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To

The Chair
The United Nations Human Rights Committee

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B Birnberg Peirce & Partners

Solicitors

14 Inverness Street
London NW1 7HJ
Telephone: 020 7911 0166
DX 57059 Camden Town
Fax: 020 7911 0170
Immigration Dept Fax: 020 7388 9036
Email: [name]@birnbergpeirce.co.uk

PRELIMINARY SUBMISSION RE THE COMMITTEE'S LIST OF ISSUES

This submission by Birnberg Peirce & Partners, a London-based civil liberties law firm sets out a number of issues relating to the continued detention of those prisoners "cleared for release" at Guantanamo Bay Detention Facility ("Guantanamo"), that we consider the Human Rights Committee (the Committee) should consider in the development of its List of Issues Prior to Reporting (list of issues) in respect of the United States of America's compliance with the International Covenant on Civil and Political Rights (ICCPR).

The United States of America's Compliance with the International Covenant on Civil and Political Rights (ICCPR) With Respect to the Continued Detention of Prisoners Cleared for Release at Guantanamo.

1. There is continuing unlawful detention of individuals indefinitely without trial at Guantanamo who have been "cleared for release" and face no legal proceedings. This body of 55 cases constitutes a paradigm example of systemic arbitrary detention.
2. Related violations commonly occurring against these individuals and their families, some of them continuing, in contravention of rights guaranteed by United Nations instruments including the ICCPR, include:
 - i. Arbitrary detention without trial;
 - ii. Physical ill-treatment amounting to torture and cruel, inhuman and degrading treatment;
 - iii. Unlawful interstate transfer/renditions with no judicial oversight;
 - iv. The withholding of legal processes and untrammelled access to lawyers;
 - v. Abusive interrogations;
 - vi. Continuous ill-treatment including ongoing confinement in Guantanamo Bay and forced feeding;
 - vii. Failure to facilitate independent medical advice;
 - viii. Unlawful separation from close family members.

Partners
Gareth Peirce
Nigel Leskin
Marcia Willis Stewart

Practice Manager
Richard Brown

Operations Manager
Dawn Elkin

Solicitors
Smita Balaria
Rachael Despicht
Matt Foot
Ronnie Graham
Daniel Guedalla
Sarah Kellas

Alastair Lyon
Sajida Malik
Jacqui McKenzie
Sally Middleton
Henry Miller
Irène Nembhard
Barry O'Connor

Sonia Routledge
Harriet Wistrich

Immigration Caseworkers
Irfan Cangatin
Liz Farrell
Arun Gananathan

*Criminal
Defence Service*



*Community
Legal Service*



Specialist Help Point

Past Committee statements

3. At its July 2006 session, the Human Rights Committee asked the US to ensure that all detainees at Guantanamo Bay are provided a fair opportunity to challenge the lawfulness of their detention, and to hold accountable all those responsible for abuse and torture in Guantanamo.

4. Human Rights Committee Supplement no. 40 (A/61/40 (Vol.I)) of December 2006 deals with the US' restrictive interpretation of Art. 7 ICCPR with respect to extraterritorial transfers. The Committee notes with concern the US practise of extraordinary rendition of terror suspects and recommends that the US should review its position and take all necessary measures to protect such individuals from torture. Where torture has occurred, a remedy should be provided.

The 2011 US government report

5. The 2011 US government report to the CCPR does not directly address the issue of the continued arbitrary detention at Guantanamo Bay of those prisoners cleared for release. However, at para 178 of the report, it is noted by the US government that Executive Order 13567 (issued on March 7, 2011) establishes a regime of "periodic review" of detention for detainees who have *not* been charged, convicted, or designated for transfer. Further, it is noted, the Order expressly provides that the periodic review process must be implemented "consistent with applicable law".¹

6. It is our submission in circumstances where prisoners cleared for release remain arbitrarily and indefinitely detained, reviews carried out under this power are rendered essentially meaningless, and not compliant with the USA's international legal obligations

Legal Framework

7. International human rights norms and articles of the International Covenant on Civil and Political Rights (ICCPR) violated include Article 7 (prohibition against torture), Article 9 (right to liberty), Article 10 (right to humane treatment), Article 14 (right to a fair trial), and Article 26 (equality before the law).

