

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

UNITED STATES OF AMERICA)	
)	
v.)	Criminal No. 1:16CR143
)	
MOHAMAD JAMAL KHWEIS)	The Honorable Liam O’Grady
)	
Defendant.)	

DEFENDANT’S EXHIBIT 1

FACT SHEET FOR AMERICANS IMPRISONED IN IRAQ

2016

Embassy's Role

While in Iraq, a U.S. citizen is subject to the same laws as an Iraqi citizen. Upon learning of a U.S. citizen's arrest, a Consular Officer will make arrangements to visit the citizen to inform him/her of certain basic criminal procedure rights, including the right to legal counsel, to provide a list of attorneys and to obtain personal data and a Privacy Act Waiver. This is a pre-requisite to enable the Embassy to communicate with family or friends who may be able to provide assistance.

Due to the security situation in Iraq, there may be a delay in our ability to visit in person. We will contact the appropriate authorities in order to speak directly to the detained citizen within 24 to 48 hours, in the event we are unable to visit the prison or detention facility in person.

The Embassy Can:

1. Telephone the accused's attorney on behalf of the accused (requires Privacy Act Waiver);
2. Contact relatives or friends to notify them of the citizen's situation and to request financial assistance (requires Privacy Act Waiver);
3. Communicate with the relatives or friends about the citizen's well-being, specifically requests for emergency assistance and medical support (requires Privacy Act Waiver);
4. Check to determine whether the citizen is receiving fair treatment by the authorities consistent with that granted to Iraqi citizens and contact Iraqi government authorities to request redress if they are not; and
5. Provided the security situation and Embassy operations permit, attend the trial, if the Embassy believes that discrimination on the basis of U.S. nationality might occur or if specifically requested by the prisoner or family.

The Embassy Cannot:

1. Provide legal counsel or advice, or pay legal costs and/or fines with U.S. Government funds;
2. Intervene in the Iraqi legal process;
3. Provide medical assistance except in cases of dire emergency;
4. Perform errands to purchase items outside the prison system; or
5. Convey non-emergency messages or requests to relatives or friends.

Overview of Iraq Justice System

Unlike the U.S. justice system, the Iraqi system is a civil law system, which relies on detailed legal codes and gives substantial power to the judge to shape a case. The U.S. legal system is based on precedence or past legal decisions and gives substantial authority to legal counsel to shape a case through arguments raised.

Proceedings in Iraq are non-adversarial, meaning attorneys do not argue the case for either side. There are no jury trials. Thus, judges in Iraq have significant authority in the trial and will determine what evidence to accept. The criminal courts in Iraq are divided into a Misdemeanor Court, Traffic Court, Felony Court and Juvenile Court.

The Kurdish region in Iraq operates autonomously in judicial affairs. It has a separate legal system and a separate judiciary than the rest of Iraq.

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Synopsis of Iraqi Legal Procedures

In Iraq, arrests may require a warrant, but a person can be arrested in certain circumstances without a warrant. Within 24 hours of detention, a detainee will appear before an Investigative Judge (IJ) (the equivalent of the prosecutor in the U.S.)

The IJ will review the evidence provided by the police, may meet with the arrestee and lawyer, and then determine whether to issue a detention order, which authorizes pretrial detention. The period of detention depends on the penalty for the crime. The reality is that the detention can be open-ended and people can be detained up to a year without trial.

The IJ determines whether to proceed to trial or reject a case, or to close a case temporarily to obtain more evidence. The IJ also determines the identity of the perpetrator or whether the incident was an act of God. Court proceedings are conducted in Arabic and your attorney is expected to translate for you. ***In Iraq, the usual expectations of presumption of innocence, the right to remain silent and proof of criminal activity 'beyond a reasonable doubt' do not apply.***

Bail

If the IJ issues a detention order and the penalty for the crime charged is less than 3 years, the judge must release the detainee on a pledge – with or without bail – unless the judge is concerned about obstruction of the investigation or that the individual will not honor the pledge.

Bail is offered at the investigation stage after taking a judicial statement from the accused. It is usually paid in cash, but, in general, a third-party guarantee is used to pay bail in Iraq. After bail is posted and approved by the IJ, the detainee should be released immediately. There are normally no restrictions provided the individual stays in Iraq, and appears before the IJ at the exact date and time assigned by the IJ. For foreigners, the court will confiscate and retain their passport until the case reaches a conclusion. Failing to comply with any condition will result in re-arrest. If there is no bail or it is denied, the individual will be detained at the police station. Please note detainees are not provided with a written explanation of the bail conditions. However, the attorney can provide more details about the bail amount and conditions.

