breakdown, I was overcome, I couldn't think about seeing anyone, I just wanted to be taken away."<sup>13</sup> Salma M. told Human Rights Watch that she fears the perpetrators will return, and that she lays awake at night, certain every time a taxi drives down the street that her attackers have returned. Her fear for herself and her family is so great that she does not let her eighteen-year-old daughter leave the house.

Muna B., a fifteen-year-old, told Human Rights Watch that armed men held her at a house on the outskirts of Baghdad for approximately four weeks before she escaped on June 8, 2003. She described how the men had abducted her along with her two sisters, age eleven and sixteen, on or around May 11 from their Basra neighborhood.<sup>14</sup>

I was walking with my two sisters, one is older, another younger. They came in a cab, four men. They covered our eyes and mouths and took us, one had a rifle and another a pistol. It was in my neighborhood, we were going to the market. We drove for a long time, but I didn't know where we were going. They covered our eyes, and I couldn't see.<sup>15</sup>

Muna B. said the men held the sisters at a house with seven other young children: three girls (one approximately age ten, and two approximately the same age as herself), and four boys (two were five or six years old and the other about eleven). In addition to the four men who abducted her, Muna B.'s captors included a woman who appeared to be the girlfriend or wife of one of the other perpetrators. Muna B. said one of the men beat all the children on the first day they arrived. "We were crying and shouting, so he beat us, he used a plastic hose. It struck me on my back, near my shoulders. But he really beat my elder sister."<sup>16</sup>

The next day the men separated Muna B. from her sisters and put her in a room alone. During this time she heard them rape her older sister.

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<sup>10</sup> Human Rights Watch interview with Salma M., Baghdad, June 17, 2003.

<sup>11</sup> Human Rights Watch interview with Salma M., Baghdad, June 17, 2003.

<sup>12</sup> Human Rights Watch interview with Natalie Pompilio, *Philadelphia Inquirer*, June 16, 2003.

<sup>13</sup> Human Rights Watch interview with Salma M., Baghdad, June 17, 2003.

<sup>14</sup> Muna B. did not know the exact date, but recalled that it was a Sunday and estimated that she was held approximately one month. Human Rights Watch interview with Muna B., age fifteen, Baghdad, June 13, 2003.

<sup>15</sup> Human Rights Watch interview with Muna B., age fifteen, Baghdad, June 13, 2003.

<sup>16</sup> Human Rights Watch interview with Muna B., age fifteen, Baghdad, June 13, 2003.

They did bad things to my sister. They beat her, and they did bad things. One night, I heard her shouting, and then a week later, they brought her to me, but only for one hour. She told me that they had slept with her, she was crying. She only told me about that one night, but she said that all [four men] did it.... It didn't happen to me, the oldest man didn't let them. They dragged me by my hand, and said that they wanted to sleep with me. The older one said, "Step back and leave her alone." That was after they did it to my sister, the following day.<sup>17</sup>

On several occasions, the men brought other people who looked the children over. Muna B. believed them to be traffickers who were going to bid on children.

They brought in people they wanted to sell us to. They would bring men, they would look at us, and then bargain, negotiate a price. One was a fat woman wearing a veil, and another time two men came. They bargained and negotiated the prices, they would talk and laugh but not let us know, the [buyers] would ask how much, and then [the captors] would wink their eyes and say "don't talk now, in front of them"... Then they would talk to us, saying "don't worry, we'll make you happy, we'll give you a happy life, don't worry, don't cry".... I think they wanted us to be dancers or something like that, they told us that. Ibtisam [the female captor], she dances, and she tried to teach me to dance. I didn't want to, and I didn't look at her when she danced.<sup>18</sup>

The last "buyer" came in early June. He returned the following day with another man. Convinced that she and her sisters would be sold to these men, Muna B. managed to escape when her captors left to get food for breakfast. She ran through fields for approximately fifteen minutes until she reached a road, then flagged down a car which took her to Baghdad, where she eventually made her way to U.S. soldiers who took her to a police station. When Human Rights Watch spoke to Muna B. on June 13, 2003, she had not seen her sisters since her escape in early June and feared that they were still in captivity or that they had been sold.

Muna B.'s account resembles that of Dalal S., a twenty-three-year old woman abducted from Baghdad on May 15, 2003. Dalal S. told Human Rights Watch that she was walking with her mother and other relatives to a social event when armed men abducted her from a crowded street. A witness to Dalal S.'s abduction, a student who happened to be on the street at the time, told Human Rights Watch, "It was 8:30 p.m., a car was standing there, a pickup truck, a white one. They were pretending to push the car." The witness walked by, and when he had gone a few paces further heard shooting. "I turned around. We thought they were shooting at us, but saw they were shooting at those people."<sup>19</sup>

Dalal S.'s mother was with her when Dalal S. was taken.

We saw a car, a pickup, standing. Their faces immediately looked strange to me, they were watching a woman in an apartment building there... Then they saw [Dalal S.]. The street was crowded, it was a commercial street, and the shops were open. I grabbed my little girl [Dalal S.] and moved away from those guys, but there were six of them, and one of them grabbed Dalal and got in the car. They began shooting, I jumped to open the door of the car and that's when the shooting started. I asked my nephew to help, but they took Dalal in the car, there were more of them in the back. They picked her up and it was like something flew from us. It all happened in less than one minute.<sup>20</sup>

Ripped away from her relatives, Dalal S. was driven around for three hours and then eventually taken to a farm that she believes was on the outskirts of Baghdad. The perpetrators seemed to be brothers, and one told Dalal S. he was a former prisoner who had been sentenced to eighty years' imprisonment but was amnestied by

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<sup>17</sup> Human Rights Watch interview with Muna B., age fifteen, Baghdad, June 13, 2003.

<sup>18</sup> Human Rights Watch interview with Muna B., age fifteen, Baghdad, June 13, 2003.

