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**STOP**  
the Use of Child  
**SOLDIERS**

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**UNITED STATES OF AMERICA:**  
**Compliance with the Optional Protocol to the Convention on the Rights  
of the Child on the involvement of children in armed conflict**

**Submission to the Committee on the Rights of the Child  
from the US Campaign to Stop the Use of Child Soldiers<sup>1</sup>**

**November 2007**

**Summary of key issues of concern**

The US Armed Forces have adopted policies since 2002 designed to prevent the participation of 17-year old US volunteers in armed conflict. However, information supplied by the Department of Defense shows that despite such policies, approximately 60 17-year old troops were deployed to Iraq and Afghanistan in 2003 and 2004. Although corrective measures were taken, it is not clear if such deployment may have recurred since that time, and whether policies prohibiting the deployment of 17-year olds are effectively enforced.

US government reports documenting misconduct by military recruiters raise concerns regarding the US' obligations to ensure that recruitment of children into the armed forces is genuinely voluntary, and done with full and informed consent. Documented misconduct by military recruiters has included the use of deception, coercion, falsification of documents, and sexual harassment. US laws allowing military recruiters to obtain students' personal information and contact information from secondary schools, also raise concerns regarding students' right to privacy.

The US has detained hundreds of children suspected of activity with armed groups in Iraq, and has also detained children at its facilities at Guantanamo, Cuba. In many of these cases, the US government has not recognized the juvenile status of these detainees, applied international juvenile justice standards, or recognized their right to rehabilitation and reintegration.

Under existing US law, the US government has opposed asylum claims from former child soldiers from other countries on the grounds that they participated in the persecution of others. Former child soldiers seeking asylum or refugee status also face obstacles because of laws barring such status to individuals who have provided support to groups engaging in terrorist activity.

<sup>1</sup> The US Campaign to Stop the Use of Child Soldiers is a national network of US-based NGOs founded in 1997. Its purpose is to influence US policy and practice to prevent the recruitment and use of child soldiers. Steering committee members of the US Campaign to Stop the Use of Child Soldiers include Human Rights Watch, World Vision, and Amnesty International-USA. This submission was prepared by Human Rights Watch on behalf of the Campaign.

## **Article 1: Direct participation of soldiers under the age of 18 in armed conflict**

The US government states that approximately 1500 soldiers each year are still 17 when they complete their basic training and are ready for operational assignment.<sup>2</sup> As of April 2007, the Army had approximately 950 active-duty soldiers under the age of 18, the Marine Corps had 310, the Navy had 70, and the Air Force had 85.<sup>3</sup>

In 2003, each US armed service adopted an implementation plan regarding the deployment of 17-year old soldiers in order to fulfill the US' obligations under article 1 of the Optional Protocol.

The US Army policy, issued in January 2003, is to not assign or deploy soldiers outside the continental US, Puerto Rico or territories or possessions of the United States until they have attained the age of 18 years.<sup>4</sup>

The US Navy assignment policy, issued on 28 February 2003, stipulates that "At no time will an enlisted member under the age of 18 be issued order that require reporting to an operational command," including in a commissioned vessel or deployable squadron.<sup>5</sup> In April 2007, the Navy added a further review on final orders for sailors under age 18 to ensure they were not being ordered to an operational unit.<sup>6</sup>

Initial guidance sent to Marine Corps commanders in January 2003 did not preclude deployment of 17 year olds in overseas operations, and instructed commanders to "weigh the mission requirements against the practicability of diverting 17-year old Marines from combat." However, on April 22, 2007, the Marine Corps issued a new policy, stating that effective immediately, Marines younger than 18 years of age were prohibited from being operationally deployed. Commanding generals and commanding officers were responsible for ensuring the policy was implemented.<sup>7</sup>

The Air Force policy is not to assign airmen who have not reached their eighteenth birthdate to hostile fire or imminent danger zones.<sup>8</sup>

In 2004, the Director of Military Personnel Policy for the US Army acknowledged in a letter to Human Rights Watch that nearly 60 17-year old US soldiers had been deployed to Iraq and Afghanistan in 2003 and 2004.<sup>9</sup> The Department of Defense subsequently stated that "the situations were immediately rectified and action taken to prevent recurrence."<sup>10</sup> Human Rights Watch sent a written request in April 2007 and again in August 2007 for updated information regarding possible deployment of 17-year old US troops to Iraq or Afghanistan, but as of November 2007, had not received a response.

