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Iraq Detainee Brief

• March 2004

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CA05950420

APPROVED FOR RELEASE DATE 06 SEP 2012

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Iraq Detainee Brief

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- Overview
- Analysis of Detainee Population
- Detention Procedures
- Prosecutions
- Transition Issues

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Overview

- As of 27 February 2004, Coalition Forces held 13,167 detainees in three categories: EPWs, Criminal Detainees and Security Internees
- Desired End-State (July 1 and beyond):
 - Significant number of detainee cases handled through judicial process
 - Certain detainees remain under Coalition Control
 - Post-occupation authority to continue detention and to apprehend insurgents/terrorists
 - Detention policies accepted by Iraqi population



Challenges

- Iraqi correctional system lacks sufficient capacity for expected criminal population
- Inadequate interrogation and evidence collection upon initial capture limits ability to prosecute
- Courthouse and judicial security not yet in place
- Iraqi public demand for swift trial of Saddam and other regime leaders
- Post-occupational authority for detainee operations not yet settled

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ANALYSIS OF DETAINEE POPULATION

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Who We Are Holding & Why -- 13,167 as of 27 Feb

- Prisoners of War (EPWs) 18
- Criminal Detainees 1,145
- Security Internees 8,058
- High Value Detainees (HVD) 98
 - (EPWs or Security Internees)
- Mujahidin-e Khalq (MEK) 3,848
 - Currently treated as EPWs

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Non-Iraqi Detainees

EPW / CI / HVD - Nationalities					
Egypt	11	Jordan	8	Sudan	17
Syria	24	Lebanon	0	Tunisia	5
Algeria	2	Libya	5	Turkey	1
Gaza Strip	1	Oman	0	West Bank	4
Iran	22	Saudi Arabia	8	Yemen	4
Palestine	3	Somalia	1	India	1
Malaysia	1	Morocco	3	Sweden	0
Kuwait	1	Afghanistan	7	Total	128

Data as of 27 Feb 04

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EPWs

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- Armed Forces of Iraq
- Geneva Prisoner of War convention (GPW) allows EPWs to be held until the “cessation of active hostilities or until the completion of trial and sentence if pending criminal proceedings for an indictable offense
- Most EPWs have been paroled but 18 are still being held based on intelligence interest or security threat
- May be subject to prosecution in Iraqi Special Tribunal (IST) after return of sovereignty

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CRIMINALS

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- Under Geneva Civilians Convention (GCC), Coalition may hold criminals while accused of offenses and after sentencing, until occupation ends
- Coalition responsible for oversight of the treatment of criminals until transition
- Detention of criminals is shifting to CPA civilian control as forces redeploy
- Saddam emptied prisons before war, so criminal detainees (along with Security Internees) held by Coalition comprise the majority of the current prison population
- CPA personnel are directing prison operations because previous regime was corrupt and abusive – need to rebuild corrections system (personnel and infrastructure)
- CPA Ministry of Justice personnel believe that Iraqi prisons population will grow to approx. 38,000
- May be subject to prosecution in Iraqi Criminal Courts, including Central Criminal Court of Iraq (CCCI)

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SECURITY INTERNEES

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- Under GCC, Coalition may hold people for “imperative reasons of security”
 - Attacks on Coalition, terrorists, knowledge of WMD, senior regime leaders, foreign fighters
 - Authority as occupying power to hold Security Internees ends at the conclusion of the occupation
- High Value Detainees (HVD):
 - Basis depends on their status (EPW or Security Internee)
 - Held pursuant to Policy Guidance # 1 (Black List) & # 15 (Grey List)
- Prosecute in IST and CCCI

