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CIVIL AND POLITICAL RIGHTS

Written statement* submitted by Human Rights Advocates, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[30 January 2003]

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- This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Arbitrary detention and the war on terrorism

1. Human Rights Advocates (HRA), an NGO with Category II Consultative Status with ECOSOC, submits the following statement on arbitrary detention in the United States (U.S.) and other countries in the ongoing war on terrorism.

Arbitrary detention in the U.S. following 11 September 2001

2. In July 2002, the Special Rapporteur on Terrorism and Human Rights issued a report stating that many of the anti-terrorism measures enacted after the terrorist attacks often failed to conform to the principles of international human rights law.¹ While these measures occur in many countries, HRA will presently focus on the procedures and practices in the U.S. Last year, HRA submitted a written statement to the UN Commission on Human Rights detailing the detention of more than 750 people in the U.S., primarily of Middle Eastern descent. The mass arrest of immigrants began in an attempt by the government to capture those responsible for the assault on the World Trade Center.² While there is little evidence that any of the detainees were connected to terrorism, they nevertheless remained in custody for an extended period of time for minor immigration violations. Many of the detainees were not given proper access to counsel nor were they provided the required procedural rights. Many detainees have been held for extended periods of time without charges. Others continue to be held even after the immigration charges against them have been resolved.
3. U.S. Justice Department officials have stated that at least 1,200 people had been held in a federal, state, or local custody since the initial round up in the terrorism investigation. In August 2002, the department stated that 763 of those people had been placed in its custody and that 131 of them had been charged with various crimes. To date, only one person, Zacarias Moussaoui, has been charged with a crime directly related to the terrorist attacks.³
4. Justice Department officials have stated as of last April 2002, 98 detainees remained in INS custody while 223 had been released and 356 had been deported. Furthermore, 66 of those detainees had been transferred to other federal, state, or local authorities, and one had died. According to many immigration lawyers, most of the current charges would not have led to detention before September 11, 2001.⁴
5. As HRA reported last year, most of these detentions violate the fundamental notions of human rights guaranteed in the *International Covenant on Civil and Political Rights* (ICCPR). The ICCPR guarantees a right to legal assistance

1 E/CN.4/Sub.2/2002/35

2 E/CN.4/2002/NGO/42, 24 January 2002.

3 Wayne Washington, *One Year After: Detainees; Deportees Face Wrenching Losses*, THE BOSTON GLOBE, Sept. 7, 2002.

4 Tanya Weinberg, *Fear of Detention Haunts South Florida Muslims; Dozens Held By U.S. Agencies In Terror Inquiries*, SUN-SENTINEL, July 9, 2002

and places restrictions on indefinite and incommunicado detention. These rights apply to immigrants as well as nationals. The U.S. has failed to meet these standards because they have denied many of the detainees their basic right to counsel and have held court proceedings in secrecy.

6. Recently, some U.S. courts have held that the detention procedures violate the rights of detainees. In August 2002, a U.S. Court of Appeals confronted the new government practice of closing all immigration hearings deemed to be of “special interest” in the terrorist search. The court considered the constitutionality of the secret deportation proceeding of Pastor Rabih Haddad, who was taken into custody on December 2001 for a minor visa violation. They ultimately held that the secret proceedings were unlawful and violated Mr. Haddad’s due process rights.⁵
7. Another Appellate Court decision in Philadelphia however has upheld the legality of closed immigration hearings for detainees categorized as “special interest” in the September 11 investigations. The court concluded that open hearings could compromise the investigation into the terrorist attack and possibly releases information that could be used for future strikes.⁶

Registration requirements and subsequent detentions

8. In November 2002, the USA Patriot Act⁷ started requiring male nonimmigrants to register with the INS.⁸ These procedures, which have thus far singled out individuals from predominantly Muslim countries, have resulted in prolonged detentions for minor visa violations and reports of cruel, inhuman and degrading treatment. The registration requirement as implemented denies the right to equal treatment before the law by distinguishing by religion and nationality. Reports indicate that registrants have been denied assistance of counsel, held incommunicado and frequently moved.
9. The right to equal treatment before the law, regardless of race or nationality,⁹ and the right to freedom of religion¹⁰ are threatened by this national registration program requiring males over age 16 visiting or living without a permanent resident status in the U.S. Despite assurances that nonimmigrants from all countries will eventually be required to register,¹¹ only males over 16 from Afghanistan, Algeria, Bahrain, Bangladesh, Egypt, Eritrea, Indonesia, Iran, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, North Korea, Oman,

5 Steve Fainaru, *Court Backs Closing of Detainees’ Hearings*, THE WASHINGTON POST, October 9, 2002.

6 Id.

7 Pub.L. 107-56, Title IV, § 414, Oct. 26, 2001, 115 Stat. 353, as amended [Pub.L. 107-173, Title II, § 201\(b\)\(2\)](#), May 14, 2002, 116 Stat. 547, implementing 18 U.S.C. 1365(a) (2002).

8 67 FR 40581, 40581 (2002), as amended 52584, 52592 (2002)

9 International Convention on the Elimination of All Forms of Discrimination, 660 U.N.T.S., art. 5 (1969).

10 International Covenant on Civil and Political Rights, 999 U.N.T.S. 171, art. 18 (1976).

11 Teresa Watanabe, *‘Monitors’ Target INS Registration*, L.A. TIMES, January 9, 2003, California Metro, Part 2, Page 1.

Pakistan, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, United Arab Emirates and Yemen are required to register in the first four phases.¹² Individuals subject to the INS order are reportedly fingerprinted, photographed and interviewed, with the data to be transmitted to federal law enforcement databases.

