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Yvette M Wong 08/19/2004 05:32:38 PM From DB/Inbox: Search Results

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STATE FOR IO/SHA

E.O. 12958: N/A

TAGS: PHUM, UNHRC-1, US

SUBJECT: THREE SPECIAL RAPORTEURS ON SIX GTMO DETAINEES:
QUESTIONS AND ALLEGATIONS

1. On July 7, Mission received a letter from the Special Rapporteurs (SR) on Torture (Theo van Boven), the Independence of judges and lawyers (Leandro Despouy), and the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (Paul Hunt), requesting information on allegations concerning six detainees at Guantanamo Bay (para 2). The letter is addressed to Ambassador Moley and requests a reply by September 2, 2004. A summary of the allegations was attached to the letter as an annex (para 3).

2. Begin Text of Letter dated July 2, 2004:

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the independence of judges and lawyers, Special Rapporteur on the right of everyone of the highest attainable standard of physical and mental health and Special Rapporteur on torture, pursuant to Commission on Human Rights resolutions 2003/43, 2002/31 and 2001/62 respectively.

We should like to refer to Commission resolution 2003/32, which, inter alia:

"(1) Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, which are and shall remain prohibited at anytime and in any place whatsoever and can thus never be justified, and calls upon all Governments to implement fully the prohibition of torture and other cruel, inhuman or degrading treatment or punishment;

"

"(8) Stresses in particular that all allegations of torture or other cruel, inhuman or degrading treatment or punishment should be promptly and impartially examined by the competent national authority, that those who encourage, order, tolerate or perpetrate acts of torture must be held responsible and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have taken place, notes in this respect the Principles on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles) annexed to Commission resolution 2000/43 of 20 April 2000 and General Assembly Resolution 55/89 of 4 December 2000 as a useful tool in efforts to

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UNITED STATES DEPARTMENT OF STATE
REVIEW AUTHORITY: FRANK E SCHMELZER
DATE/CASE ID: 10 DEC 2004 200303827

ACLU-RDI 3721 p.1

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combat torture, and reiterates its request to the Special Rapporteur, in the normal course of his work, to solicit views from Governments and non-governmental organizations;

"

"(14) Reminds all States that prolonged incommunicado detention may facilitate the perpetration of torture and can itself constitute a form of cruel, inhuman or degrading treatment or even torture, and urges all States to respect the safeguards concerning the liberty, security and the dignity of the person"

We also refer your Government to the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and endorsed by the General Assembly in its resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, paragraph 5 of which states that "(E)veryone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals."

We further refer your Government to the Basic Principle of the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, paragraph 8 of which states that "(a)ll arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials."

It will be recalled in this regard that in paragraph 9 of its resolution 2003/39 the Commission on Human Rights "(c)all upon States that have military courts for trying criminal offenders to ensure that such courts are an integral part of the general judicial system and use the duly established legal proceedings."

We further refer your Government to resolution 2003/28, in which the Commission:

"(3) Calls upon States to guarantee that the right of everyone to the enjoyment of the highest attainable standard of physical and mental health will be exercised without determination of any kind; (and)

(5) Calls upon States to pay special attention to the situation of vulnerable groups, including by the adoption of positive measures, in order to safeguard the full realization of the right of everyone to the enjoyment the highest attainable standard of physical and mental health."

In resolution 2002/84 entitled "Human Rights and thematic procedures," the Commission

"(2) Encourages all Governments to cooperate with the Commission through pertinent thematic procedures by

(a) Responding without undue delay to requests for information made to them through the thematic procedures, so that the procedures may carry out their mandates effectively;

"

"(3) Calls upon the Governments concerned to study carefully the recommendations addressed to them under thematic procedures and to keep the relevant mechanisms informed without undue delay on the progress made towards their implementation"

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In this connection, we should like to bring to your Government's attention allegations we have recently received relating to your country, a summary of which you will find in the annex to this letter. Stressing that we do not make any determination on the facts and circumstances of these allegations, we would request your cooperation in clarifying their substance. In order to do so, information concerning the following matters would be useful:

-- Are the facts alleged in the summary of the case accurate? If not, please provide details of the inquiries carried out to refute these allegations.

-- Have the actions or omissions complained of now ended or in fact continue to be imposed and, if so, why is such the case?

-- Has a complaint, formal or informal, been made on behalf of the victim? If so, who made the complaint and what is their relation to the victim? To whom was the complaint made? What action was undertaken upon receipt of the complaint and by whom?

-- Which is the authority responsible for investigating the allegations? Which is the authority responsible for prosecuting the perpetrators?

