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September 26, 2008

The Honorable Robert M. Gates
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

Dear Mr. Secretary:

I write to express concern about credible reports of torture of prisoners in the custody of U.S. forces in Iraq and Afghanistan. Such reports suggest that the United States may not be fully complying with our obligations under the UN Convention Against Torture when transferring prisoners to detention facilities run by local authorities in these two countries. I am also worried about the implications of relegating detainees to national legal systems in which they may not receive meaningful review of the charges against them, or any review at all.

According to the State Department 2007 Human Rights Report for Afghanistan, local authorities in various locations, including Herat, Helmand and Badakhshan, tortured or abused detainees, including by, “pulling out fingernails and toenails, burning with hot oil, beatings, sexual humiliation, and sodomy.”

Moreover, on September 21, 2007, the UN Secretary General issued a report which urged the government to investigate allegations of torture by detainees. The Secretary General expressed particular concern about the treatment of prisoners by the National Directorate of Security (NDS) in Afghanistan.

Similarly, Amnesty International issued a November 2007 report entitled “Afghanistan: Detainees Transferred to Torture: ISAF Complicity?” which warned international forces about the risks posed by transfer. Even under NATO’s mandate, the United States has a residual responsibility to ensure that the customary international principle of *non-refoulement*, or not returning people to torture, is observed.

Equally disturbing reports have been issued about abuses in national facilities in Iraq. According to the State Department 2007 Human Rights Report for Iraq: “During the year local and international human rights organizations continued to report torture and abuse in several MOI [Ministry of the Interior] and MOD [Ministry of Defense] detention facilities, as well as in KRG [Kurdistan Regional Government] security forces detention facilities. Numerous and serious

reports of torture, abuses, and killings were leveled at MOI's regional intelligence office in Basrah and the Khadimiyah National Police detention facility in Baghdad. Former detainees in both facilities reported that they suffered severe beatings, electric shocks, sexual assault, suspension by the limbs for long periods, threats of ill-treatment of relatives, and, in some cases, gunshot wounds.”

The United Nations have raised similar issues in its reporting. In one such report, UNAMI [UN Assistance Mission for Iraq] expressed concern “at continuing reports of the widespread and routine torture or ill-treatment of detainees, particularly those being held in pre-trial detention facilities, including police stations. Detainees interviewed by UNAMI at both Ministry of Interior and Ministry of Defense facilities regularly claimed to have been beaten or otherwise ill-treated, particularly upon arrest or while undergoing initial interrogation, most commonly to extract confessions from them. In some cases, the detainees bore injuries consistent with the torture alleged.” In addition, many women reported being raped and sexually abused while held in custody. Juvenile prisoners were likewise vulnerable to severe abuse.

I am also distressed by the UN’s conclusions with respect to due process in Iraq: “UNAMI remains concerned about procedures followed by the Central Criminal Court of Iraq and other criminal courts in Iraq, which fail to meet minimum fair trial standards. Basic legal entitlements to a fair trial are routinely denied the defendants, including adequate and timely access to counsel, access to the evidence, the right to have adequate opportunity to call and cross-examine witnesses, and generally to challenge the prosecution’s case and produce exculpatory evidence during the proceedings.” According to credible reports, many prisoners have been held in detention without charges for years. Others have been found innocent but continue to be held indefinitely.

I am similarly troubled by the state of the judicial system in Afghanistan. According to the State Department report, “the judiciary was underfunded, understaffed, and subject to political influence and pervasive corruption.” Amnesty International likewise reported an overall “lack of respect for rule of law and human rights”, a combination of factors that create an uneven system of justice. As the State Department concludes, court proceedings do not meet international standards.

I respectfully request your opinion as to whether the United States is fully complying with its obligations with respect to the Convention Against Torture in Afghanistan and Iraq. Furthermore, I would appreciate your views as to our moral responsibility when transferring detainees to judicial systems that cannot guarantee meaningful review of charges.

Thank you for your prompt attention in this matter. Please contact Natalie Coburn of my office if you require further information, at 202-226-6434.

Sincerely,



BILL DELAHUNT
Chairman
Subcommittee on
International Organizations,
Human Rights, and Oversight