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IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006 ENTITLED "HUMAN RIGHTS COUNCIL"

Written statement* submitted by the International Federation of Human Rights Leagues (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.

[28 February 2007]

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

UNITED STATES OF AMERICA
Violations of human rights in the context of the "War on Terror"

The International Federation of Human Rights (FIDH) and the Center for Constitutional Rights (CCR), express their deep concern at the continuing human rights violations being committed by the United States in the context of the so-called "War on Terror," and in particular with regards to detainees' rights. Enforced disappearances, arbitrary and indefinite detention, torture, and other cruel, inhuman and degrading treatment and denials of effective remedies and due process, constitute patent violations of the United States' obligations under international customary law and treaties it has ratified.

Treatment of Detainees and the situation in Guantánamo
Since gaining control of detainees, the U.S. military has held them virtually *incommunicado* at Guantánamo Bay, Cuba, under conditions that violate their constitutional and international rights. Isolation for up to 30 days, beatings, round-the-clock interrogations, extreme and prolonged stress positions, sleep deprivation up to 50 days, sensory assaults, removal of clothing, hooding, and the use of dogs, are interrogation techniques approved for use by the Military 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.

As more information has become available, it is clear that many of those who have been held at the U.S. Naval Station at Guantánamo Bay– some as young as 13 or as old as 80 – are not violent terrorists or "enemy combatants" but merely individuals caught in the wrong place at the wrong time, often with tenuous (at best) connections to terrorist organizations. Out of the 760 men who have been detained at Guantanamo, only 3 are currently charged with a crime, and over 350 have been released. Yet, about 395 remain detained indefinitely, without access to justice. In some cases it appears as though the seizure and detention of a person involved a mistaken identity or a mistranslation of an Arabic, Pashtun, or Dari name.

The United States has indicated publicly that close to one hundred of the prisoners have been cleared for transfer or release. Yet, it has not moved swiftly to accomplish those transfers. No transparency exists in this process nor are timetables firmly established.

On February 16, 2006, five United Nations Special Rapporteurs released a report determining that the prison is a "torture camp" and demanding that the U.S. shut down the detention facility at Guantánamo Bay, release or try the detainees and "refrain from any practice amounting to torture or cruel, inhuman or degrading treatment." Similar conclusions were issued by the UN Human Rights Committee in May 2006 and the UN Committee against Torture in July 2006.
The ICRC called said that the entire system at Guantanamo was "tantamount to torture."

The situation has worsened since these reports were issued. The U.S. has completed the building of a new permanent prison known as "Camp 6." Such facilities are designed to maximize the sensory deprivation of the prisoners. Every prisoner is kept in solitary confinement. The lights are on continually, and there are no windows to the outside.

Limited outdoor recreation is provided; some prisoners, only taken out for exercise at nighttime, are never exposed to daylight.
In September 2006, the President announced the transfer into Guantanamo of 14 so-called "high value" detainees who had previously been held for years in CIA "black sites." Since these transfers, the United States government has erected insuperable barriers to access to these detainees. Lawyers have been prevented to meet with their clients, on grounds that their knowledge of the types of "alternative interrogation methods" that were used on him, and of the locations of the "black site" prisons where he had been held, is "top secret."

The Military Commissions Act 2006 and the impossibility for the detainees to challenge the legality of their detention

On September 29, 2006, the Military Commissions Act (MCA) was passed by the U.S. Congress. It purports to retroactively (back to 9/11) strip from any "alien detained by the United States," anywhere in the world, who is "detained as an enemy combatant or is awaiting such determination" the right to file a *habeas corpus* petition challenging the legality of his or her detention. This provision ostensibly applies to all Guantánamo detainees whose habeas petitions were pending in the federal trial courts at the time of the law's passage. Another section of the statute prohibited any court from reviewing any aspect of the treatment, detention, transfer, trial or conditions of confinement of an detainee designated an "enemy combatant." This inability to file civil suits prevents detainees from holding accountable perpetrators of abuses and their commanders, in violation of international human rights law's imperative to provide effective remedies.

Retroactive amendments (back to 1997) have also been made to the U.S. War Crimes Act in order to immunize possible authors of war crimes. Indeed, "grave breaches" to the Geneva Conventions have been narrowly limited and redefined. The President is given sole discretion to punish other violations of the Geneva Conventions that do not rise to the level of "grave breaches" – including degrading treatment in violation of Common Article 3 – and to approve whatever interrogation techniques he deems legal and appropriate. In addition, the MCA states that no US court may apply international law to determine whether Common Article 3 has been violated and is punishable.

Also, according to the MCA, evidence obtained by coercion is admissible in a military commission if it is (1) reliable, (2) probative, and (3) serves the "interests of justice." The standard for evidence obtained through coercive interrogations is very low – evidence obtained from interrogations prior to December 2005 (enactment of the Detainees Treatment Act) can be admitted even if it is found to result from cruel, inhuman, and degrading treatment.

The practice of extraordinary renditions

FIDH strongly condemns the U.S. Government's practice of "rendering" persons under its control to countries and/or secret detention facilities where it is aware torture occurs. 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.

As pressure to close the facility mounts, the use of illegal transfers from Guantánamo to human rights abusing regimes seems likely to increase. The U.S. must ensure that detainees are not sent to countries where they face torture or persecution.

The Government also claims to get "diplomatic assurances" from the foreign government that the detainees will not be tortured, but such assurances 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 that the United States government take the past human rights history of the receiving country into account.

FIDH and CCR call for the adoption of a resolution publicly condemning these policies and practices and the content of the new legislation. The resolution should urge the United States authorities to*, inter alia*:

- **cooperate fully with the Special Rapporteurs** and provide immediate, complete, and unimpeded access to the Guantánamo detention facilities and the detainees being confined there;
- f**ully implement the recommendations of the five Special Rapporteurs** in their February 16, 2006 report on the circumstances of Guantánamo;
- **guarantee the physical and psychological integrity of all detainees** held by the United States government in Guantánamo and the observance of all human rights in accordance with the government's international and regional undertakings;
- **amend the Military Commissions Act** in order to authorize all detainees to challenge the legality of their detention before the courts and to fully implement the United States' obligations under the Geneva Conventions and, international human rights and humanitarian law;
- **guarantee the independence of the judiciary** in conformity with the International Covenant on Civil and Political Rights and United Nations basic principles on the Independence of the Judiciary, including among other things, executive compliance with the decisions of the federal judiciary;
- **promptly charge and try all detainees** against whom the United States intends to bring charges, in accordance with international fair trial obligations;
- **treat the detainees held at Guantánamo who are eligible for release or transfer** in accordance with international obligations and principles, including the principle of *non-refoulement*, and thereby refrain from rendering individuals to countries where there are substantial grounds to believe that they would face an imminent risk of grave human rights violations, including torture and persecution;
- **take immediate and concrete steps to investigate all military and intelligence officers and soldiers** who are alleged to have participated in the torture, abuse, or cruel, inhuman or degrading treatment of the Guantánamo detainees, and prosecute those involved to the fullest extent of the law; and
- **respect its international obligations when the United States** seeks to override or restrict fundamental rights with the aim of combating terrorism.