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<sup>2</sup> US Department of State, "Initial Report of the United States of America to the UN Committee on the Rights of the Child concerning the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict," (<http://www.state.gov/g/drl/rls/83929.htm>, accessed October 24, 2007).

<sup>3</sup> Stars and Stripes, "Marines Under 18 No Longer Will Deploy to Combat Zones," 26 April 2007.

<sup>4</sup> US Army, Implementation of Army Procedures to Comply with Child Soldiers Protocol, RUEADWD9349, January 2003.

<sup>5</sup> Navy Personnel Command, *First-Term Personnel Assignment Policy*, 28 February 2003.

<sup>6</sup> Stars and Stripes, "Marines Under 18 No Longer Will Deploy to Combat Zones," 26 April 2007.

<sup>7</sup> US Marine Corps, "Revised 17 Year Old Marine in Combat Policy, 22 April 2007, MARADMIN 272/07.

<sup>8</sup> Secretary of the Air Force, Air Force Instruction 36-2110, 1 February 2000.

<sup>9</sup> Brigadier General Sean J. Byrne, Director of Military Personnel Policy, US Army, letter to Human Rights Watch, 2 April 2004.

<sup>10</sup> Department of Defense, "Information Paper" regarding application of child soldiers protocols, provided to Senator Barbara Boxer, November 2004, on file at Human Rights Watch.

Given the deployment of 17-year olds to conflict situations in 2003 and 2004, we remain concerned regarding whether the policies of the US armed forces against such deployments are being effectively implemented.

**Questions for the US government:**

- 1) Have any 17-year old US troops served in Iraq or Afghanistan in 2005, 2006 or 2007? If so, how many, and in what capacity?
- 2) What steps are being taken to ensure that the policies adopted by each branch of the armed forces to prevent the deployment of 17-year old soldiers into combat arenas are being effectively implemented?

**Article 2: Compulsory Recruitment**

As indicated in the US report, US law only allows for conscription from the age of 18, and is not currently in effect.

**Article 3: Voluntary Recruitment**

The United States armed forces allows for the voluntary recruitment of 17-year olds with the consent of their parent or guardian. However, military recruiters often begin contacting potential recruits at an earlier age to encourage later enlistment. Approximately 55 percent of US youth aged 16-21 say that they have spoken to a US military recruiter.<sup>11</sup>

US Department of Defense surveys have found that 16 and 17-year olds are two to three times more likely to consider military enlistment than youth over the age of twenty.<sup>12</sup> For this reason, the US armed forces devote significant resources toward recruiting individuals under the age of 18. It does this through several avenues, including direct access to students at secondary schools, student enrolment in the Junior Reserve Officers Training Corps, and securing access to contact information for secondary school students through school administrators, as well as through the application of the Armed Services Vocational Aptitude Battery (ASVAB, explained below).

The armed forces' delayed entry program (Future Soldiers Training Program) allows individuals to sign an enlistment contract, but not to report for duty for up to a year. Nearly all 17-year olds who sign an enlistment contract enter this program, as it allows them to delay their training until after their graduation.<sup>13</sup>

In the year ending September 30, 2005, 13,793 recruits aged 17 joined the US armed forces: 6,780 into the active armed forces (5,387 boys and 1,393 girls), representing 4.46 percent of all new active duty recruits, and 7,013 into the reserve forces (5,013 boys and 2,000 girls), representing 15.3 percent of the total reserves.<sup>14</sup>

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<sup>11</sup> Department of Defense, Defense Human Resources Activity, Joint Advertising, Market Research and Studies, "Department of Defense: Youth Poll Wave 9 – June 2005: Overview Report," JAMRS Report No. 2006-001, January 2006. ([www.jamrs.org/reports/Youth\\_Poll\\_9.pdf](http://www.jamrs.org/reports/Youth_Poll_9.pdf), accessed July 31, 2007.)

