

Iraq, Crimes by Militia Groups

INTRODUCTORY NOTE: Various Shi'a militia groups operate within Iraq. This case presents some of the challenges such groups pose in terms of respect for IHL. In addition, it features Guidelines formulated by a Shiite religious leader, which are meant to regulate the behaviour of members of such militia groups.

N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

Case prepared by Galina Wedel, student at the University of Geneva and the Humboldt University of Berlin, under the supervision of Professor Marco Sassòli and Ms. Yvette Issar, research assistant, both at the University of Geneva.

A. Absolute Impunity: Militia Rule in Iraq

[Source: Amnesty International, "Absolute Impunity: Militia Rule in Iraq, August 2014. Available at: https://www.amnesty.org.uk/files/absolute_impunity_iraq_report.pdf (footnotes omitted)]

[...]

Introduction

[1] In recent months, Shi'a militias have been abducting and killing Sunni civilian men in Baghdad and around the country. These militias, often armed and backed by the government of Iraq, continue to operate with varying degrees of cooperation from government forces – ranging from tacit consent to coordinated, or even joint, operations. For these reasons, Amnesty International holds the government of Iraq largely responsible for the serious human rights abuses, including war crimes, committed by these militias.

[2] The victims were abducted from their homes, workplace or from checkpoints. Many were later found

dead, usually handcuffed and shot in the back of the head. Reports by families of the victims and witnesses have been corroborated by Ministry of Health workers, who told Amnesty International that in recent months they have received scores of bodies of unidentified men with gunshot wounds to the head and often with their hands bound together with metal or plastic handcuffs, rope or cloth. Photographs of several bodies shown to Amnesty International by victims' relatives and others viewed at Baghdad's morgue, reveal a consistent pattern of deliberate, execution-style killings.

[...]

[3] Such crimes are being perpetrated against a background of increased sectarian tensions in the country. Since Iraqi central government forces lost control of much of northern Iraq to the Sunni Islamist armed group which calls itself "the Islamic State" (IS) last June, sectarian attacks have spiraled to a level not seen since 2006-2007, the worst period of civil strife in the country's recent history. Government-backed Shi'a militias and Sunni armed opposition groups have both been targeting civilians from each other's communities.

[4] In addition to the mass human rights abuses they have been committing in the areas under their control, IS fighters carry out frequent bomb attacks in predominantly Shi'a areas in the capital and elsewhere that either deliberately target Shi'a civilians – sometimes in places of worship – or indiscriminately kill or injure civilians along with members of the security forces or of pro-government militias.

[5] Shi'a militias, for their part, have been taking advantage of the atmosphere of lawlessness and impunity to abduct and kill Sunni men, seemingly in reprisal or revenge for IS attacks and at times also to extort money from the families of those they have abducted.

[6] With government forces unable or unwilling to ensure the security and protection of the civilian population, militias have been operating with unprecedented freedom and have been able to perpetrate such crimes with impunity.

[...]

Growing power and lack of accountability for Shi'a militias

[7] Iraq's main Shi'a militias are:

- The **Badr Brigades** (or Badr Corps or Badr Organization), the military wing of the Supreme Islamic Iraqi Council (SIIC), created in the 1980s with the backing of Iran to fight the regime of Saddam Hussein, and currently headed by Hadi al-Ameri, who also heads the Badr Organization political party and served as Transport Minister in the Government of Prime Minister Nouri al-Maliki [until September 2014].
- The **Mahdi Army** of cleric Moqtada al-Sadr had become the most powerful militia following the 2003 US occupation of Iraq, but was officially dissolved in 2008. It was revived last June with the creation of its offshoot **Saraya al-Salam** (Peace Brigade).
- The **'Asa'ib Ahl al-Haq** (League of the Righteous), established around 2005 as a splinter group of the Mahdi Army under the leadership of Qais al-Khaz'ali and linked to General Qassem Suleimani, the head of al-Quds Force of the Iranian Revolutionary Guard Corps (IRGC). It is believed to be currently the most powerful of the Shi'a militias; in the past two years some of its members have been fighting in Syria alongside Syrian government forces battling Sunni armed opposition groups.
- The **Kata'ib Hizbullah** (Hizbullah Brigades), unrelated to the Lebanese Hizbullah and reportedly an offshoot of the Mahdi Army's "Special Groups".