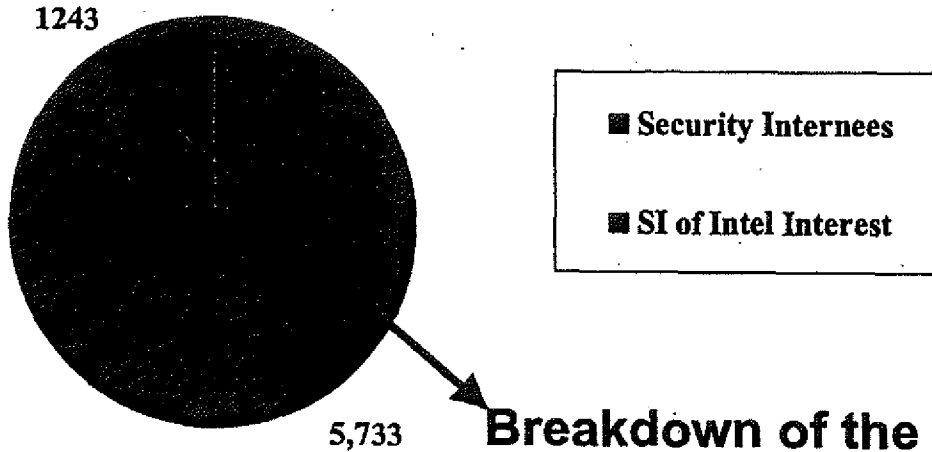
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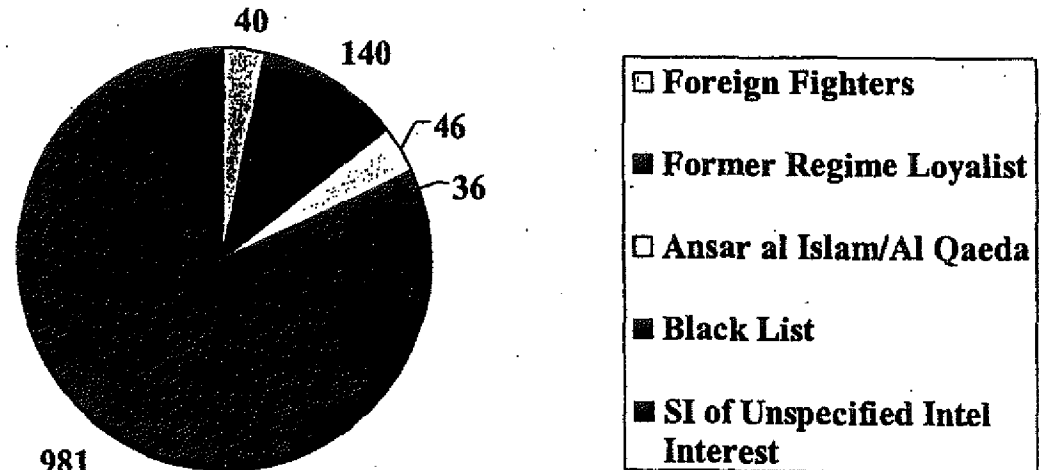
Security Internees by the Numbers

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Total Security Internees: 6,976



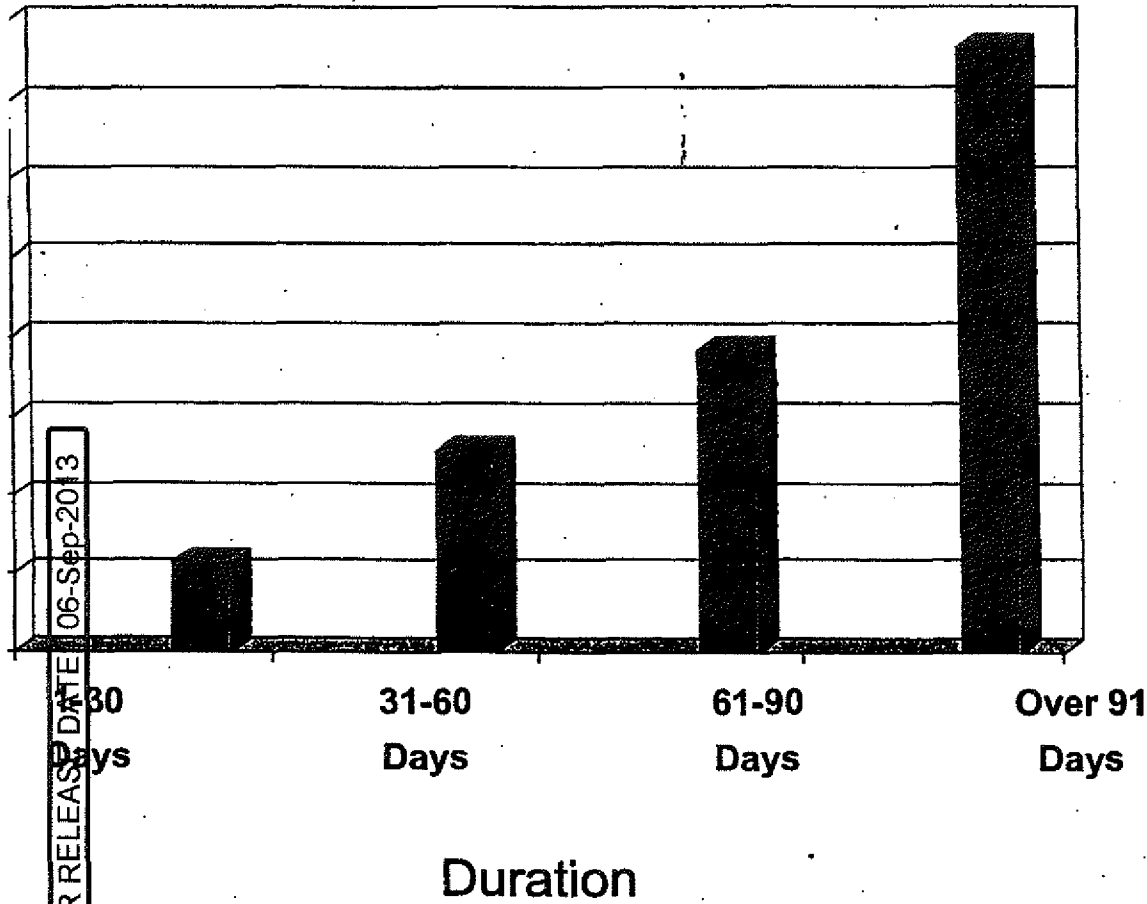
Breakdown of the 1243 SI of Intel Interest