<sup>12</sup> Department of Defense, Defense Human Resources Activity, Joint Advertising, Market Research and Studies, "Department of Defense: Youth Poll Wave 11 – June 2006: Overview Report," JAMRS Report No. 2006-008, November 2006, page 3-3. ([www.jamrs.org/reports/Youth\\_Poll\\_11.pdf](http://www.jamrs.org/reports/Youth_Poll_11.pdf), accessed November 5, 2007.)

<sup>13</sup> Office of the Under Secretary of Defense, Personnel and Readiness, "Population Representation in the Military Services, Fiscal Year 2004," [http://www.defenselink.mil/prhome/poprep2004/enlisted\\_accessions/recruiting.html](http://www.defenselink.mil/prhome/poprep2004/enlisted_accessions/recruiting.html) (accessed November 5, 2007).

<sup>14</sup> Office of the Under Secretary of Defense, Personnel and Readiness, "Population Representation in the Military Services, Fiscal Year 2005," <http://www.humrro.org/poprep/poprep05/index.html> (accessed August 1, 2007).

*Recruiter access to students in the public schools:*

The US armed forces have long pursued contact with students through access to secondary schools. In 2001, a controversial measure was adopted by Congress as part of the "No Child Left Behind Act" (NCLB), which required secondary schools to provide military recruiters with contact information for all juniors and seniors, and to conduct recruiting activities on school premises. Section 9528 of the Act states that "each local educational agency receiving assistance under this Act shall provide, on a request made by military recruiters or an institution of higher education, access to secondary school students' names, addresses, and telephone listings."<sup>15</sup> Any school failing to comply with a request for such information may jeopardize the entire state's access to federal educational aid.

The measure was criticized by parents and children who felt that it violated students' right to privacy and subjected them to unwanted contacts from military recruiters. Although the law allows students and their parents to withhold personal information from recruiters, a 2007 study found that these provisions are not effectively implemented. A study published by the New York Borough President and the New York Civil Liberties Union surveyed more than 1000 students from 45 selected New York City schools perceived to be particularly subject to military recruitment activities.<sup>16</sup> It found that in violation of the law and Department of Education guidelines, 40 percent of students at the selected schools reported that their school had not provided them with a military recruitment "opt-out" form (allowing them to withhold their name and contact information from military recruiters) at the beginning of the 2006-2007 academic year. An additional 33 percent of respondents were not sure whether or not they had received such a form. Of the 25 percent of students who reported receiving the opt-out form, more than one-third said that no one from their school explained the form or their right to withhold personal information from military recruiters.<sup>17</sup>

Individual states have also adopted specific guidelines regarding recruiter access to students. Although the Department of Education guidelines for the state of New York state that classroom time is to be used only for instruction, more than one-fifth of respondents to the survey (21 percent) reported the use of class time by military recruiters. The survey also found that 18 percent of the survey respondents did not believe that anyone in their school could properly advise them of the risks and benefits of military enlistment, and that nearly half of respondents (45 percent) reported that they did not know to whom they should report military misconduct.<sup>18</sup>

In March 2007, proposed legislation entitled the Student Privacy Protection Act of 2007 was introduced into Congress. Its provisions would amend the No Child Left Behind Act to only allow students' personal information to be provided to the military if the student's parent or guardian provides explicit, written consent.<sup>19</sup> As of November 2007, the legislation had 64 co-sponsors in the House of Representatives but no formal action had been taken.

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<sup>15</sup> 20 USC § 7908(a) (2).

<sup>16</sup> See Manhattan Borough President Scott M. Stringer and the New York Civil Liberties Union, "We Want You(th)! Confronting Unregulated Military Recruitment in New York City Public Schools," (weblink, date).

<sup>17</sup> We Want You(th)!, pp 16-17.