[8] The largest Shi'a militias have tens of thousands of fighters in their ranks. They can look and operate like regular armed forces but are not regulated by any laws or subject to oversight and accountability mechanisms. Shi'a militias, acting outside any legal framework, have long been operating in Iraq with the backing and blessing of successive Iraqi central governments, which have been dominated by Shi'a political parties. In the wake of the Iraqi army's spectacular flight from a third of the country in June 2014, the power and legitimacy of Shi'a militias have risen dramatically, with government officials, including then Prime Minister Nouri al-Maliki, and leading political and religious figures calling on volunteers to take up arms against IS insurgents. Though some of the calls were for volunteers to join the depleted armed/security forces, after tens of thousands soldiers fled in the face of the IS advance leaving their uniforms and weapons behind, the main recruitment drive was by militias.

[9] Militia members often wear uniforms and operate both independently and alongside government forces – on the battlefield and checkpoints, and use army/security forces' bases and detention centers – increasingly blurring the lines between them and regular forces. Qais al-Khaz'ali, leader of the 'Asa'ib Ahl al-Haq militia said in a media interview in June: *"It is like any army, in that there are divisions inside it... and each one has its specialties... The military has artillery and aerial force. We have the fighters who go down on the ground and purge the areas."* Ahmed al-Kinani, a spokesman for the militia's political wing told media also in June: *"They are fighting side by side the with government forces on all fronts... They wear military uniforms. They are working with the security forces. It's logical."* However, militias are not subordinate to the regular forces. On the contrary, they appear to have more authority and effective power on the ground than the beleaguered government forces, increasingly seen as weak and ineffective.

[...]

International Law and the Conduct of Shi'a Militias

[10] International humanitarian law [...] applies in situations of armed conflict. In Iraq, there is currently a non-international armed conflict involving Shi'a militias clearly operating with the consent of the central government and in cooperation with government armed and security forces and the armed group calling itself Islamic State (IS). The rules of IHL therefore apply and are binding on all parties to the conflict, including Shi'a militias. These rules and principles seek to protect anyone who is not actively participating in hostilities: notably civilians and anyone, including those who were previously participating in hostilities, who is wounded or surrenders or is otherwise captured. They set out standards of humane conduct and limit the means and methods of conducting military operations.

[11] The deliberate and summary killing of people in captivity – be they civilians, suspected members of armed groups or combatants captured on the battlefield – is a flagrant and serious violation of international humanitarian law and constitutes a war crime. Torture and cruel treatment, rape and other forms of sexual violence, hostage taking, and arbitrary deprivation of liberty are also serious violations of IHL and also constitute war crimes.

[12] Under IHL, individuals, whether civilians or military, can be held criminally responsible for war crimes. Leaders and commanders of militias and armed groups must be particularly diligent in seeking to prevent and repress such crimes. Military commanders and civilian superiors can be held responsible for crimes

committed by their subordinates if they ordered such acts or if they knew, or had reason to know, such crimes were about to be committed and did not take necessary measures to prevent their commission, or to punish crimes that have already been committed. Individuals are also criminally responsible for assisting in, facilitating, aiding or abetting the commission of a war crime.

[13] Unlike IHL, which applies only to situation of armed conflict, international human rights law continues to bind the conduct of states in all situations. As a state party to the International Covenant on Civil and Political Rights, Iraq has a duty to respect, protect and fulfil the rights to life, to freedom from torture and other ill-treatment, and to liberty and security of the person. By allowing and even encouraging the creation and growth of unaccountable militias and failing to prevent and remedy unlawful killings, abductions and torture by these militias, Iraq is violating its legal obligations and can be held responsible for these gross human rights abuses.