<sup>19</sup> Human Rights Watch interview with Muhannad Walid Shakr, age twenty-one, Baghdad, June 11, 2003.

<sup>20</sup> Human Rights Watch interview with Dalal S.'s mother, Baghdad, June 20, 2003.



Saddam Hussein in October 2002. They gave Dalal S. various accounts of who they were and why they had abducted her.

When they took me, at first they said it was because someone wanted to marry me but my parents hadn't consented, then another said I looked like his sister-in-law, who had caused him big problems.... The third one said that it was because I was wearing trousers. He said, "Why are you wearing trousers, the American soldiers are looking at you." But really, they just wanted to deceive me, to take what they wanted.... They wanted to kidnap anyone, they had their mind to take four girls waiting for a taxi, I think they wanted to rape them, but they couldn't take them so they took me instead.<sup>21</sup>

The men held Dalal S. at the farm until the next evening, when they sent her back to Baghdad. Before leaving her abductors made her don an *abaya* to disguise her identity from neighbors who might see her.<sup>22</sup>

They didn't want me to be discovered by the neighbors, they wanted me to look like a member of their family. Also, they weren't going to return me to my own neighborhood, they were going to hire a taxi for me alone, and they were afraid of what would happen to me.<sup>23</sup>

Dalal S. did not want to talk about the details of what had happened to her when Human Rights Watch interviewed her, saying that she was trying to move beyond the incident. However in an interview with a German journalist, Dalal S.'s mother confided that Dalal S. had been raped during the abduction.<sup>24</sup>

In addition to these cases, Human Rights Watch received several reports of other women who were abducted and taken outside of Baghdad. For example, U.S. military police reported to Human Rights Watch that on June 17, 2003, two women came to New Baghdad police station and reported that their companion had just been abducted while they were walking down the street. Although military police went to the scene they failed to find the perpetrators.<sup>25</sup> Iraqi police in the station failed to take a report from the women, and only referred them to a police station in the district where they said the kidnapping had taken place (although the location was closer to the police station to which the girls appealed).<sup>26</sup>

In another case, Dr. Enas al-Hamadi, a doctor at the al-'Alwiyya maternity hospital, told Human Rights Watch that she had treated two young women who had been transferred to the hospital by police on Friday, May 9, 2003. Dr. al-Hamadi said the young women, in their late teens, had told her they had been walking down the street when they were abducted by men in a vehicle; they were driven to a location on the outskirts of town, raped repeatedly, and then were returned to Baghdad the next day. According to Dr. al-Hamadi, the two women showed signs of bruising and vaginal tears consistent with their accounts that they had been raped.<sup>27</sup>

### III. IMPACT OF FEAR

We want security. Although the Americans sometimes are at the schools, to have tanks guarding us is not the point. You can't walk the streets alone. Tomorrow my daughter has exams, and she will be safe inside the school, but to there and from there, it is dangerous. We need security, then freedom. My husband told the Americans, you will make us say we prefer Saddam Hussein's rule, because then it was safe, even though everyone hated him. Even though he was oppressive, at least it was safe. Yesterday I went to a funeral, and all the women were afraid, they were

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<sup>21</sup> Human Rights Watch interview with Dalal S., Baghdad, June 20, 2003.

<sup>22</sup> An *abaya* is a black head and full-length body covering worn by conservative women.

<sup>23</sup> Human Rights Watch interview with Dalal S., Baghdad, June 20, 2003.

<sup>24</sup> Human Rights Watch interview with Birgit Kaspar, ARD German Broadcasting Network, Baghdad, June 11, 2003.

<sup>25</sup> Human Rights Watch interview with U.S. military police Lieutenant Brad Manning, 307 MP company, 519 Battalion, Baghdad, June 18, 2003.

<sup>26</sup> Human Rights Watch interview with Iraqi police officer at New Baghdad station, Baghdad, June 19, 2003.

<sup>27</sup> Human Rights Watch interview with Dr. Enas al-Hamadi, Baghdad, June 2, 2003.

worried about themselves and what might happen to them for venturing outside, just to go to a funeral.<sup>28</sup>

Reports of sexual violence, abductions, and other violent crime have contributed to the widespread perception that women and girls in Baghdad are not safe outside their homes. Human Rights Watch interviews with women, girls, and their families confirmed the impact these fears have on people's everyday lives and illustrate the inadequacies of laws, policies, and mechanisms in place to meet the specific needs of women and girls.

Abduction of women and girls from the streets is a phenomenon Iraqis cite as new: "This never happened before the war" was an oft-repeated refrain. Throughout the city, Iraqis talk of women and girls being seized from public locations, particularly while walking down the street, even in broad daylight. Out of the thirty or so women and girls Human Rights Watch interviewed in Baghdad, virtually every one cited fear of abduction and sexual violence as justification for not returning to or looking for work, holding children back from school, and in many cases, preventing young women and girls from leaving the house. In late May, women and girls were rarely seen outside in Baghdad, even during daylight hours when male shoppers and workers crowded the sidewalks and streets. Although by the end of June women formed more of a public presence, they continued to tell Human Rights Watch that they limited their movements and remained afraid. Because of the real or perceived prevalence of such attacks, women and girls clearly believe they are more vulnerable than they were before the war.

### **Access to Medical Treatment**

Insecurity affects women's and girls' access to health in complex ways. Women and girls may have greater difficulties gaining access to routine and preventive health care, including reproductive health care when they are dependent on male family members to escort them to hospitals and medical clinics.<sup>29</sup> For victims of sexual violence, informing a male family member about an attack may expose them to additional violence as punishment for their "transgression." Women and girls who do seek health care may find that female staff at hospitals and clinics are also staying home, leaving them to choose between foregoing treatment or accepting treatment from a male doctor who may lack appropriate expertise or sensitivity.

