

Iraq: New Martial Law Powers Threaten Basic Rights

By [Human Rights Watch](#)

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Iraqi Prime Minister Nuri al-Maliki's new security plan for Baghdad grants military commanders sweeping powers to arrest people and restrict their basic freedoms of speech and association, Human Rights Watch said today. On February 13, al-Maliki issued martial law powers giving military commanders authority to conduct warrantless arrests, monitor private communications, and restrict civil society groups in Baghdad. General Qanbar Hashim, commander of Baghdad operations, announced the decree as part of the Iraqi government's latest plan to curb the escalating civil war in the country.

The decree grants General Qanbar far-reaching powers to conduct searches and seizures without warrants; to arrest, detain and interrogate people; to monitor, search and confiscate "all mail parcels, letters, cables, and wire and wireless communication devices"; and to restrict all public gatherings, including "centers, clubs, organizations, unions, companies, institutions, and offices."

"The security situation in Baghdad is dire, but giving the military free rein to violate the basic rights of Iraqis is not the answer," said Sarah Leah Whitson, Middle East director at Human Rights Watch. "International law strictly limits the restrictions a government can place on fundamental rights during a public emergency. Iraq's new martial law provisions open the door to easy abuse." The security situation in Baghdad is dire, but giving the military free rein to violate the basic rights of Iraqis is not the answer.

The vaguely worded decree provides few details on how the regulations will be implemented, and includes no time limits for most of its provisions. It provides no specific limitations on searches of private property or searches and confiscation of private correspondence. While it requires that defense and security forces operating under the control of the military commander "abide by law" in carrying out searches, arrests and interrogations of individuals, and "shall observe human rights" in general when carrying out the decree, there is no elaboration of any safeguards.

The International Covenant on Civil and Political Rights, which Iraq ratified in 1976, permits some restrictions on certain rights during an officially proclaimed public emergency that threatens the life of the nation. According to the Human Rights Committee, the international body of experts that monitors compliance with the treaty, any derogation of rights during a public emergency must be of an exceptional and temporary nature, and must be "limited to the extent strictly required by the exigencies of the situation." Certain fundamental rights - such as the right to life, the right to be secure from torture and other cruel, inhuman or degrading treatment - must always be respected, even during a public emergency.

Under international law, states may not invoke a public emergency to permit arbitrary

deprivations of liberty or unacknowledged detentions, nor may they deviate from fundamental principles of fair trial, including the presumption of innocence. Human Rights Watch said that persons held as administrative detainees under a lawful state of emergency should enjoy as a minimum the right to be brought before a judicial authority promptly after arrest, be informed of the reasons for the deprivation of liberty, and have immediate access to legal counsel and family. They also should be allowed to challenge the lawfulness of their detention in a fair hearing, and to seek a remedy for mistreatment and arbitrary detention.

To implement the decree, al-Maliki cited article 58(9)(c) of the Iraqi Constitution, which authorizes him to pass emergency laws that do not contravene the Constitution: "The Prime Minister shall be authorized with the necessary powers that enable him to manage the affairs of the country within the period of the state of emergency and war. A law shall regulate these powers that do not contradict the constitution." He also cited the 2004 Law for Safeguarding National Security.

In addition to granting the military broad powers to deprive Iraqis of their liberty, the decree also grants General Qanbar full control over the defense and interior ministry forces. This is apparently intended to rein in the country's security forces, which over the past two years have increasingly splintered into segments affiliated with Shi`a and Sunni militias. Mounting evidence has implicated Interior Ministry forces in abductions, torture and killings of members of the Sunni community.

The decree provides for broad use of the death penalty, a punishment that Human Rights Watch opposes in all circumstances as inherently cruel and inhuman. Three articles in the decree refer to the 2005 Anti-Terror Law, which permits "the harshest punishment" for those found guilty of a wide array of offenses, including rape, theft, murder, abduction and destruction of private and public property, as well as the commission, participation or encouragement of crimes cited in the decree. The absence of due-process protections under the decree greatly increases cause for concern.

Other provisions of the decree include an extension of the curfew in Baghdad from 8 p.m. to 6 a.m. daily and the suspension of licenses for weapons ownership, limiting arms ownership to Iraqi security forces and to security guards escorting their charge or guarding their homes.

The decree represents a positive development with respect to preserving the property and possessions of forcibly displaced people against illegal occupation of their homes, as called for in the United Nations Guiding Principles on Internal Displacement. It addresses the issue of squatters occupying homes belonging to the approximately 3.8 million people who have fled or otherwise been displaced.

The decree requires these squatters to vacate the homes that they have taken over or to prove the owner's consent to their occupation, which cannot exceed six months. This provision is in apparent recognition of the vast numbers of Iraqis, both Sunnis and Shi`a, who have been forced to abandon their homes due to the violence in the country, and whose premises have since been overtaken by others.

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