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CIVIL AND POLITICAL RIGHTS

**Written statement* submitted by the International Federation for Human Rights (FIDH),
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.

[13 February 2006]

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

United States of America

The FIDH and its affiliate organization the Center for Constitutional Rights (CCR) express their deep concern at the continuing and systematic human rights violations being committed by the United States (US).

I. Arbitrary Detentions, Torture and Cruel, Inhuman and Degrading Treatment

More than four years after September 11, 2001, the U.S. continues to detain nearly 500 men at Guantánamo Bay, Cuba without having properly determined their legal status under the Geneva Conventions or domestic U.S. law. The U.S. Government has continued to argue that the detainees have no rights, domestic or international, to be enforced.

Since gaining control of detainees, the U.S. military has held them at Guantánamo under conditions that violate their constitutional and international rights to dignity and freedom from torture and from cruel, inhuman and degrading treatment or punishment. Indeed, many of these violations – including isolation for up to 30 days, round-the-clock interrogations, extreme and prolonged stress positions, sleep deprivation, sensory assaults, removal of clothing, hooding, and the use of dogs– were actually interrogation techniques approved for use at Guantánamo by the most senior Department of Defense lawyer. It has also been proven that these techniques have been applied in other U.S. detention facilities in Iraq and Afghanistan.

In December 2005, President Bush threatened to veto a bill passed by the United States Senate intended to ban cruel, inhuman or degrading treatment of prisoners held by the military, saying it would bind the President's hands in wartime. The Bush Administration continues to block a true investigation of the abuse, torture and murder of people held by the U.S. at Guantánamo, Abu Ghraib, and other detention camps around the world.

II. Denial of and Interference with Access to Counsel

The U.S. military has continually interfered with the Guantánamo detainees' right to a confidential attorney-client relationship. Despite an October 2004 court ruling that the monitoring was impermissible, detainees' reports reveal that the Government continues informal monitoring of such communications.

The military imposes very harsh restrictions on detainees' communication with their lawyers. The military also punishes detainees for receiving attorney visits by placing them in solitary confinement for several days each before and after these visits.

III. Violations of the right to habeas corpus

On December 30, 2005, President Bush signed the Detainee Treatment Act into law. The Act strips federal district courts of habeas corpus jurisdiction disabling them from hearing cases arising from the detention of non-citizens at Guantánamo. The Government, claiming that the Act applies retroactively, now refuses to permit any attorney with a recently filed habeas case (which constitute the cases brought on behalf of 300 detainees) to visit his clients. Furthermore, until the Appellate Court or Supreme Court has decided the issue of retroactive application, the district courts refuse to entertain any application on behalf of any Guantanamo detainee,

effectively freezing the litigation as it stands, and leaving detainees with no recourse whatsoever to the courts.

IV. Transfers to Countries Where Detainees Are Likely to Suffer Torture and Other Cruel, Inhuman or Degrading Treatment

The Government's practice of "rendering" persons under its control to countries and secret detention facilities where it is aware torture occurs, in violation of the U.N. Convention Against Torture, continues to this day. Recently, more light has been shed on the U.S. practice the "extraordinary rendition" of individuals to countries and under circumstances in which the Government must know that detainees will be tortured, or at least that they will likely be held without charges and interrogated under torture. Some of these prisoners have then ended up at Guantánamo. It is not publicly known how many people the Government has rendered to indefinite detention and torture, although estimates range from 150 to many thousands.

According to the Government, more than 275 detainees once held at Guantánamo have been transferred to other countries, including Egypt, Saudi Arabia, Iran, Yemen, and Tajikistan. As pressure to close the facility mounts, the use of illegal transfers from Guantánamo seems likely to increase. In August 2005, the U.S. announced that it had commenced negotiating agreements for the transfer of Guantánamo detainees to ten Muslim countries. One Yemeni national, Walid al-Qadasi, was returned to Yemen from Guantánamo in April 2004. Almost two years later he is still being held in the Political Security Prison at Sana'a without charge. The head of the Prison reported that him and other Yemeni prisoners were being held at the behest of the U.S. government.

