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Convention on the Rights of the Child

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Committee on the Rights of the Child

Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

List of issues concerning additional and updated information related to the consideration of the second periodic report of the United States of America (CRC/C/OPAC/USA/2)

Addendum

Written replies of the United States of America*

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited.

1. It is with great pleasure that the Government of the United States of America presents this information in response to the questions from the Committee on the Rights of the Child. The United States is delighted to participate in this process and has, in the spirit of cooperation, provided as much information as possible in response to all questions posed by the Committee, taking into consideration the page limit, even where the questions or information provided in response to them do not bear directly on obligations arising under the Optional Protocol. The United States further expresses its appreciation for the opportunity to appear in person before the Committee in January, 2013.

Reply to the issues raised in paragraph 1 of the list of issues (CRC/C/OPAC/USA/Q/2)

2. As discussed in paragraphs 11, 76-79 and 178 of the U.S. second periodic report and response to recommendations, filed 23 January 2010 (CRC/C/OPAC/USA/2), the United States has disseminated the Optional Protocol on the involvement of children in armed conflict (Optional Protocol) and related material widely at all levels of government and made its text available, with reports and related documents, on the Department of State (DOS) website, www.state.gov/j/drl/hr/treaties/. The Department of Defense (DOD), DOS, and Department of Homeland Security (DHS) all provide training on issues covered by the Optional Protocol, as described in paragraph 77 of the second periodic report; the United States also funds projects in foreign countries that include important public awareness components, as discussed in Chapter V of that report. Those activities continue.

3. DOS also publishes widely read reports that address the unlawful use of child soldiers. The annual Trafficking in Persons (TIP) reports include child soldiering as a manifestation of human trafficking when it involves the unlawful recruitment or use of children – through force, fraud, or coercion – by armed forces as combatants or other forms of labor. Beginning with 2010, the TIP report also publishes a list of foreign governments identified during the previous year as having governmental armed forces or government-supported armed groups that unlawfully recruit and use child soldiers, pursuant to the Child Soldier Prevention Act (CSPA), title IV of 110 P.L. 457 (2008). The reports for 2001-2012 are available at www.state.gov/j/tip/rls/tiprpt. The annual DOS *Country Reports on Human Rights Practices* also include reporting on unlawful use of child soldiers for each state reviewed and, in recent years, provide additional information, including trends toward improvement in each state or the lack thereof and the role of the government of each state engaging in or tolerating the use of child soldiers as defined in the CSPA. The reports covering 1999-2011 are available at www.state.gov/j/drl/rls/hrrpt/.

Reply to the issues raised in paragraph 2 of the list of issues

4. As paragraph 50 of the second periodic report indicates, while service members under the age of 18 were deployed where imminent danger pay (IDP) or hazardous duty pay (HDP) was authorized during the period 2003-2008, none took direct part in hostilities as that term is understood by the United States according to the understanding contained in its instrument of ratification: "the phrase 'direct part in hostilities' — (i) means immediate and actual action on the battlefield likely to cause harm to the enemy because there is a direct causal relationship between the activity engaged in and the harm done to the enemy; and (ii) does not mean indirect participation in hostilities, such as gathering and transmitting military information, transporting weapons, munitions, or other supplies, or forward deployment." The terms HDP and IDP as used in paragraph 50 refer to designations by the Secretary of Defense for special pay. HDP is provided as an incentive to compensate members who perform inherently dangerous duties but is not necessarily linked to situations involving hostilities. The statutory definition of "hazardous duty" includes, for example, duty involving frequent and regular participation in aerial flight, parachute jumping as an essential part of military duty, duty involving the demolition of explosives as a primary duty, including training, and duty inside a high-or low-pressure

chamber. 37 USC §301(a). A service member may receive IDP when subject to hostile fire or explosion of hostile mines but also, among other situations, when the member is on duty in a foreign area in which he or she is subject to the threat of physical harm or imminent danger on the basis of civil insurrection, civil war, terrorism, or wartime conditions. 37 USC § 310(a)(2)(A) and (D).[1] A location may be designated an IDP area for a number of years on the basis of such a threat during which there are no attacks and no one takes direct part in hostilities.

5. In response to the Committee's questions raised in paragraphs 2(a) and 2(b), during Fiscal Year (FY) 2009-2011 no individuals under the age of 18 were deployed in support of on-going operations where HDP or IDP was authorized. For the Committee's information, three individuals under 18 were deployed in support of ongoing operations in 2009 (although not where HDP or IDP was authorized or in any way taking a direct part in hostilities); none were deployed in 2010 and 2011.