Delays in or denial of medical treatment to victims of sexual violence are especially troubling because they deprive women and girls of access to medications to treat sexually transmitted diseases that untreated can result in infertility. Victims who do not receive treatment at the time of an attack may be more reluctant to seek it later.

Hospital personnel, including at the maternity hospital, told Human Rights Watch that they do treat victims of rape who require medical intervention. However, Human Rights Watch documented several cases where women and girls who sought treatment for sexual violence at hospitals in Baghdad were turned away. In some cases hospital staff told victims that they could not be treated because the victims also wanted forensic examinations, which the staff claimed fell outside their competencies.<sup>30</sup> Victims who sought treatment at the forensic institute were also routinely turned away on the grounds that that institute only conducts diagnostic examinations and does not provide treatment for injuries or post-exposure prophylaxis for sexually transmitted diseases.

Saba A., the nine-year-old rape victim, was turned away from hospitals and the forensic institute. A friend of the family described the difficulties he faced obtaining treatment for the child, who was still bleeding days after being raped.

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<sup>28</sup> Human Rights Watch interview with Dalal S.'s mother, Baghdad, June 20, 2003.

<sup>29</sup> For example, the World Health Organization noticed an increase in reports of malnutrition the latter half of May; one hypothesis they are currently exploring is that such cases were only reported when mothers felt safe to leave their houses to take children to hospital. Human Rights Watch interview with Julia Stucky, World Health Organization, June 7, 2003.

<sup>30</sup> See section "Barriers to Obtaining Forensic Medical Examinations" for a discussion of the barriers to obtaining a forensic examination to document sexual violence.

We took her to Medical City [a complex of hospitals in East Baghdad]. There, they said they couldn't treat her, they said that she needed stitches. I took her to the forensic center, they told me to go there. At Medical City, they knew what had happened to Saba A., she was bleeding when it happened. But then they wouldn't treat her. At the forensic institute, I didn't go to the doctors, I went to the general manager. I talked to him, and he said that they didn't receive such cases, that I would have to bring a report from the police. But there were no police stations helping then.<sup>31</sup>

A CNN journalist was interviewing the forensic institute's director when Saba A. was taken there. Furious that the hospital refused to treat the child, she tried to help Saba A. get medical assistance. After two days, the journalist found a sympathetic doctor with the U.S. military unit stationed nearby and was able to arrange for a unit pediatrician to examine and treat the child.<sup>32</sup>

U.S. military police officers tried for two days to organize medical attention for Muna B., the fifteen-year-old girl who was abducted in early May. Even with this assistance, three different hospitals refused to examine Muna B. because she also wanted a forensic examination to document her assertion that she had not been raped in order to protect herself from possible retaliation by her family. She had not been medically examined at the time Human Rights Watch saw her, five days after her escape.<sup>33</sup>

In another case, a U.S. soldier who had been on duty at a checkpoint outside the Saint Rafael hospital told Human Rights Watch that two adults brought a nine-year-old girl to the hospital the evening of June 2, 2003, but that the hospital would not treat the child. "I stopped the vehicle, and they said that they were going to the hospital. I noticed that they went in, and several minutes later they came out, the man was pissed off, he was yelling at them. He spoke some English, and he said that the child was nine years old and had been raped, he asked me where another hospital was and I pointed in the general direction, to the right."<sup>34</sup>

### **Access to Education**

The current fear of sexual violence and abduction also has disproportionately affected women's and girls' school attendance. In mid-May, Save the Children U.K. conducted an assessment of three schools in the Baghdad area finding attendance in the schools they surveyed less than 50 percent; the survey found that lack of security and fear of kidnapping topped the reasons for girls' nonattendance.<sup>35</sup> School attendance had increased by the first week of June to approximately 75 percent as families arranged for their daughters to travel to and from school in groups, and as more male relatives began escorting female students to school. Still, such solutions often left women and girls dependent on the availability and willingness of others to be able to go to school.

Lina J. attended evening classes until early May, when Fatima M., a young woman she knows was rumored to have been attacked while driving in Baghdad. Although Lina J. does not know the details of what happened to the girl, the fear that she too will be attacked has driven her inside.

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<sup>31</sup> Human Rights Watch interview, (name withheld to protect the child's identity), Baghdad, June 10, 2003.

<sup>32</sup> Human Rights Watch interview with Hamsa Muhammad, Baghdad, June 1, 2003. The director of the morgue confirmed that he had turned away a "five or six" year-old child from medical treatment and that a journalist had been advocating on the child's behalf. Human Rights Watch interview with Dr. Faek Amin Bakr, Baghdad, June 1, 2003.

<sup>33</sup> The specific medical facilities included the Italian Red Cross hospital, and the New Baghdad teaching hospital. Human Rights Watch also knows that she was turned away from al-Kindi hospital. Human Rights Watch interview with staff sergeant Josh Nieratko, Baghdad, June 11, 2003 and physician's assistant Zahed Khaled Malek, al-Kindi hospital Baghdad, June 10, 2003.

Muna B. told a U.S. civil affairs officer that she herself had not been raped; she told a physician's assistant at one hospital that she wanted the forensic examination "for her family;" as she feared that her family might kill her because of the abduction, it is likely that she wanted the exam to prove she was still a virgin. Human Rights Watch interview with Muna B., age fifteen, Baghdad, June 13, 2003.

<sup>34</sup> Human Rights Watch interview with U.S. army soldier who wished to remain anonymous, Baghdad, June 4, 2003.

<sup>35</sup> "Assessment in three schools," Save the Children, Baghdad, May 18, 2003.