CCPR General Comments

8. *CCPR General Comment No. 31 (Nature of the General Legal Obligation Imposed on States Parties to the Covenant):* CCPR/C/21/Rev.1/Add.13 26/05/2004 affirms that the ICCPR applies situations of armed conflict where international humanitarian law applies, and affirms that states must ensure the treaty rights to those "within the power or effective control of that State Party,

¹ *Fourth Periodic Report of the United States of America to the United Nations Committee on Human Rights Concerning the International Covenant on Civil and Political Rights*, para 179, <http://www.state.gov/j/drl/rls/179781.htm>.

even if not situated within the territory of the State Party." This principle applies to the forces of a state acting outside its territory, and the protections are not limited to citizens of the state in question, but rather apply to all regardless of nationality.

9. *CCPR General Comment No. 20 (Art. 7): 03/10/1992* notes that no derogation is allowed from obligations under Article 7. In particular:

3...The Committee also reaffirms that, even in situations of public emergency such as those referred to in article 4 of the Covenant, no derogation from the provision of article 7 is allowed and its provisions must remain in force. The Committee likewise observes that no justification or extenuating circumstances may be invoked to excuse a violation of article 7 for any reasons.

10. *CCPR General Comment No. 20 (Art. 7): 03/10/1992* notes that prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by Article 7.

11. *CCPR General Comment No. 20 (Art. 7): 03/10/1992* notes that the protection detainees requires that prompt and regular access be given to doctors and lawyers and, under appropriate supervision when the investigation so requires, to family members.

12. *CCPR General Comment No. 08 (Art. 9) : 06/30/1982, CCPR General Comment No. 21: (Art. 10): 04/10/1992, and CCPR General Comment No. 13 (Art. 14): 04/13/1984* also apply.

13. *General Comment No. 3 of the Committee Against Torture (CAT/C/GC/3) 19 November 2012* addresses the scope and implementation of Article 14 CAT, the right to redress for victims of torture. *General Comment N. 2 of the Committee Against Torture (CAT/C/GC/2) 24 January 2008* deals with the implementation of Article 2 CAT by State Parties.

Other UN reports and statements

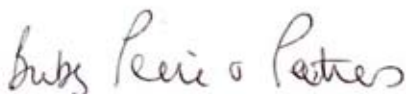
14. *The Interim Report of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (A/66/268), 5 August 2011* deals further with solitary confinement as falling under treatment prohibited by Article 7.

15. *The Joint Report on the Situation of Detainees at Guantanamo Bay (E/CN.4/2006/120)* makes a number of recommendations, including recommendations to close the detention facility at Guantanamo Bay, ensure that detainees are not returned to states where they risk being tortured, and ensure that all allegations of torture or cruel, inhuman or degrading treatment are thoroughly investigated by U.S. criminal courts, and perpetrators are brought to justice.

Questions for the United States

16. Recommended questions for the United States of America on this issue include:

- i. On what basis is the detention of the 55 detainees at Guantanamo "cleared for release" maintained?
- ii. Does the US accept that the detention of these men (many for more than 10 years), alongside the fact that they have been cleared for release, amounts to torture, contrary to Article 7 of ICCPR?
- iii. Does the US accept that the continued detention of these 55 men cleared for release is in contravention of ICCPR Article 9 (right to liberty), Article 10 (right to humane treatment), Article 14 (right to a fair trial), and Article 26 (equality before the law)?
- iv. Does the US accept that the continued detention of these men renders effectively meaningless any review of their detention pursuant to Executive Order 13567, and is further in express contravention of the Order's requirement that the review process be implemented "consistent with applicable law".



BIRNBERG PEIRCE & PARTNERS