<sup>18</sup> Ibid. pp 4-5.

<sup>19</sup> House Resolution 1346, Student Privacy Protection Act of 2007.

## *Junior Reserve Officer Training Corps*

A major conduit for military recruitment is the Junior Reserve Officer Training Corps (JROTC), an elective program based in secondary schools across the country that is open to students from the age of 14. The program's stated goal is to "motivate young people to be better citizens." Although JROTC cadets are not formal members of the military, courses are taught by retired military personnel, and include military drills with both real and dummy firearms. An estimated 40 percent of students who graduate from high school with two or more years of JROTC eventually enlist in the military.<sup>20</sup> In 2006, 486,594 high school students were enrolled in approximately 3,300 JROTC units across the country (1555 Army; 224 Marine Corps; 869 Air Force; 619 Navy).<sup>21</sup> Total enrollment in the program grew 8 percent between 2001 and 2006, fueled by a 57 percent increase in federal funding for the program.

## *ASVAB*

The Armed Services Vocational Aptitude Battery is a test developed and funded by the Department of Defense. It is administered in over 14,000 schools and military entrance processing stations (MEPS) in the United States.<sup>22</sup> The military provides the test to schools nationwide, without charge, as a way to gauge students' aptitude and strengths for military service. It is also used to obtain students' personal contact information. According to the Army's School Recruiting Program Handbook, the ASVAB is used to "provide the field recruiter with a source of leads of high school senior and juniors qualified through the ASVAB for enlistment into the Active Army and Army Reserve."<sup>23</sup>

The vast majority of students taking the test are under age 18, and some are as young as 15. (The test is approved for grades 10-12.) Local organizations have reported that students are often not told that the ASVAB is an optional test, and that many school administrators are not aware that they can choose not to share test results with the military. In some schools, it is made mandatory, and parental consent is not sought. According to organizations tracking military recruitment in high schools, the use of the test "equips recruiters to begin the recruiting process with young people well before they turn 18 and without parental approval, and it enables recruiters to override the right of parents and students to opt out of being included in the NCLB [No Child Left Behind] student lists."<sup>24</sup>

## *Recruiter Misconduct*

Reports by the US government and the media have documented the use of deception, coercion, and other misconduct by military recruiters seeking new recruits. These reports raise concerns regarding the US' obligations to ensure that recruitment of children into the armed forces is genuinely voluntary, and done with full and informed consent.

<sup>20</sup> Los Angeles Times, "Junior ROTC takes a hit in LA," 19 February 2007.

<sup>21</sup> US Army Junior ROTC website, [https://www.usarmyjrotc.com/jrotc/dt/2\\_History/history.html](https://www.usarmyjrotc.com/jrotc/dt/2_History/history.html); e-mail communication from Marine Corps Junior ROTC headquarters to Human Rights Watch, August 9, 2007; US Air Force, "Fact Sheet: Air Force Junior Reserves Officer Training Corps," December 2006;

<http://www.afboats.af.mil/Publicaffairs/documents/AFJROTCFactSheetDec06.pdf>; "JNROTC Basic Facts," Navy Junior ROTC website, <https://www.njrotc.navy.mil/basicfacts.cfm>;

<sup>22</sup> "About the ASVAB," <http://www.military.com/Recruiting/ASVAB/1.13387.00.html> (accessed November 6, 2007).

<sup>23</sup> US Army Recruiting Command, "School Recruiting Program Handbook," USAREC Pamphlet 350-13, September 1, 2004, section 6-2.

<sup>24</sup> E-mail communication to Human Rights Watch from the Committee Opposed to Militarism and the Draft, August 22, 2007.