Data as of 15 January 2004

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h of Detention of Security Internees



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30 Days

31-60 Days

61-90 Days

Over 91 Days

Duration

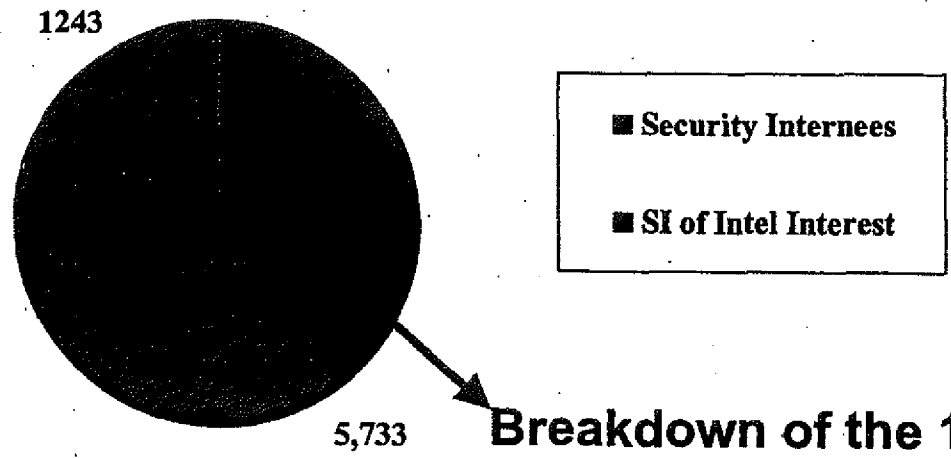
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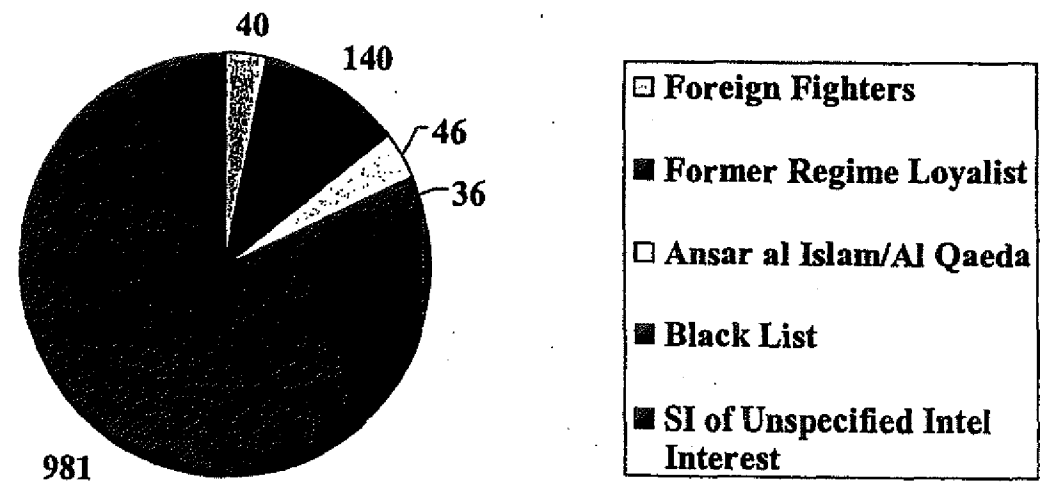