Reply to the issues raised in paragraph 3 of the list of issues

6. Information on 17-year-old recruits for FY 2009 through FY 2011 is provided in annex 1. The minimum age for applying and joining the Armed Forces is 17 and requires the consent of both parents if living. Thus no applications were accepted from 16-year-olds. Moreover, as discussed above, because of the length of time between recruitment and deployment, no service member who was under the age of 18 when recruited and who was deployed during the period 2003-2011 took direct part in hostilities as that term is understood by the United States according to the understanding contained in its instrument of ratification.

Reply to the issues raised in paragraph 4 of the list of issues

7. The plain meaning of article 3, paragraph 1, is clear that States Parties to the Optional Protocol must raise the age of voluntary recruitment into armed forces above 15, even if they are not parties to the Convention and thus not bound by its provisions, as is the case for the United States. Article 3, paragraph 1 of the Optional Protocol states, "States Parties shall raise the minimum age for the voluntary recruitment of persons into their national armed forces from that set out in article 38, paragraph 3, of the Convention on the Rights of the Child, taking account of the principles contained in that article and recognizing that under the Convention persons under the age of 18 years are entitled to special protection." Article 38, paragraph 3 of the Convention on the Rights of the Child provides that "States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces."

8. Further, during negotiation of the Optional Protocol, the United States indicated its understanding that article 3, paragraph 1, required parties to raise the minimum age for voluntary recruitment from the then current international standard of 15, as reflected in article 38, paragraph 3, of the Convention on the Rights of the Child. The United States included an understanding to this effect in its instrument of ratification: "The United States understands that article 3 obliges States Parties to raise the minimum age for voluntary recruitment into their national armed forces from the current international standard of 15."

[1] DOD is currently working to implement legal authority that combines provisions for IDP and HDP. 37 USC §351.

Reply to the issues raised in paragraph 5 of the list of issues

9. As part of its role in providing oversight, DOD continues to review data on recruiter irregularities and produces the associated report annually, as discussed in paragraph 46 of the second periodic report. Since the United States filed its report in January 2010, DOD has issued reports regarding recruiter irregularities for FY 2009, 2010 and 2011.

10. The U.S. Government Accountability Office (GAO) is an independent, nonpartisan agency that investigates all matters relating to the receipt, disbursement, and application of public funds by the federal government. Concerning the Committee's question on the 2010 GAO report on recruiter irregularities, the GAO stated in its conclusions that all components of the military services had made "substantial progress since 2006 in increasing their oversight over recruiter irregularities" (GAO-10-254, p. 41). The GAO also reported that DOD concurred in specific recommendations in the GAO report; the military departments and services continue to work with GAO to implement them fully. Collectively, steps have been taken to improve the service components' sharing of recruiter irregularity data, the clarity of reporting guidance from the Office of the Secretary of Defense, and the transparency of the data reported to DOD.

11. The language cited by the Committee in the RAND Corporation Technical Report (RCTR) on page 32 is quoting a 2006 GAO report (see RCTR page 17). As indicated above, the 2010 GAO report found "substantial progress" on recruiting oversight since 2006. The RCTR is available at *www.rand.org/pubs/technical_reports/2010/RAND_TR827.pdf*. Safeguards related to voluntary recruitment are discussed further in paragraphs 34-46 and 186 of the second periodic report.

Reply to the issues raised in paragraph 6 of the list of issues

12. As discussed in the second periodic report, paragraphs 185-193, the United States does not have universal military service or conscription. Since 1973, it has maintained an all-volunteer force. Thus, recruiting is at the heart of the U.S. military services, and the United States takes its responsibilities seriously in adhering to recruitment requirements. The United States does not see a requirement or need to restrict the presence of military recruiters on high school grounds. Current U.S. law (10 USC § 503(c)) allows recruiters the same access as other employers and post-secondary institutions. In addition, 20 USC § 7908 specifically provides access to name, address, and telephone listings of high school students by military recruiters and institutions of higher education; § 7908 also provides that a parent or student may request that such information not be provided without prior written parental consent.