In August 2006, the US Government Accountability Office reported that between fiscal years 2004 and 2005, allegations of recruiter irregularities increased from 4,400 cases to 6,600 cases; that cases substantiated by military investigations increased from just over 400 cases to almost 630 cases; and that criminal violations more than doubled from 33 cases to 68 cases.<sup>25</sup> The report defined recruiter irregularities as “willful and unwillful acts of omission and improprieties” perpetrated by a recruiter to facilitate the recruitment process for an applicant, including coercion, falsification of documents, giving false promises, failing to disclose disqualifying eligibility criteria, and sexual harassment. The GAO stated that data collected by the armed services likely underestimate the true number of recruiter irregularities, and that 20 percent of active duty recruiters believe that irregularities occur frequently.<sup>26</sup> The report also found that recruiting irregularities typically peak at the end of the monthly recruiting cycle, when recruiters are under the most pressure to meet their quotas.<sup>27</sup>

US media have also documented recruiter misconduct. A 2006 ABC News and WABC undercover investigation found recruiters in New York City intentionally misinforming students about the requirements of enlistment. For example, hidden cameras caught recruiters telling potential recruits that the US was not at war, that recruits could just leave the military after enlistment if they didn’t like it, and that potential recruits could hide drug-addiction problems.<sup>28</sup>

In 2005, more than 80 military recruiters were disciplined for sexual misconduct with potential enlistees, including at least 35 Army recruiters, 18 Marine Corps recruiters, 18 Navy recruiters and 12 Air Force recruiters. An investigation conducted by the Associated Press concluded that one of out 200 frontline recruiters were disciplined for sexual misconduct in 2005, and that most victims were girls between the ages of 16 and 18 who were considering enlistment in the military.<sup>29</sup> The incidents of misconduct included groping, sexual assault, and rape. Some victims reported to the media that they agreed to sexual contact because they believed that if they refused, they would not be allowed to join the military, or would receive an undesirable assignment.<sup>30</sup>

#### **Questions for the US Government:**

- 1) What steps are being taken to address recruiter misconduct (including the use of deception, falsification of information, coercion, or other recruiter irregularities), including measures to facilitate reports of such conduct, to conduct timely and thorough investigations, and to take appropriate disciplinary or criminal action against those responsible?
- 2) What specific steps are being taken to prevent and respond to sexual misconduct by recruiters against girls who may be considering enlistment? How are such instances investigated, and what disciplinary or criminal action is taken?

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<sup>25</sup> US Government Accountability Office, “Military Recruiting: DoD and Services Need Better Data to Enhance Visibility over Recruiter Irregularities,” August 2006.

<sup>26</sup> US Government Accountability Office, “Military Recruiting: DoD and Services Need Better Data to Enhance Visibility over Recruiter Irregularities,” August 2006, citing Department of Defense, Defense Human Resources Activity, Joint Advertising, Market Research and Studies, *2005 Recruiter Quality of Life Survey, Topline Report*, JAMRS Report No. 2006-002 (Arlington, VA: February 2006).

<sup>27</sup> US Government Accountability Office, “Military Recruiting: DoD and Services Need Better Data to Enhance Visibility over Recruiter Irregularities,” August 2006.

<sup>28</sup> “WABC News, “Army Recruiters Accused of Misleading Students to Get them to Enlist,” November 3, 2006.

<sup>29</sup> Associated Press, “Military Recruiters Cited for Misconduct,” 20 August 2006.

<sup>30</sup> See Associated Press, “Marine Corps Settles Rape Lawsuit,” 7 June 2007.

- 3) What steps are being taken to protect children's privacy, and unwanted contact from military recruiters, or the unwanted release of personal information to military recruiters?

#### **Article 4:**

Under Article 4, the States Parties shall take all feasible measures to prevent recruitment of persons under the age of 18 years or their use in hostilities by armed groups. This includes criminalizing such practices.

In the United States, the Federal Criminal Code does not address the issue of child recruitment, nor allow prosecution of an individual who has recruited or used child soldiers in another country and then attempts to take safe haven in the United States.

