

September 6, 2011

Dear Mr. President:

We write to express serious concern about allegations made in recent articles published in *The Nation* magazine and *The New York Times* that the Central Intelligence Agency (CIA) is involved in detention, interrogation, and transfer operations in Somalia that may violate domestic and international law.<sup>1</sup> We seek clarification from you about the accuracy of these articles as well as reassurance that all detention and interrogation operations are and will be conducted in compliance with the letter and spirit of Executive Order 13491 and other applicable domestic and international law, including the Convention Against Torture.<sup>2</sup>

On January 22, 2009, you signed Executive Order 13491, which was designed to ensure that the United States complies with its treaty obligations and other applicable law when detaining, interrogating, and transferring individuals.<sup>3</sup> Executive Order 13491 provides that these individuals “shall in all circumstances be treated humanely and shall not be subjected to violence to life and person (including murder of all kinds, mutilation, cruel treatment, and torture), nor to outrages upon personal dignity (including humiliating and degrading treatment), whenever such individuals are in the custody or under the effective control of an officer, employee, or other agent of the United States Government or detained within a facility owned, operated, or controlled by a department or agency of the United States.”<sup>4</sup> The executive order recognizes that this minimum baseline is “consistent with the requirements of the Federal torture statute, 18 U.S.C. 2340–2340A, section 1003 of the Detainee Treatment Act of 2005, 42 U.S.C. 2000dd, the Convention Against Torture ... and other laws regulating the treatment and interrogation of individuals detained in any armed conflict.”

To implement this mandate, Executive Order 13491 required that “[t]he CIA shall close as expeditiously as possible any detention facilities that it currently operates and shall not operate any such detention facility in the future.”<sup>5</sup> Executive Order 13491 further required that the United States government provide the International Committee of the Red Cross (ICRC) with notification of, and timely access to, any individuals “in the custody or under the effective control of an officer, employee, or other agent of the United States Government or detained within a

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<sup>1</sup>Jeremy Scahill, *The CIA’s Secret Sites in Somalia*, THE NATION, July 12, 2011, available at <http://www.thenation.com/article/161936/cias-secret-sites-somalia>; Jeffrey Gettleman, et. al, *U.S. Relies on Contractors in Somalia Conflict*, NEW YORK TIMES, Aug. 10, 2011

<sup>2</sup> Federal torture statute, 18 U.S.C. §§ 2340–2340A; Detainee Treatment Act of 2005, 42 U.S.C. § 2000dd (2006); Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 15, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85; International Covenant on Civil and Political Rights arts. 7, 9, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 999 U.N.T.S. 171; Exec. Order No. 13,491, 3 C.F.R. 199 (2009-2010).

<sup>3</sup>Exec. Order No. 13,491 (2009-2010).

<sup>4</sup>*Id.*

<sup>5</sup>*Id.*

facility owned, operated, or controlled by a department or agency of the United States Government, consistent with Department of Defense regulations and policies.”<sup>6</sup>

### **Allegations**

A recent article published in *The Nation* magazine suggests that the United States is directly involved in a detention and interrogation operation in Mogadishu, Somalia, premised on an arrangement between the CIA and Somali intelligence officials that raises serious questions about whether the United States is acting in accordance with Executive Order 13491 and other applicable domestic and international law.<sup>7</sup> Specifically, the report alleges that United States officials provide monthly cash payments of up to \$200 to Somali agents involved in the operation.<sup>8</sup> A senior Somali intelligence official reportedly stated that the United States is “by far” the operation’s largest funder.<sup>9</sup> The article further alleges that U.S. agents advise and train the Somali agents running the Somali prison, and that CIA agents directly interrogate detainees held there.<sup>10</sup> A recent report in *The New York Times* also alleges that the CIA is financing Somali intelligence operations and has directly participated in interrogating detainees held in Somalia.

*The Nation* article further alleges that detainees held at the Somali prison are subjected to questionable and potentially unlawful treatment. According to the article, detainees are held in windowless “filthy small cells infested with bedbugs and mosquitoes;”<sup>11</sup> many detainees have allegedly developed rashes and scratch themselves incessantly as a result of these detention conditions.<sup>12</sup> The prison is underground and prisoners are reportedly not allowed any time outside. The article, based in part on interviews with individuals formerly detained at this site, alleges that some inmates have been in detention for more than one year, and that “inmates who had been there for long periods would pace around constantly, while others leaned against walls rocking.”<sup>13</sup> Press reports suggest that detainees are not brought before a court nor allowed access to counsel to ensure the lawfulness of their detention.

Beyond allegations of CIA involvement in the detention and interrogation of individuals held at the Somali prison, *The Nation* article suggests that the United States has played, and may continue to play, a substantial role in facilitating the transfer of individuals from third countries to the Somali prison. The article alleges that U.S. officials provided intelligence information that led to the apprehension of Ahmed Abdullahi Hassan, a Kenyan citizen, who was rendered to the Somali prison to be interrogated.<sup>14</sup> Hassan reportedly was hooded, restrained, and then placed on a plane to Mogadishu, without having been afforded a prior opportunity to challenge his

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<sup>6</sup>*Id.*

<sup>7</sup>Jeremy Scahill, *The CIA’s Secret Sites in Somalia*, THE NATION, July 12, 2011, available at <http://www.thenation.com/article/161936/cias-secret-sites-somalia>.

<sup>8</sup>*Id.*

<sup>9</sup>*Id.*

<sup>10</sup>*Id.*

<sup>11</sup>*Id.*

<sup>12</sup>*Id.*

<sup>13</sup>*Id.*

<sup>14</sup>*Id.*

transfer. Moreover, given allegations regarding conditions at the prison, allegations of an important U.S. role in rendering individuals from abroad to the underground Somali facility are especially troubling.

### **Potential Violations**

These allegations, if true, would raise serious questions regarding whether the United States is acting in compliance with the requirements of Executive Order 13491 and other legal obligations. The alleged detention conditions of the Somali prison, and the level of protection afforded to those detained there, as described in *The Nation* article, are inconsistent with the humane treatment standards set forth in the executive order and applicable domestic and international law. If true, the article's allegations would further call into question whether the United States is in compliance with its obligations to respect, and ensure respect for, international human rights requirements relating to *non-refoulement*, arbitrary detention, and humane treatment. The ICRC has confirmed that it has not received notification of the detainees held in the Somali prison.<sup>15</sup> Moreover, the detainees have allegedly not been afforded a meaningful opportunity to challenge their detentions, or a prior opportunity to challenge their transfers to Somalia (for those who were transferred there).<sup>16</sup>

If the United States has participated in the interrogation of detainees; is funding, advising, and training the Somali agents; or is engaged in intelligence-sharing for the purpose of facilitating transfers, then it could have sufficient operational control to give rise to its obligations under Executive Order 13491 and other applicable domestic and international law. The Convention Against Torture prohibits the U.S. government from transferring individuals to a danger of torture and requires all state parties to criminalize complicity in torture. The Executive Order requires the U.S. Government to ensure that all transfers comply with U.S. domestic and international legal obligations as well as U.S. policy, which condemns torture; cruel, inhuman, and degrading treatment; and arbitrary detention. Furthermore, under applicable domestic and international law, the United States and its officials may be liable for the unlawful actions of individuals, groups, or foreign states acting under its control, or for knowingly assisting in or conspiring to commit such unlawful actions.

### **Need for Disclosure**

Given the gravity of the allegations presented, we request that your administration disclose, to the fullest extent possible consistent with national security interests, the following:

- The precise nature of U.S. involvement in detention, interrogation, or transfer operations relating to the Somali prison.
- Whether the United States, through its officials or contractors, is involved, directly or indirectly, in the interrogation of persons held at the Somali prison.

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<sup>15</sup> Jeremy Scahill Reveals CIA Facility, Prison in Somalia as U.S. Expands Covert Ops in Stricken Nation, Democracy Now! Broadcast, July 13, 2011, *available at* [http://www.democracynow.org/2011/7/13/jeremy\\_scahill\\_reveals\\_cia\\_facility\\_prison](http://www.democracynow.org/2011/7/13/jeremy_scahill_reveals_cia_facility_prison).

<sup>16</sup>Scahill, *The CIA's Secret Sites in Somalia*.

- The degree to which the United States directly or indirectly funds, advises, or trains foreign governments, or their agents and instrumentalities, for the purpose of detaining and interrogating individuals at, or transferring individuals to, the Somali prison site.
- The measures that the United States has taken to ensure that it abides by its legal obligations, including Executive Order 13491, if it is funding, advising, training, or otherwise assuming a substantial role in the detention, interrogation, or transfer operations associated with the Somali prison.
- The measures the United States has taken to ensure that foreign governments respect the rights of individuals transferred to or held in the Somali prison to the extent the United States funds, advises, trains, or otherwise assumes a substantial role in detention, interrogation, or transfer operations relating to the Somali prison.
- The measures the United States has taken to ensure that the ICRC has been notified of, and been provided access to, individuals held at the Somali prison, to the extent the United States funds, advises, trains, or otherwise assumes a substantial role in detention, interrogation, or transfer operations relating to the Somali prison.

By issuing Executive Order 13491 on the second full day of your presidency, you made clear your deep commitment to ensuring that counterterrorism operations are conducted with respect for human rights and the rule of law. We urge you to reaffirm that commitment by disclosing, to the fullest extent possible, the nature of U.S. involvement in overseas detention, interrogation, and transfer operations relating to the prison in Somalia, so that there can be meaningful public dialogue regarding the extent to which such operations comply with the law.

Sincerely,

American Civil Liberties Union

Amnesty International USA

Center for Victims of Torture

Physicians for Human Rights

National Religious Campaign Against Torture

The Open Society Foundations

Human Rights First

Human Rights Watch