13. The ASVAB is administered by schools as part of the ASVAB Career Exploration Program (ASVAB CEP). ASVAB CEP is a DOD-developed program to help students explore career opportunities, both civilian and military, using information about their current skills and interests. Participation in the ASVAB CEP is entirely voluntary. DOD does not require schools to participate, nor does it require schools to test all students within a participating school. There is no obligation for students who participate in the ASVAB CEP to talk with a recruiter, even if their scores are released to recruiters. The ASVAB CEP program is offered free of charge to high schools – not directly to students. The ASVAB test is administered by the school to students in the 10th, 11th and 12th grades (usually 15-18 years old). The scores from the tests are provided by DOD directly to the schools with materials to interpret the scores and to discuss career exploration activities with students. There is no requirement for a school to have DOD personnel conduct score interpretation sessions, but many schools prefer to have trained DOD specialists do so. Decisions as to availability of a student's scores and other information are made at two levels. The school can choose an option that prohibits any information on any student from

being made available to recruiters. If a school does not choose that option, each student can choose whether his or her information will be made available to recruiters.

Reply to the issues raised in paragraph 7 of the list of issues

14. JROTC is a local school citizenship program supported by DOD; it is a voluntary program from which students may withdraw at any time. JROTC's stated purpose is to "instill in students, in U.S. secondary educational institutions, the values of citizenship, service to the United States, and personal responsibility and a sense of accomplishment." Traditionally, the program's curriculum focuses on the study of ethics, citizenship, communications, leadership, life skills and other subjects designed to prepare young men and women to take their place in adult society. A student-centered curriculum focusing on character building and civic responsibility is presented in every JROTC classroom. Marksmanship and the responsibilities associated with firearms handling may be covered but are not a required part of the JROTC curriculum.

15. If there were any penalty for withdrawal, it would be pursuant to local school district policies, for example a possible loss of credit for the course. Local school districts must request the program and bear more than half of the cost. The school district may request the program be terminated at any time; such requests are honored by the military services. Because JROTC instructors are employees of the schools, any complaint would be directed to the school's administration as with any other teacher.

16. Students in JROTC are not members of, or otherwise affiliated with, any U.S. military service. High school graduates who have participated in JROTC can choose to enlist voluntarily at age 17 or older, as can any other individual. The only information collected by DOD or the individual military services on these programs is the total number of units, currently 3,456, and the total number of students participating, 548,000.

17. Regarding U.S. Cadets Programmes, the United States is providing available data on cadets under 18 at the Military Service Academies (the U.S. Air Force Academy, the U.S. Military Academy, the U.S. Naval Academy, and the U.S. Coast Guard Academy) in annex 2. These are officer accession programs that include a four-year academic program that leads to a commission. Students at the academies do receive co-curricular military training during their time at the academies including weapons training. The minimum age for entry into the academies is 17 years old, but most graduates are 22 years old or older when they receive their commission and actually enter active military service.

18. The Army Cadet Corps is a non-profit youth education organization that receives no federal funding and has no affiliation with the U.S. military. Other cadet programs in the United States, the Naval Sea Cadets (NSC), Young Marines (YM), and the cadet program of the Civil Air Patrol (CAP), are non-profit organizations with some financial support from U.S. armed services. NSC, YM and CAP are voluntary, community-based organizations under civilian leadership with a focus on character building, leadership, physical fitness and promoting a healthy drug-free lifestyle. Some programs offer optional small arms training and safety instruction. In addition, CAP performs three congressionally mandated missions: emergency services, aerospace education and the cadet program. The United States does not have data on children enrolled in these programs at this time.

Reply to the issues raised in paragraph 8 of the list of issues

19. The United States does not have compulsory recruitment for anyone at any age. The Selective Service Act was amended to preclude all conscription as of 1 July 1973, 50 USC app. § 467(c). The United States would also note that article 2 of the Optional Protocol does not require criminalization of compulsory recruitment.

20. As noted in paragraph 5 of the initial report (CRC/C/OPAC/USA/1), U.S. federal and state law fully meet the Optional Protocol requirements and already met the obligations of the United States under the Optional Protocol at the time of ratification. Since that time, the United States has adopted additional legislation, in particular the Child Soldiers Accountability Act (CSAA) of 2008 and the Child Soldiers Prevention Act (CSPA), discussed in paragraphs 81-101 of the second periodic report.