On October 3, 2007, the "Child Soldier Accountability Act" was introduced into the U.S. Senate. This proposed legislation would amend the US criminal code to make the recruitment or use of children under the age of 15 a punishable crime, whether committed in the US or abroad, and to establish jurisdiction over US citizens or non-nationals present in the United States who commit this crime. Persons convicted of the crime could be sentenced for up to 20 years in prison, or if death results, to a life sentence. The Act also provides that individuals who recruit or use children under 15 as soldiers are inadmissible or deportable under the Immigration and Nationality Act.<sup>31</sup>

Precedent for this already exists in US federal law. For example, Chapter 113c of Title 18, the Crimes and Criminal Procedure of the US Code makes it a crime for torture to be committed abroad irrespective of the nationality of the victim or alleged offender where the alleged offender is present in the US. The provision imposes severe criminal penalties on "whoever outside the United States commits or attempts to commit torture." Jurisdiction over this crime applies whether the alleged offender is a national of the United States, or is present in the United States, irrespective of the nationality of the victim or alleged offender. (Sec. 2340A.) The first person to be charged under this law, Charles "Chuckie" Taylor, Jr., son of former Liberian president Charles Taylor, was indicted in December 2006.

Another precedent is the Genocide Accountability Act, which was adopted by the US Senate on March 29, 2007. This act amends the Genocide Convention Implementation Act to allow prosecution of non-US nationals who are in the US for acts of genocide committed outside the United States.

#### **Question for the US government:**

- 1) Will the US government support legislation to make the recruitment of child soldier a punishable crime, whether committed in the US or abroad, and by either US citizens or non-nationals?

#### **Article 6: Disarmament, demobilization, rehabilitation and reintegration**

The United States has detained children suspected of participating in armed activities in US-run detention facilities in Afghanistan and Iraq and in its Naval Base in Guantánamo, Cuba. In 2006, the ICRC registered 59 children in detention during 16 visits to five

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<sup>31</sup> S. 2135, The Child Soldier Accountability Act.



places of detention or internment controlled by the US or UK in Iraq.<sup>32</sup> US soldiers stationed at the detention centres and former detainees described abuses against child detainees, including the rape of a 15-year old boy at Abu Ghraib, forced nudity, stress positions, beating, and the use of dogs.<sup>33</sup> Following US troop increases in Iraq in early 2007, US military arrests of children there rose from an average of 25 per month in 2006 to an average of 100 per month<sup>34</sup> Military officials reported 828 children held at Camp Cropper by mid-September; including children as young as 11.<sup>35</sup> A 17-year-old was reportedly strangled to death by a fellow detainee in early 2007.<sup>36</sup>

In August 2007 the US opened Dar al-Hikmah, a non-residential facility intended to provide 600 detainees age 11 through 17 with education services pending release or transfer to Iraqi custody. US military officials excluded an estimated 100 children from participation in the program, apparently on the grounds that they were “extremists” and “beyond redemption.”<sup>37</sup>

As of this writing it was not clear if children are subject to the same detention review process as adults, who do not have access to lawyers when presenting their case to a review board that routinely decides 20 cases per hour, and who must sign pledges of good behavior and produce a guarantor to be released.<sup>38</sup> In addition, according to Major General Douglas Stone, as of September 2007 between 50 and 60 children age 15 through 17 had been turned over to Iraqi custody for trial.<sup>39</sup>

Children have also been detained by US forces in Afghanistan, a number of whom have been transferred to the military detention facility at Guantánamo. Omar Ahmed Khadr, a Canadian national, was taken into US custody in Afghanistan in late July 2002 when he was 15 years old and subsequently transferred to Guantánamo. In November 2005, he was charged for trial by military commission under a Military Order signed by President George W. Bush in November 2001. This military commission system was ruled unlawful by the US Supreme Court in June 2006 and was replaced by a revised system under the Military Commissions Act (MCA) signed into law in October 2006. In April 2007, Omar Khadr was charged for trial under the MCA with murder and attempted murder in violation of the law of war, conspiracy, providing material support for terrorism, and spying.<sup>40</sup> In June 2007, a military judge dismissed the charges against Khadr on a jurisdictional question.<sup>41</sup> On 24 September 2007, a newly established Court of Military

<sup>32</sup> International Committee of the Red Cross, “ICRC Annual Report 2006: Iraq”, 24 May 2007, [http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/738e6j/\\$file/icrc\\_ar\\_06\\_iraq.pdf?openement](http://www.icrc.org/web/eng/siteeng0.nsf/htmlall/738e6j/$file/icrc_ar_06_iraq.pdf?openement)

<sup>33</sup> Amnesty International, “USA: Human dignity denied: Torture and accountability in the ‘war on terror’”, October 2004, [http://web.amnesty.org/library/pdf/AMR511452004ENGLISH/\\$File/AMR5114504.pdf](http://web.amnesty.org/library/pdf/AMR511452004ENGLISH/$File/AMR5114504.pdf), pages 128-9.