I am not going to school anymore. I used to go [before I heard about my friend], I'd get together with a group and we'd go together for our safety. But after this, I prefer to stay at home studying instead of going to school. And my other classmates, they also are not going. There were fifty girls in the class, I hear that maybe eight or nine attend now. Nobody would go now, even if they wanted to, their family would prevent them.<sup>36</sup>

Fatima M. disappearance profoundly affected girls in the neighborhood. A teacher at her school told Human Rights Watch that before the war her class, all girls, had thirty-two students. As of June 3, there were six regularly attending.<sup>37</sup>

Many young women, girls, and their relatives told Human Rights Watch that if women and girls left the house at all, it was only to go to school. Mohammad Walid Shagr explained that even before he witnessed a girl being abducted, the rumors of abductions had led his family to be protective of its female members. "My sister, she is twenty-two and in college. She goes to classes, but not out with her friends. We don't let her go out, it's not safe."<sup>38</sup>

Human Rights Watch met Wa'il Mustafa Ali Farrag outside a school in Ghazaliya neighborhood, where he was waiting for his sister to get out of classes.

I am afraid for my sister, she is seventeen years old, because of the kidnappings and insecurity. Sometimes there are soldiers here, but sometimes not, that's why I have to come and wait for her, even though we don't live far, it is maybe a five minute walk from here. I don't know anyone who was raped, but I've read the papers and heard on the news that it is happening. My sister is also afraid, she doesn't go out at all, we don't even take her with us when we go somewhere. It is very boring for her, but what else are we going to do."<sup>39</sup>

Hana Rashid, age forty-three, told Human Rights Watch that since the war she had escorted her two daughters to school because as a divorced single parent she had no other solution.

I take my children to school by myself, and back again also, and it's dangerous for me, I'm a single mother, so I have to do it myself. My nineteen-year-old daughter doesn't go to classes now, out of concern for her safety. They're kidnapping girls... What are the positive sides of the coalition forces coming in? They're only worried about themselves, but no one cares about us.... We need security, we want a normal life, we want to go back to work.<sup>40</sup>

#### **IV. BARRIERS TO PROSECUTION IN CASES OF SEXUAL VIOLENCE AND ABDUCTION**

While there can be no doubt that the reasons why many rapes go unreported include cultural attitudes and long-term institutional issues, the current breakdown in the policing and security system has compounded the problem and in some cases created additional difficulties for those women who do choose to turn to the authorities for protection.

##### **Police Failure to Investigate**

For those victims who choose to report sexual crimes, first contact with the law enforcement system generally occurs at the police station. Policing in Iraq is perceived as a male profession, unsuitable for women, and Iraqi police officials told Human Rights Watch that there are no female police officers in Iraq. While the Iraqi police officers Human Rights Watch met were virtually unanimous in their concern for women generally in

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<sup>36</sup> Human Rights Watch interview with Lina J., Baghdad, June 1, 2003.

<sup>37</sup> Human Rights Watch interview with a teacher at Fatima M.'s school (name withheld), Baghdad, June 3, 2003.

<sup>38</sup> Human Rights Watch interview with Muhannad Walid Shagr, age twenty-one, Baghdad, June 11, 2003.

<sup>39</sup> Human Rights Watch interview with Wa'il Mustafa Ali Farrag, Baghdad, June 7, 2003.

<sup>40</sup> Human Rights Watch interview with Hana Rashid, age forty-three, Baghdad, June 11, 2003.

the post-war security vacuum, they failed to identify their own role in addressing sexual violence. Police officers we spoke with frequently did not appear to recognize, or purposefully downplayed, the seriousness of allegations of sexual violence and abductions. For example, when Human Rights Watch inquired about the case of Muna B., the fifteen-year-old girl who had been kidnapped and held for four weeks before escaping, Iraqi police at the station referred to her as “the girl who ran away from home.”<sup>41</sup> Muna B. told Human Rights Watch that while Iraqi police and U.S. military police were present when she gave her statement, the Iraqi police did not seem interested in her case. “The Americans wrote the report. The Iraqis didn’t write anything down. The Iraqis said, ‘It is not up to us, we have nothing to do with your case.’” They said that the ‘Americans are handling it.’<sup>42</sup> Police officers at the station confirmed that they did not open an investigation, claiming that it was not within their geographical jurisdiction; nor did they refer the case to Iraqi police officers in the relevant district.<sup>43</sup>

At other stations Human Rights Watch visited, police downplayed reports of rape, at times indicating that women and girls provoked rape by venturing out of the house before the city was safe.<sup>44</sup> One police officer suggested that because a woman who had been abducted was a prostitute, her case was not rape, despite the fact that the woman reported it as rape and there was evidence of significant bruising and other injuries.<sup>45</sup> Police officers of all ranks consistently told Human Rights Watch that sexual violence and abduction allegations had low priority given the high rate of other crimes, particularly killings, carjacking, and theft. Police officers also frequently downplayed the importance of the criminal justice system in resolving such cases, noting that families “resolve” such cases between themselves.<sup>46</sup>

U.S. military police have also failed to follow up with some sexual violence complaints, according to testimonies taken by Human Rights Watch. Dalal S.’s father reported her abduction to the police station immediately after she was abducted on May 18, 2003.<sup>47</sup> A U.S. military police officer took the report, but no one followed up on the complaint. Dalal S. remembers many details about the perpetrators and the place where she was detained, but the police have never come to her to investigate, which has left her mother bitter.

This type of thing never happened before the war, and now the Americans are doing nothing. We reported this to the police, but they did nothing. The same day it happened, we went to the police and made a report, but then [Dalal S.] came back so we didn’t inform them. We knew it would be in vain... And they have never come here to inquire. You can go there yourself and ask what happened to the case.<sup>48</sup>

### **Policing Vacuum**

There can be no question that the current security vacuum has exacerbated the situation. The widespread looting and destruction of property in the immediate aftermath of the war left most police stations stripped bare if not completely burnt shells. While personnel returned, they did so in many cases to empty offices.<sup>49</sup> Many stations had no vehicles to use to investigate complaints. Until the second week of June, when U.S. forces distributed radios, Iraqi police had no communications equipment whatsoever unless the U.S. military had a

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<sup>41</sup> Human Rights Watch interview with Iraqi police officer at the al-`Adhamiyya police station, Baghdad, June 11, 2003.