21. Article 4 provides that armed groups that are distinct from the armed forces of a state should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years and places an obligation on states parties to take "all feasible measures" to prevent such recruitment and use, including criminalization. In its instrument of ratification the United States included an understanding that "the term 'armed groups' in article 4 of the Optional Protocol means non-governmental armed groups such as rebel groups, dissident armed forces, and other insurgent groups." As explained in paragraphs 64-71 of the second periodic report, the United States criminalizes insurgent activities by non-governmental actors against the United States, and criminal law prohibits the formation of, or participation in, certain insurgent groups within the United States. The United States also has extensive criminal penalties that would be applicable to forced recruitment by non-governmental armed groups if there were any such groups in the United States. It should also be noted that, as discussed in paragraphs 83-88 of the second periodic report, the CSAA criminalizes recruiting, enlisting, or conscripting a person while such person is under 15 years of age to serve in an armed force or group, as defined in the CSAA, or using a person under 15 to participate actively in hostilities.

Reply to the issues raised in paragraph 9 of the list of issues

22. The United States has long been committed to upholding the law of armed conflict. U.S. service members receive training in the principles and rules of the law of war, including the principles of proportionality and distinction, commensurate with each individual's duties and responsibilities, throughout their service in the military as required by articles 47 and 50, Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949; articles 48 and 51, Geneva Convention for the Amelioration of the Condition of Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea of 12 August 1949; articles 127 and 130, Geneva Convention Relative to the Treatment of Prisoners of War of 12 August 1949; articles 144 and 147, Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949; and 10 USC §§ 801-940, the Uniform Code of Military Justice (UCMJ). Additionally, the U.S. military makes qualified legal advisers available at all levels of command to provide advice about law of war compliance during planning and execution of exercises and operations.

23. The United States has several judicial means by which to hold individuals accountable for violations of the laws of war, including: (1) courts-martial for offenses covered by the UCMJ; (2) federal courts for offenses covered in other federal law, including the War Crimes Act of 1996; and (3) military commissions for offenses covered in the Military Commissions Act (MCA) of 2009. Under the UCMJ, general courts-martial have jurisdiction to try persons subject to the UCMJ for a wide variety of offenses covered by the UCMJ. General courts-martial also have jurisdiction to try any person who under the law of war is subject to trial by a military tribunal and may adjudge any punishment permitted by the law of war. Federal courts have jurisdiction to try persons for many offenses under federal law, including those who, whether inside or outside the United States, commit a war crime in any of the circumstances where the person committing such war crime or the victim of such war crime is a U.S. service member or a national of the United States. Military commissions convened under the MCA of 2009 have jurisdiction to

try alien unprivileged enemy belligerents for any offense made punishable by the MCA, articles 104 and 106 of the UCMJ, or the law of war.

24. DOD is keenly aware of the importance of avoiding and mitigating civilian casualties. As a matter of policy, DOD does not publicly report on civilian casualties, nor does it use its own tracking data to comment on the accuracy of reporting by other organizations, such as the United Nations. Nevertheless, DOD has instituted robust review mechanisms to track and reduce civilian casualties in Afghanistan.

25. If DOD has reason to believe that a crime has occurred that resulted in civilian casualties, a full investigation will be initiated to determine the facts. If the investigation reveals allegations of criminal activity, action is taken as appropriate to hold accountable those determined to be responsible.

Reply to the issues raised in paragraph 10 of the list of issues

26. Children, like adults, who have been recruited or used in situations of armed conflict, may be inadmissible to the United States under the terrorism-related activities grounds of Immigration and Nationality Act (INA) § 212(a)(3)(B)), 8 USC § 1182(a)(3)(B). Because most armed resistance organizations would meet the definition of a "terrorist organization" under the INA, a child's association with, or activities on behalf of, these organizations may impact that child's eligibility for asylum or refugee protection. Section 212(d)(3)(B)(i) of the INA provides discretionary authority to the Secretaries of Homeland Security and State, in consultation with each other and the Attorney General, to exempt certain otherwise eligible aliens from most of the terrorism-related grounds of inadmissibility, subject to a number of limits discussed further below. In the asylum context, the Secretary of Homeland Security's exercise of this authority is administered by DHS U.S. Citizenship and Immigration Services (USCIS) and by DHS headquarters.