<sup>34</sup> “US detains nearly 800 juveniles in Iraq,” AFP, August 19, 2007

<sup>35</sup> Martin Fletcher , “They have planted bombs and shot soldiers – now it is time for school,” The Times (London), September 15, 2007, <http://www.timesonline.co.uk/tol/news/world/iraq/article2457299.ece>;

<sup>36</sup> Martin Fletcher , “They have planted bombs and shot soldiers – now it is time for school,” The Times (London), September 15, 2007, <http://www.timesonline.co.uk/tol/news/world/iraq/article2457299.ece>;

<sup>37</sup> “US detains nearly 800 juveniles in Iraq,” AFP, August 19, 2007; Martin Fletcher , “They have planted bombs and shot soldiers – now it is time for school,” The Times (London), September 15, 2007, <http://www.timesonline.co.uk/tol/news/world/iraq/article2457299.ece>.

<sup>38</sup> “U.S. Command in Baghdad Launches Bid to Rehabilitate Iraqi Detainees,” Inside the Air Force, July 20, 2007, Vol. 18, No. 29; Nancy Montgomery, “Board decides fate of thousands of Iraqi detainees: Panel of Iraqis and American military has released more than 14,000 in 18 months,” Stars and Stripes, February 23, 2006

<sup>39</sup> Walter Pincus, “U.S. Working to Reshape Iraqi Detainees: Moderate Muslims Enlisted to Steer Adults and Children Away From Insurgency,” Washington Post, Wednesday, September 19, 2007.

<sup>40</sup> Charge sheet available at <http://www.defenselink.mil/news/Apr2007/Khadreferral.pdf>.

<sup>41</sup> At his arraignment proceedings in Guantánamo on 4 June 2007, the military judge dismissed the charges against him because, while Omar Khadr had been designated as an “enemy combatants” in Guantánamo, nowhere was there a record of his designation as an “unlawful enemy combatants”, the label which (when attached to a non-US national) is a prerequisite for trial by military commission under the MCA.



Commission Review overturned the ruling, allowing proceedings against Khadr to continue.

On 11 October 2007, the US charged another Guantanamo detainee Mohammad Jawad, for attempted murder for allegedly throwing a grenade at a US military vehicle. He was 17 at the time of the attack.<sup>42</sup>

**Questions for the US government:**

- 1) How many children are currently in US custody in Iraq, Afghanistan and Guantanamo for suspected activity with armed groups?
- 2) What provisions are being made for the release, rehabilitation and reintegration of children in US detention?
- 3) What coordination is being undertaken with UNICEF or other child protection agencies to ensure that effective rehabilitation and reintegration programs are put in place?
- 4) If any detained children are suspected of criminal activity, what charges, if any, have been made against them?
- 5) What steps are being taken to adjudicate these cases as quickly as possible, to ensure the children's access to legal counsel, and to ensure compliance with international juvenile justice standards?
- 6) Do the ICRC and other relevant agencies, such as UNICEF, have full access to visit all detention facilities where children are held, and have private access to each child?
- 7) How many children have been released from US custody, and what steps have been taken to ensure their rehabilitation and reintegration?
- 8) What is the US doing to develop a policy regarding its treatment of children apprehended during hostilities that is consistent with its obligations under the Optional Protocol?