B. Advice and Guidance to Fighters on the Battlefields by Al-Sayyid Ali Al-Husseini Al-Sistani

[Source: "Advice and Guidance to the Fighters on the Battlefields," The Official Website of his Eminence Al-Sayyid Ali Al-Husseini Al-Sistani, 12. February 2015. Available at: <http://www.sistani.org/english/archive/25036/>]

[...]

1. Just as God, exalted is He, has called the believers to Jihad [against the transgressors] and made it one of the pillars of religion, and just as God has privileged the Holy Warriors over those who do not fight [in Jihad], He, noble is His name, has placed certain conditions and etiquettes [on the conduct of Jihad]. Such conditions are necessitated by wisdom and mandated by the primordial nature of human beings. It is necessary, then, to learn these conditions and etiquettes thoroughly and to follow them sincerely, for one who learns these conditions and follows them sincerely will receive his deserved reward and blessings from God, and one who neglects them will not receive [the blessings] he hoped for.

2. With regards to Jihad there are general guidelines to which one must adhere even when confronting non-Muslims. The Prophet, peace be upon him and his progeny, advised his Companions to follow these general guidelines before sending them off to battle. In an authentic tradition, it has been reported that the Imam Ja'far al-Sadiq [...], peace be upon him, said, "When the Messenger of God, peace be upon him and his progeny, would want to send a fighting contingent he would sit down with them and advise them to represent God justly and to follow the good example of the religion of the Messenger of God. He would [further] say, 'Do not indulge in acts of extremism, do not disrespect dead corpses, do not resort to deceit, do not kill an elder, do not kill a child, do not kill a woman, and do not cut down trees unless necessity dictates otherwise.'"

[...]

4. By the majesty of God! By the majesty of God! Souls are sacred! Never should you do to them that which God has not deemed permissible. What great travesty it is to kill innocent souls, and what great honour it is to safeguard innocent souls, just as God, exalted is He, mentioned in His book [i.e. the Qur'an]. The killing of an innocent soul has dangerous consequences, both in this world and in the hereafter. [...] If you [i.e. the fighters of the Popular Mobilisation Committees] find yourselves in an uncertain situation from which you fear the Divine Wrath, issue a vocal warning [to those fighting you], or issue a physical warning by directing your bullets in a manner which does not strike the target or cause its destruction apologizing (for such a disliked confrontation) to your Lord and taking precaution not to kill innocent souls.

5. By the majesty of God! By the majesty of God! The lives of those who do not fight you are sacred, especially the weak among the elderly, the children, and the women, even if they were the families of those who fight you. It is unlawful for you to violate the sacredness of those who fight you except for their belongings. It was the noble habit of the Commander of the Faithful [i.e. 'Ali], peace be upon him, to prohibit [his soldiers] from attacking the properties of the families, the women, and the children of those against whom he fought, despite efforts by some of those who [claimed to] follow him, especially the Kharijites, who insisted on legitimizing it. To refute them, 'Ali would say, "(Their) men have fought so we fight the men, but we do not inflict harm on their women and children, for they are Muslims and within the Realm of Hijra (abode of emigration). Thus you have no right over them. But whatever they procured and used against you in the course of fighting, and whatever their army possessed and acquired belongs to you. Whatever is in their homes is an inheritance for their offspring according to the ordinance of God. You have no right over their women or over their offspring."

[...]

7. Never inflict harm on non-Muslims, regardless of their religion and sect. The non-Muslims [who live in predominately Muslim lands] are under the protection of the Muslims in those lands. Whosoever attacks non-Muslims is a betrayer and traitor. And rest assured that such an act of betrayal and treachery is one of the most repugnant acts in accordance to innate nature and the religion of God.[...] The Muslim must not allow the violation of the sanctity of those who are not Muslim and who live under the protection of Muslims. Rather, the Muslim must honour and guard those who are not Muslim as he would with his own family. [...]