27. There is currently no general exemption specifically exempting former child soldiers from the terrorism-related provisions of the INA. Nevertheless, some of the exemptions relating to individuals having affiliations with specific organizations such as the Kosovo Liberation Army, the Karen National Army/Karen National Union (Burma), the Chin National Front/Chin National Army (Burma), and the Tibetan Mustangs, among others, can apply to most affiliated persons, including any child soldiers. Other exemptions apply to child soldiers as well as adults who did not engage in combat, for example, (A) the exemption for applicants who provided material support (including providing money or a service such as transporting fighters and supplies under duress to designated or undesignated terrorist organizations), issued 26 February 2007 and (B) the exemption for military-type training under duress, issued 7 January 2011. See: www.uscis.gov/portal/site/uscis/template.PRINT/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=17510a670eb75310VgnVCM100000082ca60aRCRD&vgnextchannel=27222356e0955310VgnVCM100000082ca60aRCRD.

28. The exemption authority in § 212(d)(3)(B)(i) does have specific limitations that could be applicable to child soldiers. For example, no exemption can be granted to an alien who is a member or representative of, has voluntarily and knowingly engaged in or endorsed or espoused or persuaded others to endorse or espouse or support terrorist activity on behalf of, or has voluntarily and knowingly received military-type training from a designated Foreign Terrorist Organization (FTO). In addition, exemptions are not available to aliens who have certain current links to terrorist organizations. Also no exemption may be extended to a group that has engaged in terrorist activity against the United States or another democratic state or that has purposefully engaged in a pattern or practice of terrorist activity that is directed at civilians. Furthermore, based on their past activities, child soldiers may be inadmissible on other grounds of the INA for which there may be no exemptions available.

29. DHS is not aware of any asylum cases involving former child soldiers who have been deemed inadmissible under paragraph 212(a)(3)(B)(i).

30. The United States explained in paragraph 125 of its second periodic report that the best interests of the child principle does not play a direct role in determining substantive eligibility under the U.S. refugee definition. This is wholly consistent with the 1951 Refugee Convention and its 1967 Protocol. At the same time, the United States recognizes and supports the role of best interests determinations in assessing the situation of child refugees and asylum seekers on issues such as resettlement. It is also a useful measure for determining appropriate interview procedures for child asylum seekers. U.S. support for and reliance on best interest determinations for child refugees is discussed further in response to the issues raised in paragraph 14 of the list of issues.

Reply to the issues raised in paragraph 11 of the list of issues

31. The United States has updated its laws, policies, procedures and training to ensure respect for the dignity of every detainee in U.S. custody. The physical well-being of detainees is the primary responsibility of U.S. service members conducting detention operations, and the security of detainees is of vital importance to the United States.

32. The United States is in the process of transitioning the Afghan detainees held at the Detention Facility in Parwan (DFIP) to the custody and control of the Afghan government and is working closely with its Afghan partners to ensure this transition takes place consistent with Afghan and international law.

33. The United States treats much of the information regarding individual detainees as confidential but over the last several years the United States has captured more than 200 individuals under the age of 18 and held them at the DFIP; the average age of these individuals has been approximately 16 years old. The United States was not aware of the age of the children at the point of capture; in nearly all cases their ages were not finally determined until after capture. Few of these juveniles remain in detention at the DFIP; many of them have been released or transferred to the Afghan government.

34. The U.S. Supreme Court, in *Hamdi* v. *Rumsfeld*, 542 U.S. 507, 518-519 (2004), affirmed that the detention of enemy combatants for the duration of an armed conflict "is a fundamental incident of waging war." This is consistent with the Geneva Conventions. As the Supreme Court also explained in Hamdi, the principal rationale for detention during armed conflict is to prevent combatants from returning to the battlefield to re-engage in hostilities. Consistent with the law of armed conflict, the overwhelming majority of individuals detained by the United States in its ongoing armed conflict, including juveniles, will not face criminal charges. Thus, in response to the issues raised in paragraph 11(a), in the conflict between the United States and Al Qaida, Taliban, and associated forces, the law of armed conflict permits the United States to detain belligerents until the end of hostilities without charging such individuals with crimes, because they are not being held as criminals facing future criminal trial.

35. As noted above, it is not always clear at the point of capture whether an individual is under the age of 18. The initial determination of a detainee's status is made by forces at the point of capture (see discussion in second periodic report, paragraphs 215-220). All detainees, regardless of age, are advised of the reason for their detention and have undergone or will undergo periodic reviews of their detention.

