



Lack of Accountability
for
Contractor Crimes Committed Overseas

Before the

**House Committee on the Judiciary
Subcommittee on Crime, Terrorism,
and Homeland Security**

Presented by

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Thank you Mr. Chairman and members of Congress; Amnesty International (AI) is pleased to testify at this important and timely hearing.

Summary

In May of 2006, AI publicly called on the Department of Justice to immediately investigate and, where clear evidence of human rights violations exists, prosecute employees or contractors of private military and security firms operating overseas for their involvement in human rights violations. However, despite the passing of more than a year since Amnesty International made these demands, to date, the same 17 pending cases of detainee abuse, including abuse at Abu Ghraib, by civilians remain languishing on the docket of the U.S. Attorney's Office in the Eastern District of Virginia.

In addition to the cases of detainee abuse, Amnesty International is aware of hundreds of serious incident reports (SIRs) voluntarily filed by contractors, and reported shootings and killings by security contractors that have also apparently been unaddressed by the Justice Department. AI filed a brief in support of the *Los Angeles Times*' suit requesting that more information in the SIRs be released, which was denied on national security grounds and contract personnel privacy concerns. In this environment of apparent impunity for serious criminal conduct and human rights

violations and complete lack of transparency, the U.S. government's reliance on private contractors has grown tremendously, creating a dire need for Congress to establish adequate regulation of the industry. For these reasons, Amnesty International commends the attention the Judiciary Committee is committing to this issue and calls for (i) immediate investigation and prosecution of cases of human rights violations committed by U.S. contractors under currently available law, (ii) expansion of the Military Extraterritorial Jurisdiction Act (MEJA) and other current U.S. law to ensure that security contractors, hired by various agencies of the U.S. government, do not escape accountability and (iii) greater transparency to Congress on the status of cases referred to the Department of Justice, in particular, any circumstances prohibiting it from prosecuting referred cases of contractor criminal conduct.

Amnesty International emphatically supports the Transparency and Accountability in Security Contracting Act of 2007 (H.R. 369) and the MEJA Expansion and Enforcement Act of 2007 (H.R. 2740), introduced by Representative David Price, which contain several important provisions not addressed by the Defense Authorization Act (H.R. 1585), and which largely answer AI's calls for transparency and accountability for human rights violations in private military and security contracting.

Current U.S. Law Providing for Jurisdiction Over Contractor Crime Overseas

The U.S. Justice Department currently has the authority to prosecute civilian contractors for certain crimes committed outside the United States under several U.S. laws, including:

The War Crimes Act. This law, 18 U.S.C. § 2441, criminalizes certain war crimes committed inside or outside the United States by anyone who is a member of the armed forces or is a U.S. national. Under the Act, a war crime includes conduct defined as a grave breach of the Geneva Conventions, or constituting a violation of common Article 3 of the Conventions. The latter prohibits, inter alia, cruel treatment, torture, and outrages upon personal dignity, in particular humiliating and degrading treatment.

The Torture Statute. This law, 18 U.S.C. § 2340, makes it a criminal offense for any U.S. national acting in an official capacity "outside the United States" to commit or attempt to commit torture. The law was enacted in 1994. Anyone who conspires to commit the acts prohibited under the statute can be subject to the same penalties as the actual perpetrator. This law, however, defines torture in an arguably narrower way than the U.N. Convention against Torture.

The Military Extraterritorial Jurisdiction Act (MEJA) of 2000. This law, 18 U.S.C. § 3261, criminalizes conduct committed by "members of the Armed Forces and by persons employed by or accompanying the Armed Forces outside the United States" that would be punishable by more than one year's imprisonment if engaged in within the United States. The text of MEJA (18 U.S.C. § 3267(1)(A)) was amended in 2005 to define the term "employed by the Armed Forces outside the United States" to include civilian employees, contractors, or employees of contractors, not only of the Department of Defense, but also of "any other Federal agency, or any provisional authority, to the extent such employment relates to supporting the mission of the Department of Defense overseas." The U.S. Attorney's Office in the District of Arizona used MEJA to bring charges against a security contractor for Assault with a Deadly Weapon and Assault Resulting in Serious Bodily Injury in February 2007.