8. By the majesty of God! By the majesty of God! Do not steal the wealth of people. The wealth of a Muslim is unlawful unless he agrees to its procurement. Those who usurp from others, they have obtained a piece of fire from the fires of hell. God, exalted is He, said, "Those who devour the property of orphans unjustly, devour fire in their bellies, and shall assuredly roast in a blaze." And in a tradition reported on the authority of the Prophet, peace be upon him and his progeny, that he said, "Whosoever steals and usurps the wealth of another, God will turn away from him and will not accept and reward him for his good deeds until he repents and returns the wealth to its rightful owner." We also find when we read stories about the life of the Commander of the Faithful, peace be upon him, that he forbade [his soldiers from] taking his enemy's wealth except for that found in their military encampment. And whenever someone [from the enemy's camp] brought forth proof that his personal wealth was taken [unlawfully] he ['Ali] would ask that it be returned. In another

report on the authority of Marwan son of al-Hakam, who said, "After 'Ali defeated us in Basra he return to the people [i.e. soldiers] their wealth. Who brought proof was given the wealth and (even) who didn't had proof was given by a swear on the name of his God."

[...]

10. Do not deprive any people, who do not fight you, of their rights even if they anger you. It has been reported from stories about the life of the Commander of the Faithful, peace be upon him, that he afforded those of other faith the same [respect] he afforded to the Muslims so long as they did not wage war against him. And he would never launch a military assault unless he was attacked first. [...]

[...]

12. Let no one [among you] think that there is a solution in oppression which cannot be gained by justice. Such a thought ascends from a narrow observation of the incidents without considering the mid and long term consequences of such an attitude. The adherents to such thoughts are those who have no information on the tradition of life and the history of nations which alerts on loosing innocent lives and spread of abhorrence in the society as a result of the atrocity of them.

It has been reported in the traditions that 'The one who finds difficulty to implement justice will find greater difficulty to deal with injustice'. The contemporary history leaves a great lesson for those who ponder on it. Few rulers, for the sake of strengthening their power, oppressed and prosecuted hundreds of thousands of people. And God, exalted is He, came at them from whence they did not reckon. As if they had destroyed their sovereignty with their own hands.

13. It may be the case sometimes that when you adhere to good conduct and remain disciplined you suffer [military] losses; this, nevertheless, is more spiritually rewarding, everlasting end and of greater benefit. [...]

[...]

19. Those (civilians) among you should be the well-wishers of the militants, acknowledging their sacrifice and protecting them from evils. They shouldn't be suspicious about them. God has not assigned any right upon others unless he has assigned the same for them. Each of them enjoys equal rights. [...]

20. Everyone must let go of those sentiments which carry hatred and bigotry. Follow the noble manners. God has made people into different tribes and races so that they may know each other. Do not be overcome by narrow-minded views and personal egos. Do you not see how the majority of Muslims today are engaged in self-destruction where they spend their resources, energy, and wealth on killing and destruction of each other? They should instead spend their resources and wealth on the advancement of knowledge and multiplying their resources and improve the welfare of the people. [...]

[...]

Discussion

I. Classification of the Conflict and Applicable Law

1. (*Document A, paras [1]-[10]*)

a. How would you classify the situation in Iraq?

b. What is the role of the Shi'a Militia in this conflict? What law is applicable to the conduct of Shi'a Militia?

Are all militia groups bound to respect IHL? Are there any conditions that a group must fulfil in order for the rules of IHL to address themselves to it?

c. Are the Militia or the government (or both) parties to the conflict? Does this matter for the IHL applicable to the conduct of the militia?