The Government also claims to get "diplomatic assurances" from the foreign government that the detainees will not be tortured - but they are unenforceable, not monitored and not open to public scrutiny. Potential transferees cannot challenge the credibility or reliability of these assurances before an independent judicial body, and there is no requirement for the Government to take the past human rights history of the receiving country into account.

V. Hunger Strikes at Guantánamo

The Guantánamo detainees have been engaged in a number of widespread and often life-threatening hunger strikes to demand for respect of their religion, fair trials, proper legal representation and humane treatment. At least 50 individuals were being force-fed through nasal-gastric tubes in June-July and others still are. The U.S. military's ability to effectively end the strike without subjecting the detainees to further harm or indignity is in serious doubt.

Lawyers who went to see the detainees were denied access to their clients who had been hospitalized and could not assess the health status of their clients. They have also stated that the medical personnel are contributing to detainees' physical and mental anguish through medical mistreatment. Several detainees are now at death's door, with little that the lawyers can do.

VI. Violation of the Guantánamo Detainees' Right to Religious Freedom

Detainees, former detainees, and government officials have reported numerous incidences in which military personnel have kicked, thrown, or stomped on holy books; hosed them with water; written obscenities in them, or simply disallowed detainees from having them. Detainees

complain that military personnel regularly desecrate the prayer time. For the past two years, the Government has denied the detainees an Imam altogether.

A memo issued by Defense Secretary Donald Rumsfeld on April 16, 2003 permits interrogators to employ the “Futility” technique, according to which female military interrogators may “perform acts designed to take advantage of their gender in relation to Muslim males,” that is to degrade the moral infrastructure of Islam.

Government-initiated investigative reports regarding detention operations confirm that religious discrimination at Guantánamo is not considered “abuse.” They also reveal that the Government fails to punish military personnel who violate the detainees’ right to religious freedom.

VII. Warrantless and Illegal Surveillance of Communications

For over four years the National Security Agency (NSA), with the approval of the U.S. President, has engaged in a program of widespread warrantless electronic surveillance of telephone calls and emails in violation of the Foreign Intelligence Surveillance Act (FISA). FISA is a clear criminal law that authorizes foreign intelligence electronic surveillance only upon orders issued by federal judges. It expressly authorizes warrantless wiretapping only for the first fifteen days of a war, and makes it a crime to engage in wiretapping without specific statutory authority. Rather than seeking to amend this statute, President Bush simply violated it by authorizing warrantless wiretapping of Americans without statutory authority or court approval in the name of the “war on terror.”

VIII. Conclusion and Recommendations

The right of every person to be free from mistreatment applies equally during peacetime and wartime, regardless of an individual’s legal status. In failing to abide by these fundamental principles with regard to persons under its control, the U.S. is causing irreparable harm to the individuals detained, and has by now established dangerous precedents for other States to follow.

The FIDH and CCR therefore call upon the UN Commission on Human Rights to condemn the unlawful acts of enforced disappearance, arbitrary and indefinite detention, torture, and other cruel, inhuman and degrading treatment and violations of public freedoms, and call upon the US authorities to :

1. Respect its international obligations when they seek to temporarily override or restrict fundamental rights with the aim of combating terrorism;
2. Cease sending persons under its control to third countries where they may be at risk of torture or cruel, inhuman or degrading treatment;
3. Give individuals facing transfer a real opportunity to contest the transfer, including access to counsel and an independent hearing;
4. Ensure honest, confidential, and prompt communication between detainees held by the United States in the context of the “war on terror” and their counsel;

5. Refrain from exploiting detainees' Islamic faith or practice in order to torture or otherwise persecute them;
6. Notify consulate, families, and attorneys of prisoners participating in hunger strikes and ensure that appropriate, medical attention is provided to them with their consent by an independent medical team;
7. Ensure that counter-terrorism laws and their methods of application, comply completely with international human rights standards.

This statement is supported by the following organization:

Center for Constitutional Rights (CCR)
