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STATE FOR IO-RHS, DRL-MLA, L-HRR

E.O. 12958: N/A
 TAGS: PHUM, UNHRC-1
 SUBJECT: Samil Al-Haj - #23 in Geneva 2007 Communications Log

1. Mission has received a communication from Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Ambeyi Ligabo, SR on the question of torture, Manfred Nowak, and SR on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, regarding Samil Al-Haj who is detained at Guantanamo. This communication has been sent via e-mail to IO-RHS. It is #23 on the Geneva 2007 Communications Log.

2. Begin text of letter:
 Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Special Rapporteur on the question of torture and Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health pursuant to Commission on Human Rights resolutions 2002/48, 2005/39 and 2005/24, to General Assembly resolution 60/251 and to Human Rights Council decision 1/102.

In this connection, we would like to draw the attention of your Government to information we have received regarding Samil Al-Haj, a Sudanese cameraman who worked for Al-Jazeera and who has been detained in Guantanamo since June 2002. According to the information received:

UNITED STATES DEPARTMENT OF STATE
 REVIEW AUTHORITY: JOHN L MILLS
 DATE/CASE ID: 03 MAY 2011 200908726

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Samil Al-Haj was arrested by Pakistani security forces at the Afghan border in December 2001 and transferred to US military custody in the Guantanamo Bay military base in June 2002, where he has remained in detention ever since. Reportedly, Mr. Al-Haj began a hunger strike in December 2006 to protest against his detention. According to his lawyer, he has already lost 18 kilograms and is suffering from intestinal problems. It is alleged that Mr. Al-Haj's hunger strike has been followed by reprisals from medical and military personnel, including punishment by placing him in more painful chains. It is also reported that he was force-fed. Allegedly, medical personnel have inflicted injuries on Mr. Al-Haj and other detainees on hunger strike by using large-diameter tubes or by inserting them into the lungs rather than the stomach. Four prisoners have allegedly died since June 2006 as a result of hunger-strikes and force-feeding. According to reports, the mental condition of Mr Samil Al-Haj has deteriorated and he exhibits signs of anxiety and paranoia attacks. At present, no charges have been brought against Mr. Al-Haj.

While we do not wish to prejudge the accuracy of these allegations, we would like to appeal to your Excellency's Government to take all necessary steps to secure the right to freedom of opinion and expression, including the right to protest by a hunger strike, in accordance with fundamental principles as set forth in article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which provides that "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."

Recalling our earlier findings with regard to the situation of detainees at Guantanamo Bay (E/CN.4/2006/120), we would like to stress that each Government has the obligation to protect the right to physical and mental integrity and health of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Furthermore, we would highly appreciate information from your Government on the steps taken by the competent authorities with a view to ensuring the right to the highest attainable standard of health of Mr. Al-Haj. This right is reflected, inter alia, in article 12 of the International Covenant on Economic, Social and Cultural Rights, which provides for the right of everyone to the enjoyment of the highest attainable standard of mental and physical health. This includes an obligation on the part of all States parties to ensure that health facilities, goods and services are

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accessible to everyone, especially the most vulnerable or marginalized sections of the population, without discrimination.

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We also would like to make reference to Resolution 2005/38 by the Commission on Human Rights, which calls upon States to take utmost precautions in ensuring that counter-terrorism is not arbitrarily used as a pretext to restrict human rights in ways that are contrary to their obligations under international law. Moreover, we wish to draw your Excellency's Government's attention to General Assembly resolution 57/219 of 18 December 2002 which affirmed that States must ensure that any measure taken to combat terrorism comply with their obligations under international law and to Security Council resolution 1456 (2003), paragraph 6, which reiterates that "States must ensure that any measure taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights, refugee, and humanitarian law."

In the event that your investigations support or suggest the above allegations to be correct, we urge your Government to take all necessary measures to guarantee that the rights and freedoms of Mr. Al-Haj are respected and accountability of any person guilty of the alleged violations ensured. We also request that your Government adopts effective measures to prevent the recurrence of these acts.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of Mr. Al-Haj in compliance with the above international instruments.

Moreover, it is our responsibility under the mandates provided to us by the Commission on Human Rights and extended by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, so far as relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate?
2. Please explain the legal basis for this detention and how it is compatible with the international norms and standards of the right to freedom of opinion and expression.
3. In the event that the allegations contained in the summary of the case are accurate, please provide information, concerning measures that have been taken to guarantee the physical and psychological integrity and health of Mr. Al-Haj.

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We undertake to ensure that your Government's response to each of these questions is accurately reflected in the reports we will submit to the Human Rights Council for its consideration. UNCLASSIFIED

Please accept, Excellency, the assurances of our highest consideration.

Ambeyi Ligabo

Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.

Manfred Nowak

Special Rapporteur of the question of torture

Paul Hunt

Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. End of text.

Tichenor

NNNN

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