The USA PATRIOT Act. Section 804 of this law, 18 U.S.C. § 7 (9), extends the jurisdiction of U.S. federal courts over military personnel, including civilian contractors, for violations of federal criminal law committed at U.S. facilities abroad. The U.S. Department of Justice has used this provision to bring criminal charges against a CIA contractor who allegedly beat a detainee who later died in custody in Afghanistan. The contractor was indicted by a North Carolina grand jury of Assault with a Dangerous Weapon and Assault Resulting in Serious Bodily Injury, was found guilty of multiple counts of assault and was sentenced to over eight years in prison.

Expansion of Law Supported by Amnesty International

While past abuses by military and some security contractors may be prosecuted under current U.S. law, Amnesty International also supports an expansion of the MEJA and any other U.S. law that would ensure that contractors, who are taking on a growing number of functions, for example in security, border patrol and reconstruction projects, do not escape accountability simply because they may be deemed to not be “supporting the mission of the Department of Defense”.

The MEJA Expansion and Enforcement Act of 2007 (H.R. 2740) and its predecessor (H.R. 369) accomplish such an expansion by establishing jurisdiction over all U.S. government contractors, as long as their work is carried out outside of the United States in an Armed Forces contingency operation, compared to the current jurisdiction MEJA grants, over contractors whose work supports a Department of Defense mission. The Judiciary Committee should consider amending language to even further the expansion to all U.S. contractors operating overseas, as long as they are working to support a mission or effort of the U.S. government.

Further, Amnesty International supports a clear establishment of enforcement mechanisms, including organization of any existing enforcement resources, to ensure that prosecutions are not thwarted due to practical problems such as collecting evidence and making available witness testimony. While enforcement mechanisms must be established in accordance with certain Constitutional protections, and with consideration to the sovereignty of the host country, international law recognizes the nationality principle, under which a state may apply and enforce its criminal law outside of its territorial jurisdiction in order to hold accountable its own citizens and people who otherwise avail themselves of its nationality, for their criminal misconduct. The environment of impunity in which tens of thousands of U.S. contractors have been and are currently operating overseas is the exact type of situation necessitating application of this principle.

Thus far, it appears that some investigations overseas have been conducted, leading to the referral of at least twenty cases of detainee abuse to the Department of Justice. However, the status of those cases, and the reason(s) why they have not been acted on in the more than three years they have been on the docket of the U.S. Attorney’s Office in Eastern Virginia, are unknown. In order to ensure that victims of human rights abuses have meaningful access to justice, Congress should mandate, in accordance with H.R. 2740, that the Department of Justice report to it the status of cases of contractor misconduct overseas to the extent that, at a minimum, Congress is aware of (i) the number and type of complaints received, (ii) the number of investigations into complaints received, (iii) the number of cases opened, (iv) the number and result of cases closed, and (v) the reasons why prosecutions could not be brought in cases that were not opened.

Preference of Civilian Prosecutions over Application of Uniform Code of Military Justice

The Uniform Code of Military Justice (UCMJ) is applicable to U.S. troops worldwide and, since the 2007 Defense Authorization Act (P.L. 109-364), can also be used to prosecute certain civilians "in time of declared war or contingency operation... serving with or accompanying an armed force in the field". The fact that a person is eligible for trial by court-martial under the UCMJ does not make him or her ineligible for trial in the ordinary U.S. courts.

In order to prevent arbitrariness – with, for example, civilian contractors charged with similar or the same crimes as military personnel, but tried in different jurisdictions – and to avoid any perception of inappropriate military justice leniency or lack of impartiality, Amnesty International believes that all personnel, civilian or military, of low rank or high, should be tried for human rights abuses in civilian courts. Any trials must conform fully to international standards for fair trial, and the death penalty – which could be available under the UCMJ, the War Crimes Act and the Torture Statute in cases of torture or ill-treatment resulting in death – must not be imposed.