



The Honorable Robert M. Gates
Secretary
U.S. Department of Defense
1000 Defense Pentagon
Washington, DC 20301

November 19, 2009

Dear Secretary Gates,

We write to you concerning juvenile detainees in U.S. custody in Iraq and Afghanistan. As you may recall, a delegation of U.S. government officials, including Department of Defense officials, appeared before the United Nations Committee on the Rights of the Child in May 2008. At that time, during the Committee's periodic review of U.S. compliance with the Optional Protocol on the Involvement of Children in Armed Conflict, which the United States ratified in 2002, Department of Defense officials provided information regarding juvenile detainees in U.S. custody overseas and at Guantánamo Bay. We write seeking updated information regarding the detention of children in U.S. custody overseas and at Guantánamo Bay, as well as information about any recent efforts to implement the Committee's recommendations.

The Optional Protocol requires the United States to provide all appropriate assistance for the physical and psychological rehabilitation and social reintegration of children under U.S. jurisdiction or control who have been recruited or used in violation of the protocol. Obligations under the Optional Protocol and juvenile justice standards require the U.S. government to ensure special safeguards for children under the age of 18. These norms stipulate that the arrest and detention of children must be used only as a measure of last resort and for the shortest appropriate period of time, and that juvenile detainees must be separated from adults, allowed contact with their families, and receive appropriate assistance, including access to education, recreation and rehabilitation.

At the conclusion of the periodic review in June 2008 the Committee issued its Concluding Observations and Recommendations, noting the considerable number of children in U.S.-administered detention facilities in Iraq and Afghanistan. As of May 12, 2008, U.S. military authorities were holding 513 Iraqi children as "imperative threats to security," and had transferred an unknown number of additional children to Iraqi custody. The U.S. government also reported to the Committee that as of April 2008, there were "approximately 10 juveniles being held at the Bagram Theater Internment Facility as unlawful enemy combatants."

In its Concluding Observations and Recommendations, the Committee expressed concern about the reports of mistreatment, length of detention and conditions of detention of these juvenile detainees, as well as the lack of adequate access to education, legal services, and physical or psychological recovery services. Furthermore, the Committee was concerned that the U.S. government has

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charged with war crimes, and in some cases prosecuted, children who were recruited or used in armed conflict, without due account of their status as children.

Following the periodic review, the Committee recommended that the U.S. government ensure that children under 18 are only detained as a measure of last resort, reduce the overall number of children in detention, provide adequate free and independent legal assistance for detained children, guarantee children a periodic and impartial review of their detention, and conduct such reviews at greater frequency for children than adults. The Committee also called on the U.S. government to guarantee that children, even if suspected of having committed war crimes, are detained in adequate conditions in accordance with their age and vulnerability, and ensure that detained children have access to an independent complaints mechanism, including impartial review of reports of cruel, inhuman and degrading treatment. Furthermore, the Committee recommended that the U.S. government conduct investigations of accusations against detained children in a prompt and impartial manner, in accordance with minimum fair trial standards. Lastly, the Committee recommended that the U.S. government provide physical and physiological recovery measures, including educational and athletic programs and efforts to promote social reintegration.

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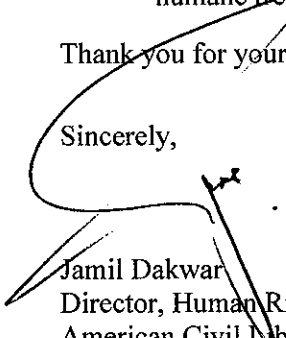
The ACLU welcomes the Department of Defense's engagement with the Committee on the Rights of the Child's periodic reporting and review process, as well as the current efforts to improve the legal process and conditions of detention in Iraq and Afghanistan. We write to respectfully request the following information regarding measures adopted by the Department of Defense since the May 2008 review to implement the Committee's recommendations and bring U.S. detention policy in Iraq, Afghanistan and Guantánamo Bay into compliance with the Optional Protocol and other human rights obligations:

- Disaggregated data (by age, sex, detention facility, length of detention, and length of incommunicado detention if applicable) regarding the number of minors (under the age of 18) held in U.S. custody in Iraq and Afghanistan anytime between May 2008 to the present.
- Information regarding any new policies or planned policies regarding the treatment or care for juvenile detainees in U.S. custody in Iraq and Afghanistan. In particular, we seek information regarding the legal limits on the detention of individuals who were juveniles at the time of capture, the procedures followed before a child under 18 is detained, and the detention review process for detained juveniles.
- Information on policies regarding conditions of detention, separation of children from adult detainees, access to family members and legal assistance, access to education and health care, and access by organizations such as UNICEF and the ICRC.
- Information on any new policies regarding the prosecution of detainees in U.S. custody in Iraq, Afghanistan and Guantánamo Bay, for crimes allegedly committed under the age of 18.

- Information regarding the extent to which U.S. obligations under the Optional Protocol and the Committee on the Rights of the Child's recommendations will be taken into account in future decisions regarding Canadian Omar Khadr, a Guantánamo Bay detainee who has been held in U.S. custody since age 15 and faces prosecution for crimes allegedly committed when he was as young as 10.
- Information regarding the extent to which U.S. obligations under the Optional Protocol and the Committee on the Rights of the Child's recommendations were taken into account in the recent decision, announced by Attorney General Holder on November 13, to continue to prosecute Omar Khadr before a military commission.
- Information on the number of juveniles transferred to Iraqi and Afghan custody for rehabilitation and reintegration into society, further detention or prosecution.
- Information on existing or new policies on transfer of juveniles from the U.S. to Iraqi or Afghan custody and mechanisms to ensure their safety, humane treatment and well-being by the new detaining authorities.

Thank you for your attention to this matter. We look forward to your response.

Sincerely,



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