

Human Rights Watch

Children's Rights

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Children in US Custody Held Without Due Process

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US forces in Iraq should ensure that children it takes into custody are treated according to their status as children, and given prompt judicial review and access to independent monitors, Human Rights Watch said today. On May 22, the UN Committee on the Rights of the Child will meet in Geneva to review US compliance with the international treaty banning the use of child soldiers, which requires states to help with the recovery and reintegration of such children under their control.

US military authorities, operating as the Multinational Forces in Iraq, were as of May 12, 2008 holding 513 Iraqi children as imperative threats to security, and have transferred an unknown number of other children to Iraqi custody. According to a recent report by the United Nations Assistance Mission in Iraq (UNAMI), children in Iraqi custody are at risk of physical abuse.

In conflicts where it was not directly involved, the US has been a leader in helping child soldiers re-enter society, said Clarisa Bencomo, Middle East children's researcher at Human Rights Watch. That kind of leadership is unfortunately missing in Iraq.

On May 22, the UN Committee on the Rights of the Child will meet in Geneva to review US compliance with the Optional Protocol on children in armed conflict, which the US ratified in 2002. The treaty bans the recruitment and use of persons under 18 in hostilities by any party to a conflict, and requires states to provide all appropriate assistance for the physical and psychological recovery and social reintegration of such children under their jurisdiction or control.

Since 2003, the US has detained some 2,400 children in Iraq, including children as young as 10. Detention rates rose drastically in 2007 to an average of 100 new children a month from 25 a month in 2006. The US holds most children at US Camp Cropper in Baghdad, but has also held children at the main US military detention facility, Camp Bucca near Basra. US officials earlier this year told Human Rights Watch that they separate children from adults at these facilities but do not separate very young or particularly vulnerable children from other child detainees.

In early 2007, a 17-year-old boy was reportedly strangled to death by a fellow child detainee at Camp Cropper.

Child detainees, no differently from adults, may be interrogated over the course of days or weeks by military units in the field before being sent to the main detention centers. They have no real opportunity to challenge their detention: earlier this year US officials told Human Rights Watch that children are not provided with lawyers and do not attend the one-week or one-month detention reviews after their transfer to Camp Cropper. In addition, children have very limited contact with their families. While the US does assign each child a military advocate at the mandatory six-month detention review, that advocate has no training in juvenile justice or child development.

As of February 2008, the reported average length of detention for children was more than 130 days, and some children have been detained for more than a year without charge or trial, in violation of the Coalition Provisional Authority memorandum on criminal procedures. That memorandum's section on security internee process states, Any person under the age of 18 interned at any time shall in all cases be released not later than 12 months after the initial date of internment.

The vast majority of children detained in Iraq languish for months in US military custody, Bencomo said. The US should provide these children with immediate access to lawyers and an independent judicial review of their detention.

In August 2007, the United States opened Dar al-Hikmah (House of Wisdom) at Camp Cropper with the stated intention to provide 600 detainees, ranging in age from 11 to 17, with educational services pending release or transfer to Iraqi custody. However, in May 2008, US military officials in Baghdad told Human Rights Watch that only 200 to 300 of the 513 child detainees were enrolled in classes at Dar al-Hikmah. Currently, children who are excluded from the program do not receive any other educational services.

Like adults, children transferred to Iraqi custody are at risk of abuse and poor conditions of confinement. A US military official in Baghdad told Human Rights Watch this month that the US was delaying the transfer of 130 child detainees to Iraq's al-Tobchi juvenile

detention facility because of conditions there.

The UN Assistance Mission for Iraq (UNAMI) found that overcrowding at al-Tobchi was causing hygiene problems during visits in October and November 2007. At the time the facility was operating at close to double its normal capacity of 200 beds, and children were sharing beds or taking turns to sleep on the floor without mattresses.

To date, the United States has not released statistics on the number of children it has transferred to Iraqi custody for trial. According to UNAMI, 89 children transferred from US to Iraqi custody had been convicted of offenses by December 2007. Between December 2007 and March 2008, there was a drop of 450 children in US custody, but the United States has not made known whether they were released or transferred to Iraqi custody.

Human Rights Watch calls on US military forces in Iraq to:

- Ensure children in its custody receive prompt access to independent legal assistance and family visits;
- Provide children with prompt review of detention by an independent judicial body;
- Release children who have been detained for more than a year, in compliance with Section 6, Article 5 of Coalition Provisional Authority Memo 3 (revised) of June 27, 2004;
- Separate very young and other particularly vulnerable children from other detainees;
- Allow UNICEF, UNAMI, and other independent monitors confidential access to children in US custody;
- Refrain from transferring physical custody of children to Iraqi authorities pending trial when there is reason to believe they will be at risk of abuse; and,
- Ensure the right to education and recreation of all children in US custody.

Background

Since the declared end of the US occupation of Iraq in June 2004, detained persons should be provided due process under international human rights law. Security Council Resolution 1546 and its successors allow for internment of Iraqis for imperative reasons of security. However, the United States improperly uses this language to justify holding the detainees without judicial review and other basic rights, as if the operative law were the Fourth Geneva Convention on the treatment of civilians during international armed conflict.

Human rights law, as found in the International Covenant on Civil and Political Rights, requires that all persons arrested be brought promptly before a judge, have access to legal counsel and family members, be charged with a cognizable criminal offense, and receive a prompt trial meeting international fair trial standards. It also requires states to provide every child such measures of protection as are required by his status as a minor.

Under international juvenile justice standards, children accused of criminal offenses must have access to specialized juvenile justice systems, with specially trained judges, prosecutors, and attorneys working in a framework of restorative justice and social rehabilitation. The arrest and detention of a child must be used only as a measure of last resort and for the shortest appropriate period of time. Detained children should be separated from adults, and are entitled to prompt access to legal and other appropriate assistance in challenging detention.

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