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July 27, 2007

Secretary Robert M. Gates
Office of the Secretary
U.S. Department of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

Dear Secretary Gates:

We are writing to you regarding the United States military's collection of biometric data from Iraqi citizens. According to a front-page article in USA Today last week, U.S. troops are using mobile scanners to capture fingerprints, eye scans, and build secret profiles on hundreds of thousands of Iraqis.¹ Although General Petraeus has indicated that the purpose is to identify insurgents, USA Today reports that U.S. troops are stopping Iraqis at homes, checkpoints, workplaces, and "In several neighborhoods in and around Baghdad, troops have gone door to door collecting data."

We believe that the current Iraqi identification practices contravene international treaties and could lead to potentially devastating consequences. We urge you to develop and adopt clear guidelines that incorporate strong privacy safeguards to ensure that Iraqis are afforded basic human rights in their personal information.

We recognize the strategic military importance of identifying threats to American military personnel. However, these tactics also strip away a substantial privacy measure for Iraqi citizens in the midst of a conflict that flows from deep religious and ethnic division. Specifically, the biometric identification of Sunni, Shiite, and Kurd populations vastly increases the possibility that this information may be misused at some future point.

Because names are associated with religious identity, many Iraqis change their names or carry fake IDs to avoid being murdered by rival sects.² Numerous reports indicate that Iraqis regularly risk death if they are proven to be of a different sect than gunmen at a checkpoint.³ In July 2006, Shiite militiamen established a fake checkpoint and killed up to 50 Sunnis after

¹ *U.S. is building database on Iraqis*, USA TODAY, July 12, 2007, available at http://www.usatoday.com/news/world/iraq/2007-07-12-iraq-database_N.htm.

² Edward Wong, *To Stay Alive, Iraqis Change Their Names*, N.Y. TIMES, Sept. 6, 2006, at A1.

³ *Id.*; See also Hussein Kadhim & Jenan Hussein, *Iraqis risk lives or jail time by carrying fake IDs; To move around, they show 'right' card to hostiles to avoid being killed*, HOUSTON CHRON., June 24, 2007, at A28.

examining their identification documents.⁴ According to Gianni Magazzeni, head of the U.N. human rights office for Iraq, "People are basically killed or taken away simply because of their name, their identity or specific affiliations."⁵

Identification requirements have always raised privacy concerns but human rights interests are also implicated in regions of the world with deep religious and ethnic strife. In Rwanda, despite protests from non-governmental organizations several years prior to the genocide, official identification cards contained ethnic information.⁶ The classification system was a remnant from the Belgian colonial government, and was extensively used to identify victims to be killed.⁷ To have the word "Tutsi" on an identification card was a death sentence. It was the "pass" system in South Africa that helped maintain the system of apartheid. The system was so-named because it helped to segregate the population and regulate the movement of black Africans in urban areas.⁸ The famous Sharpsville incident, which gave rise to the African National Congress and the overthrow of the apartheid government, was an organized response to the pass law system. During the Holocaust, Nazi Germany placed a "J-stamp" on the identification cards of all Jews. These stamps were followed by yellow badges that made the identification and extermination of Jews more efficient.⁹

International privacy standards were established in response to such atrocities and to prevent future human rights violations. The Universal Declaration of Human Rights, adopted shortly after the end of World War II with the full support of the United States, recognizes privacy in Article 12 as a human right and enjoins unlawful or arbitrary interference with privacy, family, home and correspondence.¹⁰ The International Covenant on Civil and Political Rights, which both Iraq and the United States have ratified, similarly establishes privacy as a fundamental human right. Further, the United Nations High Commissioner for Human Rights clarified that this includes personal information stored on computers and databanks, that signatories must take effective measures to ensure unauthorized parties do not access this information, and that this information is never used for purposes incompatible with the treaties.¹¹ The right to privacy is derogable in times of emergency, but in the Iraqi context privacy is closely intertwined with the right to practice one's religion without reprisal,¹² which is not a derogable right.¹³

⁴ *Dozens killed in Baghdad attacks*, BBC, July 9, 2006, available at http://news.bbc.co.uk/1/hi/world/middle_east/5162510.stm.

⁵ *At Checkpoints in Baghdad, Disguise Is a Lifesaving Ritual*, WASH. POST, Sept. 29, 2006, available at http://www.washingtonpost.com/wp-dyn/content/article/2006/09/28/AR2006092801996_pf.html.

⁶ Human Rights Watch, "Leave None to Tell the Story: Genocide in Rwanda- History," March 1999, available at http://www.hrw.org/reports/1999/rwanda/Geno1-3-09.htm#P196_82927.

⁷ *Id.*

⁸ "Pass Laws," Wikipedia, http://en.wikipedia.org/wiki/Pass_Law.

⁹ Testimony of Abram Gerzevitch Suzkever, Nuremberg Trial Proceedings, Vol. 8, February 27, 1946, available at <http://www.yale.edu/lawweb/avalon/imt/proc/02-27-46.htm>.

¹⁰ International Covenant on Civil and Political Rights art. 17, Dec. 16, 1966; Universal Declaration of Human Rights art. 12, Dec. 10, 1948.

¹¹ Office of the High Commissioner for Human Rights [OHCHR], General Comment No. 16: the right to respect of privacy, family, home and correspondence, and protection of honour and reputation (August 4, 1988) available at <http://www.ohchr.org/english/bodies/hrc/comments.htm>.

¹² International Covenant on Civil and Political Rights art. 18; Universal Declaration of Human Rights art. 18.

¹³ International Covenant on Civil and Political Rights art. 4.

The massive aggregation of secret files on Iraqis, linked to permanent biometric identifiers, creates an unprecedented human rights risk that could easily be exploited by a future government. The Defense Science Board has itself noted the privacy issues that arise from the creation of systems of biometric identification. As the March 2007 report stated, “The designated PSA [Principal Staff Assistant] for biometrics should ensure that privacy considerations are brought to the fore early in the requirements and design phase of any system, and the scope of the considerations must extend beyond the individual system to include other systems with which a user might interact.”¹⁴

We are writing to seek clarification about the U.S. military’s current data collection practices in Iraq. Specifically, what safeguards has the military set in place to prevent misuse of the information? Also, what is the plan for future use of the system? And, if the system is to be turned over to the Iraqi government at some future point, what safeguards will be put in place? Will the United States be responsible for any consequence that might flow from the misuse of this system? We believe these questions are urgent, and the lack of an adequate framework to protect this data could result in genocidal violence.

As the USA Today article notes, “Many Iraqis carry fake IDs with last names that suggest a sectarian background other than their own – a method of survival in a country where violence between Sunnies and Shiites have killed thousands since the war began.”

The new system of biometric identification and secret profiles raises the very real possibility of future reprisals and killings on a far more widespread basis.

Thank you for your attention to this matter.

Sincerely,

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Executive Director
Electronic Privacy Information Center
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Director
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Ken Roth,
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Cc:

¹⁴ Office of the Undersecretary of Defense for Acquisition, Technology, and Logistics, “Report of the Defense Science Board Task Force on Defense Biometrics,” at 71 (March 2007), available at <http://www.acq.osd.mil/dsb/reports/2007-03-Biometrics.pdf>

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