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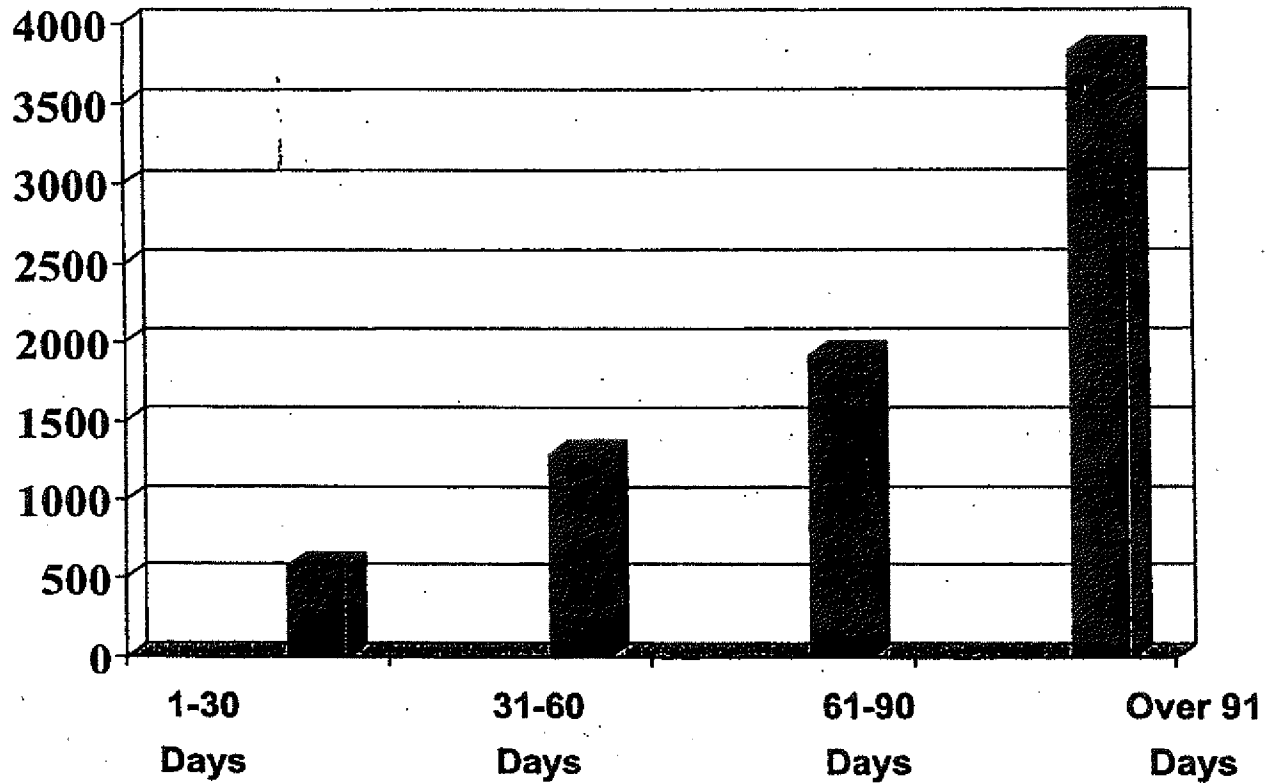
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Length of Detention of Security Internees



