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**CIVIL AND POLITICAL RIGHTS**

**Written statement\* submitted by Human Rights Advocates, Inc. (HRA),  
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 2004]

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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.

#### **Detention in the U.S.**

2. HRA recognizes the progress made by the U.S., which issued a report substantiating allegations of abuse brought by individuals from South Asian and Middle Eastern countries with no ties to terrorism, who were arrested after 11 September and held for months in New York.<sup>1</sup> They allege that supervisors slammed detainees into walls; bent and twisted their hands, wrists and fingers; lifted restrained detainees off the ground by their arms; stepped on their leg restraints; left detainees cuffed and shackled for seven hours and strip-searched detainees without correctional justification. Additionally, conversations between detainees and their attorneys were recorded and videotaped, which the report concluded violated the law and interfered with the detainees' effective access to counsel. The Center for Constitutional Rights filed a suit asking the government to conform its policies to the Constitution.<sup>2</sup>

3. Yaser Hamdi, a U.S. citizen detained in Afghanistan, has been held incommunicado in a military brig in the U.S. since April 2002 under the designation of "enemy combatant." This designation and Hamdi's indefinite detention is inconsistent with international law which states that those deprived of their liberty are entitled to be informed of the reasons for their arrest, the charges against them and to trial within a reasonable time. It is encouraging that the Supreme Court recently agreed to review this case in light of international standards, and HRA hopes to report a favorable outcome when the Court reaches its decision.

#### **Detention in Guantánamo Bay**

4. After 11 September, the U.S. Government captured several thousand terror suspects whom they said were mostly Taliban and al-Qaeda members. The U.S. is currently detaining more than 660 men and boys in Guantánamo Bay (Cuban land leased by the U.S.).<sup>3</sup> The prisoners are from 42 countries, including three juveniles between 13 and 15 years. Most are

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<sup>1</sup> THE SEPTEMBER 11 DETAINEES: A REVIEW OF THE TREATMENT OF ALIENS HELD ON IMMIGRATION CHARGES IN CONNECTION WITH THE INVESTIGATION OF THE SEPTEMBER 11 ATTACKS, Office of the Inspector General, April 2003. Available at <http://www.ccr-ny.org/v2/reports/report.asp?ObjID=pQ17GB94gP&Content=312> (last visited December 30, 2003).

<sup>2</sup> See *Turkman v. Ashcroft* at [www.ccr-ny.org](http://www.ccr-ny.org)

<sup>3</sup> Center for Constitutional Rights, *Petition to Inter-American Commission on Human Rights on Behalf of the Guantánamo Detainees*, available at [http://www.ccrny.org/v2/legal/september\\_11th/sept11Article.asp?ObjID=7lt0qaX9CP&Content=134](http://www.ccrny.org/v2/legal/september_11th/sept11Article.asp?ObjID=7lt0qaX9CP&Content=134) (last accessed December 10, 2003).

from Saudi Arabia, Yemen and Pakistan, but others are from Canada, Sweden, Australia, Britain and Kuwait. Some of these detainees were captured far from combat zones.<sup>4</sup>

5. The detainees have not been afforded judicial review regarding their legal status or detention and will not receive any outside of ad hoc military commissions. HRA and other human rights groups have requested that the detention of the prisoners and the proposed military tribunals conform to the Geneva Convention and the International Convention for Civil and Political Rights (ICCPR); both ratified by the U.S.

6. Conditions of captivity are harsh. Each prisoner lives in separate steel and mesh cells that are 6.8 x 8 feet.<sup>5</sup> Prisoners are allowed out only three times a week for 20 minutes of solitary exercise in a concrete-floored cage. Outside their cells they must submit to shackles-connected-to-handcuffs. The detainees are held entirely incommunicado, and know nothing about their status or duration of their detention. As a result, the prisoners' mental health is deteriorating. As of January, 2004, there had been 34 suicide attempts by 21 individuals.<sup>6</sup> The treatment of the detainees is inconsistent with the Convention Against Torture (CAT) which prohibits the intentional infliction of physical and mental pain or suffering.