<sup>42</sup> Human Rights Watch interview with Muna B., age fifteen, Baghdad, June 13, 2003.

<sup>43</sup> Human Rights Watch interview with Brigadir Samir `Abbas Isma`il, al-`Adhamiyya police station, Baghdad, June 14, 2003.

<sup>44</sup> Human Rights Watch interview with police officers at East Baghdad headquarters, Baghdad, May 31, 2003.

<sup>45</sup> The woman was abducted at gunpoint on June 9 and taken to a house where she was raped and held overnight; she was released in the morning. Human Rights Watch interview with police officer at Zeyuna police station, Baghdad, June 24, 2003.

<sup>46</sup> Human Rights Watch interview with police officers at East Baghdad headquarters, Baghdad, May 31, 2003.

<sup>47</sup> Dalal S.’s mother showed Human Rights Watch a copy of the police report taken by the U.S. military police officer; the officer’s identity and MP company are known to Human Rights Watch.

<sup>48</sup> Human Rights Watch interview with Dalal S.’s mother, Baghdad, June 20, 2003.

<sup>49</sup> In some cases police staff had difficulty finding three chairs so that the police commander, the Human Rights Watch researcher, and an interpreter could all sit down to talk.

presence in the station.<sup>50</sup> Local Iraqi police were unable to collect even the most basic information about crimes, let alone analyze trends or conduct in depth investigations.

The disarray in the police is partly a result of the U.S. “de-Ba`thification” policy, in which L. Paul Bremer, the head of the CPA, dismissed most of the experienced Iraqi police management and other personnel. This process has disrupted the preexisting chain of command and left inexperienced officers in charge of felony investigations. While Human Rights Watch has emphasized the urgency of vetting the police to remove those responsible for past human rights abuses, this summary process has not met Iraqi security needs. In addition it does not satisfy the demands for due process and is absent of investigations of individual responsibilities for past crimes and human rights violations.

At the police headquarters for East Baghdad, Human Rights Watch found similar chaos. The statistics office had no information on several cases of sexual violence that Human Rights Watch learned had been reported to the police. Investigating Judge Muhammad Jassim al-Jumaili of the al-`Adhamiyya court told Human Rights Watch about an incident where a man was killed and his girlfriend was gang-raped.<sup>51</sup> According to the judge, he opened an investigation and returned the file to the relevant police station. However, when Human Rights Watch visited that and other nearby police stations, police officers denied that they had even heard of the case.<sup>52</sup> Although investigations have been formally opened in a number of cases, Human Rights Watch is aware of only two in which suspects were apprehended and in detention. One case was mentioned in a U.S. Military Command press release of June 1, 2003, which noted that a suspect was apprehended and in detention. In a different case, U.S. military police told Human Rights Watch that on May 19, an eighteen-year-old girl was walking to school in the al-Alam district of Baghdad when a car drove up and its occupants abducted her; she escaped but was later able to identify one of the perpetrators, who was arrested.<sup>53</sup> Iraqi police in that precinct’s headquarters, however, did not appear to have records of the case.<sup>54</sup>

Most of the U.S. military police units Human Rights Watch encountered did keep some records, but it is unclear to what extent that reporting is feeding into the Iraqi criminal justice process. Military police repeatedly told Human Rights Watch that when they take reports, they pass them up their chain of command, and no copy of the original report is kept at the police station. If the crime involves an attack against U.S. or coalition forces, they said, it is investigated by the U.S. If it is “Iraqi on Iraqi,” then U.S. headquarters turns the case over to Iraqi police investigators.<sup>55</sup>

Although U.S. and coalition military police keep records of crime complaints, they do not publicize the information. U.S. officials frequently announce the number of attacks against coalition or international forces in press and other briefings, and report on the number of patrols they conduct and weapons they seize. Such briefings contain at best only anecdotal accounts of some of the crimes reported in Baghdad. There is no comprehensive information on crime reported in Baghdad. The absence of accurate crime data only fuels rumors and further aggravates the sense of insecurity felt by ordinary Iraqis.

Furthermore, it is unclear if U.S. or coalition military police are conducting investigations, and if so how such investigations will feed into the Iraqi criminal justice system. For example, Muna B.’s testimony suggests

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<sup>50</sup> Human Rights Watch visited eight police stations between May 26 and June 13, 2003, while pursuing this research.

<sup>51</sup> Human Rights Watch interview with Investigating Judge Mohammad Jassim al-Jumaili, East Baghdad investigative court (al-`Adhamiyya), June 7, 2003 and June 14, 2003.

<sup>52</sup> Human Rights Watch interview with police officers at East Baghdad police headquarters, Baghdad, June 4, 2003 and June 12, 2003, and Sa`adun police station, June 11, 2003; and subsequent inquiries made at Sa`adun, al-`Alwiyya, Bab al Sheikh, Bab al Sharji and the East Baghdad headquarters.

<sup>53</sup> Human Rights Watch interview with U.S. military police officer Staff Sergeant Taylor, 615 MP Company, Baghdad, June 22, 2003.

<sup>54</sup> Human Rights Watch interview with Lt. Col. Saif Ghaleb, administration of West Baghdad police headquarters, Baghdad, June 24, 2003.

<sup>55</sup> Human Rights Watch interview with military police battalion officer (name withheld), Baghdad, June 19, 2003.

that child trafficking networks may be operating in the Basra and Baghdad areas.<sup>56</sup> Iraqi police completely deferred competence to the U.S. military police in proceeding with an investigation. But nearly two weeks after Muna B. first appeared at the U.S. military police station, civilian affairs officers involved in the case were unable to establish whether there was any investigation underway.<sup>57</sup> In an environment when many Iraqis feel that U.S. priorities are unrelated to their own security concerns, failure to take action on such issues is a glaring omission.