II. Violations of IHL/IHRL

2.

a. (*Document A*) What violations of international law (both IHL and IHRL) does Amnesty International point to in its report? Which parties are responsible?

b. (*Document A, paras [1], [6]*) Amnesty International voices concern about the impunity with which militia groups are allowed to operate in Iraq. In your opinion, is the Government of Iraq responsible in the same way for human rights abuses suffered by civilians when it is "unable" to guarantee their rights, as opposed to when it is "unwilling" to do so?

c. (*Document A, para. [12]*) Can leaders and commanders of Shi'a militia be held responsible for war crimes?

d. (*Document A, para. [13]*) Can the Iraqi Government be held responsible for violations committed by Shi'a militia? Under IHL? Under Human Rights Law?

III. Armed Forces/Armed Groups

3. (*Document A, paras [8]-[9]*)

a. The report discusses the blurring of the distinction between the militia forces and governmental armed forces. Under what circumstances could a particular Shi'a militia group be considered part of the Iraqi Government's fighting forces?

b. Is it problematic from an IHL point of view that Shi'a militias fight side-by-side with regular armed forces, and even wear their uniforms?

IV. Implementation by Armed Groups

4. (*Document B*) The author of the *Advice and Guidance to Fighters*, Al-Sayyid Ali al-Husseini al-Sistani, is Iraq's most influential Shiite cleric. Do you think his advice and guidance could have an impact on the behaviour of Shi'a militia members?

5. (*Document B*) In al-Sistani's *Advice and Guidance to Fighters*, we find echoes of rules and principles that are well-recognized in treaty and customary IHL. Could you provide examples of where in the *Advice and Guidance to Fighters* this is the case, and point out the specific IHL rules that are similar in each case? Are there any instructions that are similar to rules of IHRL? Are there any instances where the instructions contained in the *Advice and Guidance to Fighters* clashes with the rules of IHL? IHRL?

6. Upon reading and reflecting on al-Sistani's *Advice and Guidance to Fighters*, are there particular aspects of the *Guidance* that you find particularly striking? What are these? Why do they catch your attention?

7. (*Document B, para. 2*) Al-Sistani instructs: "Do not indulge in acts of extremism, do not disrespect dead corpses, do not resort to deceit, do not kill an elder, do not kill a child, do not kill a woman, and do not cut down trees unless necessity dictates otherwise." Can similar rules be found in IHL? (GC I-IV, Art. 3; GC I,

Arts 12 and 17; GC IV, Art 16; P I, Arts 34(1), 35, 37 and 51(2); P II, Arts 4(2)(a) and 13(3); CIHL, Rules 1, 6, 43, 50, 113, 134 and 135)

8. (*Document B, paras 4 and 5*) Is there a guideline that advises the taking of precautionary measures?

Which similarities does it show to the rules in IHL? Which differences? (P I, Arts 52 and 57 (2)(a)(i); P II, Arts 4 and 13; CIHL, Rules 1, 6 and 15)

9. (*Document B, para. 5*) Al-Sistani says that “[...] whatever they procured and used against you in the course of fighting, and whatever their army possessed and acquired belongs to you. Whatever is in their homes is an inheritance for their offspring according to the ordinance of God. You have no right over their women or over their offspring.” Are there similar rules in IHL that protect from pillage? (Hague Regulations, Arts 28 and 47; GC IV, Art. 33(2); P II, Art. 4(2)(g); CIHL, Rules 52 and 111)

10. (*Document B, para. 7*) Al-Sistani prohibits discrimination based on religious beliefs. Does IHL distinguish on the basis of religion? Is there a need for such a rule under IHL? (GC I-IV, Art. 3; P II, Arts 2(1) and 4(1); GC I, Art. 12(2); GC II, Art. 12(2); GC III, Art. 16; GC IV, Art. 27(3); CIHL, Rule 88)

11. (*Document B, paras 10 and 13*) According to the guidelines set out by Al-Sistani, an attack is only justified when committed in self-defence? Is this the IHL rule? Why not?

12. (*Document B, para. 19*) Al-Sistani advises the civilian population to cooperate with Shia's Militia. Is there a similar obligation under IHL?