7. The detainees are designated "enemy combatants" as opposed to a recognized legal status such as Prisoner of War (POW). This category violates the Geneva Convention, which provides that "*There is no intermediate status; nobody in enemy hands can fall outside the law.*"<sup>7</sup> Precautionary measures were issued in March 2002 by the Inter-American Commission on Human Rights regarding their lack of a recognizable legal status.<sup>8</sup>

8. The detainees have not been formally charged or tried before a competent tribunal in accordance with international law. The U.S. Government has not responded to repeated charges that these actions violate ICCPR Articles 11 and 14, requiring persons to be tried "without undue delay." Provisions of the Fourth Convention require that accused persons be promptly informed of the charges against them and afforded a trial to take place "as rapidly as possible" before pronouncement of any sentence.<sup>9</sup> According to the Working Group on

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<sup>4</sup> See Habib v. Bush at [http://www.ccr-ny.org/v2/legal/september\\_11th/sept11Article.asp?ObjID=3dRVtqS8iX&Content=92](http://www.ccr-ny.org/v2/legal/september_11th/sept11Article.asp?ObjID=3dRVtqS8iX&Content=92) (last visited January 24, 2004).

<sup>5</sup> Ted Conover, In the Land of Guantánamo, The New York Times Magazine, p.41, June 29, 2003.

<sup>6</sup> Guantánamo Detainee Attempts Suicide, Associated Press, January 6, 2004.

<sup>7</sup> International Committee of the Red Cross, Commentary: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Geneva: 1958), p.51 (emphasis in original).

<sup>8</sup> See Habib v. Bush at [http://www.ccr-ny.org/v2/legal/september\\_11th/sept11Article.asp?ObjID=3dRVtqS8iX&Content=92](http://www.ccr-ny.org/v2/legal/september_11th/sept11Article.asp?ObjID=3dRVtqS8iX&Content=92) (last visited January 24, 2004). On April 15, 2002, the Inter-American Commission on Human Rights (IACHR) notified CCR that the U.S. had rejected the IACHR's decision to adopt precautionary measures. The government argued that the IACHR did not have jurisdiction to apply precautionary measures and that it did not have the right to interpret the Geneva Convention.

<sup>9</sup> Fourth Geneva Convention, supra note 66, at art. 71

Arbitrary Detention, the status of “enemy combatant” and the denial of judicial review violate international law.<sup>10</sup>

9. As non-citizens on non-U.S. soil, the “enemy combatant” designation strips detainees of their right to judicial review in U.S. courts. While U.S. nationals accused of the same or similar crimes will be tried by civilian courts, the 2001 Military Commission Order mandates that foreign nationals be tried before military commissions.<sup>11</sup> This disparate treatment based on national origin violates the ICCPR Article 14 and the Convention on the Elimination of All Forms of Racial Discrimination (CERD) Article 5.

10. HRA is concerned that the military commission procedures will impede the detainees' access to full and fair trials in compliance with the ICCPR. The procedures impose conditions on civilian defense counsel that will make it difficult to win acquittals for clients. First, secret evidence would be admissible at trial. Not only are civilian attorneys required to have “secret” level security clearance, but they may be refused access to designated ‘Protected Information’ and closed commission proceedings.<sup>12</sup> Also, the prosecution is not required to give access to evidence or names/contact information of witnesses until a week before the trial commences. The requirements in Article 75(4) of the Geneva Conventions require that detainees be informed promptly of the basis for their detention and must be able to examine witnesses used to testify against them.<sup>13</sup>

11. Australian David Hicks is the only detainee at Guántanamo to be visited by a lawyer. Hicks sought habeas relief in a U.S. court, along with two other detainees, challenging their prolonged, indefinite, and arbitrary detention, without legal process, under ICCPR Articles 9 and 14, and the American Declaration on the Rights and Duties of Man Articles 18, 25 and 26.<sup>14</sup>

12. Contrary to ICCPR provisions, there is no right to appeal decisions of the military commissions to independent civilian courts or a competent and independent tribunal established by law.

13. U.S. courts have split on whether they have territorial jurisdiction over Guantánamo. The U.S. Supreme Court recently agreed to consider this issue. In the event that the Court holds that U.S. courts do not have jurisdiction, HRA hopes that the Commission will recognize this lack of judicial oversight violates international law.

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<sup>10</sup> “Civil and Political Rights, Including the Question of Torture and Detention”, Opinions Adopted by the Working Group on Arbitrary Detention, 26 November 2003 (e/cn.4/2004/3/add.1) at 34-35, Adopted on 8 May 2003.

<sup>11</sup> Military Commission Order (21 March 2002).

<sup>12</sup> Military Commission Order, B paragraph 4(C)(3)(b), Section 6(D)(5) (21 March 02).

<sup>13</sup> Fourth Geneva Convention, *supra* note 66, at art. 71.

<sup>14</sup> *Rasul v. Bush*, 215 F.Supp. 2d 55 (D.D.C. 2002); See BBC News online, *Senator Blasts Guantánamo Delays* (Dec. 11, 2003), available at <http://news.bbc.co.uk/1/hi/world/americas/3309321.stm>  
<http://news.bbc.co.uk/2/hi/americas/3258017.stm> (last accessed January 24, 2004).

## States of Emergency

14. Article 4 of the ICCPR allows for the derogation of particular rights “in time of public emergency which threatens the life of the nation.” However, in order to avail itself from these recognized rights, the State Party must “immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated.” The U.S. has not articulated through the appropriate channels that such circumstances exist.

15. States of Emergency do not allow for discriminatory measures, and HRA is pleased to report that the U.S. has discontinued the mandatory Special Registration<sup>15</sup> which it reported on last year.<sup>16</sup> However, HRA is concerned that the recently implemented “US-VISIT” policy continues to discriminate against people entering and exiting the U.S. based on national origin.<sup>17</sup>

16. Other issues of concern have subsequently arisen in the name of national security such as the Designated Free Speech Zones set up during President Bush’s visits to communities around the U.S. This policy impinges on “the right to hold opinions without interference [and] the right to freedom of expression” as well as the right to peacefully assemble.

## Practices in other countries

17. In addition to the U.S., Russia, Egypt, Indonesia, China, Britain and India have enacted more stringent anti-terror legislation, allowing states to arbitrarily detain individuals and jeopardize fundamental due process rights recognized by the ICCPR and customary international law.<sup>18</sup>

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<sup>15</sup> Special Registration with the Department of Immigration Services was required of all seventeen year old males from Iran, Iraq, Libya, Sudan, Syria, Afghanistan, Algeria, Bahrain, Eritrea, Lebanon, Morocco, North Korea, Oman, Qatar, Somalia, Tunisia, United Arab Emirates, Yemen, Pakistan and Saudi Arabia. Found on the American-Arab Anti-Discrimination Committee website under “DOJ Information About INS Special Registration”. Available at <http://www.adc.org/index.php?id=1353> (last visited on January 21, 2004).

<sup>16</sup> E/CN.4/2003/NGO/55

<sup>17</sup> US-VISIT allows US officials to collect, from all U.S. visitors, fingerprints and photographs; immigrant and citizenship statuses; nationalities; countries of residence; and addresses while they are in the US, and individuals who are unable to provide this information will not be permitted entry. Available at <http://www.murthy.com/ukhigh.html> (last visited on January 21, 2004).

<sup>18</sup> HRA will make available more detailed reports at the Commission on Human Rights, March-April 2004.

### **Recommendations**

18. HRA urges the Commission to affirm the Working Group's reports<sup>19</sup> on Arbitrary Detention, and requests that the Commission continue to investigate the continued mistreatment of detainees held in the U.S. and Guantánamo.

19. HRA calls upon the U.S. to afford those individuals currently being held as "enemy combatants" in Guantánamo and in the U.S., the rights established under the ICCPR, the Geneva Conventions and to improve the conditions of the detainees in compliance with the CAT.

20. HRA calls on all nations combating terrorism to strictly comply with all relevant international instruments, in particular the provisions of the ICCPR and CERD that prohibit the derogation of rights, the right to counsel, other safeguards against arbitrary detention, the right to be brought promptly before a judge or other officer authorized by law to exercise judicial power and to a speedy trial, and the freedom from discrimination based on national origin mandated.

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<sup>19</sup> "Civil and Political Rights, Including the Question of Torture and Detention", Opinions Adopted by the Working Group on Arbitrary Detention, 24 January 2003 (E/CN.4/2003/8/add.1); "Civil and Political Rights, Including the Question of Torture and Detention", Opinions Adopted by the Working Group on Arbitrary Detention, 26 November 2003 (E/CN.4/2004/3/add.1)