### **Barriers to Obtaining Forensic Medical Examinations**

Under Iraq's Code of Criminal Procedure, police are required to use all possible means to preserve evidence of a crime.<sup>58</sup> Police must also immediately report all information about felonies or misdemeanors to an investigating magistrate or a Ministry of Justice investigator operating under the magistrate's supervision, who then begins the initial investigation.<sup>59</sup> The code also authorizes police to begin investigations into felonies and misdemeanors without authorization from an investigating magistrate or investigator if waiting for authorization would delay necessary action and result in evidence being destroyed or lost or in the suspect fleeing.<sup>60</sup>

While formally investigations should be opened by the investigating magistrate before victims of sexual violence are referred to the forensic institute for an examination, police officers told Human Rights Watch that in practice they, and not magistrates, referred women and girls who made complaints of rape for forensic examination. In Baghdad, these examinations are conducted at the Institute of Forensic Medicine, which is also the city morgue: at the entrance to the building a sign designates a department for the living (*qism al-ahyaa*) and a department for the dead (*qism al-amwat*).<sup>61</sup>

According to Dr. Faek Amin Bakr, the director of the Institute of Forensic Medicine, the institute only conducts forensic examinations upon an official referral, and turns away victims who seek an examination without such a referral.<sup>62</sup> The institute does not provide any medical treatment to victims of sexual violence, who are expected to go to a hospital for urgent care.<sup>63</sup> The doctors on staff are all men.<sup>64</sup> Dr. Bakr told Human Rights Watch that the examinations in rape cases involve a swab test for the presence of semen, examination of the exterior and internal genital area for bruising, tears, or other damage, and examination of the condition of the hymen. In some cases where examiners believe such evidence would be deemed to be significant in ensuing legal proceedings, the forensic laboratory photographs the victim's injuries.<sup>65</sup>

The need to obtain a police referral to the forensic institute places a substantial burden on women and girls who wish to document sexual violence, as demonstrated by the case of Hala R. When Human Rights Watch first interviewed Hala R. on June 1, less than twenty-four hours after the alleged attack, she had not as yet had a

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<sup>56</sup> See also, UNICEF, "UNICEF wary of post-war child trafficking in Iraq," *News Notes*, June 13, 2003, [online] <http://www.unicef.org/newsline/2003/03nn50iraqtrafficking.htm> (retrieved July 2, 2003).

<sup>57</sup> Human Rights Watch interview with civil affairs officer (name withheld), Baghdad, June 19, 2003.

<sup>58</sup> The Code of Criminal Procedure further specifies that if a police officer receives information about a crime committed in the presence of witnesses the officer must immediately go to the crime scene and take written statements from victims, witnesses, and suspects. Code of Criminal Procedure, articles 39, 42, 43.

<sup>59</sup> The magistrate or investigator is then responsible for conducting the initial investigation, including examining the scene of the incident, recording evidence and injuries, appointing experts to offer opinions, and compelling plaintiffs or defendants to cooperate in a physical examination. The code specifies that, as far as possible, any physical examination of a female should be conducted by a female. Code of Criminal Procedure, articles 49, 51, 52, 69, 70.

<sup>60</sup> Code of Criminal Procedure, article 50.

<sup>61</sup> Other than rape examinations, the forensic institute's department for the living also examines people who have made allegations of torture or ill-treatment and other examinations where a medical opinion is necessary for a legal decision, for example in divorce cases where the grounds are impotence or sterility. Human Rights Watch interview with Dr. Faek Amin Bakr, director, Institute of Forensic Medicine, Baghdad, June 1, 2003.

<sup>62</sup> This phenomenon was the experience of Saba A., the nine-year-old victim described above. The practice was confirmed by Dr. Faek Amin Bakr, director, Institute of Forensic Medicine. Human Rights Watch interview, Dr. Faek Amin Bakr, the director of the Institute of Forensic Medicine, Baghdad, June 1, 2003 and June 12, 2003.

<sup>63</sup> Human Rights Watch interview with Dr. Faek Amin Bakr, Baghdad, June 12, 2003.

<sup>64</sup> According to the director, women do not choose to enter this branch of medicine.

<sup>65</sup> Human Rights Watch interview with Dr. Faek Amin Bakr, Baghdad, June 12, 2003.

chance to wash or change her clothes. When she filed her initial complaint, police at the station did not refer Hala R. to the institute for a forensic examination that might have revealed evidence corroborating her allegation that she had been raped by a neighbor. Hala R. told Human Rights Watch that police did not tell her about the possibility of getting a forensic medical exam at the time she gave her statement. While there were contradictory accounts in relation to Hala's requests for a forensic examination, when Hala R. returned to the station to explicitly request a referral for a forensic examination, the captain questioned her credibility and it took an hour for him to agree give her a referral.<sup>66</sup> But first he insisted that she repeat her complaint, even though he had a copy of the original complaint in front of him. This she did.

When the captain did eventually give Hala R. a referral, the referral was to al-Kindi general hospital, not the forensic institute. At the hospital the deputy head doctor explained that the hospital was not able to conduct the examination, and referred Hala R. to the al-'Alwiyya maternity hospital. There, doctors conducted an exam, but afterwards doctors and nurses gathered in a semi-public room and informed Hala R. that the results were inconclusive and were not valid for legal purposes. They then told Hala R. that it would be necessary for her to go to the forensic institute, which by that time was closed for the day.