-- Are any inquiries, judicial or other procedures in connection with the case under way? If so, please provide details of their progress to date, and the timetable envisaged for their conclusion. If such inquiries or procedures have been completed, please provide details of the conclusions reached. (Please attach copies of any relevant documents). Are these conclusions definitive?

-- Have penal or disciplinary sanctions been imposed on the alleged perpetrators? If so, please provide details of the procedures followed to ascertain the penal or disciplinary responsibility of the perpetrators before imposing such penalties. If no such sanctions have been imposed, why not?

-- If no inquiries have been undertaken, why not? If the inquiries which were undertaken were inconclusive, why so?

-- Has any compensation been provided to the victim or his/her family? If so, please provide details including the type and the amount of the compensation involved. If no compensation has been provided, why not?

-- Was a medical examination conducted? If so, by whom? What are the results of the medical examination?

-- Is the identity of the person or persons, group or unit responsible for the torture known? Is the identity of any military, police, paramilitary, civil defence or similar body, or armed group not under government control, to which those responsible belong known?

-- Please provide such other information or observations concerning the present case as you consider relevant.

In addition, we would urge your Government to take any steps

that might be necessary to investigate, prosecute and impose appropriate sanctions on any persons guilty of the alleged violations, and to provide an adequate remedy for the victim. We also request your Government to adopt effective measures to prevent the recurrence of such acts.

It would be greatly appreciated if your Government's reply could be sent to the Office of the United Nations High Commissioner for Human Rights by 2 September 2004.

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

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Theo Van Boven
Special Rapporteur on the question of torture

Leandro Despouy
Special Rapporteur on the independence of judges and lawyers

Paul Hunt
Special Rapporteur on the right of everyone to the enjoyment
of the highest attainable standard of physical and mental
health

End text of letter.

3. Begin text of annex:

Mindful of the 28 June 2004 decision of the United States Supreme Court, which stated that U.S. courts have jurisdiction to consider challenges of the legality of the detention of persons incarcerated at the Guantanamo Bay Naval Base, and the announcement that the first military tribunal was formed on 29 June 2004, the Special Rapporteurs have received information regarding Feroz Ali Abbasi, a United Kingdom national, aged 23, Moazzam Begg, a UK/Pakistani national, aged 35, David Hicks, an Australian national, aged 28, Salim Ahmed Hamdan, a Yemen national, aged 34, Ali Hamza Ahmed Sulayman al Bahlul, Yemen national, and Ibrahim Ahmed Mahmoud al Qosi, a Sudan national. According to the allegations received:

It was announced on 3 July 2003 that the six men were made subject to the Military Order on the Detention, Treatment and Trial of Certain Non-Citizens in the War Against Terrorism, of 13 November 2001. They were subsequently transferred to Camp Echo, the part of Guantanamo Naval Base where pre-commission detainees, or those designated to face a military commission, are held. Salim Ahmed Hamdan, in custody since November 2001, was transferred there in early December 2003, while Feroz Abbasi and Moazzam Begg are believed to have been held there longer. Ali Hamza Ahmed Sulayman al Bahlul, Ibrahim Ahmed Mahmoud al Qosi and David Hicks have been charged with conspiracy to commit war crimes. No dates for their trials have been set, but David Hicks may face a military commission in August.

At Camp Echo each detainee is held in solitary confinement for up to 24 hours per day in a windowless air-conditioned cell. The cells are approximately 3m by 3m by 5m, and divided into living quarters with a bed and small toilet, and a section for a small table. One psychiatrist, who visited Guantanamo military base in 2003 at the invitation of the Department of Defense, stated that the solitary confinement places the detainees at significant risk for future psychiatric deterioration, possibly including the development of irreversible psychiatric symptoms. The International Committee of the Red Cross has stated that it has observed a worrying deterioration in the psychological health of a large number of detainees. Moreover, the isolation and conditions of the confinement may ultimately make these prisoners susceptible to mental coercion and false confessions. Therefore there are concerns that guilty pleas or incriminating testimony could result from the conditions in which the detainees are held. According to the psychiatrist's declaration which was filed in federal court, Salim Ahmed Hamdan has said that he considered confessing falsely to ameliorate his situation.

There is concern that the military commissions, whose sentences cannot be appealed in any other court and include the death penalty (i.e. sanctions 7 and 4 of the 2001 order, respectively), will allow for the admission of such evidence without regard to international standards of due process. According to the released 26 February 2002 memorandum from the Justice Department to the Defense Department, incriminating statements may be admitted in proceedings before military commissions even if the interrogating

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officers do not abide by the Miranda warnings (the US Supreme Court decision concerning the rights of suspects).

End text of annex.

4. Mission has transmitted by e-mail a copy of the letter and annex to IO/SHA, attention Director.
Moley

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End Cable Text

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