36. In response to the issues raised in paragraph 11(b), the United States does not wish to hold anyone longer than necessary. The United States has developed review processes in Afghanistan, Iraq, and Guantanamo Bay, each of which is designed to ensure that the United States does not detain anyone longer than necessary to mitigate the threat the

individual may pose. Generally, for juveniles, the average length of stay at the DFIP has been approximately one year.

37. In response to the issues raised in paragraph 11(c), as previously noted, under the law of armed conflict, the purpose of detention is not punitive but preventative: to prevent a combatant from returning to the battlefield. Therefore, a detainee would generally not be provided legal assistance, as would be done if the detainee were charged with a crime. Nevertheless, there are numerous processes in place to ensure that a detainee is held lawfully and only for as long as necessary, including periodic administrative hearings that enable the detainee to challenge his detention. At the DFIP, detainees are entitled to attend the non-classified portions of these hearings, testify (without being compelled to do so), call witnesses, question the government's witnesses, and present documentary information.

38. In connection with these hearings, detainees are assigned a personal representative who advocates on behalf of the detainee. The United States recognizes the special needs of young detainees and the often difficult or unfortunate circumstances surrounding their situation. The personal representatives have access to all reasonably available information, including classified information, relevant to the determination of whether the detainee meets the criteria for internment and whether the detainee's continued internment is necessary. Through the personal representative, the detainees are also afforded the opportunity to conduct a reasonable investigation into any exculpatory information and the opportunity to present information including reasonably available witnesses and documentary information. Detainees may elect to represent themselves instead of having a personal representative.

39. In response to the issues raised in paragraph 11(d), the United States has procedures in place to evaluate detainees medically, determine their ages, and provide for detention facilities and treatment appropriate for their ages. Every effort is made to provide them a secure environment, and to provide the special physical and psychological care that they may need.

40. All detainees in DOD custody, wherever they are held, have access to medical professionals who assess their physical and psychological needs. The medical staff specifically tracks all detainees 18 years or younger and discusses juvenile medical dispositions on a regular basis to address any medical concerns proactively. Juvenile detainees, in particular, are attended to by medical professionals who recognize that because of their age, they require special care. All detainees receive a physical examination and behavioral health screening from medical providers. In Afghanistan, the providers forward any recommendations for treatment to the relevant officials who assist in mitigating or alleviating medical concerns.

41. If they meet the applicable criteria, juveniles are able to cohabitate with family members who may also be detained in the DFIP. Juveniles may also have access to individualized recreation, education, and socialization programs developed in coordination with the medical staff and behavioral consultants.

42. In response to the issues raised in paragraph 11(e), consistent with its efforts to address the use of children in armed conflict, DOD works to ensure that U.S. military personnel recognize the special needs of juveniles captured on the battlefield and held in detention. The United States goes to great lengths to attend to the special needs of juveniles while they are in detention. The United States fully implements its humane treatment obligations under Common Article 3 of the Geneva Conventions. In addition, the United States recently conducted an extensive review and concluded that current U.S. military practices are also consistent with Additional Protocol II and article 75 of Additional Protocol I to the Geneva Conventions.

43. The United States recognizes the special role of the International Committee of the Red Cross (ICRC) under the Geneva Conventions in support of the protection of detainees during armed conflict. The ICRC has regular, private access to all detainees interned by DOD at Guantanamo and at its detention facility in Afghanistan, and it assists the United States with facilitating contact with detainee families. Additionally, the ICRC delivers mail to detainees in U.S. custody, and it helps to facilitate telephone calls between family members and detainees, as well as to increase family access at the detention facility in Afghanistan. The Afghanistan Independent Human Rights Commission has also visited the DFIP. UNICEF has not been given access to detainees at the DFIP.

Reply to the issues raised in paragraph 12 of the list of issues

44. Omar Khadr is no longer detained in Guantanamo. The United States transferred Omar Khadr to Canada to serve the remainder of his sentence on 29 September 2012. In 2010 he pleaded guilty pursuant to a pre-trial agreement, and was convicted in a military commission of several charges, including murder in violation of the law of war and spying. Consistent with the terms of the pre-trial agreement, the Military Commissions Convening Authority approved an eight-year sentence of confinement. The pre-trial agreement specified that after one year of confinement in the United States, Mr. Khadr could be transferred to Canada to serve the remainder of his sentence in accordance with Canadian law, and that transfer occurred in September 2012. The treatment of Omar Khadr while in detention in Afghanistan and Guantanamo Bay was addressed in litigation before a military judge in the military commissions system. The judge found that there was "no credible evidence the accused was ever tortured… even using a liberal interpretation considering the accused's age." See www.defense.gov/news/D94-D111.pdf.