**Article 7: Technical cooperation, financial assistance for rehabilitation and social reintegration**

As reported by the US government, since 2001, the US has contributed US\$34 million to support programs to prevent the recruitment and use of child soldiers and to demobilize and reintegrate child combatants, including US\$10 million through the US Agency for International Development (USAID) and US\$24 million through the US Department of Labor. It has supported programs in Angola, Afghanistan, Burundi, Colombia, Democratic Republic of Congo, Liberia, Sierra Leone, Sri Lanka, Sudan, and Uganda.<sup>43</sup>

Former child soldiers who seek asylum or refugee status in the United States face serious obstacles. The United States Immigration and Nationality Act prohibits asylum or refugee status for individuals who have participated in the persecution of others, are inadmissible or removable as a terrorist, or met other specified preclusions.<sup>44</sup> While many child soldiers have been recruited (often by force) in violation of international law and US domestic policy, the US has opposed asylum claims of some former child

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<sup>42</sup> Miami Herald, "Guantanamo Captive Charged," 12 October 2007.

<sup>43</sup>US government, "Initial Report of the United States of America to the UN Committee on the Rights of the Child concerning the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict," (date, website).

<sup>44</sup> 8 U.S.C. § 1158(a)(2)(A)

soldiers on the grounds that they were persecutors by virtue of having been child soldiers.<sup>45</sup>

In one example, the Department of Homeland Security opposed the asylum claim of Salifou Yankene, a former child soldier in Cote d'Ivoire. Yankene's claim stated that he was forcibly recruited when he was 15 years of age by a rebel soldiers who cut off the arm of his little brother when their mother resisted the recruitment, and who plied him with drugs during his two years of compelled service. When the immigration judge granted Yankene's request for asylum, the government appealed on the grounds that Yankene was a "persecutor."<sup>46</sup> In another case, the Department of Homeland Security for years opposed asylum for a young man who, as a child of 14, was forcibly conscripted into the army of a government that had previously jailed and tortured him.<sup>47</sup>

The USA PATRIOT Act of 2001, followed by the REAL ID Act of 2005, created further obstacles to former child soldiers seeking refuge in the United States by expanding the Immigration and Nationality Act's definition of "terrorist activity" to include "material support" to any organization that has engaged in "terrorist activity."<sup>48</sup> The Department of Homeland Security has argued that "material support" may include such non-violent activity such as portering, cooking, or even paying extortion.<sup>49</sup> Further, the expansion of the definition of "terrorist activity" may bar anyone who has ever borne arms in a non-state armed group or provided support to any armed group from receiving asylum or refugee status.

In sum, United States agencies have refused to recognize any legal exceptions or defenses to either the persecutor or terrorism bars for former child soldiers who have been illegally recruited or forced to participate in an armed group. Indeed, former child soldiers may be excluded even without any evidence that they were involved in human rights violations.

#### **Questions for the US government:**

- 1) How many former child soldiers have sought asylum or refugee status in the United States?
- 2) In how many cases has the US government opposed such claims, including taking steps to overturn decisions to grant former child soldiers status?
- 3) Will the US government consider issuing guidelines for the consideration of claims to asylum or refugee status by child soldiers that would recognize that the persecutor/ "material support" bar to asylum should not apply to child soldiers recruited in violation of international law?

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<sup>45</sup> The United States has ratified the Worst Forms of Child Labour Convention which under Article 3 includes compulsory use of children for use in armed conflict, as well the Optional Protocol to the Convention of the Rights of the Child. It is also a signatory to the 1977 Additional Protocols, the Convention on the Rights of the Child, and the International Criminal Court.

<sup>46</sup> Telephone conversation with Bryan Lonagan Esq., former counsel to Yankene.

<sup>47</sup> Anwen Hughes, Testimony of Human Rights First before US Senate Committee on the Judiciary, Subcommittee on Human Rights and the Law, "Casualties of War Child Soldiers and the Law," April 24, 2007.

<sup>48</sup> 8 U.S.C. § 1182(a)(3)(B)(iv)(VI)

<sup>49</sup> See *Abandoning the Persecuted: Victims of Terrorism and Oppression Barred from Asylum*, Human Rights First (2006)