Duration

Data as of 27 Feb 04

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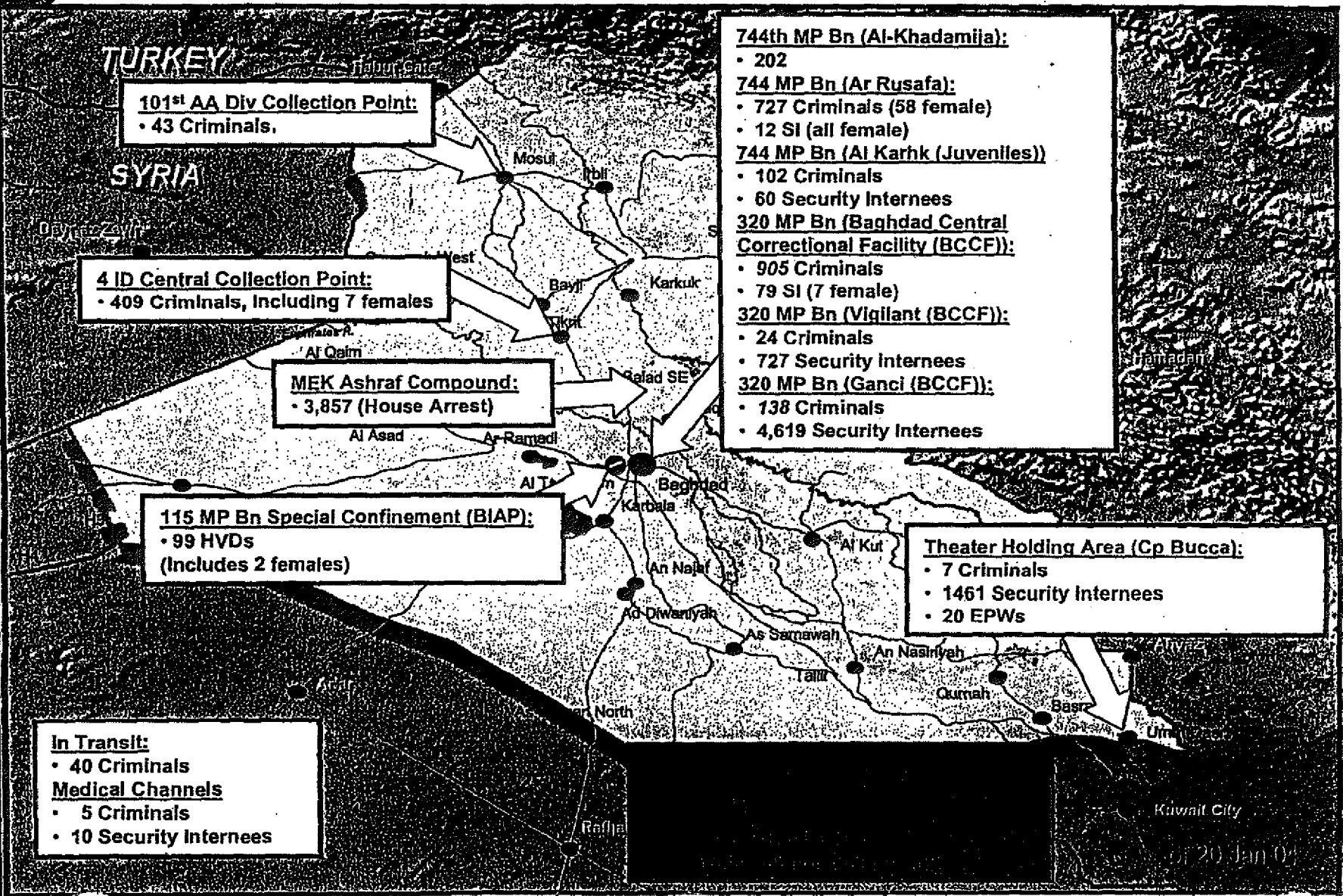