45. The charges against Mohammed Jawad were withdrawn by the Military Commissions Convening Authority without prejudice on 31 July 2009. This withdrawal occurred before the commencement of the trial on the merits. Because the charges were withdrawn, the commission did not reach a finding regarding Mr. Jawad's guilt or innocence. During the pre-trial phase, counsel for Mr. Jawad made several allegations that their client was mistreated by both Afghan and U.S. personnel. In response to these allegations, the judge ordered the suppression of all of Mr. Jawad's confessions of guilt. The United States repatriated Mr. Jawad to Afghanistan on 24 August 2009. Mr. Jawad's transfer was carried out under an arrangement between the United States and the government of Afghanistan, to ensure that appropriate security and humane treatment measures were in place.

Reply to the issues raised in paragraph 13 of the list of issues

46. The Child Soldiers Prevention Act of 2008 (CSPA) prohibits the provision of certain types of military assistance and licenses for military sales to countries identified as "having governmental armed forces or government-supported armed groups, including paramilitaries, militias, or civil defense forces, that recruit and use child soldiers," as that term is defined in the CSPA. Section 404(c) of the CSPA authorizes the President to waive the application of the CSPA's prohibitions with regard to a particular state upon a determination that such waiver is in the national interest of the United States.

47. On 19 June 2012, the Secretary of State identified seven states that met the CSPA's criteria for prohibiting certain types of military assistance and licenses for military sales during the applicable reporting period: Burma, the Democratic Republic of the Congo (DRC), Libya, Somalia, South Sudan, Sudan, and Yemen. The President subsequently determined that it is in the U.S. national interest to waive the application of the prohibitions to Libya, South Sudan, and Yemen; and to waive in part the application of the prohibitions to the DRC. The President's determination is available at 77 Fed.Reg. 61509 (Oct 10,

2012). The prohibition was not waived as to Burma, Somalia, and Sudan. The United States only waives application of the CSPA prohibitions in the face of strong countervailing interests. CSPA waiver determinations are complex, and each decision is based on the unique situation of the state in question. In all cases in which a waiver is granted, the United States continues to engage with the state in question to end the unlawful recruitment and use of child soldiers. U.S. military assistance to states that receive waivers helps to professionalize militaries and promote needed reforms with respect to human rights (including child protection issues), democratic values, and civilian control of the military and addresses national security interests in building capable military partners in states emerging from conflict. In some cases, such assistance may be used, in part, to reinforce efforts to end the unlawful recruitment and use of child soldiers. In some instances, states receiving waivers have signed joint Action Plans with the United Nations to eliminate the use of child soldiers, and to rehabilitate and reintegrate former child soldiers. These action plans represent a significant commitment by these governments, and implementation of these time bound plans is monitored by United Nations experts and the United Nations Security Council.

Reply to the issues raised in paragraph 14of the list of issues

48. The United States is by far the largest single donor to UNHCR, providing over $775 million to UNHCR in FY 2012. Funding in FY 2010 and 2011 was $708 and $691 million respectively. These funds are available for a broad range of UNHCR programmes, including building best interest determination (BID) capacity in various parts of the world. As a matter of policy, the United States does not accept unaccompanied child referrals for resettlement in the United States from UNHCR unless BIDs have been conducted. Thus, U.S. practices generally encourage the increased use of the BID mechanism.

49. Given the strong importance the United States places on protecting children displaced by conflict, some funding is earmarked for child protection issues each year. In FY 2011, support explicitly included "strengthening capacity for Best Interest Determinations." As described by UNHCR in the funding proposal to which these funds respond, the specific project focused on UNHCR's effort "to maintain a higher standard of practice globally through the production of guidance materials." Specifically, the proposal explained:

(a) UNHCR's Global Learning Centre (GLC) together with the Child Protection Unit (CPU) is developing an e-learning package on Best Interests Determination, which is based on tools developed through previously granted funding from the BPRM (Field Handbook for the Implementation of UNHCR's Best Interest Determination Guidelines);

(b) The Field Handbook explains that the GLC was developed as part of a joint project by UNHCR and the International Rescue Committee "made possible through the generous support of the U.S. Department of State, Bureau of Population, Refugees and Migration."