### **Legal Barriers to Justice**

Rape, sexual violence, and abduction are felonies under Iraqi law, punishable by lengthy prison sentences.<sup>67</sup> Yet victims of abduction and sexual violence still face important legal and social barriers to obtaining justice. Some of these barriers are the provisions in the Penal Code that allow a man to escape punishment for abduction if he marries the victim.<sup>68</sup> The Penal Code also allows perpetrators of rape, sodomy, sexual violence, or attempted sexual violence to receive reduced sentences if they marry their victims.<sup>69</sup> A high ranking police official

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<sup>66</sup> A male U.S. military officer told Human Rights Watch that Hala R's was offered a referral for a forensic examination and she declined. A female military police officer told Human Rights Watch that Hala R. had expressed interest in having such a test but nothing was done to follow up that request.

<sup>67</sup> Rape or sodomy are punishable by up to life imprisonment, and sexual violence or attempted sexual violence by means of force, threat, or deception by up to seven years imprisonment. The law applies to both male and female victims of rape, sodomy, and sexual violence, and longer sentences apply in sexual violence and attempted violence cases where the victim is a child, and in rape or sodomy cases where the victim is a child or the perpetrator is a relative, government official, or otherwise responsible for the victim's care, or where victim dies, contracts a sexually transmitted disease, loses her virginity or becomes pregnant. The law further punishes abduction of a child by force or deception by imprisonment for up to fifteen years. The penalty is death or life imprisonment in cases of abduction by force or deception where the victim is a woman and the abduction results in rape, or attempted rape, or where the victim is a child or a woman and the use of force results in death. See Penal Code (Law 111 of 1969, as amended) articles 393, 396(1), 396(2), 393(2), 135, 136, 422, 423, and 424.

<sup>68</sup> Human Rights Watch opposes capital punishment in all circumstances because of its cruel and inhumane nature. Article 427 of the Penal Code states:

If the offender mentioned in this section then lawfully marries the victim, any action becomes void and any investigation or other procedure is discontinued and, if a sentence has already been passed in respect of such action, the sentence will be quashed.

Legal proceedings will resume or the sentence will be reinstated according to the circumstances if the marriage ends in a divorce brought about by the husband without legal justification or in a divorce ordered by the court for wrongs committed by the husband or for his bad behavior within 3 years following the cessation of proceedings.

The public prosecutor, the accused, the victim or any person who has an interest in the proceedings may, according to the circumstances, make application for the proceedings, investigation, procedures or execution of the sentence to be stopped for their resumption of the reinstatement of the sentence.

(Translation by Human Rights Watch)

<sup>69</sup> Article 398 of the Penal Code states:

If a proper marriage is contracted between the perpetrator of one of the crimes in covered in this section [Part II, Chapter 9, Section One: Rape and Sodomy and Indecent Assault, articles 393-398] and the victim it shall be considered a legally mitigating excuse under the terms of articles 130 and 131 of the Penal Code. And if prior to the passage of three years the marriage ends in divorce instigated by the husband without legal justification or by court



described the procedure positively to Human Rights Watch: “This is part of our law, the kidnapper and kidnapped are married so that there won’t be other cases, of revenge.”<sup>70</sup> Other provisions allow for significantly reduced sentences for so-called honor killings.<sup>71</sup> At the time of writing, these provisions are unaffected by the Coalition Provisional Authority’s June 9, 2003 order that suspended certain provisions of the Penal Code.

Since prosecutors, perpetrators, and “anyone who has an interest” in the matter may petition for the suspension of the investigation or sentence under these provisions, the law adds to the already considerable social pressures on victims not to pursue their cases. If victims do file and pursue a complaint, they are faced with the possibility that their abuser or their families will force them to enter into a marriage where they are likely to endure marital rape or other sexual and physical violence. Perpetrators who enter such marriages must remain married for at least three years, potentially extending the torment of their victims, or face a resumption of prosecution or reinstatement of the sentence. The absence of functioning criminal and judicial systems in post-conflict Iraq may lead to increased resort to such marriages that in many cases may amount to forced marriages in reality as family members and criminals seek “resolutions” at the expense of victims’ rights.

## V. INTERNATIONAL LEGAL STANDARDS

Iraq is a state party to major international human rights treaties protecting the rights of women and girls, and these treaties remain in force even in situations of armed conflict or occupation.<sup>72</sup> Iraq, like the United States and other members of the CPA, is also a state party to the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949 (commonly referred to as the Fourth Geneva Convention) and the 1907 Hague Convention, which regulate the treatment of civilians during times of war. Taken together, these treaties provide comprehensive guarantees of the rights of women and girls to protection from sexual violence and abuse.

### International Human Rights Law

International law requires states to address persistent violations of human rights and take measures to prevent their occurrence. With respect to violations of bodily integrity, states have a duty to prosecute abuse, whether an agent of the state or a private citizen commits the violation.<sup>73</sup> When states routinely fail to respond to evidence of sexual violence and abuse or abduction of women and girls, they send the message that such attacks can be

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ordered divorce for reasons related to a wrong on the part of the husband or to his bad behavior the judge in the case must at the request of the prosecutor or the victim or whomever has an interest in the case review the punishment to increase it.

(Translation by Human Rights Watch)

<sup>70</sup> Human Rights Watch interview with Lt. Col. Saif Ghaleb, West Baghdad Police Headquarters, June 24, 2003.

<sup>71</sup> “Honor” killing (most commonly committed by men) is a type of domestic violence in which a close family member or relative kills a female family member as punishment for having been involved in behavior that transgressed community or family mores and brought disgrace to the family’s sense of “honor.” The imputed transgressive behavior could include a woman or girl dating against her family’s wishes, marrying against her family’s wishes, being the victim of sexual violence, no longer being a virgin, or seeking a divorce or separation from her husband against her family’s wishes. Typically, the behavior that is deemed inappropriate is sexual in nature and “honor” crimes ultimately seek to punish and control women’s and girls’ exercise of sexual autonomy and their equality before the law.

For example, Penal Code article 409 sets a maximum punishment of three years’ detention for anyone who kills or permanently disables his wife or female relative upon finding her in bed with a partner. Penal Code 128 further allows for reduced sentences in cases where a crime, including murder, is committed “for honorable reasons or based on a serious and unjustified provocation by the victim of the offense,” which when coupled by article 409 can reduce the punishment to a fine with no detention.

<sup>72</sup> Iraq became a state party to the International Covenant on Civil and Political Rights (ICCPR) on January 25, 1971; the International Covenant on Economic, Social and Cultural Rights (ICESCR) on January 25, 1971, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) on August 13, 1986; and the Convention on the Rights of the Child (CRC) on June 15, 1994.

<sup>73</sup> Article 2 of the ICCPR requires governments to provide an effective remedy for abuses and to ensure the rights to life and security of the person of all individuals in their jurisdiction, without distinction of any kind including sex.

committed with impunity.<sup>74</sup> In so doing, states fail to take the minimum steps necessary to protect the right of women and girls to physical integrity.

International human rights law increasingly recognizes women's right to sexual autonomy, including the right to be free from nonconsensual sexual relations. The right to sexual autonomy for women is reflected in a number of international declarations and conference documents.<sup>75</sup> Sexual autonomy is closely linked to the rights to physical security and bodily integrity. When a woman or girl is subjected to sexual violence with no realistic possibility for redress, her right to make free decisions regarding her sexual relations is violated.

In 1992, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) Committee enumerated a wide range of obligations for states related to ending sexual violence, including ensuring appropriate treatment for victims in the justice system, counseling and support services, and medical and psychological assistance to victims.<sup>76</sup>

CEDAW also recognizes that many women's rights abuses emanate from society and culture, and compels governments to take appropriate measures to correct these abuses. CEDAW requires governments to "modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women."<sup>77</sup>

The Convention on the Rights of the Child also sets forth standards for the protection of girls from sexual violence and exploitation. State parties must undertake to protect children "from all forms of sexual exploitation and sexual abuse," and in particular take all appropriate measures to prevent "[t]he inducement or coercion of a child to engage in any unlawful sexual activity" and "[t]he exploitative use of children in prostitution or other unlawful sexual practices."<sup>78</sup> States must take all appropriate measures to promote physical and psychological recovery and social integration of a child victim of any form of neglect, exploitation, or abuse; torture of any other form of cruel, inhuman, or degrading treatment or punishment; or armed conflicts.<sup>79</sup>

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<sup>74</sup> See Human Rights Watch, "'We'll Kill You If You Cry': Sexual Violence in the Sierra Leone Conflict," *A Human Rights Watch Short Report*, vol. 15, no. 1(A), January 2003; Human Rights Watch, *Scared at School: Sexual Violence Against Girls in South African School* (Human Rights Watch: New York), 2001; Human Rights Watch, *Suffering in Silence: The Links Between Human Rights Abuses and HIV Transmission to Girls in Zambia* (Human Rights Watch: New York), 2002; and Human Rights Watch, "South Africa: Violence Against Women and the Medico-Legal System," *A Human Rights Watch Short Report*, vol. 9, no. 4(A), August 1997.

<sup>75</sup> At the U.N. International Conference on Population and Development held in October 1994 in Cairo, Egypt, and the U.N. Fourth World Conference on Women held in September 1995 in Beijing, China, governments explicitly endorsed women's sexual autonomy. In the 1994 Cairo Programme of Action on Population and Development, delegates from governments around the world pledged to eliminate all practices that discriminate against women and to assist women to "establish and realize their rights, including those that relate to reproductive and sexual health." In the 1995 Beijing Declaration and Platform for Action, delegates from governments around the world recognized that women's human rights include their right to have control over and decide freely and responsibly on matters related to their sexuality free of coercion, discrimination and violence. See United Nations, Programme of Action of the United Nations International Conference on Population and Development (New York: United Nations Publications, 1994), A/CONF.171/13, 18 October 1994, para. 4.4(c); and United Nations, Beijing Declaration and Platform for Action (New York: United Nations Publications, 1995), A/CONF.177/20, 17 October 1995, para. 223.

<sup>76</sup> Committee on the Elimination of All Forms of Discrimination Against Women, "Violence Against Women," General Recommendation no. 19 (eleventh session, 1992), U.N. Document CEDAW/C/1992/L.1/Add.15.

<sup>77</sup> CEDAW, art. 5(a).

<sup>78</sup> Convention on the Rights of the Child, G.A. res. 44/25, U.N. Doc. A/44/49 (1989), entered into force Sept. 2, 1990, article 34.

<sup>79</sup> CRC article 39.

## **International Humanitarian Law**

Under international humanitarian law, the CPA, as the occupying power, has a duty to restore and maintain public order and safety and to respect the fundamental rights of the territory's inhabitants.<sup>80</sup> The Fourth Geneva Convention places special emphasis on the requirement that "women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault."<sup>81</sup>

In addition to these general provisions, the occupying power must act to ensure the effective administration of justice. In most criminal matters this should be done through the implementation of preexisting penal laws, unless such laws "constitute a threat to [the Occupying Power's] security or an obstacle to the application" of the Fourth Geneva Convention.<sup>82</sup> Provisions of the Iraqi Penal Code that reduce punishments in cases of "honor" crimes or allow male perpetrators of abduction, rape, sodomy, sexual violence, or attempted sexual violence to escape punishment by marrying their victims constitute an obstacle to the CPA's obligation to ensure women's and girls' fundamental rights.

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<sup>80</sup> See Hague Convention (IV) Respecting the Laws and Customs of War on Land, article 43, and Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949, articles 29 and 47.

<sup>81</sup> Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949, art. 27.

<sup>82</sup> Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949, art. 64.



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