Legal Representation in Iraq

Private Lawyers

The U.S. Embassy maintains a list of private attorneys that is available on request by emailing the Embassy at BaghdadACS@state.gov. As in the United States, private attorneys in Iraq can be costly.

Court Appointed Attorneys/Legal Aid

The NGO Dar-Al-Khibra, with the assistance of the U.S. Embassy and UNDP, recently established a Legal Help Desk to provide initial legal information to court users, to ensure that citizens are aware of their rights to a lawyer, particularly clients in detention, who may experience difficulties in obtaining access to a lawyer. The legal desk may provide representation in exceptional circumstances, such as for victims of gender based violence, of those with particular needs.

An initial call to the Help Desk will be directed to a specialist (lawyer or social worker, depending on the situation) to assist with the case. The Help Desk will prioritize cases based on urgency and sensitivity and will provide assistance in cases involving allegations of criminal conduct or civil cases, with a special focus on children, women, and people with special needs.

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The NGO Dar-Al-Khibra employs Arabic and English speaking specialists. It is important to remember that the official language used in Iraqi courts is Arabic; all civil and criminal codes and laws are in Arabic.

Contact for Help Desk: [REDACTED] - [REDACTED] - email [REDACTED]

The Help Desk is physically located in the Court House in the Baghdad Rusafa Court Complex. Hours of Operation are 9:00 am to 1:00 pm (0900 to 1300) Sunday through Thursday. The Help Desk is closed whenever the court is on official holidays.

If you do not have access to legal counsel, the court will hire a lawyer for you during the investigation and the trial.

Entering a Plea

Your attorney will prepare and file court documents. You will be present when charges are read / filed. You can change a plea once entered. Fines imposed must be paid immediately to the Court. If you plead guilty, your attorney can be involved at any time and before any court or police station.

Detention Timeline

Before charges are filed, your period of detention depends on the maximum possible sentence for the crime. In any event, it should not exceed 6 months – but there are instances in which this has occurred. If it is necessary to increase the period of detention to more than 6 months, the judge should submit your case to the Felony Court to seek permission for an appropriate extension, also determined by the maximum permissible sentence. If the Judge does not seek permission to extend, he should order your release, with or without bail.

You can have access to legal counsel at any time, including prior to and during any detention. If you enter a guilty plea, the period for processing the case varies depending on the case and issues. If you do not have access to legal counsel, the court will hire a lawyer for the investigation and the trial

U.S. law requires our Embassy to reach out to American Citizens that have been arrested or detained within the first 24-48 hours, which we will do as soon as we are informed of your detention or arrest. You can request a call be made to the Embassy, immediately upon your detention. Depending upon the detention facility where you are held, you may also be able to request calls with the Embassy. Visiting hours vary by facility. Written copies of rules for prisons and the obligations of officials are not provided to detainees. If the Iraqi officials do not act within legal time frames or meet other obligations under Iraqi law, you do have a right to take civil action against the officials or to appeal to the highest criminal court or Court of Cassation.

Iraqi Prisons

If you plead guilty or are found guilty by the Court, you will be sentenced according to Iraqi law. A U.S. Consular officer will make every effort to visit during your imprisonment, at least semi-annually. If you need to speak to a Consular officer at other times, you can request a phone call to the Embassy, by asking the Social Worker at the detention facility.

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While detained, your activities and rights are determined by the prison officials. You will be allowed to send and receive mail, subject to prison censorship, smoke cigarettes (usually provided by family), medications may be available (in clinic or through family members), have access to the prison doctor and social worker, and have the right to speak with the Prison Warden after submitting a written request. You also have the right to contact the Embassy to request a visit from a U.S. Consular officer. Please note our ability to visit is severely restricted because of the security situation in Iraq.

To avoid unwittingly violating prison regulations, you should ask in writing for any regulations so that you are aware of them. However, there is no obligation for the prison or court to provide these in writing. Your attorney can provide clarification on these regulations. It is imperative that these be followed to the fullest, or your confinement may be extended or you may be placed in solitary confinement.

If you have any questions concerning this information sheet or anything not covered by it, please feel free to ask the American Citizens Services officer or assistant. We will do our best to provide the information or assistance you seek.