50. In FY 2012 the United States supported deployments of additional personnel to conduct BIDs. The United States specifically funded eight deployments. This includes six BID deployments already established in: (1) Maro, Chad; (2) Kampala, Uganda; (3) Jakarta, Indonesia; (4) Damak, Nepal; (5) Islamabad, Pakistan; and (6) Mae Sot, Thailand. In addition, the International Catholic Migration Commission (ICMC), which implements the deployments on UNHCR's behalf, has just been approved by UNHCR for a deployment in Gore, Chad, for which ICMC is now in the process of recruiting staff. Establishment of the eighth position has not yet been finalized with UNHCR. Funds were also used to support a regional deployment to increase BID capacity in East Africa, where a large number of unaccompanied asylum seeking children have been identified. In FY 2011 the United States funded three BID specialists and five translators in Kenya.

51. In addition, in each of the three fiscal years, the United States funded activities in specific countries which included BID activities such as streamlining and capacity building of BID processes, and providing an e-learning package for BIDs. In FY 2012 the United States funded activities in Thailand, Sudan, Rwanda, and Chad; in FY 2011 in Ethiopia, Malaysia, and Chad; and in FY 2010 in Yemen, Nepal, Chad and Kenya.

Annexes

Annex 1

Military academy data

FY2011 Officer Commissioning (RACE)

	USMA (Army)	*USNA (Navy and Marine Corp)*	*USAFA (Air Force)*	*TOTAL DoD*	*USCAA (Coast Guard)*	*DOD and Cost Guard Combined*
White	777	873	802	2,452	159	2,611
Black	53	28	52	133	9	142
American Indian or Alaska Native	13	7	11	31	0	31
Asian	87	25	82	194	5	199
Native Hawaiian or Other Pacific Islander	0	3	2	5	1	6
Two or more	0	43	11	54	3	57
Unknown	130	31	81	242	17	259
Totals	1,060	1,010	1,041	3,111	194	3,305

FY2011 Officer Commissioning (ETHNICITY)

	USMA (Army)	*USNA (Navy and Marine Corp)*	*USAFA (Air Force)*	*TOTAL DoD*	*USCAA (Coast Guard)*	*DOD and Cost Guard Combined*
Hispanic	101	97	25	223	16	239
Non-Hispanic	959	913	1,016	2,888	178	3066
Totals	1,060	1,010	1,041	3,111	194	3,305

FY2011 Officer Commissioning (GENDER)

	USMA (Army)	*USNA (Navy and Marine Corp)*	*USAFA (Air Force)*	*TOTAL DoD*	*USCAA (Coast Guard)*	*DOD and Cost Guard Combined*
Male	889	808	835	2,532	152	2,684
Female	171	202	206	579	42	621
Totals	1,060	1,010	1,041	3,111	194	3,305

Annex 2

17 Year-old accession data

2009 - 2011

	2009	*2010*	*2011*	*3 YR AVG*	*3 YR TTL*
Total Accessions	296,505	282,638	270,066	283,070	849,209
Total # of 17 YO Accessions	17,809	13,300	13,963	15,024	45,072
PCT of Accessions that were 17 YO	6.01%	4.71%	5.17%	5.29%	5.31%
17 YOs by Gender					
Male	13,620	10,359	10,704	11,561	34,683
Female	4,189	2,941	3,259	3,463	10,389
% Male	76.48%	77.89%	76.66%	77.01%	
% Female	23.52%	22.11%	23.34%	22.99%	
17 YOs by Ethnicity					
Hispanic	1,577	1,771	1,996	1,781	5,344
Non-Hispanic	16,232	11,529	11,967	13,243	39,728
% Hispanic	8.86%	13.32%	14.29%	12.16%	
% Non-Hispanic	91.14%	86.68%	85.71%	87.84%	
17 YOs by Race					
White	13,710	10,425	10,927	11,687	35,062
Black	2,205	1,685	1,919	1,936	5,809
American Indian or Alaska Native (AI or AN)	282	111	136	176	919
Asian	274	337	348	320	1,539
Other	1,338	742	633	904	457
% White	76.98%	78.38%	78.26%	77.87%	
% Black	12.38%	12.67%	13.74%	12.93%	
% AI or AN	1.58%	0.83%	0.97%	1.13%	
% Asian	1.54%	2.53%	2.49%	2.19%	
% Other	7.51%	5.58%	4.53%	5.88%	