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UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

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USA 49/2003

22 October 2003

Excellency,

I have the honour to write to you in my capacity as Special Rapporteur of the Commission on Human Rights on torture and in accordance with Commission resolutions 2001/62, entitled "Torture and other cruel, inhuman or degrading treatment or punishment".

In its resolution 2003/32, adopted at its 59th session, the Commission inter alia:

"1. Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, which are and shall remain prohibited at any time 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 and General Assembly resolution 55/89 as a useful tool in efforts to 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 in 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;"

I would further like to refer to resolution 2002/84 of the Commission on Human Rights, entitled "Human Rights and Thematic Procedures", which inter alia:

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"2. Encourages all Governments to cooperate with the Commission through the pertinent thematic procedures by 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;"

In the exercise of my mandate I continue to receive and examine information about incidents of torture. In this connection I should like to bring to your Government's attention allegations I have recently received relating to your country, a summary of which you will find in an annex to this letter. I would, therefore, request your cooperation in clarifying the substance of these allegations. In order to do so, information concerning the following would be useful, where it is pertinent to the cases in question:

- Whether the allegations are factually accurate.
- Any other factual circumstances which should be taken into account in assessing the implications of the allegations.
- The court, agency or other competent body which was, or is, responsible for investigation of the allegations and/or the prosecution of those responsible.
- The result of any medical examination and the identity of the person who performed it.
- The identity of the person or persons, group or unit responsible for the torture, if known, as well as the identity of any military, police, paramilitary, civil defence or similar body, or armed group not under government control, to which those responsible belong.
- The decision on a complaint, the grounds for this decision and any disciplinary or criminal sanctions imposed, as well as whether or not the measure(s) imposed is (are) final.
- The present status of any investigation or legal action not yet completed.
- The nature and amount of any compensation made to the victim or his/her relatives.
- In the event the investigation has not been completed, the responsible parties have not been identified, prosecuted, or punished or compensation not paid, the reasons why such is the case.
- Any other information or observations which your Government deems pertinent.

In addition, I would urge your Government to take any steps which might be necessary in order to investigate, prosecute and impose appropriate sanctions on any persons guilty of torture regardless of any rank, office or position they may hold, as well as to take effective measures to prevent the recurrence of such acts and to compensate the victims or their relatives, in accordance with the relevant international standards. A summary of such standards as they pertain to my mandate can be found in the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the General Assembly on 9 December 1988 (Res. 43/173).

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I would be grateful if the reply of your Government were to be received at the Office of the United Nations High Commissioner for Human Rights by 28 November 2003. I shall also make myself available for any consultations which you may consider desirable. Arrangements for consultations may be made through the Office of the United Nations High Commissioner for Human Rights in Geneva.

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



Theo van Boven
Special Rapporteur of the Commission
on Human Rights on torture

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Annex

Summary of allegations

On 16 January 2002, the Special Rapporteur transmitted an urgent appeal regarding the alleged conditions of detention in the Guantanamo Bay military base, Cuba (E/CN.4/2003/68/Add.1, para.1907). By letter dated 3 April 2002, the Government assured the Special Rapporteur that the detainees were being treated humanly (ibid., para. 1908). In this context, the Special Rapporteur has received information on the following individual cases:

[redacted] a 31-year-old French national, was reportedly arrested in autumn 2001 by United States of America's authorities at the border between Pakistan and Afghanistan. In January 2002, he was reportedly transferred to Guantanamo Bay military base, where he is alleged to have been kept in detention since then. [redacted] a 24-year-old French national, was reportedly transferred to Guantanamo Bay military base in early 2002 upon his arrest in Afghanistan. He is alleged to have been kept in detention in the military base since then. [redacted] a 36-year-old French national, was reportedly arrested in October 2001 in Pakistan and subsequently handed over to the United States of America's authorities. He was allegedly transferred to Guantanamo Bay military base in October 2001 and has since then been kept in detention there. [redacted] a 22-year-old French national, was reportedly arrested in Pakistan and transferred in early 2002 to Guantanamo Bay military base, where he is alleged to have been kept in detention since then.

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It is reported that during their transfer the four above-named individuals were bound to a seat during 25 hours and that they were not given any indication as to where they were taken. Upon arrival at the military base, their hair and beard were forcibly shaved. According to the information received, they have been held in individual 2.40 x 2 metres open air cells, which are said to be constantly enlightened. As a result, it is allegedly not possible for them to enjoy privacy. It is also reported that they are only allowed to get out of their cell 20 minutes per week, during which they have allegedly no contact without any other person. In view of their alleged complete isolation, fears have been expressed for their physical and mental integrity. They are further reported to have had not access to a lawyer, his relatives or a doctor of his own choice since their respective arrest. It is alleged that since July 2003, all the correspondence with their families must be written in English. They have reportedly not been informed yet on the charges brought against him. In its opinion No 5/2003, the Working Group on arbitrary detention (WGAD) considered their detention to be contrary to articles 9 of the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights.