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November 29, 2010

Dear Mr. Lietzau:

We appreciate your response on behalf of Secretary Gates to our letter raising concerns about detention operations in Afghanistan. Among the issues addressed in our letter was the use of interrogation methods authorized by Appendix M of Army Field Manual 2-22.3 (Human Intelligence Collector Operations). In your response, you stated that our organizations' "specific views as to how Appendix M could be modified to address [our] concerns and improve operations are welcomed and would be of great value to [your] efforts." We are pleased to take the opportunity to respond to your invitation.

As discussed in detail below, we recommend establishing a single set of interrogation rules for all detainees in the main body of AFM 2-22.3, eliminating measures in Appendix M that give rise to human rights concerns or that risk sowing ambiguity. Any elements of Appendix M to be preserved should be located in the main body of AFM 2-22.3. We also recommend some additional changes to AFM 2-22.3, including restoration of important language from the 1992 version of the AFM, which had been deleted in 2006. We believe our recommendations allow any legitimate purpose of Appendix M to be achieved while at the same time strengthening AFM 2-22.3 to better ensure compliance with relevant legal standards, as discussed below.

#### *Purposes of Appendix M and Relevance of Techniques*

The introduction to Appendix M (Restricted Interrogation Technique – Separation), states that one purpose of separation is "to deny the detainee the opportunity to communicate with other detainees in order to keep him from learning counter-resistance techniques or gathering new information to support a cover story." Preventing detainees from sharing information that will potentially impede a legitimate interrogation is a legitimate goal that does not in itself raise human rights concerns. An additional stated purpose of separation, "decreasing the detainee's resistance to interrogation," is problematic because of its vagueness, creating a possibility that it could be interpreted as permitting detainee treatment that is intended to "break" a detainee psychologically, crossing the boundary into cruelty and torture. We recommend that this purpose be removed from any revised AFM.

While recognizing preventing of sharing of information can be a legitimate goal, we note that the methods used under Appendix M do not appear to be designed to achieve this goal and also raise serious concerns about possible torture or ill-treatment. We are particularly concerned that Appendix M may be interpreted to allow for the use of sleep manipulation which does not have any evident connection to preventing detainees from sharing information.

### Potential Harm Caused by Sleep Manipulation and Sensory Deprivation

Not only does sleep manipulation appear to be irrelevant to the purpose of preventing information sharing, but it also can cause severe and lasting psychological and physical harm as has been well-documented in scientific literature. As we have asserted in previous conversations with you and your staff, the methods used to implement the technique of “separation” under the guidance of Appendix M, including sleep manipulation combined with other techniques, can amount to torture or ill-treatment. While Appendix M states that the use of separation must “not preclude the detainee getting four hours of continuous sleep every 24 hours,” some analysts have argued that by this standard two 20 hour periods without sleep could possibly be used back-to-back, resulting in 40 continuous hours without sleep. There is also no limit on how many weeks or even months this type of sleep manipulation can be continued. The kinds of sleep manipulation apparently permitted under Appendix M are the kinds of abuses that were used by the Bush Administration in the infamous “frequent flier” program. We note that in the previous version of the AFM for Intelligence Interrogations (AFM 34-52, 1992) “Abnormal Sleep Deprivation” was listed as an example of “mental torture” (page 1-8). This language, or similar language, should be restored to AFM 2-22.3 and it should be made explicit that sleep manipulation is prohibited for all detainees as an interrogation technique.

Additionally, although the guidance in Appendix M says that detainees will not be subjected to sensory deprivation, the language of the guidance is inadequate as a safeguard against the use of a technique which can have profoundly negative mental health effects. The guidelines define “sensory deprivation” as “an arranged situation causing significant psychological distress due to a prolonged absence, or significant reduction of the usual external stimuli and perceptual opportunities.” This vague definition will not necessarily prevent sensory deprivation since the amount of time constituting “prolonged absence” is not specified and there is no definition of the term “significant reduction.” Additionally, Appendix M permits the use of goggles or blindfolds and earmuffs without clear safeguards, a technique also subject to potential abuse. By endorsing these techniques in Appendix M, the Department of Defense is effectively acknowledging that the same practices can lawfully be applied by a foreign government to U.S. personnel.

### Compliance with Legal Standards

In addition to setting the AFM as the uniform standard for interrogation, Executive Order 13491, “Ensuring Lawful Interrogations,” issued on January 22, 2009, requires that detainees are treated consistently with the U.S. anti-torture statute, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and Common Article 3 and other provisions of the Geneva Conventions of 1949. The permitted techniques in Appendix M risk putting the United States in violation of these well-established legal standards. Moreover, the Appendix M separation technique may be used in combination with additional techniques not contained in the Appendix, such as fear-inducing methods, raising further concern about compliance with international obligations.

The guidance in Appendix M acknowledges the danger of abuse posed by separation, requiring special safeguards and notification prior to its use, cautioning, “[c]areful consideration should be given prior to employing separation as an interrogation technique in order to mitigate the risks associated with its use.” The technique of separation may not be used on detainees covered by Geneva Convention Relative to the Treatment of Prisoners of War (Geneva Convention III) and is only allowed for a special class of detainees described as “specific unlawful enemy combatants.” First, it is unclear if this terminology is still operative. This category of individual is not recognized in international humanitarian law and there is no basis in that law for providing lesser protections to persons hors de combat who may have directly participated in hostilities or otherwise fall within the ambit of the Authorization for the Use of Military Force. Moreover, we

are concerned that the technique is recognized as unsuitable for Prisoners of War under the Geneva Convention III but acceptable for other prisoners protected by Common Article 3 of the Geneva Conventions.

Finally, we are concerned that Appendix M creates a legal precedent that may be used in the future by other governments to justify abusing captured U.S. personnel. As we make clear above, Appendix M can be interpreted to allow serious abuse, including months of abnormal sleep deprivation. The Department should also consider the risk it is creating for U.S. personnel through the ambiguities and lack of clear safeguards in Appendix M.

### Eliminating Appendix M

We believe that the risks associated with Appendix M can best be eliminated by deleting the Appendix as a separate section. Any elements of Appendix M to be preserved should be located in the main body of AFM 2-22.3. The legitimate goal of denying the detainee the opportunity to communicate with other detainees in order to keep him from learning counter-resistance techniques or gathering new information to support a cover story can be achieved by adding a new section to the main body of the AFM 2-22.3 which sets out procedures for monitoring or limiting interactions between detainees in a manner which is compliant with the Geneva Conventions, customary laws of armed conflict, and international human rights standards and conventions, and contains adequate safeguards to prevent any abuse. There does not appear to be any valid justification for placing guidelines for separating detainees in a separate appendix to the AFM.

Whether or not the new section described above is added to the main body of AFM 2-22.3, we recommend that several points contained in Appendix M be retained. These points, currently mentioned in the Appendix but not explicitly set out in the main body of AFM 2-22.3, should be added to Chapter 5 of the AFM: first, an explicit and, as discussed above, more definitive prohibition of sensory deprivation; second, the requirement in paragraph M-24 to take into account the cumulative effect of using multiple techniques and the personal characteristics of the individual; third, the direction in paragraph M-30 to protect detainees from exposure to excessive or inadequate environmental conditions. Additionally, an explicit prohibition on sleep manipulation, as discussed above should be added to the main body of AFM 2-22.3 at section 5-75. As you may be aware, commentators have suggested additional ways of improving the AFM such as reintroducing important policy language that was deleted during the 2006 revisions and insuring that the list of prohibited techniques clearly include all elements of the Bush Administration's "enhanced interrogation" program.

### Current relevance of concerns about Appendix M

The existence of "restricted" interrogation rules for "exception[al]" prisoners continues to raise legitimate concerns. As reported in a recent policy brief from the Open Society Foundations, *Confinement Conditions at a U.S. Screening Facility on Bagram Air Base*, former detainees consistently described a number of different types of abusive treatment, including exposure to excessive cold and light, sleep deprivation due to an accumulation of circumstances, inadequate and inappropriate food, and disorientation and lack of natural light. While such treatment is inconsistent with the guidelines of Appendix M, it may well be attributable to a permissive atmosphere toward detainee mistreatment arising from the techniques which are specifically allowed by the Appendix. Elimination of Appendix M will therefore prevent the problems connected to its language described above and also help ensure a detention environment which discourages abuse.

The Obama Administration has made repeated pledges to end torture and ill-treatment and to conduct detainee operations in as transparent a manner as possible. Yet the continued existence of Appendix M, and a lack of clear knowledge of how it is being employed, creates concern that detainee abuse may be

continuing. Reports of such detainee abuse “seriously damage Afghan perceptions of U.S. detention operations,” as the OSF brief points out.

We encourage you to take this opportunity to draw a bright line prohibiting abuse by eliminating Appendix M entirely and, if deemed necessary, establishing any new guidelines on separation in the main body of AFM 2-22.3. Given the allegations of torture and ill-treatment which have plagued the U.S. national security interrogation program for a number of years, it is crucial to establish standards that will allow no room for abuse. It is also vital that officials in the Obama Administration provide clear and transparent information about detention operations worldwide and establish effective oversight mechanisms for the Department of Defense and other agencies’ screening, detention, and interrogation programs.

### Summary of Recommendations

We look forward to discussing our recommendations, as summarized below, with you and your staff.

- Rescind Appendix M as a separate Appendix
- If deemed necessary, incorporate strictly limited language in the main text of the AFM setting out procedures for monitoring or limiting interactions between detainees where necessary to prevent the detainee from learning counter-resistance techniques or gathering new information to support a cover story
- Add manipulating sleep to the list of prohibited actions in paragraph 5-75 of the main body of the AFM
- Move the following points currently contained in Appendix M to Chapter 5 of the AFM:
  1. Retain language in Appendix M explicitly prohibiting sensory deprivation and add language more clearly defining prohibited acts amounting to sensory deprivation
  2. Retain language in Appendix M paragraph M-24 directing interrogators to consider the cumulative effect of using multiple techniques and the personal characteristics of the individual
  3. Retain language in Appendix M paragraph M-30 directing interrogators to protect detainees from exposure to excessive or inadequate environmental conditions

Sincerely,

Larry Cox  
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Amnesty International USA

Reverend Richard Killmer  
Executive Director  
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Douglas Johnson  
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