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DETENTION PROCEDURES

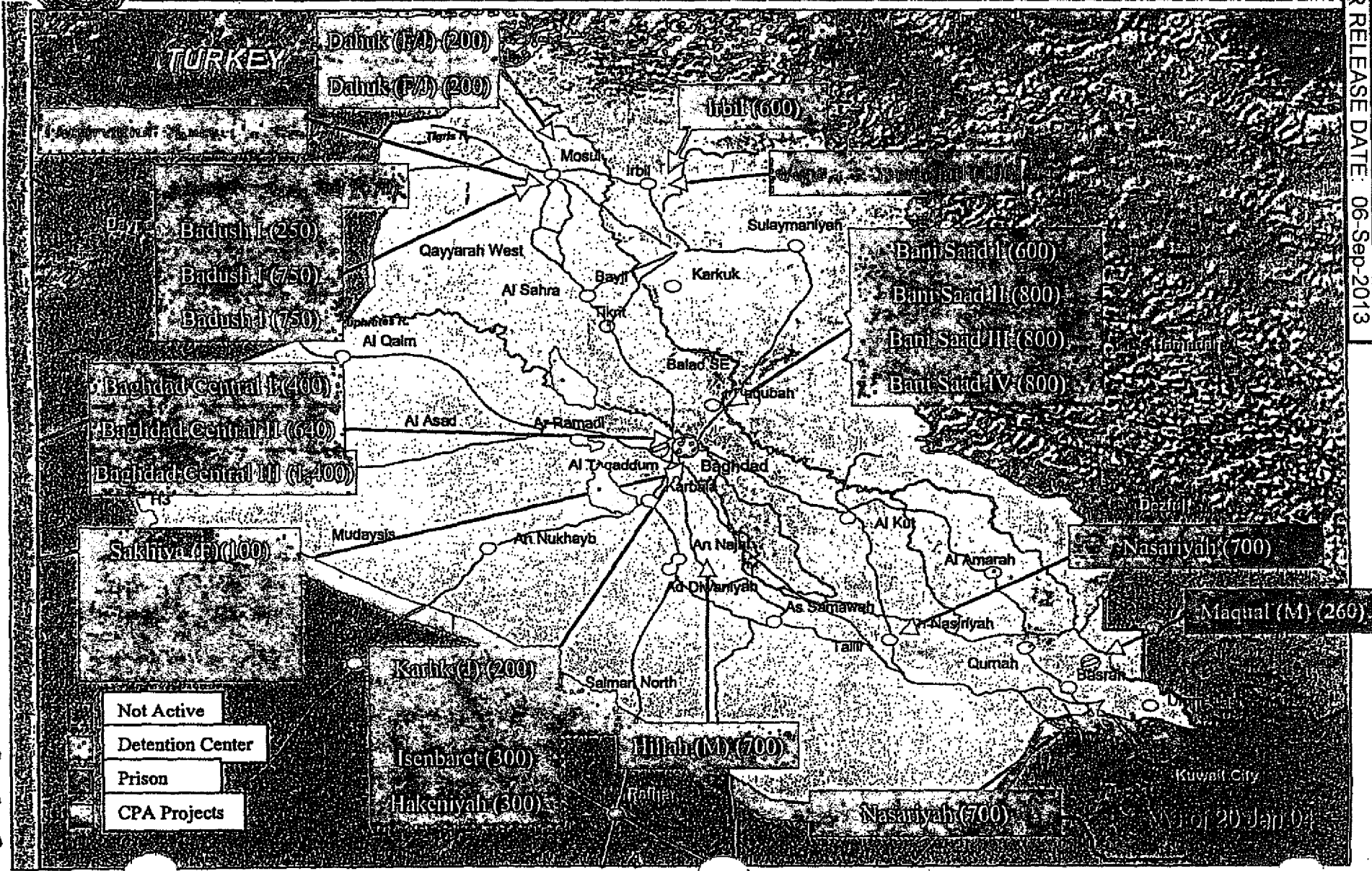
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Detainee/EPW Facilities – 20 Jan 04



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Iraqi Prisons / Detention Centers



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Jan 20 2004



Principles of the Detainee Process

- Designed to identify detainee category rapidly
- Designed to ensure detention of individuals posing a threat to Coalition Forces and release those who do not
- Designed to adjudicate detainee cases in timely manner
- Designed to help Iraqis assume responsibility for the process

Bottom line: Need to establish a comprehensive justice system to process detainees that ensures common crime, war crimes, and terrorism are adjudicated and remedied in a timely and appropriate fashion

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Overview of Detainees Processed

