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November 12, 2003

Lieutenant General John R. Vines
U.S. Commander in Afghanistan
CJTF 180 – CG
APOAE 09354
Bagram Air Base, Afghanistan

Dear General Vines:

I am writing to request information about the current status of the military investigations into the deaths of three detainees who died in U.S. custody in Afghanistan. Mullah Habibullah and Mr. Dilawar died at Bagram Airbase in December 2002.[1] A third man, Abdul Walli, died at a U.S. holding facility near Asadabad in June 2003.

According to press reports, pathologists working for the Department of Defense determined that the Mr. Habibullah and Mr. Dilawar had suffered "blunt force injuries" and classified their deaths as homicides.[2] In response to these reports, Lt. Gen. Daniel K. McNeill indicated in March 2003 that the circumstances behind the deaths were being examined by the U.S. military in the context of an ongoing criminal investigation.[3] In June 2003, a spokesperson for the U.S. military announced that a separate investigation had been launched into Mr. Walli's death. According to the BBC, reports from Afghan sources suggested that Mr. Walli had been tortured during a U.S. interrogation session.[4]

As you are aware, these three deaths amplified existing concern about the U.S. treatment of detainees. On December 26, 2002, for example, a story in the *Washington Post* alleged that "captives are often 'softened up' by MPs and U.S. Army Special Forces troops who beat them up and confine them to tiny to tiny rooms."[5] There have also been reports that CIA officers have used "stress and duress" techniques against detainees who refused to cooperate during

[1] *See* Barbara Starr, "U.S. Investigating Afghan Detainee Deaths," CNN.com, December 18, 2003 (noting that the first detainee died on December 3, 2002 and that the second detainee died on December 10, 2002).
[2] *See, e.g.,* Duncan Campbell, "Afghan Prisoners Beaten to Death at U.S. Military Interrogation Base," *Guardian*, March 7, 2003; Marc Kaufman, "Army Probing Deaths of Two Afghan Prisoners," *Washington Post*, March 5, 2003.
[3] *See* Carlotta Gall, "U.S. Military Investigating Death of Afghan in Custody," *New York Times*, March 4, 2003.
[4] *See* "Local Detainee Dies In U.S. Custody in Afghanistan," BBC Monitoring International Reports, June 24, 2003.
[5] *See* Dana Priest and Barton Gellman, "U.S. Decries Abuse but Defends Interrogations: 'Stress and Duress' Tactics Used on Terrorism Suspects Held in Secret Overseas Facilities," *Washington Post*, December 26, 2002.

interrogation sessions.[6] These techniques are said to include sleep deprivation, forcing the prisoners to wear black hoods or spray-painted goggles, and forcing them to remain in awkward, painful positions.[7]

On June 26, 2003, President Bush reiterated that the United States would not torture terrorism suspects or interrogate them in a manner that would constitute "cruel and unusual punishment."[8] In conjunction with this pledge, William Haynes, the General Counsel for the Department of Defense, promised that anyone found to have broken the law in relation to the deaths of Mr. Habibullah, Mr. Dilawar, and Mr. Walli would be prosecuted by the U.S. government.[9]

Despite world-wide concern, to our knowledge no further information has been made public about the status of the investigations into these three cases. We would be grateful, therefore, if you would provide us with answers to the following questions:

(1) What is the current status of each of the three cases?
(2) Would you clarify the nature of the military investigation described by General McNeill into Mr. Habibullah and Mr. Dilawar's cases? Is it an investigation, for example, under Article 32 of the Uniform Code of Military Justice, 10 U.S.C. § 832? If not, what type of investigation is it?
(3) Is the investigation into Mr. Walli's death the same kind of investigation? If not, what type of investigation is it?
(4) Will the reports of the investigating officers be made available to the public?
(5) Has the military held a hearing in any of the three cases, under Article 32 or otherwise? If not, are there currently plans for such hearings and will the transcripts of such hearings be made available to the public? [10]

[6] *See ibid*.; Jonathan Turley, "Rights on the Rack: Alleged Torture in Terror War Imperils U.S. Standards of Humanity," *Los Angeles Times*, March 6, 2003; Francis Williams, "US Criticized Over Bagram Interrogation Techniques," *Financial Times* (London), March 13, 2003;
[7] *See* Dana Priest and Barton Gellman, "U.S. Decries Abuse but Defends Interrogations: 'Stress and Duress' Tactics Used on Terrorism Suspects Held in Secret Overseas Facilities," *Washington Post*, December 26, 2002.
[8] Statement by the President, United Nations International Day in Support of Victims of Torture, June 26, 2003, accessed on November 7, 2003 at http://www.whitehouse.gov/news/releases/2003/06/20030626-3.html.
[9] *See* Peter Slevin, "U.S. Pledges Not to Torture Terror Suspects," *Washington Post*, June 27, 2003.
[10] The public has a right of access to Article 32 proceedings. This right was affirmed in 1997 by the United States Court of Appeals for the Armed Forces. *See Colonel Owen C. Powell, et al v. Colonel Robert L. Jarvis, et al.*, U.S. Ct of Appeals for the Armed Forces, November 5, 1997.

(6) Has the military adopted any regulations or other measures to ensure the proper treatment of detainees? Are copies of such measures available to the public?

Thank you very much for your consideration. We look forward to receiving your responses.

Sincerely,

Elisa Massimino
Director, Washington, D.C. Office

cc: The Honorable Donald Rumsfeld,
Secretary of Defense

William Haynes,
General Counsel, Department of Defense