10. The right to be free of arbitrary arrest or detention¹³ is implicated by reports that this ongoing program resulted initially in the detention of 500 to 700 individuals. One report stated that a 16-year-old boy was pulled from the arms of his crying mother, who was 6 ½ months pregnant.¹⁴ Federal INS officials have claimed unfettered discretion as to whether they detain such individuals,¹⁵ indicated an unwillingness to discontinue such practices.
11. The secrecy of these detentions raises concerns that the human rights of these individuals are not being protected, specifically the right to assistance of counsel.¹⁶ Relocating detainees frequently and denying detainees permission to see their families¹⁷ cause detainees to be held incommunicado and fundamentally uncut the right to counsel.
12. The right to be free of cruel, inhuman and degrading treatment¹⁸ is violated when visitors to the U.S. are treated as hardened criminals. In the first phase of this registration program, several reports indicated that detainees had been shoved into overcrowded cells, hosed down with cold water,¹⁹ shackled at the hands and waist,²⁰ and were subjected to verbal harassment and unnecessary body cavity searches.²¹

Denial of right to counsel

13. The right to assistance of counsel is thwarted in cases where individuals, who must provide for their own attorneys, are systematically detained and disoriented by relocation, closing the channels of communication with families. The practice of moving detainees frequently, the cause of which is explained by federal official as a problem of finding space for detainees, has

12 <http://www.ins.usdoj.gov/graphics/lawenfor/specialreg/index.htm> (last visited January 18, 2003).

13 International Covenant on Civil and Political Rights, 999 U.N.T.S. 171, art. 9 (1976).

14 *INS Arrests Hundreds from Mideast, Africa*, S.F. CHRON., December 19, 2002, at A6.

15 Todd Bensman, *Envoy Addresses Immigrant Fears*, DALLAS MORNING NEWS, January 13, 2003, at 13A.

16 International Covenant on Civil and Political Rights, 999 U.N.T.S. 171, art. 14 (1976).

17 Tony Perry, *Immigration Attorney for 7 Detainees Lashes Out at INS*, L.A. TIMES, December 23, 2002, California Metro, Part 2, Page 5.

18 International Covenant on Civil and Political Rights, 999 U.N.T.S. 171, art. 7 (1976).

19 Nita Lelyvald & Henry Weinstein, *INS Arrest Numbers Inflated, U.S. Says*, L.A. TIMES, December 20, 2002, California Metro, Part 2, Page 1.

20 Tony Perry, *Immigration Attorney for 7 Detainees Lashes Out at INS*, L.A. TIMES, December 23, 2002, California Metro, Part 2, Page 5.

21 Teresa Watanabe, *'Monitors' Target INS Registration*, L.A. TIMES, January 9, 2003, California Metro, Part 2, Page 1.

been exacerbated by the increased number of detentions since September 11.22

14. In combating terrorism, individuals have been systematically denied counsel based on the actions of federal officials. One group of detainees, held after reporting to register in December 2002, were reportedly flown to four cities in four different states before eventually ending up at a private detention facility in San Diego.²³
15. This deplorable practice has gained favor in holding individuals from Middle Eastern countries for alleged visa violations. Hady Hassan Omar, who was detained for 73 days after September 11, 2001, was moved to three different locations within 24 hours,²⁴ both disorienting him and making it difficult to contact legal counsel.

Practices in other countries

16. Other countries are also impeding on fundamental liberties guaranteed under the ICCPR in an effort to combat terrorism in their region. Recently, China has begun drawing parallels between its harassment of the Muslim separatist in the Xinjiang province with the U.S. battle against Al-Qaeda.²⁵
17. In Russia, government officials, while committing human rights violation in Chechnya, have justified their actions as an attempt to combat global terrorism.²⁶
18. Finally, in an effort to combat terrorism in the State of Jammu and Kashmir, India has enacted the Prevention of Terrorism Act (POTA) legislation. The Act falls below the standard of human rights protection guaranteed under international law by allowing police to detain “terrorist suspects” for questioning for up to 30 days without appearance before a court and 90 days without being charged with a crime.²⁷

Recommendations

19. HRA calls on the U.S. and other countries combating terrorism through legislation and practices to uphold the provisions of the ICCPR, in particular those related to the obligations to provide public trials and give adequate counsel for any persons detained.

22 Tony Perry, *Immigration Attorney for 7 Detainees Lashes Out at INS*, L.A. TIMES, December 23, 2002, California Metro, Part 2, Page 5.

23 Id.

24 Matthew Brzezinski, *Hady Hassan's Detention*, N.Y. TIMES MAGAZINE, October 27, 2002, page 54.

25 Lawyers Committee for Human Rights, *A Year of Loss: Reexamining Civil Liberties Since September 11*, 42-43 (2002)

26 Id.

27 Id.

20. HRA calls on the U.S. to conform to the ICCPR and the International Convention on the Elimination of All Forms of Racial Discrimination and reverse its policy of singling out non-citizens based on religion or nationality, particularly individuals who originate from Muslim countries and countries associated with international terrorism.
21. HRA requests the Working Group on Arbitrary Detention to investigate the treatment of individuals who are detained or mistreated when complying with government registration requirements.
22. HRA requests the Working Group on Arbitrary Detention to investigate the practice of moving of detainees and its effect on the right to counsel.