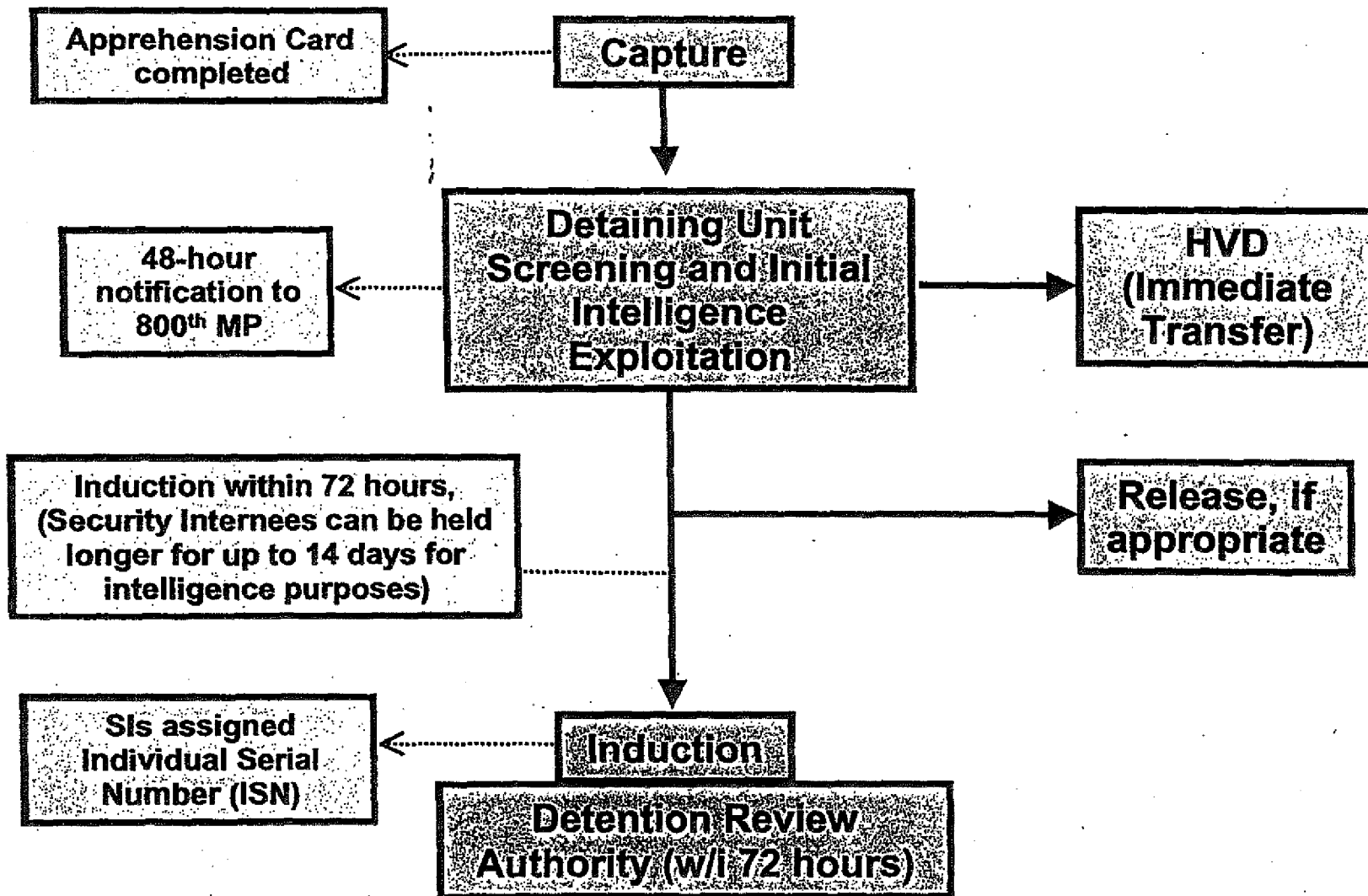
- Nearly 37,000 Iraqis have been detained by Coalition Forces since March 2003 — nearly two-thirds of them have been processed through to release or parole
 - Of approx. 18,000 criminal detainees processed, 2,606 remain in U.S. custody
 - Of approx. 11,000 security internees processed, 7,005 remain in custody
 - Of approx. 8,000 non-MEK EPWs—less than 50 remain (including HVDs).
- Bottom Line: The existing detainee process is working to ensure that individuals are screened and reviewed in an appropriate and timely fashion and released, when appropriate

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What Happens to Detainee After Capture?



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Security Internee Review Process

- Until recently, Coalition Forces detained more security internees than they could effectively review
- Recent adjustments dramatically improved processing capability
 - Initial reviewing magistrate can now order release
 - Standing review board increased review capacity to 100 cases/day
 - 857 cases reviewed as of 26 Feb by new review board
 - 710 ordered released
 - 65 recommended release unless further information is found to justify detention
 - 44 referred to CCCI for further investigation
 - 38 recommended for conditional release

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Conditional Release Program

- Bremer announced program on January 8, 2004
- Initial release of 59 detainees, more to follow
 - Must renounce violence
 - Guarantor (prominent community, religious, or tribal leader) must accept responsibility for future good conduct
- Not available for “those with blood-stained hands” (Bremer)

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Family Notification

- Identification of detainees and notification of family members depend upon detainee providing truthful information
- Improving family notification is important to Iraqi perception of U.S. detention procedures
- Detainee information is posted at police stations and elsewhere (including recently launched web-site)
- Limitations:
 - Language translation and database limitations (non-Arabic system)
 - Poor communication infrastructure in Iraq hampers more effective notification
 - Iraqis still dissatisfied with procedures

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What Happens to Criminals Captured by Iraqis?

- Iraqi system operates in parallel to Coalition system
- Detainees can flow from Iraqi system to U.S. system as security internees and vice-versa (as categorization changes)
- Most common criminals are now arrested by Iraqi Police and processed through local Iraqi courts
- Virtually all Iraqi courts are operating, although not all court facilities operational

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PROSECUTIONS

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How Will Detainees Be Prosecuted?

- Iraqi Special Tribunal (IST)
- Central Criminal Court of Iraq (CCCI)
- Iraqi Criminal Courts
- No plan to use military commissions at this time



Iraqi Special Tribunal (IST)

- Jurisdiction
 - War Crimes, Crimes against humanity, Genocide
 - Violations of certain Iraqi laws
- Three tiers within court
 - Department of Investigative Judges
 - Trial Chamber
 - Appellate Chamber
- IST applies international law and Iraqi law
- The IST will try those HVDs that committed the most serious atrocities against the Iraqi people and Iraq's neighbors.

IST Issues

- DOJ has lead in supporting the IST
- DOJ requires support from DoD – propose National Security Presidential Directive
- Death penalty
- Timing:
 - DOJ proposal envisions trials by end of 2004
 - Order of cases
 - Test system – do not want to start with Saddam
 - Public should be kept informed about progress toward trials



Central Criminal Court of Iraq

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- Jurisdiction
 - Crimes of special significance referred by Amb. Bremer
 - May include major crimes against Coalition Forces

- Three tiers
 - Investigative Judges
 - Trial Court: 3-Judge panel
 - Appellate Court—existing Iraqi Court of Cassation (highest court)

- CCCI applies Iraqi law, as modified by CPA orders
 - Death penalty has been suspended in Iraq

- CPA goal is to have CCCI trying 5 cases per week and conducting 10 investigations per week by March 10, 2004 (assumes requested investigative and security support is provided per Bremer's December 12, 2003, memo)

CCCI Issues

- Future of CCCI after end of occupation
- Insufficient resources to prepare cases for referral
 - Bremer request for additional support is being staffed
- Security concerns for judges/prosecutors and witnesses
- Limited Iraqi awareness of Court's convictions reduces deterrent effect
- Punishments may not be sufficiently severe to deter terrorists and Regime loyalists – death penalty not available

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TRANSITION

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CSRS-DA



Way Ahead for Detainees After 30 June

- Redline for Combatant Commander is continued detainee operations

- There are several legal theories that may support detainee operations:
 - *Continuation of authorities under UNSCR 1511* – preferred authority as it bridges to security agreement and/or new UNSCR, consistent with UN mandate
 - *Continuation of ongoing international armed conflict in the GWOT* – not preferred as some nations do not share our interpretation of detention authority in the GWOT (detainees limited to unprivileged belligerents)
 - *Assistance provided during an internal armed conflict* – detentions would be limited to those allowed under Iraqi law



Way Ahead for Detainees After 30 June

- UNSCR 1511 “authorizes a multinational force under unified command to take *all necessary measures* to contribute to the maintenance of security and stability in Iraq”
 - Arresting and detaining people in Iraq is therefore authorized to the extent they are necessary for the MNF to fulfill its mandate of contributing to international peace and security
 - Persons the MNF commander detains under this authority would be afforded protections analogous to Security Internees under the Geneva Civilians Conventions until handed over to Iraqi authorities
 - This argument may be controversial as some may not share this view on the continued authority and ability to use UNSCR 1511 in this manner

- EPWs and HVD Security Internees may continue to be held for prosecution

- A security agreement and/or follow-on UNSCR would provide additional authorities for continued detainee operations

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